MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the repeal of rules 16.38.501, 16.38.502, and 16.38.503, and the adoption of new rules relating to pre-marital serological tests	NOTICE OF PUBLIC HEARING REPEAL OF RULES 16.38.501, 16.38.502, and 16.38.503, AND THE ADOPTION OF NEW RULES (Serological Tests)

To: All Interested Persons

1. On September 9, 1983, 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 repeal of rules 16.38.501, 16.38.502, and 16.38.503, and the adoption of new rules which describe the procedures for premarital serological testing.

2. The proposed rules will replace rules 16.38.501, 16.38.502, and 16.38.503, found at page 16-1865 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I CERTIFICATE FORM In addition to the information required by sections 40-1-203 and 40-1-204, MCA, the certificate form shall include the following:

(1) An indication by the certifying physician that either:

(a) the applicant submitted to a standard serological test for rubella immunity within the past six months and that both the applicant and the other party to the proposed marriage have examined the report of such test; or

(b) the applicant is exempt from the requirement for serological testing on medical grounds, as specified in [RULE III].

(2) Certification by the applicant.

(3) Acknowledgement of receipt of the certificate by the clerk of the district court who is to issue the marriage license.

AUTHORITY: Sec. 40-1-206, MCA
IMPLEMENTING: Sec. 40-1-203 and 40-1-204, MCA

RULE II PROCEDURES (1) The procedure for completion of the medical certificate when the examination is made in Montana is as follows:

(a) The female applicant for a marriage license shall consult a physician for blood tests. If the applicant is not exempt on medical grounds, as set out in [Rule III], the physician shall send a specimen of the applicant's blood to an approved laboratory designating that it is for a premarital test.

(b) The laboratory shall examine the specimen, fill out the lower half of the certificate form, and transmit it with a confidential report of results to the physician.

(c) After examination of the laboratory report, and after the report has been exhibited to and examined by the applicant and the other party to the marriage, the physician shall complete the form and give it to the applicant.

(d) The applicant must sign the certificate and present it with satisfactory evidence of age, or if a minor, with the consent required by section 40-1-203, MCA, to the clerk of the district court who is to issue the marriage license.

(2) The procedure for completion of the medical certificate when the examination is made outside of Montana is as follows:

(a) Certificate forms and blood test forms have been forwarded to each state health department and are available at these sources or directly from the Montana state department of health and environmental sciences, Helena, Montana.

(b) The applicant may consult any duly licensed physician in any state or territory or Canadian province for the examination.

(c) Blood tests made outside Montana must be done in approved laboratories, which include state and territorial health department laboratories and laboratories within their jurisdictions approved by them, U.S. public health service laboratories, laboratories operated by the U.S. armed forces and veteran's administration, provincial public health laboratories of Canada, and laboratories licensed under the provisions of the Clinical Laboratories Improvement Act of 1967.

(d) Certificate forms provided by other states having comparable laws will be accepted for persons who have received serological tests outside of Montana provided such tests are performed not more than six months prior to the issuance of a marriage license.

(e) Except as modified by this subsection, the procedures of subsection (1) of this rule apply.

AUTHORITY: Sec. 40-1-206, MCA
IMPLEMENTING: Sec. 40-1-203, 40-1-204 and 40-1-206, MCA

RULE III EXEMPTIONS FROM REQUIREMENT FOR SEROLOGICAL TESTING (1) A female applicant for a marriage license may be exempted from the requirements for serological testing on any of the following grounds:

(a) If the applicant is over age 50.

(b) If, in the opinion of the consulting physician, the applicant is incapable of bearing children.

(2) If the consulting physician determines that a basis for exemption exists, he or she shall so indicate on the medical certificate.

AUTHORITY: Sec. 40-1-206, MCA
IMPLEMENTING: Sec. 40-1-206, MCA

4. The Department is proposing these rules to comply with amendments to Sections 40-1-203, 40-1-204, 40-1-206, and 40-1-208, MCA, enacted by Chapter 180, Laws of 1983. The law as amended removes the requirement for syphilis testing, and makes the rubella test necessary only for the female applicant. The law also directs the Department to establish criteria for exemptions from the testing requirement.

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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than September 9, 1983.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on section 40-1-206, MCA, and the rules implement sections 40-1-203, 40-1-204, and 40-1-206, MCA.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State August 1, 1983

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

In the matter of the amendment of rule 16.2.101 relating to rulemaking procedures	NOTICE OF PROPOSED AMENDMENT OF ARM 16.2.101 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 16, 1983, the department and board propose to amend rule 16.2.101 relating to rulemaking procedures.

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

16.2.101 MODEL RULES (1) The Department of Health and Environmental Sciences and the Board of Health and Environmental Sciences herein adopt and incorporate the Attorney General's model procedural rules ARM 1.3.101, 1.3.102, and 1.3.201 through 1.3.233, including the appendix of sample forms which follows the model rules, except as modified by subsections (2), (3) and (4) below, as authorized by Section 2-4-302, MCA.

(2) The incorporation of ARM 1.3.206 is modified by the addition of the rules in sub-chapter 2 of this chapter which incorporate requirements of statutes administered by the department and board. In addition, the incorporation of ARM 1.3.206 is modified by deletion of subsection (3)(a)(i)(A)(II).

(3) The incorporation of the appendix of sample forms is modified and by deletion of the "Note:" paragraphs in Sample Forms 4, 5, 7, 8, and 9.

(4) The incorporation of ARM 1.3.208 is modified by adding the words "or summary" and deleting the words "in full" in subsection (2)(a)(i) so that it will read as follows: "(i) either the text of the rule adopted or amended, reference to the notice of proposed agency action in which the text OR SUMMARY of the proposed rule or rule as proposed to be amended was printed, or reference to the page number of the Administrative Rules of Montana on which the repealed rule appears.

~~(2)~~ (5) ARM 1.3.101 and 1.3.102 are procedural rules required by MCA chapter implementing Article II, Section 8 of the 1972 Constitution, right of participation. ARM 1.3.201 through 1.3.233 are organizational and procedural rules required by the Montana Administrative Procedure Act. Copies of the model rules may be obtained from the Legal Division, Department of Health and Environmental Sciences, Room C216, Cogswell Building, Helena, Montana, 59620.

AUTHORITY: Sec. 2-4-201, 2-4-202 MCA
IMPLEMENTING: Sec. 2-4-201 MCA

4. The purpose of the proposed amendment is to more closely conform the rulemaking procedures of the board and department to the requirements of Section 2-4-302 of the Administrative Procedure Act, and to provide the agencies with greater flexibility in determining the format of rulemaking notices. The board and department maintain extensive

mailing lists of interested persons and organizations, who will continue to receive the full text of all proposed rules.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 15, 1983.

6. The authority to make the proposed amendment is based on section 2-4-201, MCA, and implements section 2-4-201, MCA.

FOR THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

JOHN F. McGREGOR, M.D., Chairman

By: John W. Bartlett

FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

JOHN J. DRYNAN, M.D., Director

By: John W. Bartlett

Certified to the Secretary of State August 1, 1983

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

In the matter of the amendment of rules 16.18.101, organization of the board of water and wastewater operators; 16.18.203, operator certifications; 16.18.204, examinations; 16.18.205, experience/education; and 16.18.206	NOTICE OF PROPOSED AMENDMENT OF RULES 16.18.101, 16.18.203, 16.18.204, 16.18.205, and 16.18.206 (Water and Wastewater Operators) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 12, 1983, the department proposes to amend rules 16.18.101, referencing the description of the board of water and wastewater operators; 16.18.203, stating requirements for certification of operators; 16.18.204, setting examination requirements; 16.18.205, setting experience and education standards for operators; and 16.18.206, creating exceptions under which plant may be run by less-than-fully-certified operator.

2. The rules as proposed to be amended provide in substance that the authority for certification and general regulation of standards for water and wastewater facilities and their operators is shifted to the department from the board of water and wastewater operators. A copy of the entire rules as proposed to be amended may be obtained by contacting Eleanor Parker, Legal Unit, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT., 59620.

3. The department is proposing these amendments to conform the rules to action taken by the 1983 Legislature in House Bill 207, which shifted general supervisory and rulemaking authority over water and wastewater operators to the department and reduced the board of water and wastewater operators to the status of an advisory council.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Cogswell Building, Helena, MT., 59620, no later than September 9, 1983.

5. If a person who is directly affected by the proposed action 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 L. Solomon at the above address, no later than September 9, 1983.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, 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 1,200, based on the approximate number of water and wastewater operators in Montana.

7. The authority of the department to make the proposed amendments is as follows:

16.18.101 -- Section 2-4-201, MCA

16.18.203 through 16.18.206 -- Section 37-42-202, MCA

The rules implement the following sections:

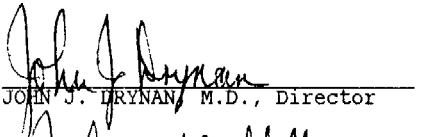
16.18.101 -- Section 2-4-201, MCA

16.18.203 -- Sections 37-42-202 and 37-42-303, MCA

16.18.204 -- Sections 37-42-202 and 37-42-301, MCA

16.18.205 -- Sections 37-42-201 and 37-42-202, MCA

16.18.206 -- Sections 37-42-104 and 37-42-202, MCA.



JOHN J. DRYNAN, M.D., Director

By 

JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State August 1, 1983

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

In the matter of the repeal of rule 16.18.102, procedural rules	)))	NOTICE OF PROPOSED REPEAL OF RULE (Water and Wastewater Operators) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 12, the department proposes to repeal rule 16.18.102, adopting procedural rules for the board of water and wastewater operators.

2. The rule proposed to be repealed can be found on page 16-871 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because the procedural rules it adopts are relevant only to bodies making rules and hearing contested cases and, since it was converted by the 1983 Legislature in House Bill 207 from a board to an advisory council, the council does neither.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Cogswell Building, Helena, MT., 59620, no later than September 9, 1983.

5. If a person who is directly affected by the proposed action 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 L. Solomon at the above address, no later than September 9, 1983.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, 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 1,200, based on the approximate number of water and wastewater operators in Montana.

7. The authority of the department to repeal the rule is based on section 2-4-201 MCA, and implements section 2-4-201, MCA.

JOHN J. BRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State August 1, 1983

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 24.9.226, relating to approval of settlements by the division administrator	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 24.9.226 (Approval of Settlements)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 16, 1983, the Human Rights Commission proposes to amend rule 24.9.226, which establishes the conciliation and settlement procedure.

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

24.9.226 PREHEARING; CONCILIATION: (1) Remains the same.

(2) Any conciliation agreement reached by the parties shall be reduced to writing, and signed by the parties. No conciliation agreement shall be binding until it is approved by the Division Administrator ~~and confirmed by the Commission~~ on behalf of the Commission. Once a conciliation agreement has been ~~confirmed by the Commission~~ approved, it shall have the have the same effect and be as binding as a Commission order issued after hearing.

(3) Remains the same.

(4) Remains the same.

(5) Remains the same.

(6) The Division Administrator may refuse to approve a conciliation agreement, even if the individual parties agree to a proposed settlement, if the remedies outlined in the agreement are considered to be inadequate to cure the discrimination complained of. A party may appeal the division administrator's refusal to the Commission by filing an objection within ten (10) days of notification of the refusal. In addition, the Division Administrator may approve an agreement curing only part of the discrimination discovered by the division's investigation and continue to attempt conciliation to cure the discriminatory acts which remain unremedied. If the division has intervened in the complaint, it may settle the case in regard to the original parties and continue to attempt conciliation or proceed to hearing in regard to the allegations of the divisions intervenor complaint. Conciliation of a case in regard to the claims of any person or group of persons shall not prohibit the division from filing a complaint against the same Respondent alleging discriminatory acts affecting others not party to the conciliation, which acts or the effects of which acts are not corrected by the conciliation agreement.

(7) Remains the same.

(8) Remains the same.

(9) Nothing in this section shall prohibit the division, on the request of any party from undertaking efforts to achieve a voluntary resolution of a case at any time after the charge is filed and before a final order is issued. Any settlement of a case, agreed to prior to or after the conciliation by the division administrator ~~and confirmation by the Commission~~, on behalf of the Commission, and shall be enforceable in the same manner as other conciliation agreements provided for in these rules. ~~Any negotiations undertaken after the Commission has issued a final order and prior to the completion of the appeals process in which the division participates shall be subject to prior authorization and and subsequent confirmation by the Commission.~~ The Commission must be informed of any settlement entered into after the Commission has issued a final order.

3. The Commission proposes the amendments in order to streamline its procedures and to eliminate duplicative reviews in cases in which the parties have entered into a settlement.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Anne L. MacIntyre, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than September 12, 1983.

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 Anne L. MacIntyre, Human Rights Division, Capitol, Helena, Montana, 59620, no later than September 12, 1983.

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 more than 25 persons based upon the number of potential complainants and respondents in Montana.

7. The authority of the Commission to make the proposed amendment is based on Section 49-2-204, MCA, and the rule as amended implements 49-2-504, MCA.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

BY: Anne L. MacIntyre
Anne L. MacIntyre
Administrator
Human Rights Division

Certified to the Secretary of State August 1, 1983.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules governing maternity leave under the Montana Human Rights Act	))))	NOTICE OF PROPOSED ADOPTION OF RULES GOVERNING MATERNITY LEAVE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 16, 1983, the Human Rights Commission proposes to adopt rules to govern maternity leave under the Montana Human Rights Act.

2. The proposed rules provide as follows:

RULE I. DEFINITIONS. "Disability as a result of pregnancy" includes any condition certifiable by a medical doctor as disabling, whether the condition arises as a result of the normal course of pregnancy, or as a result of abnormal medical conditions which occur in the course of a pregnancy, and may cover the time period beginning with conception through termination of gestation and a reasonable period for recovery therefrom.

(2) "Maternity leave" means any leave of absence granted to or required of an employee because of such employee's disability due to pregnancy.

AUTH: 49-2-206, MCA; IMP: 49-2-310 and 49-2-311, MCA.

RULE II. TERMINATION OF EMPLOYMENT DUE TO PREGNANCY PROHIBITED. Section 49-2-310(1), MCA provides that it is unlawful for an employer or his agent to terminate a woman's employment because of her pregnancy. For purposes of this provision, "terminations" shall include all involuntary dismissals, all resignations in which the employees' resignation was required by the employer or permitted as the sole alternative to dismissal and those situations in which the totality of the circumstances surrounding a resignation by an employee indicate that the resignation was compelled by the conduct or policy of the employer or agent. Coercive conduct by an employer or his agent toward an employee in order to secure her resignation, when the employee's pregnancy constitutes a substantial reason for the conduct, shall be considered a violation of this provision.

AUTH: 49-2-206, MCA; IMP: 49-2-310 and 49-2-311, MCA.

RULE III. RIGHT TO REASONABLE LEAVE OF ABSENCE. Section 49-2-310(2), MCA provides that it is unlawful for an employer or his agent to refuse to grant to the employee a reasonable leave of absence for pregnancy. In determining the standards of reasonableness which shall apply to a request for a leave of absence for a pregnancy, an employer shall apply standards at least as inclusive as those which he applies to requests

for leave of absence for any other valid medical reason.
AUTH: 49-2-206, MCA: IMP: 49-2-310 and 49-2-311, MCA.

RULE IV. MANDATORY LEAVE FOR UNREASONABLE LENGTH OF TIME PROHIBITED. Section 49-2-310(5), MCA provides that no employee take a mandatory maternity leave for an unreasonable length of time. The reasonableness of the length of time for which an employee is required to take a mandatory maternity leave shall be determined on a case by case basis. However, the employer shall have the burden of proving that a maternity leave for a longer period of time than that prescribed by the employee's medical doctor is reasonable, and in no case shall an employee be required to take an uncompensated maternity leave for a longer period of time than a medical doctor who has actually examined the employee shall certify that the employee is unable to perform her employment duties. Neither this section nor any other section of these regulations shall prohibit an employer and employee from mutually agreeing, in the case of the particular employee, to a longer period of maternity leave, either compensated or uncompensated than is permitted by this regulation. However, no employer may enter into a general agreement with any group or association of employees which requires a longer period of mandatory maternity leave than is permitted by this regulation.
AUTH: 49-2-206, MCA; IMP: 49-2-310 and 49-2-311, MCA.

RULE V. VERIFICATION OF DISABILITY. In any case where an employee makes a claim against her employer for any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, including any insurance or other disability plans referred to in [Rule VI] and the claim is based on a disability covered by and defined in Title 49, Chapter 2, MCA, and these regulations, the employer may require that the disability be verified by medical certification by a physician competent to treat and diagnose the particular disability, that the employee is, or at the time for which the claim is made, was unable to perform her employment duties. For purposes of obtaining this medical certification the employer may require that the claimant submit to a physical or mental examination by a medical doctor to verify the claimed disability by medical certification. In cases where a dispute in medical evidence exists, the commission shall determine the weight and credibility of the testimony of the physicians involved.
AUTH: 49-2-206, MCA; IMP: 49-2-310 and 49-2-311, MCA.

RULE VI. PREGNANCY-RELATED DISABILITIES TO BE TREATED AS TEMPORARY DISABILITIES. Disabilities as a result of a pregnancy, childbirth or related medical condition are for all job-related purposes, temporary disabilities and shall not be treated less favorably than other temporary disabilities

under any health, medical, or temporary disability insurance plan or sick leave plan maintained by employer. The question of maintenance is one of fact which will be judged upon all of the evidence. No written or unwritten employment policies or practices involving matters such as commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement or payment under any health, medical, or temporary disability insurance plan, or under any sick leave, disability leave or disability benefit plan whatsoever, whether formal or informal, shall be applied to disability due to pregnancy, on terms or conditions less favorable than those applied to other temporary disabilities.

AUTH: 49-2-206, MCA; IMP: 49-2-310 and 49-2-311, MCA.

RULE VII. RETURN TO EMPLOYMENT AFTER MATERNITY LEAVE. Section 49-2-311, MCA requires that an employee who has signified her intent to return at the end of her maternity leave of absence shall be reinstated to her original job or an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it unreasonable or impossible to do so. Any private employer who claims that his circumstances have so changed as to make compliance with Section 49-2-311, MCA impossible or unreasonable shall have the burden of proving his claim based upon all evidence.

AUTH: 49-2-206, MCA; IMP: 49-2-310 and 49-2-311, MCA.

3. The Commission proposes the rules in order to establish procedures and guidelines to govern the Commission's enforcement of the maternity leave provisions of the Montana Human Rights Act.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Anne L. MacIntyre, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than September 12, 1983.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Anne L. MacIntyre, Human Rights Division, Captiol Station, Helena, Montana, 59620, no later than September 12, 1983.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules, 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 more than 25 persons,

bases upon the number of potential complainants and respondents in Montana.

HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
Anne L. MacIntyre
Administrator
Human Rights Division

Certified to the Secretary of State August 1, 1983.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42.15.504 relating to the investment tax credit.	)))	NOTICE OF PUBLIC HEARING on the Proposed Amendment of Rule 42.15.504 relating to the investment tax credit.

TO: All Interested Persons:

1. On September 6, 1983, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the proposed amendment of rule 42.15.504 relating to the investment tax credit.

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

42.15.504 INVESTMENT CREDIT (1) ~~Effective for taxable years beginning after December 31, 1976, and before January 1, 1981, a credit is allowed against Montana income tax equal to 20% of the federal income tax investment credit allowed for the taxable year with respect to "Internal Revenue Code Section 38 property"~~ An investment tax credit is allowed to qualifying individuals for investments in certain depreciable property specified under section 38 of the Internal Revenue Code, however, rehabilitation costs as set forth under section 46(a)(2)(F) for tax years beginning after December 31, 1982, may not be included in the computation of the credit. The property must be placed in service in Montana during the taxable year for which the credit is claimed and must be used for the production of Montana business income. The qualifying property may be first placed in service outside Montana and transferred into the state later in the taxable year. In that instance the amount of the credit will be subject to the limitations provided in subsection (2) below. The amount of the credit allowed is the applicable percentage of the credit determined under IRC section 46(a)(2) for those investments eligible for the Montana tax credit. The percentage of the federal credit that is allowed each year as a credit against the individual income tax is shown below:

% of Federal Investment Credit	For Tax Years
20%	Ending after January 1, 1977, and before December 31, 1981.
30%	Ending on or after December 31, 1981, and on or before December 31, 1982.
5%	Beginning after December 31, 1982.

(2) ~~Effective for taxable years beginning after December 31, 1980, and before January 1, 1983, a credit is allowed against Montana income tax equal to 30% of the federal income tax investment credit allowed for the taxable year with respect to "Internal Revenue Code Section 38 property"~~ The investment tax credit may not exceed the taxpayer's tax liability for the taxable year. The following limitations also apply:

(a) in the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000. This limit is in effect for all tax years ending on or before December 31, 1982.

(b) for taxable years beginning after December 31, 1982, the credit is limited to $500 for each taxpayer. Each shareholder of a small business corporation electing under section 15-31-202 may claim up to $500 investment credit. Husbands and wives holding shares jointly may each claim up to $500 credit.

Example 1: Assume a small business corporation has a $30,000 federal investment credit and 30 shares of stock outstanding. Two individuals each own 10 shares and a husband and wife own 10 shares jointly. Each individual may claim $500 credit except the husband and wife may claim $500 on a joint return or $250 if they file separately.

Example 2: Assume the same facts as in example 1 except the federal investment credit is $60,000. Each individual may claim $500 and the husband and wife may claim $1,000 on a joint return or $500 each if they file separately. In this example, the two single individuals have $500 each in unused investment credit. The married couple has no unused investment credit.

(c) For small business corporations electing under section 15-31-202, MCA, the investment shall be apportioned between the shareholders in the same manner as for federal tax purposes and subject to the same state limitations as other taxpayers.

(d) In addition to the limitations provided in (a) and (b) above, the amount of the credit allowable may also be limited if the qualifying asset is placed in service in Montana for the production of Montana business income, but is used outside Montana for part of the taxable year. In this instance, the credit will be apportioned according to a fraction, the numerator of which is the number of days during the taxable year the property was located in Montana, and the denominator of which is the number of days during the taxable year the taxpayer owned the property.

(3) ~~The credit may not reduce tax liability below zero. An unused balance of credit may be carried forward to succeeding taxable years or carried back to preceding taxable years in accordance with the rules established for federal income tax purposes. However, an unused credit may not be carried back to a taxable year beginning before January 1, 1977, nor carried forward to a taxable year beginning after December 31, 1982~~ If any part of the investment credit earned in taxable years ending on or before December 31, 1982, is not applied against the tax liability for the taxable year because of the limitations

imposed by subsection (2) above, the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the IRC except that current year investment credit will be applied before carry overs. Any unused investment credit earned in taxable years beginning after December 31, 1982, may not be carried back or carried over. Carry overs and carry backs shall be computed using the applicable percentage for the taxable year in which the credit is earned (see subsection (1) above) and shall be subject to the limitations in effect for said taxable year.

(4) The investment credit is subject to recapture tax as provided in IRC section 47. Recapture tax is payable for the tax year during which qualified property is taken out of service. Before computing recapture tax, any available carry overs and carry backs may be applied to the tax year in which the qualified property was put into service. Any remaining tax liability is payable as recapture tax in the current year. Investment credit available in the current year may not be used to offset recapture tax.

AUTH: 15-30-305, MCA; IMP: 15-30-162, MCA.

3. The Department is proposing this amendment because Chapter 704 of the 1983 Laws of Montana decreased the percentage of Montana investment tax credit, decreased the limitation of the credit and changed the carryover provisions of the credit. This legislation also established conditions for allocating the credit between spouses. Rule 42.15.504 as currently written does not take into account these changes. Further, the rule clarifies the treatment of unused credits accrued under prior law. Chapter 704 did not explicitly address these unused credits, and a rule is necessary to prevent taxpayer confusion over their treatment. The amended rule also provides examples to follow in determining the investment tax credit limitations. The legislation also did not clarify the circumstances when a taxpayer was to recapture the investment tax credit or the procedures to follow. The amended rule states these provisions clearly and follows established federal practice in this area.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

5. Barbara Bozman, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on §15-30-305, MCA, and the rule implements §15-30-162, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 07/18/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rules 42.24.101, 42.24.103, 42.24.104, 42.24.107, and 42.24.108 and the repeal of rules 42.24.105 and 42.24.106 relating to small business corporation elections.	NOTICE OF PROPOSED AMENDMENT of Rules 42.24.101, 42.24.103, 42.24.104, 42.24.107, and 42.24.108 and the repeal of rules 42.24.105 and 42.24.106 relating to small business corporation elections.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to amend rules 42.24.101, 42.24.103, 42.24.104, 42.24.107, and 42.27.108 and to repeal rules 42.24.105 and 42.24.106 all of which relate to small business corporation elections.

2. The rules as proposed to be repealed can be found at pages 42-2406 and 42-2407 of the Administrative Rules of Montana. The rules as proposed to be amended provide as follows:

42.24.101 DEFINITIONS (1) ~~Small business corporation, as defined in 15-31-201, MCA, means a corporation doing business in Montana which does not have:~~

~~(a) more than 10 shareholders except as provided in 15-31-206(2), MCA, or more than 15 shareholders after having elected small business status for 5 years;~~

~~(b) as a shareholder a person (other than an estate) who is not an individual;~~

~~(c) a nonresident alien as a shareholder; and~~

~~(d) more than one class of stock.~~ An electing small business corporation means, with respect to any taxable year, a corporation which has a valid election under subchapter S of chapter 1 of the Internal Revenue Code of 1954 and has filed a copy of such election with the department on or before the 15th day of the third month of the first taxable year for which the election is to become effective.

~~(2) Electing small business corporation means, with respect to any taxable year, a small business corporation which has made the election under 15-31-202, MCA, and such election is in effect for the taxable year in question. A corporation is not an electing small business corporation as to a particular taxable year if it was ineligible to make the election or if a termination is effective as to such taxable year~~

AUTH: 15-31-501, MCA; IMP: 15-31-201 and 15-31-202, MCA.

42.24.103 PROCEDURE TO MAKE ELECTION (1) ~~The election must be made by the corporation filing form CT-3, containing the information required by such form, including a statement of consent of each shareholder of the corporation, in the manner provided in ARM 42.24.105. The election shall be signed by one of the following: the president, vice- president, or other principal officer or the treasurer, assistant treasurer, or chief accounting officer. The form shall be filed with the department~~ The election must be made by filing a copy of the federal small business election form containing the information required by that form. In addition, a statement must be attached stating that the election is requested for state purposes and the year for which the election is to become effective. This statement is to be signed by an officer of the corporation.

AUTH: 15-31-501, MCA, IMP: 15-31-201, MCA.

42.24.104 TIME OF MAKING ELECTION (1) ~~The election shall be filed either:~~

~~(a)--during the first calendar month of such taxable year; or~~

~~(b)--during the calendar month preceding such first month~~ A copy of the federal election must be filed with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective.

(2) ~~In the case of a new corporation which has a taxable year beginning after the first day of a particular month, the term "month" means the period commencing with the first day of the taxable year and ending on the day preceding the numerically corresponding day of the succeeding calendar month~~ In the case of a new corporation, the election must be filed on or before the 15th day of the third month following the date the corporation began doing business within Montana.

~~(3)--Should a corporation fail to physically tender to the department its election in the manner and within the time specified by 15-31-202(3), MCA, the department shall nevertheless consider such election to have, constructively been properly and timely made:~~

~~(a)--if the election was made within the taxable year for which the election is desired to take effect, and~~

~~(b)--if the corporation can substantiate its intent to file the election for the year in which the election is desired to take effect.~~

~~(4)--An election shall not be deemed made within the contemplation of subsection (3), above, and 15-31-202(3), MCA, unless:~~

~~(a)--the corporation has an acknowledgment from the department that the election was received; or~~

~~(b)--the corporation has proof by return receipt, that the election was sent to the department by certified mail.~~

~~(5)--Any election sought to be effected by a corporation in any manner other than is herein provided or by the provisions of 15-31-202(3), MCA, shall not be recognized.~~
AUTH: 15-31-501, MCA; IMP: 15-31-201, MCA.

42.24.107 REVOCATION OF ELECTION (1) ~~After the first taxable year for which the election is effective by filing a statement with the department explaining that the corporation revokes the election made under 15-31-202, MCA. This statement shall be signed by one of the following officers: the president, vice-president or other principal officer or the treasurer, assistant treasurer or other chief accounting officer~~ If a corporation elects to revoke its subchapter S election for federal purposes, such revocation shall be effective for state purposes. The corporation must notify the department within 30 days after such revocation as required under section 15-31-209, MCA.

~~(2)--In addition, there shall be attached to the statement of revocation a statement of consent, signed by each person who is a shareholder of the corporation at the beginning of the day on which the statement of revocation of the election is filed. Each statement of consent shall contain consent for the revocation of the small business corporation election.~~

~~(3)--A termination by revocation is effective for the taxable year in which it is made and for all subsequent taxable years if it is made during the first month of that year. If the revocation is not made during the first month of a taxable year, it is effective for the following taxable year and all subsequent taxable years. A termination by revocation cannot be made effective for the first taxable year of the corporation for which the election is made.~~
AUTH: 15-31-501, MCA; IMP: 15-31-209, MCA.

42.24.108 TERMINATION OF ELIGIBILITY (1) ~~The election terminates if at any time after the first day of the taxable year for which the election is effective or after the day on which the election is made (if such day is later than the first day of the taxable year), the corporation ceases to be a small business corporation. In the event of a termination under this paragraph, the corporation shall immediately notify the department~~ If the corporation ceases to be eligible for subchapter S treatment, it must notify the department within 30 days after such eligibility has expired. The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of subchapter S of the Internal Revenue Code of 1954.
AUTH: 15-31-501, MCA; IMP: 15-31-209, MCA.

3. The Department is proposing these amendments because Chapter 667 of the 1983 Laws of Montana amended §§ 15-31-201 and 15-31-202, MCA, to coordinate Montana's definition of a small business corporation with the federal definition for purposes of the corporate license tax. Chapter 667 also enacted §15-31-209, MCA, which provides that where an election is either revoked or terminated for federal purposes, the corporation must notify the Department within 30 days of the revocation or termination. The amendments to 42.24.107 and 42.27.108 implement this new statutory provision.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-31-501, MCA, and the rules implement §§15-31-201, 15-31-202, and 15-31-209, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42.16.1113 relating to taxation of intangible personal property (interest income).	NOTICE OF PROPOSED AMENDMENT of Rule 42.16.1113 relating to taxation of intangible personal property (interest income).

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to amend rule 42.16.1113 relating to the taxation of intangible personal property (interest income).

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

42.16.1113 INCOME FROM INTANGIBLE PERSONAL PROPERTY (1) A nonresident's income from annuities; interest on bank deposits, notes, and other interest bearing obligations; dividends on capital stock of corporations, royalties from patents and copyrights; and all other income from intangible personal property is derived from or attributable to Montana sources only to the extent earned in connection with a business, trade, profession, or occupation carried on in Montana.

(2) Income from intangible personal property is earned in connection with a business, trade, profession, or occupation carried on in this state if the intangible personal property is employed as capital in this state or if the possession and control of the property has been localized in connection with the business, trade, or occupation carried on in this state so as to become an asset thereof.

(3) Interest income received by a nonresident on an installment transaction arising from the sale of real or tangible business property located in Montana shall be deemed to be income from sources within Montana, unless the item is properly excludable from federal gross income.

AUTH: 15-30-305, MCA; IMP 15-30-131, MCA.

3. Section 15-30-131(1), MCA, does not tax nonresidents on income from annuities, interest on bank deposits, interest on bonds, notes, or other interest bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in Montana.

Subsection (3) was written to clear up questions nonresidents have about what is taxable to Montana and what is not in a business transaction arising from sales within Montana.

Interest income is taxable to the nonresidents because the sale took place within Montana. The interest income cannot be segregated from the total amount paid in exchange for the property. The focus is on the source of the income and not the recipient.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-30-305, MCA, and the rule implements §15-30-131 MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42.22.1215 relating to deductions for drilling costs and capital expenditures.	NOTICE OF PROPOSED AMENDMENT of Rule 42.22.1215 relating to deductions for drilling costs and capital expenditures.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to amend rule 42.22.1215 relating to deductions for drilling costs and capital expenditures.

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

42.22.1215 DEDUCTIONS FOR DRILLING COSTS AND CAPITAL EXPENDITURES (1) Deductions allowable for cost of drilling wells drilled during the period and for other capital expenditures shall be allowed at 10% of such cost each year for a period of 10 consecutive years; provided, however, the operator may elect to amortize these costs over a period of 2 consecutive years if the well is less than 3,000 feet deep. The election made with the initial filing shall be applicable for the life of the amortization of the asset.

(2) Capital expenditures other than drilling costs may include buildings, equipment, and tanks permanently installed on the lease.

(3) Capital expenditures relating to the production of associated gas may be estimated by using a ratio the numerator of which is the gross value of gas produced from the well; the denominator being the gross value of both the oil and gas produced. This ratio is applied to all capital expenditures and drilling costs which are related either exclusively to gas production or to both oil and gas production. If the ratio is less than 20%, then no capital expenditures or drilling costs will be deemed attributable to the gas production. All these costs would then be amortized against the oil production.

~~(3)~~ (4) Costs of dry holes drilled on a lease or unit are deductible to the specific lease or unit on which they are drilled. Costs of dry holes drilled outside the boundaries of any lease or unit are not to be deducted on that lease or unit.

~~(4)~~ (5) The amortization period for deduction of these capital expenditures shall begin with the year of the actual expenditure and not the year when the lease or unit went into production.

AUTH: 15-23-108, MCA; IMP: 15-23-604, MCA.

3. The Department is proposing the amendment to this rule to clarify the amortization provisions of the net proceeds tax on oil and gas production for the taxpayer. Subsection (1) provides that an operator who drills a well less than 3,000 feet deep may elect to amortize the drilling costs for that well over either a 2 year or 10 year period. The

amendment requires that the initial election to amortize over either a 2 or 10 year period must remain in effect for the life of the amortization of the asset.

The new language in subsection (3) pertains to the capital expenditures and drilling costs related to the production of associated gas. This subsection provides that if less than 20% of the value produced from a well is related to associated gas, no capital expenditures or drilling costs will be deemed attributable to the gas production. In this case, those costs will be fully amortized against the oil production. Where the gas production is 20% or greater of the total value of production, then the drilling costs and capital expenditures will be assigned to the gas production based on this production ratio. This proposed language does not limit the allowable deductions a taxpayer may claim for either drilling costs or capital expenditures. It merely clarifies whether those deductions should be amortized against oil production or oil and gas production.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-23-108, MCA, and the rules implement §15-23-604, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Adoption of Rule I relating to nonresident deductions for Keogh and I.R.A. plans.	NOTICE OF PROPOSED ADOPTION of Rule I relating to nonresident deductions for Keogh and I.R.A. plans.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to adopt rule I relating to nonresident deductions for Keogh and I.R.A. plans.

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

RULE I NONRESIDENT AND PART YEAR RESIDENT DEDUCTIONS FOR KEOGH AND I.R.A. PLANS (1) Persons who are not residents of Montana cannot claim a deduction for a Keogh or an I.R.A. plan against their Montana income.

(a) Keogh and I.R.A. deductions are considered nonbusiness expenses and thus not deductible for nonresidents.

(2) Persons who are fractional year residents are allowed to deduct a prorated share of their federal Keogh or I.R.A. deduction for Montana purposes. The allowable deduction is the taxpayer's Montana gross income before adjustments divided by the taxpayer's federal gross income before adjustments times the federal Keogh or I.R.A. deduction.

AUTH: 15-30-305, MCA; IMP: 15-30-131, MCA.

3. The Department is proposing this rule because a nonresident of Montana is allowed only those deductions from Montana income directly connected with the production of Montana income. This rule defines contributions to a self-employment retirement plan as not directly connected with the production of Montana income.

A fractional year resident may only deduct a prorated portion of the deductions from income. This rule provides the methods to be used by fractional year residents for calculating the deductions for contributions to a Keogh or I.R.A. plan.

The major purpose of this rule is to prevent individuals from claiming deductions against Montana income which have no relationship to their income accrued.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-30-305, MCA, and the rule implements §15-30-131, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42.15.425 relating to conformance to federal filing status required in certain cases.	))))	NOTICE OF PROPOSED AMENDMENT of Rule 42.15.425 relating to conformance to federal filing status required in certain cases.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to amend rule 42.15.425 relating to a deduction for two earner married couples.

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

42.15.425 ~~TWO-EARNER-MARRIED-COUPLES-DEDUCTION~~ CONFORMANCE TO FEDERAL FILING STATUS REQUIRED IN CERTAIN CASES ~~The adjustment to federal gross income permitted by IRC §§62(16) and 221, as these sections may be amended, for two-earner married couples is only permitted to such couples who file a Montana joint return and is effective for tax years beginning after December 31, 1981.~~ (1) If a married couple files their Montana return claiming an adjustment to gross income or an itemized deduction which is allowed only to a specific filing status taxpayer under the Internal Revenue Code or regulations, the taxpayer must use the federally specified filing status on the Montana return form.

Examples:

(a) Taxpayers who file a joint federal income tax return and claim a deduction of $1,000 for a two-earner married couple must also file jointly on their Montana return in order to claim the deduction.

(b) Taxpayers who file a joint federal income tax return compute all capital gains and losses of a husband and wife as if they were the gains and losses of one person with a loss limitation of $3,000. To be subject to the same loss limitation of $3,000 on the state return, the taxpayers must also file jointly for state purposes. If, however, the taxpayers elect to file separately for state purposes when they have filed a federal joint return, each spouse will be required to claim his or her own gains or losses and the loss is limited to $1,500 each.

(c) If a husband and wife are using different accounting periods they may not file a joint return on either the federal or state return.

(2) This rule is effective for tax years beginning after December 31, 1982.

AUTH: 15-30-305, MCA; IMP: 15-30-111, MCA.

3. The Department is proposing the amendment of this rule because the United States Congress recently enacted P.L. 97-34 (I.R.C. §221). This law provides a deduction for a two earner married couple when they file a joint return. The amendment to

rule 42.15.425 clarifies the relationship between the federal and state filing status for married couples. The amendment insures that married couples, who claim an adjustment to income or an itemized deduction allowed by federal law to taxpayers filing under a specific filing status, file their state return form using the same status used on the federal form. It also insures that taxpayers do not claim deductions of adjustments to income to which they are not entitled.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-30-305, MCA, and the rule implements §15-30-111, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Adoption of Rule I relating to Sub S Corporation and partnership losses.	)))	NOTICE OF PROPOSED ADOPTION of Rule I relating to Sub S Corporation and partnership losses.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to adopt rule I relating to Sub S Corporation and partnership losses.

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

RULE I SUB S CORPORATION AND PARTNERSHIP LOSSES (1) A loss will not be allowed on a Montana individual income tax return of a partner or shareholder unless the following requirements are met:

(a) the loss resulted from a partnership and a Montana partnership return is filed as required under section 15-30-133, MCA; or

(b) the loss resulted from a Sub S Corporation and a Sub S Corporation return is filed as required by section 15-31-202, MCA.

AUTH: 15-30-305, MCA; IMP: 15-30-133 and 15-31-101, MCA.

3. At the present time, many partnership and Sub S Corporation returns are delinquent. Yet, losses from these partnerships and corporations are used on individual income tax returns.

Under the authority of section 15-30-145, MCA, if a taxpayer fails to make a return as required, the department can make an estimate of the taxable income of the taxpayer.

In implementing this section, we exclude losses of partnership and Sub S returns because the returns have not been filed or verified.

The rule is needed to enforce sections 15-30-133 and 15-31-101, MCA.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-30-305, MCA, and the rule implements §§15-30-133 and 15-31-101, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Adoption of Rule I relating to additional deductions from the net proceeds of non-metallic mines.	NOTICE OF PROPOSED ADOPTION of Rule I relating to additional deductions from the net proceeds of nonmetallic mines.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 1, 1983, the Department of Revenue proposes to adopt Rule I relating to additional deductions from the net proceeds of nonmetallic mines.

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

RULE I DEDUCTION FOR INSURANCE, WELFARE, RETIREMENT, MINERAL TESTING, SECURITY AND ENGINEERING (1) Fire, boiler and machinery and public liability insurance will be allowed as a deduction to the extent that it is insurance for equipment and buildings in the mine, and equipment and buildings in the reduction works, to the extent the insurance for the reduction works is not beyond the point of valuation. No insurance costs will be allowed for offices or other administrative buildings.

(2) Cost of welfare and retirement fund payments provided for in wage contracts shall be deductible only for those employees actually involved in the mining or reduction work up to the point of valuation.

(3) The cost of testing minerals extracted, in satisfaction of federal or state health and safety laws or regulations, will be allowed for the mines and reduction works up through the beneficiation process to the extent that the costs are incurred for testing the product to the point of valuation.

(4) The cost of security in and around the mine and including the cost of security around the mill or reduction works in Montana shall be deductible provided these costs are not incurred beyond the point of valuation.

(5) The cost of assaying and sampling for extracted minerals will be allowed to the extent that they are a part of processes that bring the mineral to the point of valuation.

(6) Engineering and geological services will be allowed as described in 15-23-503(1)(h), MCA.

AUTH: 165-23-108, MCA; IMP: 15-23-502 and 15-23-503, MCA.

3. The Department is proposing this rule because Chapter 528 of the 1983 Laws of Montana expanded the deductions which are allowable under the net proceeds of mines to include:

a) boiler and machinery insurance, public liability insurance paid for the mine, reduction works, or beneficiation process;

b) the cost of welfare and retirement fund payments provided for in wage contracts; and

c) the cost of testing extracted minerals for the purpose of satisfying federal or state health laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the state of reduction and beneficiation of the minerals.

The proposed rule incorporates these changes into the regulations and further explains that they are allowable deductions up to the point of valuation or beneficiation as established under case law applying to this tax.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 23, 1983.

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 Ann Kenny at the above address no later than September 23, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-23-108, MCA, and the rule implements §§15-23-502 and 15-23-503, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Adoption of Rules I and II relating to a 3 year exemption of natural gas from severance tax and one-half of the tax on net proceeds.	NOTICE OF PROPOSED ADOPTION of Rules I and II relating to a 3 year exemption of natural gas from severance tax and one-half of the tax on net proceeds.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to adopt Rules I and II relating to a 3 year exemption of natural gas from severance tax and one-half of the tax on net proceeds.

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

RULE I NATURAL GAS EXEMPT FROM SEVERANCE TAX. Natural gas produced from a well 5,000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, 1992, is exempt from all of the severance tax imposed by section 15-36-101, MCA, for 3 years. This exemption applies only when the gas produced qualifies according to section 15-36-121(2)(a) and (b), MCA. The 3 year exemption period will run for 36 calendar months beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.

AUTH: 15-1-201, MCA; IMP: 15-36-121, MCA.

RULE II NATURAL GAS EXEMPT FROM ONE-HALF THE NET PROCEEDS TAX (1) Natural gas produced from a well 5,000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, 1992, is exempt from one-half the net proceeds tax imposed by 15-23-607, MCA, for 3 years. This exemption applies only when the gas produced qualifies according to section 15-36-121(2)(a) and (b), MCA. The 3 year exemption period will run for 36 calendar months beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.

AUTH: 15-23-108, MCA; IMP: 15-23-612 and 15-36-121, MCA.

3. Chapter 124 of the 1983 Laws of Montana provides a 10 year extension period for the 3 year exemption from the severance tax and one-half the net proceeds tax on natural gas produced from a well 5,000 feet deep or deeper. These proposed rules incorporate that change into the regulations. The rules also clarify the 3 year exemption period defining it as a 36 month period beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-1-201 and 15-23-108, MCA, and the rule implements §§15-23-612 and 15-36-121, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Adoption of Rule I relating to a 5-year statute of limitations for net proceeds of oil and gas.	NOTICE OF PROPOSED ADOPTION of Rule I relating to a 5-year statute of limitations for net proceeds of oil and gas.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to adopt Rule I relating to a 5-year statute of limitations for net and gross proceeds.

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

RULE I STATUTE OF LIMITATIONS (1) The statute of limitations pertaining to adjustments to the net and gross proceeds has been changed to 5 years - effective for production years ending on an after December 31, 1980. Any additional assessment or claim for refund must be mailed within 5 years of the due date or the date the return was filed whichever is later. The statute may expire at a later date where tax return is filed after the due date. Production years ending prior to December 31, 1980, remain subject to the 10 year statute of limitations.

(2) Current statute expiration dates are shown below.

Production Year	Statute Expiration Date
1972	December 31, 1983
1973	December 31, 1984
1974	December 31, 1985
1975	December 31, 1986
1976	December 31, 1987
1977	December 31, 1988
1978	December 31, 1989
1979	December 31, 1990
1980	April 15, 1986
1981	April 15, 1987
1982	April 15, 1988
1983	April 15, 1989
1984	April 15, 1990

AUTH: 15-1-201 and 15-35-111, MCA; IMP: 15-35-114, 15-36-122, 15-37-116, 15-37-212, 15-38-112, 15-58-114, 15-59-214, MCA.

3. Chapter 194 of the 1983 Laws of Montana provides for a 5 year statute of limitations for taxes on centrally assessed property, coal severance taxes, oil and gas severance taxes, mining license taxes, resource indemnity trust taxes, electric

energy producers license taxes, telephone company license taxes, freight line company license taxes, coal retailers license taxes, and cement taxes. Since the previous statute of limitations pertaining to net proceeds of oil and gas and other minerals was 10 years, this rule explains which years are subject to the 10 year statute of limitations and which years are subject to the 5 year statute of limitations.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §§15-1-201 and 15-35-111, MCA, and the rule implements §§15-35-114, 15-36-122, 15-37-116, 15-37-212, 15-38-112, 15-58-114, and 15-59-214, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Adoption of Rules I and II relating to a formula for adjusting interest income exempt under federal law.	))))	NOTICE OF PROPOSED ADOPTION of Rules I and II relating to a formula for adjusting interest income exempt under federal law.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1983, the Department of Revenue proposes to adopt Rules I and II relating to a formula for offsetting interest income exempt under federal law.

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

RULE I ADJUSTMENT OF ALLOWABLE DEDUCTIONS (1) Pursuant to the Montana Supreme Court's decision in First Federal Savings and Loan Association v. Department of Revenue (654 P.2d 496), interest from the following obligations was held to be exempt from taxation under the Montana corporate license tax:

(a) United States treasury bills issued pursuant to 31 U.S.C. §769.

(b) Federal home loan bank notes issued pursuant to 12 U.S.C. §1433.

(c) Federal land bank obligations issued pursuant to 12 U.S.C. §2055.

(d) Federal farm credit bank securities issued pursuant to 12 U.S.C. §§2079 and 2134.

(e) Federal home loan bank dividends on stocks issued pursuant to 12 U.S.C. §2134.

(f) Federal savings and loan insurance corporation obligations issued pursuant to 12 U.S.C. §1725.

Therefore, a corporation which excludes interest income from the above obligations which would otherwise be taxable except for federal law, must adjust its allowable deductions for all years for which such interest is excluded.

(2) This rule is effective for taxable periods beginning on or after December 31, 1978, for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently filed claims for refund based upon federal law.

AUTH: 15-31-501, MCA; IMP: 15-31-116, MCA.

RULE II COMPUTATION OF ADJUSTMENT (1) Allowable deductions must be reduced by the result of the following calculation:

$$\frac{\text{Exempt Interest Income}}{\text{Total Interest Income}} \times \text{Total Deductions*} = \text{Deductions Disallowed}$$

* Total deductions allowable under 15-31-114, MCA.

The total deductions disallowed may not exceed the amount of exempt interest.

(2) This rule is effective for taxable periods beginning on or after December 31, 1978, for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently filed claims for refund based upon federal law.

AUTH: 15-31-501, MCA; IMP: 15-31-116, MCA.

3. Chapter 673 of the 1983 Laws of Montana provided for a reduction in allowable deductions for corporations which have reduced their Montana gross income by federally exempted interest on United States obligations. This rule sets forth those obligations which are exempt from Montana corporation license tax under the First Federal decision and provides the formula which should be used in reducing deductions.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

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 Ann Kenny at the above address no later than September 9, 1983.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-31-501, MCA, and the rules implement §15-31-116, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42.21.112, relating to mobile homes.	)))	NOTICE OF PROPOSED AMENDMENT of Rule 42.21.112 relating to mobile homes.

TO: All Interested Persons:

1. On September 1, 1983, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the amendment of rule 42.21.112 relating to mobile homes.

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

42.21.112 MOBILE HOME - IMPROVEMENT TO REAL PROPERTY (1) Pursuant to 15-1-101(e), MCA, a mobile home will be considered an improvement to real property ~~as soon as it is connected to a utility and the mobile home and the land it rests on are in common ownership. Utilities for this purpose include, but are not limited to, water, sewage, electricity, natural gas, propane and telephone~~ only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(a) Attached, for the purpose of application of this rule, means the mobile home and the land it rests on are in common ownership.

(b) Foundation, for the purpose of application of this rule, means concrete, concrete block, or wood pier, any of which rests on embedded concrete or concrete block footings.

(c) Foundation, for the purpose of application of this rule, does not include mud sill, pier and post, wood blocks, concrete block, or other types of temporary support, any of which rests on the ground.

(2) This rule is effective beginning October 1, 1983.

AUTH: 15-1-201, MCA; IMP: 15-1-101, MCA.

3. Chapter 632 of the 1983 Laws of Montana changed the definition of improvements and specifically when a mobile home or house trailer may be determined to be permanently located. Since the statute has changed, it has become necessary to identify what constitutes a "foundation which cannot feasibly be relocated".

This change to rule 42.21.112 will provide the Department of Revenue with a clear definition of a "foundation which can or cannot feasibly be relocated". A more concise rule will provide guidance to appraisers in the field in the determination of whether or not mobile homes are improvements to real property.

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

Larry Schuster
Department of Revenue
Property Tax Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

5. Barbara Bozman, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendment is found in §15-1-201, MCA, and the rule implements §15-1-101, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42.23.502 relating to the investment tax credit.	))))	NOTICE OF PUBLIC HEARING on the Proposed Amendment of Rule 42.23.502 relating to the investment tax credit.

TO: All Interested Persons:

1. On September 6, 1983, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room in the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the amendment of rule 42.23.502 relating to the investment tax credit.

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

42.23.502 INVESTMENT CREDIT (1) ~~An investment tax credit is allowed to qualifying corporations for certain investments made after January 1, 1977. The amount of the credit allowed for tax years ending on or before December 31, 1981, is 20% of the credit determined under IRC §46(a)(2) for those investments eligible for a Montana tax credit. For tax years beginning after December 31, 1980, the amount of the credit allowed is 30% of the credit determined under IRC §46(a)(2) for these investments eligible for a Montana tax credit. The earliest year to which an unused credit can be carried back is the tax year ended December 31, 1977~~ An investment tax credit is allowed to qualifying corporations for investments in certain depreciable property specified under section 38 of the Internal Revenue Code, however, rehabilitation costs as set forth under section 46(a)(2)(F) for tax years beginning after December 31, 1982, may not be included in the computation of the credit. The property must be placed in service in Montana during the taxable year for which the credit is claimed and must be used for the production of Montana business income. The qualifying property may be first placed in service outside Montana and transferred into the state later in the taxable year. In that instance the amount of the credit will be subject to the limitations provided in subsection (2) below. The amount of the credit allowed is the applicable percentage of the credit determined under IRC section 46(a)(2) for those investments eligible for the Montana tax credit. The percentage of the federal credit that is allowed each year as a credit against the corporation license tax is shown below:

% of Federal Investment Credit	For Tax Years
20%	Ending after January 1, 1977, and before December 31, 1981.
30%	Ending on or after December 31, 1981, and on or before December 31, 1982.

5% Beginning after December 31, 1982.

(2) ~~The investment credit is subject to recapture tax as provided for in IRC §47. Recapture tax is payable for the tax year during which qualified property is taken out of service. Before computing recapture tax, any available carryovers and carrybacks may be applied to the tax year in which the qualified property was put in service. When any remaining tax liability is payable as recapture tax in the current year~~ The investment tax credit may not exceed the taxpayer's tax liability for the taxable year. The following limitations also apply:

(a) in the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000. This limit is in effect for all tax years ending on or before December 31, 1982.

(b) for taxable years beginning after December 31, 1982, the credit is limited to $500 for each taxpayer.

(c) In addition to the limitations provided in (a) and (b) above, the amount of the credit allowable may also be limited if the qualifying asset is placed in service in Montana for the production of Montana business income, but is used outside Montana for part of the taxable year. In this instance, the credit will be apportioned according to a fraction, the numerator of which is the number of days during the taxable year the property was located in Montana, and the denominator of which is the number of days during the taxable year the taxpayer owned the property.

(3) ~~Current year investment credit and carry forwards of prior year investment credit may be claimed by filing federal Form 3468 and a list of shareholders and the percentage of stock owned by each along with the corporation license tax return. Carrybacks of investment credit may be claimed by filing amended returns~~ If any part of the investment credit earned in taxable years ending on or before December 31, 1982, is not applied against the tax liability for the taxable year because of the limitations imposed by subsection (2) above, the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the IRC except that current year investment credit will be applied before carryovers. Any unused investment credit earned in taxable years beginning after December 31, 1982, may not be carried back or carried over. Carry overs and carry backs shall be computed using the applicable percentage for the taxable year in which the credit is earned (see subsection (1) above) and shall be subject to the limitations in effect for said taxable year.

(4) The investment credit is subject to recapture tax as provided in IRC section 47. Recapture tax is payable for the tax year during which qualified property is taken out of ser-

vice. Before computing recapture tax, any available carryovers and carry backs may be applied to the tax year in which the qualified property was put into service. Any remaining tax liability is payable as recapture tax in the current year. Investment credit available in the current year may not be used to offset recapture tax.
AUTH: 15-31-501, MCA; IMP: 15-31-123, MCA.

3. The Department is proposing this amendment because Chapter 704 of the 1983 Laws of Montana decreased the percentage of Montana investment tax credit, decreased the limitation of the credit and changed the carry forward provisions of the credit. Rule 42.23.502 as currently written does not take into account these changes.
Further, the rule clarifies the treatment of unused credits accrued under prior law. Chapter 704 did not explicitly address these unused credits, and a rule is necessary to prevent taxpayer confusion over their treatment. The amended rule provides this needed clarification. The legislation also did not clarify the circumstances when a taxpayer was to recapture the investment tax credit or the procedures to follow. The amended rule states these provisions clearly and follows established federal practice in this area.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 9, 1983.

5. Barbara Bozman, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on §15-31-501, MCA, and the rule implements §15-31-123, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 08/01/83

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rule pertaining to fees for filing documents and issuing certificates.	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE - Fees for Filing Documents and Issuing Certificates (Business Corporations)

TO: All Interested Persons.

1. On September 7, 1983, at 10:00 a.m., a public hearing will be held in Room 108, State Capitol, Helena, Montana, to consider the amendment of a rule pertaining to fees for filing documents and issuing certificates for business corporations.

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

44.5.101 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - BUSINESS CORPORATIONS The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $15.00,

(2) filing articles of amendment and issuing a certificate of amendment, $15.00,

(3) filing restated articles of incorporation and issuing a restated certificate of incorporation, $15.00,

(4) filing articles of merger, consolidation, or exchange and issuing a certificate of merger, consolidation, or exchange, $17.50,

(5) filing an application to reserve a corporate name, $10.00,

(6) filing a notice of transfer of a reserved corporate name, $5.00,

(7) filing a statement of change of address of registered office or change of registered agent, or both, $7.50,

(8) filing a statement of the establishment of a series of shares, $20.00,

(9) filing a statement of cancellation of shares, $12.50,

(10) filing a statement of reduction of stated capital, $15.00,

(11) filing a statement of intent to dissolve, $12.50,

(12) filing a statement of revocation of voluntary dissolution proceedings, $20.00

(13) filing articles of dissolution and issuing a certificate of dissolution, $12.50,

(14) filing an application of a foreign corportation for a certificate of authority to transact business in this state and issuing a certificate of authority, $15.00

(15) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, $12.50,

(16) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $12.50,

(17) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, $15.00,

(18) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $12.50,

(19) filing an application for registration of corporate name of a foreign corporation, $10.00 per year, unless there are 9 months or less remaining in year of application, then $1.00 per month,

~~(19)~~ (20) filing an annual report within allotted time, ~~$5.00~~ 10.00,

~~(20)~~ (21) filing an annual report after the April 15 statutory deadline ~~$10.00~~ 15.00,

~~(21)~~ (22) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $12.50

(23) filing a statement of change, changing only the business address of the registered agent, $7.50 each for 1-25 corporations, $6.50 each for 25-50 corporations, and $5.00 each for over 50 corporations,

~~(22)~~ (24) issuing a certificate of good standing, $2.50,

~~(23)~~ (25) issuing a certificate of fact, $12.50.

AUTH: 35-1-1202, MCA IMP: 35-1-1202, MCA

4. The rule is being amended to establish fees for filing documents and issuing certificates required by Title 35, Chapter 1, MCA. Amendment is necessary to adjust fees to reflect changes in costs and to satisfy the statutory requirement that fees must be reasonably related to costs. Records to support the fees charged for the filing requirements are maintained in the Office of the Secretary of State and are available to the public.

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 Larry Akey, Room 202, State Capitol, Helena, Montana, 59620, no later than September 8, 1983.

6. Larry Akey, Room 202, State Capitol, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

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

Dated this 1st day of August, 1983.

JIM WALTERMIRE
Secretary of State

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

In the matter of the amendment of Rule 46.10.510 pertaining to excluded earned income; AFDC program.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.510 PERTAINING TO THE AFDC PROGRAM

TO: All Interested Persons

1. On September 2, 1983, 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 amendment of Rule 46.10.510 pertaining to excluded earned income; AFDC program.

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

46.10.510 EXCLUDED EARNED INCOME Subsections (1) through (2)(b) remain the same.

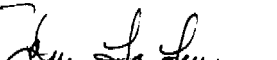
(c) ~~income--received--under--Title--II--of--CETA,--"youth employment-demonstration-programs," of P.L. 95-93,--These programs--include-the-youth--incentive-pilot--projects,-the-youth community-conservation-and-improvement-projects,-and-the-youth employment--and--training--programs.~~ income received by a dependent child under section 503 of the Job Training Partnership Act (JTPA) of 1982, P.L. 97-300, will be excluded for the first 6 months of participation in JTPA training.

AUTH: 53-4-212 MCA IMP: 53-4-231, 53-4-241 and 53-4-242 MCA

3. The disregard of income of AFDC children who receive job training pursuant to the Job Training Partnership Act is intended to encourage these children to develop marketable job skills thus avoiding or reducing future welfare costs.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 12, 1983.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1983.

MAR Notice No. 46-2-388

15-8/11/83

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

In the matter of the amendment of Rules 46.14.102, 46.14.104, 46.14.201, 46.14.203, 46.14.204, 46.14.205, 46.14.206, 46.14.207, 46.14.303, 46.14.401 and 46.14.402 pertaining to the low income weatherization assistance program.	))))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.14.102, 46.14.104, 46.14.201, 46.14.203, 46.14.204, 46.14.205, 46.14.206, 46.14.207, 46.14.303, 46.14.401 AND 46.14.402 PERTAINING TO THE LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM.

TO: All Interested Persons

1. On August 31, 1983, 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 amendment of Rules 46.14.102, 46.14.104, 46.14.201, 46.14.203, 46.14.204, 46.14.205, 46.14.206, 46.14.207, 46.14.303, 46.14.401 and 46.14.402 pertaining to the low income weatherization assistance program.

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

46.14.102 ROLE OF THE LOCAL CONTRACTOR (1) The department will contract with appropriate community-based organizations in the state to provide outreach, ~~and to~~ receive and process applications and provide weatherization services for the low income weatherization assistance program. A local contractor may provide one or all of these functions as designated by the department.

(a) In providing outreach, the local contractor performs activities, ~~as specified in the contract,~~ designed to inform ~~all~~ potentially-eligible households of the existence of and the benefits available under the low income weatherization assistance program.

(b) In receiving and processing applications, the designated local contractor determines household eligibility under the rules contained in this chapter.

(c) The designated local contractor shall see that priority is given to identifying and providing weatherization assistance to elderly and handicapped low income persons ~~provided by ARM 46.14.401~~. using a computerized listing of households prioritized for service provided by the department and described in ARM 46.14.401. The computerized listing may be amended by the designated local contractor using the prccedure described in ARM 46.14.401.

(2) The designated local contractor provides weatherization service for eligible low income persons according to the rules and regulations of the United States department of

energy (DOE) as found in 10 CFR 440 and the provisions of the contract for weatherization for low income persons. The department hereby adopts and incorporates by reference 10 CFR 440 which sets forth the specifications, weatherization techniques and material standards for weatherizing low income dwellings. A copy of 10 CFR 440 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.104 FAIR HEARINGS (1) Any person who is dissatisfied with action taken on his application, benefit status, form or condition of services, may request a fair hearing as provided in ARM 46.2.202.

(2) It is the responsibility of the department through the designated local contractor to inform every applicant/recipient in writing at the time of application and at the time any action affects his benefits of the right to request a fair hearing.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

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

(a) A staff member of the designated local contractor shall interview all applicants or persons authorized to act responsibly on behalf of applicants who contact the offices of the local contractor to apply for low income weatherization assistance. During the first interview, the staff member shall explain the person's rights, outline his responsibilities and describe the process in the system which may affect the client. (See ARM 46.14.203 for exceptions.)

(2) The staff member shall explain to the person applying ~~all~~ factors of eligibility which must be substantiated and assist the person to understand the regulations governing his eligibility and receipt of benefits. The staff member shall inform the client of the availability of the regulations affecting eligibility as found in the Administrative Rules of Montana 46.14.101 through 46.14.402, copies of which are available and may be inspected in the offices of the clerk and recorder and the clerk of court in each county.

(3) No person shall be excluded from participation in, be denied benefits, or be subject to discrimination under the low income weatherization assistance program on the grounds of race, color, religion, sex, culture, age, creed, marital status, physical or mental handicap, political beliefs, or national origin.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.203 PLACE OF APPLICATION (1) The place of application shall be open from 8:00 a.m. to 5:00 p.m. Mondays through Fridays with the exception of recognized holidays.

(2) Applications are to be made at the office of the designated local contractor in the area where the person lives. When conditions preclude a person from visiting the local contractor's office to make application, he shall have an opportunity to make application through the mail, at a mutually agreed place, by telephone with the staff-completed application mailed to the applicant for signature, or through a home visit by a member of the local contractor's staff.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

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

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

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.205 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for low income weatherization assistance and determining priority for service are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and priority for service. The staff member of the designated local contractor accepts the application and determines financial eligibility and priority for service. The client is notified of the reasons for approval or disapproval of his application.

(b) Financial eligibility requirements that must be verified are:

(i) current receipt of benefits under supplemental security income or aid to families with dependent children;

(ii) income;

(iii) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education.

(c) If reasonable doubt exists as to the accuracy of the information provided by the client, the type of dwelling, (including the number of bedrooms and/or the primary heating fuel/vendor) must also be verified.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.206 NOTIFICATION OF ELIGIBILITY DETERMINATION (1) An individual who makes application for low income weatherization assistance will receive written notice of eligibility including priority for service within 45 days of the date of application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the designated local contractor immediately following final decision on the application.

(2) Households determined eligible but not prioritized high enough to receive service must be redetermined for eligibility after one year from initial application except that redetermination may be made within a year if a reasonable suspicion of change of status occurs.

(3) Notification of eligibility shall contain the following: "Because of limited funds, homes are weatherized on a priority basis with special consideration given to handicapped and elderly. You will be notified when funds become available to weatherize your home. If not notified within one year, you must reapply to be reassigned priority for service."

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.207 NOTICE OF ADVERSE ACTION (1) Each person determined eligible for weatherization assistance must be notified by the designated local contractor in advance of any action that terminates or reduces his benefits. Notification must be in writing and contain information about the amount of decrease or the closure, the reason and legal basis for the action, and must advise the client of the date on which the action will take effect. The notice must inform the client of his right to a fair hearing.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.303 INCOME STANDARDS ~~(1) The gross receipts standards in the table in (2) below are 250% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to households with income from self employment. Self-employed~~

~~households with annual gross receipts at or below 250% of the 1982 poverty level are financially eligible for low income weatherization assistance only if they further meet the adjusted gross income test as set forth in (3) and (4) below.~~

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

~~Number of individuals in household~~	~~Annual gross receipts for self-employed households~~
~~1~~	~~$11,700~~
~~2~~	~~15,550~~
~~3~~	~~19,400~~
~~4~~	~~23,250~~
~~5~~	~~27,100~~
~~6~~	~~30,950~~
~~Each additional member~~	~~3,850~~

~~(3)~~ (1) The income standards in the table in ~~(4)~~ subsection (2) below are 125% of the 1982~~3~~ U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to all households, including self-employed households. ~~that meet the gross receipts test set forth in (1) and (2) above.~~ Households with adjusted gross income at or below 125% of the 1982~~3~~ poverty level are financially eligible for low income weatherization assistance. Households with an annual gross income above 125% of the 1983 poverty level are ineligible for low income energy assistance.

~~(4)~~ (2) ~~Adjusted gross~~ Income standards for all households:

Number of individuals in household	~~Annual adjusted gross income for households of different sizes~~ 125% OMB Poverty Standard
1	~~$ 5,850~~ $ 6,075
2	~~7,775~~ 8,175
3	~~9,700~~ 10,275
4	~~11,625~~ 12,375
5	~~13,550~~ 14,475
6	~~15,475~~ 16,575
Each additional member	~~1,925~~ 2,100

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.401 PRIORITIZATION FOR SERVICE

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

(5) Weatherization will be scheduled to minimize travel and other non-productive costs.

(a) ~~A scheduled home with non-productive costs exceeding one hundred dollars ($100.00) will be advertised for bids within the locality of the work to be performed.~~ If nonproductive costs are excessive, the scheduled home may be delayed for weatherization at a later date but in no instance shall the scheduled home be delayed longer than one year or the end of the contract period whichever comes first.

~~(b) If a local sub contractor is unavailable or cost excessive, the scheduled home will be prioritized highest in the following contract period and so notified.~~

(6) Eligible homes, scheduled to receive partial weatherization from any other agency, may be prioritized higher to allow coordination and avoid duplication of weatherization services.

(7) A multi-family unit prioritized high enough to be scheduled for service that is also one of several units that comprise a sixty-six and two-thirds percent (66 2/3%) eligible multi-family building shall have the entire building weatherized to avoid nonproductive costs.

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

46.14.402 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE (1) Weatherization assistance will be made to eligible households in accordance with the state standard of prioritized measures for sample dwellings as established in (3) below.

(2) The designated local contractors may reorder a standard for any of the following reasons:

(a) A local contractor completes a job inspection book and the inspection reveals the cost-benefit ratio would be higher by reordering the standards as prioritized in subsection (3) below. It must be noted on the inspection sheet that the reordering is the most appropriate cost-effective measure in this case and signed off by the local contractor.

(b) Material to complete the prioritized standard is not commercially available or fails to meet the materials standards as prescribed by DOE.

(3) STATE STANDARDS FOR WEATHERIZATION BY STANDARD DWELLING TYPE

PRIORITY	SOURCE OF HEAT LOSS	WEATHERIZATION MEASURE REQUIRED
~~Single-Story-Homes~~	All Homes Other Than Mobile	
1	General Heat Waste	Stop Infiltration/Adjust Heating Source
2	* Uninsulated Ceilings	Insulate Ceilings to R19 30[1]
3	~~Partially-Insulated-Ceiling~~	~~Insulate-Ceilings-to-R19~~
	Uninsulated Floor	Insulate Floor to R11
4	Windows	Storm Windows
5	Perimeter of Basement Uninsulated	Insulate Perimeter
6	~~Uninsulated-Floor~~	~~Insulate-Floor-to-R11~~
	** Partially Insulated Ceiling	Insulate Ceilings to R30
7	Uninsulated Walls	Insulate Walls
Mobile homes - all sizes, all heat types		
1	General Heat Waste	Stop Infiltration/Adjust Heating Source
2	Single Glass	Storm Windows/Thermal Curtains
3 or 4	Dead Air Locks	Construct Air Lock
4 or 3	Uninsulated Perimeter	Skirt Trailer

[1] Insulation may be increased to an R-38 if required when coordinating with other weatherization services.

* Uninsulated is defined as R-11 or less.

** Partially insulated is defined as R-11 or more.

~~Two-or-more-story-homes---all-heat-types~~

~~--1------General-Heat-Waste----------Stop-Infiltration/Adjust Heat-Source~~
~~--2------Single-Glass----------Storm-Windows~~
~~--3------Uninsulated-Ceilings--------Insulate-Ceilings-R19~~
~~--4------Partially-Insulated Ceilings Insulate-Ceilings-R19~~
~~--5------Uninsulated-Perimeter-------Insulate-Perimeter~~
~~--6------Uninsulated-Floors----------Insulate-Floors-to-R11~~
~~--7------Uninsulated-Walls----------Insulate-Walls~~

AUTH: 53-2-201 MCA
IMP: 90-4-201 and 90-4-202 MCA

3. This rule clarifies local contractor responsibilities, qualifies notification to households, simplifies and raises income criteria, adds flexibility to priority for service and slightly changes the priority for installation of weatherization measures to a more cost effective procedure.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 8, 1983.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1983.

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

In the matter of the amendment of Rules 46.13.102, 46.13.205, 46.13.206, 46.13.207, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 and 46.13.404 pertaining to the low income energy assistance program	)))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.13.102, 46.13.205, 46.13.206, 46.13.207, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 AND 46.13.404 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On September 1, 1983, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rules 46.13.102, 46.13.205, 46.13.206, 46.13.207, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 and 46.13.404 pertaining to the low income energy assistance program.

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

46.13.102 ROLE OF THE LOCAL CONTRACTOR (1) The department will contract with appropriate community-based organizations in the state to provide outreach and to receive and process applications for the low income energy assistance ~~program~~ and weatherization programs.

(a) In providing outreach, the local contractor performs specified activities designed to inform all potentially-eligible households in the contract area of the existence of and the benefits available under the low income energy assistance program. Such application may also constitute an application for weatherization.

(b) In receiving and processing applications, the local contractor determines household eligibility and benefit award under the rules contained in this chapter.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.205 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for low income energy assistance are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and benefit award. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons

for approval or disapproval of his application. Eligible applicants shall be notified that benefits are available for heating costs only for the period October 1 through April 30.

(b) Financial eligibility requirements that must be verified are:

(i) current receipt of benefits under supplemental security income or aid to families with dependent children;

(ii) income;

(iii) medical/dental deductions;

(iv) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education.

~~(c) Benefit award requirement which must be verified is any credit balance with previous fiscal year's fuel vendor(s), if applicable.~~

(dc) If reasonable doubt exists as to the accuracy of the information provided by the client, the type of dwelling, including the number of bedrooms and/or the primary heating fuel/vendor must also be verified.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.206 NOTIFICATION OF ELIGIBILITY (1) An individual who makes application for low income energy assistance and/or weatherization will receive written notice of eligibility within 45 days of the date of application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the local contractor immediately following final decision on the application.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.207 NOTICE OF ADVERSE ACTION (1) Each person who receives assistance must be notified ten days in advance of any action that terminates or reduces his benefits. Notification must be in writing and contain information about the amount of decrease or the closure, the reason and legal basis for the action, and must advise the client of the date on which the action will take effect. The notice must inform the client of his right to a fair hearing.

(2) The local contractor may dispense with timely notice but must send adequate notice no later than the date of action in the following situations:

(a) recipient dies;

(b) recipient no longer wishes assistance;

(c) recipient admitted or committed to an institution;

(d) recipient fraudulently obtained benefits.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS (1) The income standards in the table in (2) below are 125% of the 1982~~2~~3 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to all households, including self-employed households. Households with annual gross income at or below 125% of the 1982~~2~~3 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the 1982~~2~~3 poverty level are ineligible for ~~the program~~ low income energy assistance.

(2) Income standards for all households.

Family Size	125% OMB Poverty Standard
1	$ ~~5,850~~ 6,075
2	~~7,775~~ 8,175
3	~~9,700~~ 10,275
4	~~11,625~~ 12,375
5	~~13,550~~ 14,475
6	~~15,475~~ 16,575
each additional member	~~1,925~~ 2,100

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.304 INCOME (1) Definitions:

(a) Annual gross income means all non-excluded income including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, worker's compensation, unemployment compensation, and capital gains received by the members of the household in the ~~twelve~~ six months multiplied by two (6 months x 2) immediately preceding the month of application.

(b) Annual gross receipts apply to households with income from self-employment and mean all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the ~~twelve~~ six months multipled by two (6 months x 2) immediately preceding the month of application.

(c) Medical and dental deductions mean all medical and dental payments for allowable ~~medical~~ costs, as described in (4), made by members of the household in the twelve months immediately preceding the month of application. Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party. Medical deductions can only be subtracted from annual gross income that is 150% or less of the 1982~~2~~3 U.S. government office of

management and budget poverty level for the particular household size. Households meeting the income standards in 46.13.303(2) after this adjustment are eligible for benefits.

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

(h) dentures, hearing aides, and prosthetic devices;

Subsections (4)(i) and (4)(j) remain the same.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.305 RESOURCES (1) The following property resources shall make a family unit ineligible when in total they exceed $5,000 for a single person, $7,500 for a couple, and $500 for each additional member to a maximum of $10,000 per household:

(a) cash on hand;
(b) certificate of deposits;
(c) savings accounts;
(d) market value of stocks or bonds;
(e) equity value of business property in excess of ~~$50,000~~ $25,000.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES (1) Definitions:

(a) LC means local contractor.
(b) MPC means Montana Power Company.
(c) MDU means Montana-Dakota Utilities.
(d) GFG means Great Falls Gas Company.
(e) Single family unit means a building which contains a single shelter or rental unit for living purposes. For purposes of the program, a double wide trailer or mobile home is considered a single family unit.
(f) Multi-family unit means a building which contains two or more shelter or rental units for living purposes. For purposes of the program, a duplex and a home with a basement apartment are considered multi-family units.
(g) Mobile home means a single wide trailer or mobile home only.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. 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	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	303 ~~276~~	196 ~~178~~	258 ~~235~~	386 ~~352~~	270 ~~227~~	328 ~~299~~
Fuel Oil	703 ~~825~~	492 ~~577~~	597 ~~701~~	859 ~~1008~~	601 ~~706~~	730 ~~857~~
Propane	628 ~~641~~	440 ~~448~~	534 ~~544~~	768 ~~783~~	537 ~~548~~	652 ~~665~~
Electricity R.E.A.	552 ~~378~~	387 ~~264~~	469 ~~321~~	675 ~~462~~	472 ~~323~~	574 ~~393~~
Electricity M.D.U.	844 ~~716~~	591 ~~502~~	717 ~~609~~	1031 ~~875~~	722 ~~613~~	877 ~~744~~
Electricity Sidney	70	70	70	70	70	70
Coal	242 ~~198~~	170 ~~149~~	206 ~~160~~	303 ~~248~~	212 ~~198~~	258 ~~210~~
Wood	197 ~~215~~	138 ~~143~~	167 ~~183~~	263 ~~206~~	184 ~~215~~	223 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	529 ~~408~~	370 ~~267~~	449 ~~347~~	594 ~~465~~	416 ~~306~~	505 ~~395~~
Fuel Oil	968 ~~1146~~	678 ~~803~~	823 ~~974~~	1084 ~~1283~~	759 ~~899~~	921 ~~1091~~
Propane	1020 ~~890~~	714 ~~623~~	867 ~~756~~	1142 ~~996~~	799 ~~697~~	971 ~~847~~
Electricity R.E.A.	767 ~~525~~	537 ~~367~~	652 ~~446~~	859 ~~588~~	601 ~~412~~	730 ~~500~~
Electricity M.D.U.	1172 ~~995~~	820 ~~696~~	996 ~~846~~	1313 ~~1114~~	919 ~~780~~	1116 ~~947~~
Electricity Sidney	70	70	70	70	70	70
Coal	364 ~~297~~	255 ~~248~~	309 ~~252~~	424 ~~347~~	297 ~~297~~	361 ~~295~~
Wood	328 ~~358~~	230 ~~286~~	279 ~~304~~	394 ~~429~~	276 ~~358~~	335 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	342 ~~333~~	221 ~~214~~	290 ~~283~~	434 ~~424~~	304 ~~274~~	369 ~~360~~
Fuel Oil	745 ~~840~~	521 ~~505~~	633 ~~714~~	910 ~~1027~~	637 ~~719~~	774 ~~873~~
Propane	738 ~~653~~	516 ~~457~~	627 ~~555~~	902 ~~798~~	631 ~~558~~	766 ~~678~~
Electricity	591 ~~305~~	413 ~~269~~	502 ~~327~~	722 ~~470~~	505 ~~329~~	614 ~~400~~
Coal	259 ~~198~~	181 ~~149~~	220 ~~168~~	324 ~~248~~	227 ~~198~~	275 ~~218~~
Wood	211 ~~215~~	147 ~~143~~	179 ~~183~~	281 ~~286~~	197 ~~215~~	239 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	504 ~~492~~	353 ~~321~~	428 ~~418~~	573 ~~560~~	401 ~~369~~	487 ~~476~~
Fuel Oil	1035 ~~1168~~	725 ~~817~~	880 ~~993~~	1159 ~~1308~~	811 ~~915~~	985 ~~1112~~
Propane	1025 ~~906~~	717 ~~635~~	871 ~~770~~	1148 ~~1015~~	803 ~~710~~	975 ~~863~~
Electricity	820 ~~535~~	574 ~~374~~	697 ~~455~~	919 ~~600~~	643 ~~420~~	781 ~~510~~
Coal	389 ~~297~~	272 ~~248~~	330 ~~252~~	454 ~~347~~	318 ~~297~~	386 ~~295~~
Wood	351 ~~358~~	246 ~~286~~	298 ~~304~~	421 ~~429~~	295 ~~358~~	358 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

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

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	353	247	300	447	313	380
G.F.G.	~~325~~	~~210~~	~~277~~	~~414~~	~~260~~	~~352~~
Natural Gas	305	213	259	387	271	329
M.P.C.	~~297~~	~~191~~	~~252~~	~~378~~	~~264~~	~~321~~
	670	469	570	819	573	696
Fuel Oil	~~737~~	~~516~~	~~627~~	~~901~~	~~631~~	~~766~~
	599	419	509	732	512	622
Propane	~~565~~	~~396~~	~~480~~	~~690~~	~~483~~	~~587~~
	527	369	448	644	451	547
Electricity	~~343~~	~~240~~	~~292~~	~~419~~	~~294~~	~~357~~
	231	162	196	289	202	246
Coal	~~198~~	~~149~~	~~168~~	~~240~~	~~198~~	~~210~~
	188	131	160	250	175	213
Wood	~~215~~	~~143~~	~~183~~	~~280~~	~~215~~	~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	517	362	439	587	411	499
G.F.G.	~~481~~	~~314~~	~~409~~	~~547~~	~~361~~	~~465~~
Natural Gas	449	314	382	511	358	435
M.P.C.	~~441~~	~~309~~	~~375~~	~~499~~	~~349~~	~~424~~
	923	646	785	1034	723	878
Fuel Oil	~~1024~~	~~717~~	~~871~~	~~1147~~	~~803~~	~~975~~
	972	681	826	1089	762	926
Propane	~~705~~	~~549~~	~~667~~	~~879~~	~~615~~	~~747~~
	731	512	622	819	573	696
Electricity	~~477~~	~~334~~	~~405~~	~~534~~	~~374~~	~~454~~
	347	243	295	404	283	344
Coal	~~297~~	~~248~~	~~252~~	~~347~~	~~297~~	~~295~~
	313	219	266	376	263	319
Wood	~~356~~	~~286~~	~~304~~	~~429~~	~~358~~	~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

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

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	305 ~~297~~	197 ~~191~~	259 ~~252~~	387 ~~377~~	271 ~~244~~	329 ~~321~~
Fuel Oil	646 ~~743~~	452 ~~520~~	549 ~~632~~	789 ~~908~~	552 ~~636~~	671 ~~772~~
Propane	649 ~~548~~	455 ~~348~~	552 ~~466~~	794 ~~670~~	556 ~~469~~	675 ~~570~~
Electricity	527 ~~343~~	369 ~~240~~	448 ~~292~~	644 ~~419~~	451 ~~294~~	547 ~~357~~
Coal	231 ~~198~~	162 ~~149~~	196 ~~168~~	289 ~~248~~	202 ~~198~~	246 ~~210~~
Wood	188 ~~215~~	131 ~~143~~	160 ~~183~~	250 ~~286~~	175 ~~215~~	213 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	449 ~~438~~	314 ~~286~~	382 ~~373~~	511 ~~499~~	358 ~~329~~	435 ~~424~~
Fuel Oil	898 ~~1033~~	628 ~~723~~	763 ~~878~~	1005 ~~1157~~	704 ~~810~~	854 ~~983~~
Propane	902 ~~761~~	631 ~~533~~	767 ~~647~~	1010 ~~853~~	707 ~~597~~	859 ~~725~~
Electricity	731 ~~477~~	512 ~~334~~	622 ~~405~~	819 ~~534~~	573 ~~374~~	696 ~~454~~
Coal	347 ~~297~~	243 ~~248~~	295 ~~252~~	404 ~~347~~	283 ~~297~~	344 ~~295~~
Wood	313 ~~358~~	219 ~~286~~	266 ~~304~~	376 ~~429~~	263 ~~358~~	319 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	264	185	225	337	236	286
M.D.U.	~~229~~	~~140~~	~~195~~	~~292~~	~~109~~	~~240~~
Natural Gas	278	195	237	354	248	301
M.P.C.	~~279~~	~~196~~	~~237~~	~~356~~	~~250~~	~~303~~
Fuel Oil	590	413	502	721	505	613
	~~668~~	~~468~~	~~568~~	~~816~~	~~571~~	~~694~~
Propane	601	421	511	735	514	625
	~~516~~	~~361~~	~~439~~	~~631~~	~~442~~	~~536~~
Electricity	735	515	625	899	629	764
	~~314~~	~~220~~	~~267~~	~~383~~	~~268~~	~~326~~
Coal	211	148	180	264	185	224
	~~198~~	~~149~~	~~168~~	~~248~~	~~198~~	~~210~~
Wood	172	120	146	229	160	194
	~~215~~	~~143~~	~~183~~	~~286~~	~~215~~	~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	391	273	332	445	311	378
M.D.U.	~~339~~	~~221~~	~~288~~	~~386~~	~~254~~	~~328~~
Natural Gas	411	287	349	467	327	397
M.P.C.	~~414~~	~~289~~	~~352~~	~~472~~	~~363~~	~~401~~
Fuel Oil	820	574	697	918	643	781
	~~929~~	~~650~~	~~789~~	~~1039~~	~~728~~	~~884~~
Propane	824	577	701	923	646	785
	~~717~~	~~502~~	~~610~~	~~803~~	~~562~~	~~683~~
Electricity	668	468	568	749	524	636
	~~436~~	~~305~~	~~370~~	~~488~~	~~341~~	~~415~~
Coal	317	222	269	370	259	314
	~~297~~	~~248~~	~~252~~	~~347~~	~~297~~	~~295~~
Wood	286	200	243	343	240	292
	~~358~~	~~286~~	~~304~~	~~429~~	~~358~~	~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	319 ~~311~~	206 ~~212~~	272 ~~264~~	406 ~~396~~	284 ~~256~~	345 ~~337~~
Fuel Oil	690 ~~760~~	483 ~~532~~	587 ~~646~~	843 ~~929~~	590 ~~650~~	717 ~~790~~
Propane	681 ~~628~~	477 ~~440~~	579 ~~534~~	832 ~~768~~	583 ~~537~~	708 ~~652~~
Electricity	552 ~~360~~	387 ~~252~~	469 ~~306~~	675 ~~440~~	472 ~~308~~	574 ~~374~~
Coal	242 ~~198~~	170 ~~149~~	206 ~~168~~	303 ~~248~~	212 ~~198~~	258 ~~210~~
Wood	197 ~~215~~	138 ~~143~~	167 ~~183~~	263 ~~286~~	184 ~~215~~	223 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	471 ~~460~~	330 ~~301~~	400 ~~391~~	536 ~~523~~	375 ~~345~~	456 ~~445~~
Fuel Oil	941 ~~1056~~	659 ~~740~~	800 ~~898~~	1054 ~~1183~~	738 ~~826~~	896 ~~1006~~
Propane	946 ~~872~~	662 ~~611~~	804 ~~741~~	1059 ~~977~~	742 ~~684~~	901 ~~830~~
Electricity	767 ~~500~~	537 ~~350~~	652 ~~425~~	859 ~~560~~	601 ~~392~~	730 ~~476~~
Coal	364 ~~297~~	255 ~~248~~	309 ~~252~~	424 ~~347~~	297 ~~297~~	361 ~~295~~
Wood	328 ~~350~~	230 ~~286~~	279 ~~304~~	394 ~~429~~	276 ~~358~~	335 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	322 ~~313~~	208 ~~202~~	274 ~~267~~	409 ~~399~~	287 ~~250~~	348 ~~339~~
Fuel Oil	702 ~~792~~	491 ~~555~~	597 ~~673~~	858 ~~960~~	600 ~~670~~	729 ~~823~~
Propane	669 ~~669~~	468 ~~468~~	568 ~~568~~	817 ~~817~~	572 ~~572~~	695 ~~695~~
Electricity	557 ~~363~~	390 ~~254~~	473 ~~308~~	680 ~~443~~	476 ~~310~~	578 ~~377~~
Coal	244 ~~190~~	171 ~~149~~	208 ~~168~~	305 ~~248~~	214 ~~190~~	260 ~~210~~
Wood	199 ~~215~~	139 ~~143~~	169 ~~183~~	265 ~~206~~	185 ~~215~~	225 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	475 ~~463~~	332 ~~303~~	404 ~~394~~	540 ~~520~~	378 ~~348~~	459 ~~440~~
Fuel Oil	976 ~~1101~~	683 ~~771~~	829 ~~936~~	1093 ~~1233~~	765 ~~863~~	929 ~~1040~~
Propane	929 ~~929~~	650 ~~650~~	789 ~~789~~	1040 ~~1040~~	728 ~~728~~	884 ~~884~~
Electricity	773 ~~504~~	541 ~~353~~	657 ~~428~~	866 ~~564~~	606 ~~395~~	736 ~~480~~
Coal	366 ~~297~~	257 ~~248~~	312 ~~252~~	428 ~~347~~	299 ~~297~~	363 ~~295~~
Wood	331 ~~350~~	232 ~~286~~	281 ~~304~~	397 ~~429~~	278 ~~350~~	337 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	322 ~~314~~	208 ~~200~~	274 ~~267~~	409 ~~399~~	287 ~~256~~	348 ~~339~~
Fuel Oil	715 ~~773~~	500 ~~537~~	608 ~~657~~	874 ~~944~~	612 ~~656~~	743 ~~803~~
Propane	731 ~~615~~	512 ~~427~~	621 ~~523~~	894 ~~752~~	625 ~~522~~	759 ~~639~~
Electricity M.P.C.	557 ~~425~~	390 ~~254~~	473 ~~362~~	680 ~~520~~	476 ~~331~~	578 ~~442~~
Electricity P.P.L.	645	451	548	788	551	670
Coal	244 ~~198~~	171 ~~149~~	208 ~~160~~	305 ~~248~~	214 ~~198~~	260 ~~210~~
Wood	199 ~~215~~	139 ~~143~~	169 ~~183~~	265 ~~286~~	185 ~~215~~	225 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	475 ~~463~~	332 ~~301~~	404 ~~394~~	540 ~~528~~	378 ~~345~~	459 ~~448~~
Fuel Oil	994 ~~1074~~	696 ~~746~~	845 ~~913~~	1113 ~~1203~~	779 ~~835~~	946 ~~1022~~
Propane	1015 ~~854~~	711 ~~593~~	863 ~~726~~	1137 ~~957~~	796 ~~665~~	967 ~~813~~
Electricity M.P.C.	773 ~~591~~	541 ~~414~~	657 ~~502~~	866 ~~663~~	606 ~~464~~	736 ~~562~~
Electricity P.P.L.	895	627	761	1002	702	852
Coal	366 ~~297~~	257 ~~248~~	312 ~~252~~	428 ~~347~~	299 ~~297~~	363 ~~295~~
Wood	331 ~~358~~	232 ~~286~~	281 ~~304~~	397 ~~429~~	278 ~~350~~	337 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	319 ~~311~~	206 ~~200~~	272 ~~264~~	406 ~~396~~	284 ~~256~~	345 ~~337~~
Fuel Oil	697 ~~780~~	488 ~~546~~	592 ~~663~~	851 ~~953~~	596 ~~667~~	723 ~~810~~
Propane	690 ~~601~~	483 ~~421~~	586 ~~511~~	843 ~~735~~	590 ~~515~~	717 ~~625~~
Electricity	552 ~~360~~	387 ~~252~~	469 ~~306~~	675 ~~440~~	472 ~~308~~	574 ~~374~~
Coal	242 ~~198~~	170 ~~149~~	206 ~~168~~	303 ~~248~~	212 ~~198~~	258 ~~210~~
Wood	197 ~~215~~	138 ~~149~~	167 ~~183~~	263 ~~286~~	184 ~~215~~	223 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	471 ~~450~~	330 ~~301~~	400 ~~391~~	536 ~~529~~	375 ~~345~~	456 ~~445~~
Fuel Oil	968 ~~1083~~	678 ~~750~~	823 ~~921~~	1084 ~~1213~~	759 ~~849~~	921 ~~1031~~
Propane	958 ~~835~~	671 ~~585~~	815 ~~710~~	1073 ~~936~~	751 ~~655~~	912 ~~795~~
Electricity	767 ~~500~~	537 ~~350~~	652 ~~425~~	859 ~~560~~	601 ~~392~~	730 ~~476~~
Coal	364 ~~297~~	255 ~~248~~	309 ~~252~~	424 ~~347~~	297 ~~297~~	361 ~~295~~
Wood	328 ~~350~~	230 ~~286~~	279 ~~304~~	394 ~~429~~	276 ~~358~~	335 ~~365~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

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

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	319 ~~311~~	206 ~~200~~	272 ~~264~~	406 ~~396~~	284 ~~256~~	345 ~~337~~
Fuel Oil	697 ~~767~~	488 ~~537~~	592 ~~652~~	851 ~~937~~	596 ~~656~~	723 ~~796~~
Propane	734 ~~637~~	514 ~~446~~	624 ~~541~~	897 ~~770~~	628 ~~545~~	763 ~~662~~
Electricity	552 ~~360~~	387 ~~252~~	469 ~~306~~	675 ~~440~~	472 ~~308~~	574 ~~374~~
Coal	242 ~~190~~	170 ~~149~~	206 ~~160~~	303 ~~248~~	212 ~~190~~	258 ~~210~~
Wood	197 ~~215~~	138 ~~143~~	167 ~~183~~	263 ~~206~~	184 ~~215~~	223 ~~243~~

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	471 ~~460~~	330 ~~301~~	400 ~~391~~	536 ~~523~~	375 ~~345~~	456 ~~445~~
Fuel Oil	968 ~~1066~~	678 ~~746~~	823 ~~906~~	1084 ~~1193~~	759 ~~835~~	921 ~~1014~~
Propane	1020 ~~885~~	714 ~~619~~	867 ~~752~~	1142 ~~991~~	799 ~~693~~	971 ~~842~~
Electricity	767 ~~500~~	537 ~~350~~	652 ~~425~~	859 ~~560~~	601 ~~392~~	730 ~~476~~
Coal	364 ~~297~~	255 ~~248~~	309 ~~252~~	424 ~~347~~	297 ~~297~~	361 ~~295~~
Wood	328 ~~350~~	230 ~~206~~	279 ~~304~~	394 ~~429~~	276 ~~350~~	335 ~~365~~

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.402 DETERMINING BENEFIT AWARD (1) For applications filed during the period October 1, ~~1982~~ through April 30, ~~1984~~, households found eligible will receive the full amount of their applicable matrix for the current program year. Applications filed after April 30 will be treated as application for the following program year and subsequently subject to rules in effect at that time.

(2) When a household changes residence or type of primary fuel during the heating season, the household may request to have its benefit award recomputed for the new circumstances. The benefit award for the new circumstances will be equal to the benefit award the household would have received had its original application been for the new circumstances minus the used portion of the original benefit award. The unused portion of the original benefit award reverts to the department.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

46.13.404 ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS (1) When funds are not available to serve all eligible households, the department will take the following steps in sequential order as needed:

(a) reduce the maximum benefit amounts of the benefit award matrices;

(b) limit eligibility to only financially needy households with a member ~~65~~ 60 years of age or older or with a member who is disabled and receiving supplemental security income or social security income based on permanent and total disability;

(c) deny all subsequent applications.

AUTH: 53-2-201 MCA
IMP: 53-2-201 MCA

3. The purpose of the proposed rule changes are to more specifically define local contractor responsibilities, qualify timely notice of adverse action, shorten the period for eligibility determination, update the poverty standard, lengthen the application period, lower exemption equity value of business property and update the benefit matrix.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 9, 1983.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1983.

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the Medicaid Program, Rules 46.12.3603 and 46.12.3804.	))))))	NOTICE OF AN ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULES 46.12.3603 AND 46.12.3804, MEDICAID PROGRAM. NO HEARING IS CONTEMPLATED.

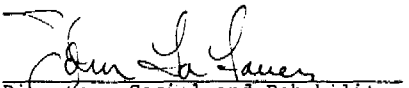
TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 20 CFR, Part 416.1110 and 416.1111 published in 48 Fed. Reg., 23177, Tuesday, May 24, 1983. 20 CFR 416 is presently incorporated by reference in Rules 46.12.3603 and 46.12.3804, Medicaid Program. These amendments provide that certain payments received due to the earned income tax credit provisions of section 43 of the Internal Revenue Code will be included in the definition of earned income. Further, these regulations provide that payment for services performed in a sheltered workshop or work activities center also constitutes earned income. A copy of 20 CFR, Part 416.1110 and 416.1111 published in 48 Fed. Reg., 23177, Tuesday, May 24, 1983, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for adoption of the later amendment is August 15, 1983. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment May 24, 1983.

3. If the department receives request for a public hearing under 2-4-315, MCA, on the proposed amendment from either 10 percent or 25 percent, whichever is less, of the persons who are directly affected by the proposed amendment; 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 1,021 persons based on 10,211 Medicaid eligibles.

4. The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements 53-6-131, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1983.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendments of Rules 4.12.1202, Definitions; 4.12.1203, Standards for Certification; 4.12.1206, Alfalfa Leafcutting Bee Sampling Procedures; and 4.12.1207, Certification Procedures and Fees.	))))))	NOTICE OF AMENDMENTS OF ARM 4.12.1202, 4.12.1203, 4.12.1206 and 4.12.1207, ALFALFA LEAFCUTTING BEES

TO: All Interested Persons:

1. On June 30, 1983, the Department of Agriculture published a notice of proposed adoption of amendments of ARM 4.12,1202, 4.12.1203, 4.12.1206 and 4.12.1207, relating to the definitions, standards for certification, sampling procedures, and certification procedures and fees for alfalfa leafcutting bees, at page 676 of the Administrative Register, Issue No. 12.

2. No comments or testimony were received.

3. The Department adopted the amendments as proposed.

Keith Kelly, Director
Montana Department of Agriculture

Certified to the Secretary of State August 1, 1983.

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

In the matter of the amendments of 8.22.610 concerning interest and penalties on fines levied by the stewards; 8.22.808 subsection (6) concerning objections and protests; 8.22.1501 subsection (6) concerning general provisions; and proposed adoption of new rules; under sub-chapter 3, a new rule concerning a stay of summary imposition of penalty; under sub-chapter 4, a new rule defining the duties of the executive secretary; under sub-chapter 15 a new rule concerning the definition of conduct detrimental to the best interests of racing; and under sub-chapter 16 new rules concerning a definition of exotic forms of wagering and bonuses for owners of Montana breds.	NOTICE OF AMENDMENT OF 8.22.610 STEWARDS; 8.22.808 (6) OBJECTIONS - PROTESTS; 8.22.1501 GENERAL PROVISIONS and ADOPTION OF NEW RULES, 8.22.324 STAY OF SUMMARY IMPOSITION OF PENALTY; 8.22.401 POWERS AND DUTIES OF EXECUTIVE SECRETARY; 8.22.1502 DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTERESTS OF RACING; 8.22.1622 DEFINITIONS OF EXOTIC FORMS OF WAGERING; and 8.22.1623 BONUS FOR OWNERS OF MONTANA BREDS

TO: All Interested Persons:

1. On June 30, 1983, the Board of Horse Racing published a notice of proposed amendment and adoption of the above-stated rules at pages 683 through 688, 1983 Montana Administrative Register, issue number 12.

2. The board is amending and adopting the proposed rules as noticed, with the exception of the proposed new rule under sub-chapter 3, concerning hearing examiners (II). Board action on this proposed rule has been deferred until after the board meeting of August 20, 1983.

All rules being amended and adopted were amended and adopted without comment except the proposed new rule under sub-chapter 16, "VI. Bonus for Owners of Montana Breds ...". The board received 3 letters signed by 79 members of the betting public on 7/28/83 stating their opposition to any further "take out" from any wagering pool. While the petition did not specify the signers' intent to oppose the proposed rule, the board assumed these petitioners should be addressed to their consideration of that proposed rule. Neither did the petitions ask that the board delay its decision on adoption of any proposed rule in favor of a public hearing. The board, in adopting the proposed rule on "Bonus for Owners of Montana Breds" did so after duly considering the testimony presented at House and Senate hearings on this proposed "owners award" during the 1983 legislature, the intent of the 1983 legislature, comments made

to the board at the 6/4/83 and 7/11/83 board meetings, the aforementioned petition, and finally, their own best judgement as to the "best interests of horse racing in Montana".

3. No other comments or testimony were received.

BOARD OF HORSE RACING
LINDA KING, ACTING CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 1, 1983.

DEPARTMENT OF INSTITUTIONS

EMERGENCY RULE TO AMEND

1. Pursuant to Quigg v. South, cause No. 48140, Lewis and Clark County, and the Court's opinion and Declaratory Judgment filed in this matter by District Judge Gordon R. Bennett on July 19, 1983, the Department is filing this emergency rule to amend rule 20.7.102 under the Supervised Release Program. The court ruled that the provisions of the Supervised Release Law cannot be applied retroactively. Therefore, in order not to prejudice other inmates in their application process for supervised release, the Department is adopting an emergency rule amending the prisoner application procedure rule, effective immediately, with the intention of adopting a permanent amended prisoner application procedure rule as soon as possible.

20.7.102 PRISONER APPLICATION PROCEDURE, GENERAL STATUTE REQUIREMENTS. (1) Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make an application to participate in the supervised release program:

(a) at any time if his date of crime is prior to July 1, 1979.

(b) if he has served at least one-half of the time required to be considered for parole and his date of crime is after July 1, 1979, but prior to October 1, 1981.

(c) if he has served at least one-half of the time required to be considered for parole and not more than 15 months remain before he is eligible for parole if his date of crime is after October 1, 1981.

No other changes in the remainder of the rule.

(History: Sec. 46-23-405, MCA; IMP, Sec. 46-23-405, 411 MCA; NEW, Eff. 6/4/77; AMD, 1978 MAR p. 1030, Eff. 7/8/78, AMD, 1982 MAR p. 392, Eff. 2/26/82.)

CARROLL V. SOUTH, Director
Department of Institutions

BY: 
CURT CHISHOLM, Deputy Director
Department of Institutions

CERTIFIED TO THE SECRETARY OF STATE August 1, 1983.

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

In the matter of the adoption of rules providing for exemption of certain transmission lines from the provisions of the Major Facility Siting Act	)))))	NOTICE OF THE ADOPTION OF RULES PROVIDING FOR EXEMPTION OF CERTAIN TRANSMISSION LINES FROM THE PROVISIONS OF THE MAJOR FACILITY SITING ACT

TO: All Interested Persons

1. On March 31, 1983, the Board of Natural Resources and Conservation published notice of the proposed adoption of rules providing for exemption of certain transmission lines from the provisions of the Major Facility Siting Act on Page 244 of the 1983 Montana Administrative Register, issue number 6.

2. The Board has adopted Rule VI (36.7.906) and Rule VII (36.7.907) as proposed.

3. The Board has adopted Rules I thru V and Rule VIII as proposed with the following changes.

RULE I-36.7.901 ~~DEFINITIONS~~ GENERAL PROVISIONS (1) Definitions. In these rules:

~~(1)~~(a) An "upgrade" means an existing transmission line of a voltage and length covered by the act which is being converted to a line of higher operating voltage, or being converted from single circuit to double circuit, using the same centerline.

~~(2)~~(b) A "relocation" means an existing transmission line of a voltage and length covered by the act which is being moved to a new location outside the existing right-of-way.

~~(3)~~(c) A "reconstruction" means a transmission line of a voltage and length covered by the act which is being rebuilt in the same right-of-way, including reconductoring, replacement of poles or towers, crossarms, or insulating hardware. It does not include activities that are part of normal and customary maintenance which do not require a certificate pursuant to 75-20-104(7)(d), MCA, or to reconstructions necessitated by storm damage or other causes for which a waiver is obtained pursuant to 75-20-304(2), MCA.

~~(4)~~(d) A "game range" means land owned, leased, or otherwise controlled by the Montana department of fish, wildlife, and parks or the U.S. fish and wildlife service and managed as wildlife habitat. It includes all designated game management areas.

~~(5)~~(e) A "wildlife refuge" means land owned, leased, or otherwise controlled by the U.S. fish and wildlife service as part of the national wildlife refuge system.

~~(6)~~(f) A "critical habitat for rare, threatened, or endangered species" means areas designated by the U.S. fish and wildlife service pursuant to the endangered species act of 1973.

~~(7)~~(g) A "big game security area" means an area of land more than 0.5 miles from an existing road or right-of-way which is recognized by the Montana department of fish, wildlife and parks or other land management agency as providing essential escape cover or other secure habitat for big game species.

(h) A "viewshed" means the portion of the surrounding landscape that is seen from a designated observation point. The "foreground" of a viewshed means the detailed landscape found from the observation point to 1/4-1/2 mile away. The "middleground" of a viewshed means the area located from 1/4-1/2 to 3-5 miles from the observer.

(i) "Historical and archaeological properties" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, archaeology, or culture.

(2) The department recommends that persons intending to construct exempt facilities consult with the department regarding the information required for the notice of intent to construct an exempt facility (Rule V). Data to meet the information requirements and criteria of Rules II (5) and (6), III (4) and (5) are available from state and federal agencies. Officials to contact include the director of the Montana department of fish, wildlife and parks, the forest supervisor of the applicable U.S. forest, the district manager of the applicable U.S. bureau of land management district, the regional manager of the U.S. fish and wildlife service, the state conservationist and district conservationists of the U.S. soil conservation service. The written request for information from these agencies should include a map at a scale of at least 1:125,000 showing the location of the existing facility, access roads, and proposed relocation, if any. Department staff can assist persons seeking exemptions to locate the data required by these rules.

AUTH: 75-20-202, MCA IMP: 75-20-202, MCA

RULE II-36.7.902 ELIGIBLE EXEMPTIONS FOR UPGRADES The upgrade of an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) the upgrade falls into one of the following categories:

(a) 69 kV or less upgraded to no more than 115 kV,

(b) 100 kV or 115 kV upgraded to no more than 161 kV,

(c) 161 kV upgraded to no more than 230 kV, or

(d) 230 kV single circuit upgraded to 230 kV double circuit;

(2) the upgraded length of line in Montana is 30 miles or less ~~in length~~;

(3) the facility will be rebuilt in the same right-of-way using existing access roads; or if additional right-of-way or new access roads are required, the person submits a notorized statement from at least 80 percent of the ~~each~~ affected landowners stating that the landowner has granted an easement or that the landowner has been contacted by the person, is willing to work with the person to identify an acceptable location on his/her property for additional right-of-way or access road easement, and ~~is~~would be willing to grant additional right-of-way or access road easements along such route and in accordance with mitigation and construction standards as established by the department and approved by the board. This statement in no way binds the landowner ~~who still~~with respect to the compensation for such right-of-way or easements, and the landowner has the right to negotiate a fair and reasonable price for the right-of-way or easements. Likewise, this statement does not preclude the exercise of the power of eminent domain held by the person in the event that a fair and reasonable price cannot be negotiated;

(4) ~~the mean structure height of new structures will not be greater than 1.75 times the mean height of existing structures~~ andthe upgrade meets the following requirements for changes in structure height and type:

(a) for existing facilities with a mean structure height less than 75 feet, the mean structure height of new structures will not be greater than 1.75 times the mean height of existing structures;

(b) for existing facilities which have a mean structure height of 75 feet or more, the mean structure height of new structures will not be greater than 130 feet; and

(c) the upgrade will use one of the following:

~~(a)~~(i) no change in poles, single or double circuit;

~~(b)~~(ii) single ~~wood~~ pole changed to taller single ~~wood~~ pole or to ~~wood pole~~ h-frame structures, single or double circuit;

~~(c)~~(iii) ~~wood~~multiple pole h-frame structures changed to taller ~~wood~~multiple pole h-frame structures~~, or to triple pole~~ single or double circuit ~~wood structures~~; or

~~(d)~~(iv) in the case of 230 kV single circuit changed to 230 kV double circuit, ~~woodpole h-frame~~ structures may be changed to steel lattice towers only in those locations where the line does not cross cultivated agricultural land (unless the landowner specifies in the statement required by Rule II (3) willingness to accept compensation for the inconvenience), is not in the viewshed of any home, federal or state highway, designated recreation area, or historic site which is eligible for the national register of historic places because of its setting;

(5) the upgraded line and new access roads do not:

(a) cross or pass within ~~the following zones:~~ one-half mile for an upgrade up to 161 kV, or within one mile for 230 kV, of the following:

(i) an area designated by the federal government as part of the national wilderness preservation system, or an area currently being studied for possible inclusion in the system;

(ii) primitive areas and lands managed specifically for their roadless and primitive recreation values by the U.S. forest service, bureau of land management, or other federal or state agency; and

(iii) national or state parks, national natural landmarks, national or state monuments, and other lands managed by federal or state agencies specifically to preserve their natural aesthetic qualities;

(b) cross a ~~national or state~~ game range or wildlife refuge, or cross critical habitat for rare, threatened, or endangered species;

(c) cross irrigated cropland if the upgrade would result in ~~an undesirable change in irrigation practice on the land~~reduced land productivity or interference with mechanical irrigation equipment, unless the landowner specifies in the statement required at Rule II (3) willingness to accept compensation for these inconveniences;

(d) cross a platted subdivision or a residential area with more than four homes within one-quarter mile of the line in any mile of the line, in those cases where an upgrade involves an increase in height or change in type of structure;

(e) pass through the middle ground or foreground of the viewshed from a state or federal highway for more than 10 miles; or

(f) cross a stream classified by the Montana department of fish, wildlife, and parks as a class one stream. This subsection applies only to new access roads;

(6) if the upgraded line or new access roads cross or pass within the specified distance of the following areas (a) through (f), all such instances must be listed in the information supplied to the department under Rule V, and

include proposed mitigation measures. The department will consider the impacts and mitigation measures in preparing its construction and mitigation standards if the line:

(a) crosses or passes within one-half mile of a designated campground, interpretive site, rest area, picnic or day use recreational area, fishing access site, class one or two fishery or other designated outdoor recreation site listed in the Montana statewide comprehensive outdoor recreation plan published by the Montana department of fish, wildlife and parks;

(b) crosses or passes within one-half mile of nesting sites of bald eagles, golden eagles, peregrine falcons, prairie falcons, merlins, ferruginous hawks, great blue herons, double-crested cormorants, or other colonial water birds;

(c) crosses areas designated by the U.S. forest service or bureau of land management as Research Natural Areas, Areas of Critical Environmental Concern, Special Interest Areas, Research Botanical Areas, or other areas which include old-growth forests greater than 5 acres which have not been burned or logged for at least 100 years, and mature cottonwood forests where average canopy height is 50 feet or more;

(d) crosses wetlands, waterfowl concentrations or feeding flight paths identified by the Montana department of fish, wildlife, and parks or the U.S. fish and wildlife service;

(e) crosses areas having highly erosive or unstable soils as indicated by soil conservation service data; or

(f) crosses historic or archaeological sites listed on the national register of historic places, or which have been determined eligible for listing on the national register, or passes within the foreground or middle ground viewshed of an historic site for which the undisturbed natural setting of the site is one of the criteria that contributes to its eligibility for listing on the national register;

(7) the person demonstrates that ~~historic and archaeological properties that would be affected by the proposed undertaking, if any, have been identified and evaluated pursuant to applicable historic preservation laws~~ historic and archaeological properties that would be affected by the proposed undertaking have been properly identified and evaluated in a report that documents that the following procedures have been carried out:

(a) the person identifies what resources are located in the project area by:

(i) consulting with the state historic preservation officer (shpo) to determine what surveys have been done and what properties have been identified previously;

(ii) obtaining recommendations as to what survey methods should be employed to locate any additional properties that may not yet have been identified and/or;

(iii) demonstrating that previous ground disturbance would eliminate the need for a cultural resource survey;

(b) the person demonstrates assessment of impacts and plans to mitigate or avoid cultural resources by:

(i) submitting to the shpo a report that includes a listing of the sites in the project area, an assessment of their significance, an assessment of project-related impacts upon each, and recommendations on measures to avoid or minimize impacts;

(ii) the person requests shpo comments and provides additional information as needed; and

(iii) the person submits their report and shpo's comments to the department so the department can consider the impacts and mitigation measures in preparing its construction and mitigation standards; and

(8) the person agrees that the upgrade and new access roads will be built in accordance with construction and mitigation standards established by the department for the facility. The department will consult with the person prior to submitting proposed standards to the board for adoption or modification.

AUTH: 75-20-202, MCA IMP: 75-20-202, MCA

RULE III-36.7.903 ELIGIBLE EXEMPTIONS FOR RELOCATIONS Relocation of an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) the facility or portion of the facility being relocated in Montana is 30 miles or less in length and 230 kV or less, the relocation is not part of a longer relocation project that would otherwise be covered under the act, and the new location ~~substantially reduces environmental impacts over the current line location~~ is unlikely to have significant environmental impact;

(2) a person desiring to construct an exempt upgrade (Rule II) or reconstruction (Rule IV) may relocate a portion of the facility if the relocated portion will reduce environmental impacts over current conditions;

(a) a combined upgrade-relocation in Montana may not exceed 30 miles in length if it is to qualify for exemption;

(b) the relocated portion of a reconstruction in Montana may not exceed 30 miles in length if it is to qualify for exemption;

(3) the person submits as evidence of landowners' consent to give easements for access roads and right-of-way a notarized statement from at least 80 percent of the ~~each~~

affected landowners containing the information specified in Rule II (3);

(4) the relocated line and access roads do not:

(a) cross or pass within one mile of the areas specified in Rule II (5) (a); an exception to the one-mile zone is made if the current line crosses one of these specified areas and the relocation would remove the current line from the area;

(b) cross the areas specified in Rule II (5) (b);

(c) cross platted subdivisions, irrigated croplands where the relocation would result in ~~an undesirable change in irrigation practice on the land~~ reduced land productivity or interference with mechanical irrigation equipment (unless the landowner specifies in the statement required by Rule II (3) willingness to accept compensation for these inconveniences), or a residential area with more than four homes within one-quarter mile of the line in any mile of the line;

(d) pass through the middle ground or foreground of the viewshed from a state or federal highway for more than 10 miles; or

(e) cross a big game security area, or a stream classified by the Montana department of fish, wildlife and parks as a class one stream;

(5) if the relocated line or new access roads cross or pass within the specified distances of the areas listed in Rule II (6), all such instances must be listed in the information supplied to the department under Rule V, including proposed mitigation measures. The department will consider the impacts and mitigation measures in preparing its construction and mitigation standards;

(6) the person demonstrates that any historic and archaeological properties that would be affected have been identified and evaluated pursuant to ~~applicable historic preservation laws~~ the procedures outlined in Rule II(7); and

(7) the person agrees that the relocation and access roads will be built in accordance with construction and mitigation standards established by the department for the facility. The department will consult with the person prior to submitting proposed standards to the board for adoption or modification.

AUTH: 75-20-202, MCA IMP: 75-20-202, MCA

RULE IV-36.7.904 ELIGIBLE EXEMPTIONS FOR RECONSTRUCTION A person reconstructing an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) the facility being reconstructed is 230 kV or less;

(2) the reconstruction will be in the same right-of-way as the existing facility and will use existing access roads. If additional right-of-way or easements for new access roads are required, the person shall submit evidence of landowner consent as specified in Rule II (3);

(3) the construction will be of the same type and configuration, and the mean height will not be greater than 1.25 times the mean height of existing structures;

(4) the person demonstrates that if any new access roads or right-of-way affect historic and archaeological properties, these properties have been identified and evaluated pursuant to ~~applicable historic preservation laws~~the procedures outlined in Rule II (7); and

(5) the person agrees that the reconstruction will be built in accordance with construction and mitigation standards established by the department for the facility. The department will consult with the person prior to submitting proposed standards to the board for adoption or modification.

AUTH: 75-20-202, MCA IMP: 75-20-202, MCA

RULE V-36.7.905 NOTICE OF INTENT TO CONSTRUCT AN EXEMPT FACILITY Prior to initiation of construction, a person desiring to construct an exempt facility shall give public notice briefly describing the proposed facility, its location, and the intent to construct an exempt facility to persons residing in the area in which any portion of the proposed facility may be located. Notice shall be given by publication of this information once in each of three consecutive weeks in newspapers of general circulation in the areas to be affected by the proposal. The person desiring to construct an exempt facility shall also publish a display ad in those newspapers, describing the proposal, to further inform those persons who might be affected. The person desiring to construct an exempt facility shall also inform the department, board, department of health, board of health, and those agencies listed in 75-20-211(3), MCA, by certified mail or personal service, providing a copy of the public notice, and in addition shall provide the following information:

(1) a description of the existing facility that is to be modified, in a level of detail sufficient to enable the department and the board to determine its location and its structural and operation characteristics; the description must include U.S.g.s. 7.5' or 15' quadrangle maps with the existing line plotted on them or if these are unavailable the line must be demarcated on maps with a scale of 1:125,000 or larger;

(2) a description of the facility as it will be relocated, reconstructed, or upgraded, in sufficient detail for the department to develop specific construction and mitigation standards for the facility. U.S.g.s. 7.5' or 15' quadrangle maps showing the proposed line location must be supplied, or if these are unavailable, the line must be demarcated on maps with a scale of 1:125,000 or larger;

(3) an explanation of the reason for the reconstruction, relocation, and/or upgrade;

(4) an explanation that demonstrates how each of the conditions listed in Rules II, III, and/or IV are or will be met; and

(5) a list of the landowners (names, addresses, phone numbers) that would be crossed by the facility or access roads.

AUTH: 75-20-202, MCA IMP: 75-20-202, MCA

RULE VIII-36.7.908 LOCAL, STATE, AND FEDERAL PERMITS A person relocating, reconstructing, and/or upgrading an exempt facility under these rules is responsible for compliance with all applicable local, state, and federal approvals, consents, permits, certificates, or other conditions for the construction, operation or maintenance of the exempt facility.

AUTH: 75-20-202, MCA IMP: 75-20-202, MCA

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

RULE I DEFINITIONS

COMMENT: Definitions of "big game security area" and other terms used in Rule II (6) such as "waterfowl concentration areas," "waterfowl feeding flight paths," "areas of critical environmental concern, special interest areas, or research botanical areas," are too vague. A formal process for identifying these areas should be specified.

RESPONSE: The terms are the ones used by the agencies which maintain the data on these areas. A new section has been added to Rule I specifying the responsible officials to contact at the state and federal agencies which have the data required by Rule II (6), along with the information that a person seeking exemption should provide to the agencies in making a request. Consultation with Department staff is recommended during the data gathering process, and staff can assist a person seeking exemption to locate the data required by these rules.

COMMENT: The last sentence of the definition of "game range" should be deleted. In Rule II (5) (b), "national or state" should be deleted as these are inherent in the definition of a "game range."

RESPONSE: The confusion results from the lack of capitalization in the rules. We will insert the word "designated" before "game management areas" for clarification. We will omit "national or state."

COMMENT: The term "viewshed" is undefined.
RESPONSE: A definition for "viewshed" has been added.

COMMENT: A definition should be added for historical and archaeological properties, as follows: "Historical and archaeological properties" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, archaeology, or culture.

RESPONSE: This definition has been added to Rule I.

COMMENT: The definition of reconstruction should exclude normal and customary maintenance activities and reconstruction due to storm damage and other acts of God or acts of third parties, for example man-caused fires.

RESPONSE: The Department agrees normal and customary maintenance activities do not require a certificate pursuant to section 75-20-104(7)(d), MCA. Reconstructions necessitated by storm damage or other causes can be waived pursuant to 75-20-304(2), MCA. A statement clarifying this has been added to the definition of reconstruction in Rule I.

COMMENT: Reconstructions of transmission lines in kind and in place are not subject to the Act. The "commence to construct" definition (75-20-104(7), MCA) includes relocation or upgrading of an existing facility but does not mention reconstruction. In the exemption section of the Act (75-20-202(3), MCA), "reconstruction" refers to facilities other than transmission lines, consistent with 75-20-202(2), MCA, which exempts facilities in operation January 1, 1973.

RESPONSE: The Department disagrees with the comment. The term "facility" in 75-20-202, MCA is all encompassing and is not qualified. The exemption section, 75-20-202(3), MCA, refers to facilities consistent with 75-20-202(2), MCA, which also refers to facilities without qualification or limitation.

RULE II ELIGIBLE EXEMPTIONS FOR UPGRADES

COMMENT: For Rule II (2) we suggest rewording to "The upgraded length of line in Montana is 30 miles or less."

RESPONSE: The Department agrees with the comment.

COMMENT: Any line that is to be upgraded or rebuilt in the same location with the same general type of structure should be excluded. Length of the line (30 miles) should not be a factor, nor should other factors be considered such as four homes within one quarter mile of the line, the 10-mile limit for visibility from highways, or the half-mile distance from wilderness areas.

RESPONSE: Reconstructions, if additional right-of-way or new access roads are not required, have minimal impact and all that is required to establish an exemption is a Notice pursuant to Rule V and construction in compliance with the standards adopted by the Board. Upgrades, especially of higher voltage lines, can have a significant additional impact. The rules requirements for upgrades reflect this difference.

The 30-mile limit for upgrades and/or relocations was selected because the Siting Act has a shorter time frame for obtaining certificates for facilities 30 miles or less in length. The factors in the rules were selected as reasonable indicators that an exempt facility would be "unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods," as required by 75-20-202, MCA.

COMMENT: Several comments were received that Rules II (3), III (3), and IV (2) regarding landowner consent give the landowner leverage to request unreasonably high right-of-way payments from the applicant. One utility suggested the following language (new language underlined).

"....or if additional right-of-way or new access roads are required, the person submits a notarized statement from each affected landowner stating that the landowner has been contacted by the person, is willing to work with the person to identify an acceptable location on his/her property for additional right-of-way or access road easement, and would be willing to grant additional right-of-way or access road easements along such route and in accordance with such construction and mitigation standards as established by the department and approved by the board. This statement shall in no way bind the landowners with respect to the price to be

demanded for such right-of-way or easements, and the landowner shall have the right to negotiate a fair and reasonable price therefore. Likewise, this statement shall not preclude the exercise of any powers of eminent domain held by the person in the event that a fair and reasonable price cannot be negotiated. In the event that a landowner is unwilling to sign such a statement after reasonable negotiations and good faith efforts on behalf of the person, the department may excuse the person from the requirements of this subsection."

RESPONSE: The Department's intent in this case is to insure that the relocation or upgrade has minimal environmental impact, including social impact. Adverse social impact would occur if a substantial number of landowners were unwilling to allow a change in the current right-of-way agreement. The Department has changed the rule to require easements or statements of intent to grant an easement from a minimum of 80 percent of the affected landowners. To remove the leverage over price to be paid, eminent domain over price is allowed.

To be exempt, the person must demonstrate in the statement provided under Rule V that at least 80 percent of the affected landowners have indicated willingness to grant an easement. Eminent domain proceedings should not begin until an exemption is established. Eminent domain proceedings constitute commencement of construction pursuant to the definition of "commence to construct," 75-20-104(7), MCA, and construction may not begin until an exemption is established by Board approval of construction and mitigation standards.

COMMENT: Upgrades from single circuit to double circuit should be covered by the Act. At the very least, if they are allowed an exemption, they should be done using existing wooden h-frame poles, and not steel lattice towers. Steel lattice towers are not commonplace in Montana and people are concerned about the impacts of these towers on agriculture, livestock, health effects, and visual effects, as well as the fact they require wider right-of-ways, more and bigger access roads for the heavy equipment to build them. Public concern suggests such upgrades should be fully covered by the Act to allow landowners the voice they need to mitigate adverse effects. We recommend eliminating Rule II (1) (d) and (4) (d).

RESPONSE: To cover those conditions under which an upgrade to steel lattice towers could be a significant impact, the Department has changed the rule restricting use

of steel lattice towers in those locations where the line crosses cultivated agricultural land (unless the landowner specifies in the statement required by Rule II (3) willingness to accept compensation for the inconvenience), is in the viewshed of any home, federal or state highway, designated recreation area, or historic site which is eligible for the national register of historic places because of its setting.

COMMENT: The allowable types of construction in Rule II (4)(b)-(d) are too restrictive. Steel or concrete poles or h-frame structures may be preferable to wood for upgrades of both single circuit and double circuit lines. Therefore, it is recommended that any reference to wood be deleted.

For Rule II (4), the maximum increase in structure height should be changed from 1.5 to 1.75 times the mean height of existing structures. To upgrade from single circuit wood h-frame to double circuit 230 kV on steel lattice towers requires more height to achieve the necessary ground clearance. Tower configurations using longer spans (600-900 feet) also require more than 1.5 times the mean height of existing structures.

To upgrade a single circuit h-frame line to double circuit could be a two-pole as well as three-pole structure. Therefore, we suggest using the phrase "multiple pole" rather than "triple pole." Rule II (4)(c) would be reworded to "multiple pole h-frame type structures to taller multiple pole h-frame type structures, single or double circuit."

RESPONSE: The Department agrees that more flexibility in structure type and configuration can increase the possibility that an upgrade would be unlikely to have significant environmental impact. Reference to wood has been deleted and the language regarding multiple pole structures has been adopted. The Department agrees that existing structures under 75 feet tall could be increased in height by 1.75 times the mean existing height, resulting in a maximum height of approximately 130 feet. Structures with a mean height of 75 feet and taller could be increased in height to this same maximum. The rules have been changed accordingly.

COMMENT: The electric cooperatives in this state are non-profit, and our principal concern is to keep costs down. We are concerned about costs involved, especially of Rule II (5) and the following rules.

RESPONSE: The rules for exemption reduce the time and cost that would otherwise be required by a full Siting Act certification process.

COMMENT: What constitutes an "undesirable change in irrigation practices" is undefined. A landowner may accept payment for inconveniences caused by a right-of-way but this clause could leave the applicant non-exempt. A suggestion was made to replace "an undesirable change" with "increased sediment, reduced water quality or quantity, or reduced productivity of the land."

RESPONSE: The rule has been changed to read: "cross irrigated cropland if the upgrade would result in reduced land productivity or interference with mechanical irrigation equipment, unless the landowner specifies willingness to accept compensation for these inconveniences."

COMMENT: Under Rule II (5) we suggest that you add "(g) increase sediment or otherwise create pollution or environmental degradation or reduce water quality."

Under Rule II (6)(e) we suggest you add "without taking necessary action to prevent sediment transport and protect water quality."

RESPONSE: Under Rule VIII a person seeking exemption would have to obtain a water quality permit from the Department of Health and Environmental Sciences, which will ensure protection of water quality. The Department can consult with the Soil Conservation Service when preparing construction and mitigation standards to ensure that measures to prevent or reduce soil erosion not related to water quality are adequate. The proposed language does not need to be added to the rules.

COMMENT: In Rule II (6), what is meant by "other designated outdoor recreation sites"? Are "fishing access sites" defined?

RESPONSE: A list of designated outdoor recreation sites, including fishing access sites, can be found in the Montana Statewide Comprehensive Outdoor Recreation Plan, published by the Montana Department of Fish, Wildlife, and Parks. Private, local (county/city), state, and federal sites are all included. This source has been added to the rule.

COMMENT: Regarding Rule II (6)(f), is information available listing eligible sites for the National Register of Historic Places and/or historic sites where the undisturbed

of steel lattice towers in those locations where the line crosses cultivated agricultural land (unless the landowner specifies in the statement required by Rule II (3) willingness to accept compensation for the inconvenience), is in the viewshed of any home, federal or state highway, designated recreation area, or historic site which is eligible for the national register of historic places because of its setting.

COMMENT: The allowable types of construction in Rule II (4)(b)-(d) are too restrictive. Steel or concrete poles or h-frame structures may be preferable to wood for upgrades of both single circuit and double circuit lines. Therefore, it is recommended that any reference to wood be deleted.

For Rule II (4), the maximum increase in structure height should be changed from 1.5 to 1.75 times the mean height of existing structures. To upgrade from single circuit wood h-frame to double circuit 230 kV on steel lattice towers requires more height to achieve the necessary ground clearance. Tower configurations using longer spans (600-900 feet) also require more than 1.5 times the mean height of existing structures.

To upgrade a single circuit h-frame line to double circuit could be a two-pole as well as three-pole structure. Therefore, we suggest using the phrase "multiple pole" rather than "triple pole." Rule II (4)(c) would be reworded to "multiple pole h-frame type structures to taller multiple pole h-frame type structures, single or double circuit."

RESPONSE: The Department agrees that more flexibility in structure type and configuration can increase the possibility that an upgrade would be unlikely to have significant environmental impact. Reference to wood has been deleted and the language regarding multiple pole structures has been adopted. The Department agrees that existing structures under 75 feet tall could be increased in height by 1.75 times the mean existing height, resulting in a maximum height of approximately 130 feet. Structures with a mean height of 75 feet and taller could be increased in height to this same maximum. The rules have been changed accordingly.

COMMENT: The electric cooperatives in this state are non-profit, and our principal concern is to keep costs down. We are concerned about costs involved, especially of Rule II (5) and the following rules.

RESPONSE: The rules for exemption reduce the time and cost that would otherwise be required by a full Siting Act certification process.

COMMENT: What constitutes an "undesirable change in irrigation practices" is undefined. A landowner may accept payment for inconveniences caused by a right-of-way but this clause could leave the applicant non-exempt. A suggestion was made to replace "an undesirable change" with "increased sediment, reduced water quality or quantity, or reduced productivity of the land."

RESPONSE: The rule has been changed to read: "cross irrigated cropland if the upgrade would result in reduced land productivity or interference with mechanical irrigation equipment, unless the landowner specifies willingness to accept compensation for these inconveniences."

COMMENT: Under Rule II (5) we suggest that you add "(g) increase sediment or otherwise create pollution or environmental degradation or reduce water quality."

Under Rule II (6)(e) we suggest you add "without taking necessary action to prevent sediment transport and protect water quality."

RESPONSE: Under Rule VIII a person seeking exemption would have to obtain a water quality permit from the Department of Health and Environmental Sciences, which will ensure protection of water quality. The Department can consult with the Soil Conservation Service when preparing construction and mitigation standards to ensure that measures to prevent or reduce soil erosion not related to water quality are adequate. The proposed language does not need to be added to the rules.

COMMENT: In Rule II (6), what is meant by "other designated outdoor recreation sites"? Are "fishing access sites" defined?

RESPONSE: A list of designated outdoor recreation sites, including fishing access sites, can be found in the Montana Statewide Comprehensive Outdoor Recreation Plan, published by the Montana Department of Fish, Wildlife, and Parks. Private, local (county/city), state, and federal sites are all included. This source has been added to the rule.

COMMENT: Regarding Rule II (6)(f), is information available listing eligible sites for the National Register of Historic Places and/or historic sites where the undisturbed

natural setting is one of the criteria that contributes to its eligibility for listing on the National Register? If yes, from whom?

RESPONSE: The State Historic Preservation Office (SHPO) maintains files of known historic properties. SHPO staff provide guidance on determining visual impacts if one of the criteria that contributes to a site's eligibility is its undisturbed natural setting.

COMMENT: Under Rule II (7) the reference to "applicable historic preservation laws" should be replaced with the change suggested below because an exemption situation could involve instances in which no laws apply other than the Major Facility Siting Act's requirement to consider cultural resources.

Section (7) should be revised to read: "The applicant demonstrates that recorded and previously unidentified historic and archaeological properties that would be affected by the proposed undertaking have been properly identified and evaluated in a report that documents that the following procedures have been carried out:

(a) Applicant identifies what resources are located in the project area by:

(i) consulting with the State Historic Preservation Office (SHPO) to determine what surveys have been done and what properties have been identified previously;

(ii) obtaining recommendations as to what survey methods should be employed to locate any additional properties that may not yet have been identified and/or;

(iii) demonstrating for exempt facilities that previous ground disturbance would obviate the need for a cultural resource survey.

(b) Applicant demonstrates adequate assessment of impacts and plans to mitigate or avoid cultural resources by:

(i) submitting to the SHPO a report that includes a listing of the sites in the project area, an assessment of their significance, an assessment of project-related impacts upon each, and recommendations on measures to avoid or mninimize impacts;

(ii) applicant requests SHPO comments and provides additional information as needed;

(iii) applicant submits their report and SHPO's comments to DNRC as evidence of no significant impact to cultural resources.

Under Rule III (6) and IV (4), it would be appropriate to cite this process by stating that the applicant demonstrates that any historic and archaeological properties that would be affected have been identified and evaluated pursuant to the procedures outlined in Rule II (7).

RESPONSE: The changes proposed are an effective and clear way of meeting the intent of the language to satisfy "applicable historic preservation laws." The changes have been adopted as suggested.

COMMENT: Regarding construction and mitigation standards, we would like to see the applicant have opportunity for input before the Department proposes those standards to the Board and recommend inserting the phrase, "after consultation with the applicant," in the language for Rules II (8), III (7), and IV (5).

RESPONSE: The Department anticipated such consultation. A statement has been added to the rules that the Department will consult with the person proposing to construct an exempt facility prior to submitting proposed standards to the Board for adoption or modification.

COMMENT: The Department should reserve the right to alter construction and mitigation standards on a site-specific basis.

RESPONSE: The rules do provide the Department the opportunity to specify appropriate construction and mitigation standards on a site-specific basis.

COMMENT: Perhaps there is some justification for establishing construction and mitigation standards for new access roads, but upgrades and rebuilds of existing electric line would certainly be done to utility standards and meet National Electric Safety Codes.

RESPONSE: Utility standards, especially NESC codes, are engineering standards rather than environmental standards. To be exempt, a project must be unlikely to have significant environmental impact by reason of construction methods, among other items listed in 75-20-202(3)(b), MCA.

RULE III ELIGIBLE EXEMPTIONS FOR RELOCATIONS

COMMENT: Reword Rule III (1) to "the facility or portion of the facility being relocated in Montana is 30 miles or less in length."

RESPONSE: The Department agrees with the comment.

COMMENT: The relocation of portions of transmission lines (Rule III) is not consistent with the Act. In 75-20-104(7)(d), MCA, "commence to construct" is defined to include relocation of existing transmission facilities as set forth in subsection 10(b). We suggest Rule I (2) and Rule III (1) be changed to make clear that neither the Act nor the exemptions available apply to relocations of portions of existing transmission lines (or at least to relocations of 10 miles or less in length).

RESPONSE: The rules reflect at Rule I that only facilities already covered by the Act are subject to these rules. Transmission facilities, including upgrades and relocations less than 10 miles in length and 230 kv or less are not covered by the Act and thus do not require a certificate. Consequently, no change is necessary.

COMMENT: If portions of lines can be relocated, relocations necessitated by the widening and relocation of highways should be exempt.

RESPONSE: Persons relocating lines or portions of lines necessitated by the widening and relocation of highways may obtain a waiver under 75-20-304(2).

COMMENT: A relocation of no greater impact than the existing line should be permissible. The requirement for a "substantial" reduction in environmental impact for relocation is unnecessarily restrictive.

RESPONSE: The test under 75-20-202(3)(b) is "unlikely to have a significant environmental impact." The rule has been revised to read: "the new location is unlikely to have significant environmental impact."

RULE V NOTICE OF INTENT TO CONSTRUCT AN EXEMPT FACILITY

COMMENT: Why is it necessary to give public notice? A discussion with DNRC and determination of exemption should be sufficient.

RESPONSE: The public affected by construction of an exempt facility should have the opportunity to object if they believe the facility does not meet the criteria for exemption. Montana's open meeting laws require that notice be given.

COMMENT: In Rule V (3) and (4) and in Rule VIII, the word "or" should be "and/or" to include any combination of upgrade-relocation-reconstruction.

RESPONSE: The Department agrees with the comment.

COMMENT: A maximum review time for DNRC to report deficiencies to an applicant should be included.

RESPONSE: The Department does not review the notice for deficiencies since there is no discretion in the agency to reject or accept a notice of intent to construct an exempt facility. DNRC uses the information to develop construction and mitigation standards.

RULE VII CONSTRUCTION MONITORING BY DEPARTMENT

COMMENT: Regarding Rule VII, does the authority of DNRC include charging the applicant for this required monitoring?

RESPONSE: No, the Department does not have the authority to mandate payment of a monitoring fee.

RULE VIII LOCAL, STATE, AND FEDERAL PERMITS COMMENT

COMMENT: We urge you to remove the term local in Rule VIII. DNRC should retain authority to override local rules when they become prohibitive.

RESPONSE: An exempt facility is not covered by the Siting Act, so neither the Department nor the Board has authority to override local rules.

GENERAL COMMENTS

COMMENT: The word "person" should be changed to "applicant."

RESPONSE: An applicant as used in the Act usually refers to a person who has filed an application for a certificate. Since an exemption precludes the need to file an application, the Department prefers not to use the term applicant.

COMMENT: Rules II, III, and IV should list which provisions of the Act will not apply if the conditions for exemption are met.

RESPONSE: If the conditions for exemption are met, none of the provisions of the Act apply.

COMMENT: The proposed rules are a good step toward making the Siting Act more workable for applicants, the public, and affected landowners. However, we would be very much opposed to the rules if they did not require mitigation. We suggest inserting the word "partial" or "conditional" before "exemption" to make clear that the applicant is required to follow construction and mitigation standards.

RESPONSE: An exemption cannot be "partial" or "conditional;" however, the requirement for following construction and mitigation standards remains valid.

(d) COMMENT: For exemptions as well as other facilities involving clearing a right-of-way, please inform applicants of the requirements of the Hazard Reduction or Management Law 76-13-401 through 413, MCA.

RESPONSE: The Hazard Reduction Law requires those cutting timber on public or private land to enter into an agreement with the Forestry Division, Department of State Lands, to clean up slash and otherwise reduce fire hazard. DNRC will add a provision to its construction standards that the person constructing the line must contact the Forestry Division, Department of State Lands, to make arrangements for compliance with the Hazard Reduction Law, 75-13-401 through 413, MCA.

COMMENT: We doubt there are existing transmission lines that do not cross or pass near one of the areas described in Rule II (5) and Rule III (4). If this is the case, no existing lines would qualify for the upgrading or relocation exemption.

RESPONSE: The Department disagrees with the comment. The criteria in Rules II(5) and III(4) are reasonable, and many existing lines would qualify.

COMMENT: We would like to see the Department adopt some boiler plate general construction standards, at least on a broad basis such as populated/non-populated, eastern vs. western Montana, still allowing the Department flexibility to establish specific standards on a case-by-case basis.

RESPONSE: As a result of certification proceedings, the Board has adopted construction standards for wood-pole lines and for 500 kV lines. The Department uses these standards as general construction standards and modifies them as needed for specific projects. The Department presently intends to use these standards as a basis for developing specific project standards.

COMMENT: The information required under a notice for exemption is almost as extensive as studies that would be necessary for a complete siting application. This is a general comment, not to suggest any changes.

RESPONSE: The information required is to ensure that the relocation, reconstruction, or upgrade does not have a significant environmental impact. The time frame for establishing an exemption is shorter than for obtaining a certificate.

5. The authority of the Board to establish the proposed rules is granted by section 75-29-202, MCA, and implements section 75-20-202, MCA.

Charles L. Hash, Acting Chairman

Certified to the Secretary of State, August 1, 1983

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of amendment of) rules pertaining to agency) filing fees and subscription) rates to the ARM and MAR.)	NOTICE OF AMENDMENT OF RULES 1.2.421 SUBSCRIPTION TO THE CODE--COST; 1.2.423 AGENCY FILING FEES.

TO: All Interested Persons.

1. On June 30, 1983, the Secretary of State published notice of proposed amendment of rules concerning filing fees and subscription rates for the ARM and MAR, at page 723, 1983 Montana Administrative Register, issue number 12.

2. The Secretary of State has amended the rules as proposed.

3. The following comments and testimony were received during the comment period and at the hearing:

COMMENT:
Testimony was heard from the Montana Taxpayers Association and the Montana Association of Realtors. Both associations were in favor of the increase and they felt that the increase should be paid by the user. A representative for the Montana Association of Realtors stated that it would be a good idea to require an economic impact statement from the agencies.

COMMENT:
Verbal comments were received at the hearing from Mr. Bob Wood, Attorney with the Department of Commerce. Written response was received from the Board of Livestock. Both state agencies opposed the per page fee increase on the grounds of adversely affecting the 1983-1984 budgets for both agencies.

RESPONSE:
Comments rejected. All state agencies were notified by the budget office that filing fees were to be increased on the order of $25.00 per page. This notification was made well in advance of all executive budget requests.

COMMENT:
Metropolitan Property and Liability Insurance Company of Warwick, Rhode Island, provided a letter opposing the subscription increase to the Montana Administrative Register. Primary opposition to the increase was based on the insurance companies' limited use of the register.

RESPONSE:
Comment rejected. Any individual or company with specific and limited need to review proposed agency rules, may request, those specific agencies to notify them, in advance, of any proposed rules or changes in rules.

COMMENT:

Representative Aubyn Curtiss, Fortine, Montana, sent written correspondence in opposition to increasing subscription fees. Primary concern in the letter received was for the small business or individual subscriber who could not afford the increased fees.

RESPONSE:

Comment rejected. The process of promulgating these rules did not begin with the published notice of hearing. The proposed increases were discussed, at length, during the appropriation process in the last legislative session. Not one legislator, small business person or individual objected during that process. The legislative auditor also strongly recommended this method of establishing fees. No small business person or individual objected. The Administrative Code Committee unanimously endorsed the proposed fee schedules. No individual or small business person objected. Also, during the hearing process, no small business person or individual objected.

Finally, any small business person or individual has access by requesting proposals directly from the agencies or by reviewing proposed changes in any county courthouse in the State of Montana.

Dated this 1st day of August, 1983.

JIM WALTERMIRE
Secretary of State

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

In the matter of the amendment of Rules 46.11.111, 46.11.112, 46.11.114, 46.11.116, 46.11.120, and 46.11.125 and the repeal of Rule 46.11.128 pertaining to the food stamp program, retrospective budgeting and monthly reporting	)))))))	NOTICE OF THE AMENDMENT OF RULES 46.11.111, 46.11.112, 46.11.114, 46.11.116, 46.11.120, AND 46.11.125 AND THE REPEAL OF RULE 46.11.128 PERTAINING TO THE FOOD STAMP PROGRAM, RETROSPECTIVE BUDGETING AND MONTHLY REPORTING

TO: All Interested Persons

1. On June 16, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.11.111, 46.11.112, 46.11.114, 46.11.116, 46.11.120, and 46.11.125 and the repeal of 46.11.128 pertaining to the food stamp program, retrospective budgeting and monthly reporting at page 638 of the Montana Administrative Register, issue number 11.

2. The department has amended Rules 46.11.112, 46.11.114, 46.11.116, 46.11.120, and 46.11.125 and repealed Rule 46.11.128 as proposed.

3. The department has amended Rule 46.11.111 as proposed with the following changes:

46.11.111 FOOD STAMP PROGRAM, ~~PILOT PROJECTS FOR~~ RETROSPECTIVE BUDGETING AND MONTHLY REPORTING, ~~PURPOSE~~ IMPLEMENTATION (1) Federal food stamp regulations require each state to implement a system of monthly reporting and retrospective budgeting (MRRB) by October 1, 1983. The department will phase in ~~pilot~~ MRRB systems ~~in four (4) counties, Madison, Hill, Powell and Valley counties~~, starting on ~~December 17, 1982~~ SEPTEMBER ~~August~~ 1, 1983.

4. The department is amending Rule 46.11.111 to reflect a September 1, 1983 implementation date due to administrative considerations.

5. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1983.

VOLUME NO. 40 OPINION NO. 15

COUNTIES - Period for redemption of land sold for taxes;
COUNTIES - Redemption not tolled by partial payment of back taxes;
MONTANA CODE ANNOTATED - Sections 15-18-101, 15-18-102, 15-18-104

HELD: The period of redemption for land sold for delinquent taxes is provided for by section 15-18-101, MCA. Payment of all taxes and assessments is required for redemption to occur. The time period cannot be tolled by payment of part of the delinquent taxes.

19 July 1983

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You requested an opinion concerning:

> When land is sold to the county as purchaser at a tax sale, may the time period for issuance of a tax deed be tolled by payment of one year's delinquent taxes, regardless of the amount of tax actually due on the land?

Title 15, chapter 18, MCA, deals with ownership interests in land sold for taxes. Once a piece of property is sold for delinquent taxes, this chapter governs transactions involving the property. Section 15-18-101, MCA, provides:

> A redemption of property sold may be made by the owner or any party having any interest in or lien upon such property within 36 months from the date of purchase or at any time prior to the giving of the notice and the application for a deed as provided in this chapter.

Your question arises due to the present practice of the Missoula County Treasurer's office. Currently the Treasurer's Office allows the owner of property sold for taxes or any other party who qualifies under section 15-18-101, MCA, to pay one year's delinquent taxes and thereby forestall issuance of a tax deed for an additional year. This allows the owner or interested party to continually stall issuance of a tax deed without actually redeeming the property. You are concerned with the legality of this practice.

Initially, it should be noted that there are two different situations which arise in redemption proceedings. The first is when the property is sold to a private party, the second is when the property is "struck off" to the county. In the former situation, section 15-18-102, MCA, provides that the redemptioner:

> [S]hall, in addition to the amount for which said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser or his assignee at such tax sale, with interest thereon at the rate of 8% per annum from the date of payment of such taxes.

In the latter situation, section 15-18-104, MCA, provides:

> In case property is sold to the county as purchaser pursuant to 15-17-207 and is subsequently assessed pursuant to 15-17-304, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees, and interests.

It is well settled that when the language of a statute is plain, unambiguous, direct and certain, the section speaks for itself and there is nothing left to construe. State v. Hubbard, 39 St. Rptr. 1608, 649 P.2d 1331 (1982); Shannon v. Keller, 37 St. Rptr. 1709, 612 P.2d 1293 (1980). Applying this rule to the instant situation, it is clear that in order for redemption to occur, payment of the total amount due under either of the statutes must occur. Neither section 15-18-102, MCA, nor section 15-18-104, MCA, provides a method for the redemption of property upon partial payment of the amount due. In addition, there is no reference to an extension of the redemption period in section 15-18-101, MCA, upon receipt of a partial payment.

What effect then does the payment of one year's taxes have on the time period for redemption? Section 15-18-101, MCA, provides for two time periods for redemption: (1) "within 36 months from the date of purchase" or (2) "at any time prior to the giving of the notice and the application for a deed." Thus at any time after 36 months the purchaser may apply for a tax deed. The 36-month period begins to run the date the property is purchased, either by a private party or the county. There is no provision in the statute which allows that time period to be tolled. In construing a statute, the function of a court is simply to ascertain and declare what is in substance contained therein, not to insert what has been omitted or omit what has been inserted. Reese v. Reese, 38 St. Rptr. 2167, 637 P.2d 1183 (1981). The Legislature did not provide a method whereby the time for redemption could be tolled, nor is there any indication, by implication or otherwise, that such a procedure was intended. Nothing, of course, prevents a purchaser from voluntarily refraining from applying for a tax deed after 36 months, but the statute does not extend the redemption period as a matter of law due to partial payment of the amount due. As a result, partial payment of the amount necessary to redeem the property has no effect on the statutory redemption period.

THEREFORE IT IS MY OPINION:

> The period of redemption for land sold for delinquent taxes is provided for by section 15-18-101, MCA. Payment of all taxes and assessments is required for redemption to occur. The time period cannot be tolled by payment of part of the delinquent taxes.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 16

SUBDIVISION AND PLATTING ACT - Analysis of whether exemptions are claimed for the purpose of evading review under the act;
SUBDIVISION AND PLATTING ACT - Authority of local governments to require evidentiary showing of entitlement to exemption;
SUBDIVISION AND PLATTING ACT - Propriety of certificate of survey creating more than one lot to be conveyed under "occasional sale" exemption;
MONTANA CODE ANNOTATED - Title 76, chapter 2, part 2, sections 76-3-102, 76-3-105, 76-3-207, 76-3-301, 76-3-501, 76-3-507, 76-3-608;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 41 (1977), 38 Op. Att'y Gen. No. 106 (1980).

HELD: 1. A single certificate of survey may not reflect the creation of more than one lot to be conveyed under the "occasional sale" exemption embodied in section 76-3-207(1)(d), MCA.

2. The question of whether an exemption is claimed "for the purpose of evading" review under the act is one of fact to be decided by the local government in the first instance, taking into consideration all of the surrounding circumstances.

3. A local government may require a person claiming exemption from subdivision review to furnish evidence of entitlement to the claimed exemption.

20 July 1983

Jim Nugent, Esq.
City Attorney
City County Building
Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion on several questions arising from the following facts. On September 11, 1980, a developer filed a certificate of survey dividing a tract of land into three parcels. The developer retained title to the largest parcel, comprising roughly three-fourths of the original tract, and disposed of the other two, roughly the southeast quarter, one by gift to a member of his immediate family and one by sale. This first division was exempted from the review provisions of the Subdivision and Platting Act ("the Act") under section 76-3-207(1)(b), (d), MCA. On November 17, 1980, the developer filed a certificate of survey showing that a portion of the gifted parcel was reconveyed to the developer. This transaction was exempted from the review provisions of the Act under section 76-3-207(1)(e), MCA, which pertains to relocation of boundaries and aggregation of lots. On November 29, 1982, the developer filed a third certificate of survey creating two additional lots covering roughly the southwest quarter of the original tract. Again, one lot was to be disposed of by gift and one by occasional sale, and, as with the first certificate of survey, the division was exempted from review under section 76-2-207(1)(b), (d), MCA. The developer has now completed and submitted for filing a fourth certificate of survey dividing the balance of the tract into five lots, four of which are to be conveyed to others as "occasional sales." The remaining lot, comprising roughly the area returned to the developer by relocation of boundary in the November 17, 1980, certificate of survey, is to be conveyed by gift to a member of the developer's immediate family.

You raise two questions arising from these facts:

1. May a single certificate of survey show division of a tract of land into more than one lot to be conveyed under the "occasional sale" exemption embodied in section 76-3-207(1)(d), MCA?

2. Under these facts, are the claimed "occasional sales" subject to review under the Act on the ground that the exemptions are claimed "for the purpose of evading" the Act?

The Montana Subdivision and Platting Act, Title 76, chapter 3, MCA, establishes a comprehensive system of local government review for proposed "subdivisions." The term "subdivision" is defined generally to include any "division of land" creating one or more parcels of less than 20 acres to be conveyed by sale, rental, lease, or otherwise. Subdivided lots may not be conveyed until plats of the subdivision have been approved by the appropriate local governing body, applying the public interest criteria set forth in section 76-3-608, MCA. Conveyances in violation of the Act are voidable, 38 Op. Att'y Gen. No. 106 (1980), and they subject the subdividers to actions for injunctive relief, § 76-3-301(3), MCA, as well as criminal penalties, § 76-3-105, MCA.

Pursuant to the Act, a "division of land" occurs when

> one or more parcels of land [are segregated] from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the parcels. (Emphasis added.)

In the present circumstances, the filing of the proposed certificate of survey would create a "division of land" which falls within the definition of "subdivision" and which would ordinarily be subject to local government review. Title 76, chapter 2, part 2, however, states numerous exemptions from various requirements of the Act. Section 76-3-207(1), MCA, in particular, defines classes of "divisions of land" which, although within the statutory definition of "subdivision," are not subject to the review provisions of the Act. The pertinent exemption here is set forth in section 76-3-207(1)(d), MCA: "a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale." A filed certificate of survey showing more than one division of a parcel cannot qualify for this exemption because the statute expressly limits the exemption to "a single division of a parcel." A conveyance of a lot by reference to such a certificate of survey without local government subdivision review would be in violation of the Act, because the "division of land" (the filing of the certificate of survey)

created a "subdivision" (one or more parcels to be conveyed) which was not a "single division" of one parcel exempt from review under section 76-3-207(1)(d), MCA.

Your second question presents an inappropriate basis for an Attorney General's opinion. The question of whether a particular exemption is claimed "for the purpose of evading" the Act is manifestly one of fact which is addressed to the discretion of the local government. I have consistently declined to address such questions in the context of an advisory opinion. However, to assist you in analyzing the issue I offer the following observations. As a statute promoting public health and welfare, the Subdivision and Platting Act must be liberally construed to effectuate its objects. Its exemptions must be narrowly applied. State ex rel. Florence-Carlton School District v. Board of County Commissioners, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978). A local government may legitimately require one claiming an exemption from the Act's requirements to make some evidentiary showing that the exemption is justified. In 37 Op. Att'y Gen. No. 41 (1977), I held that a local government could, as part of its rulemaking authority under the Act, §§ 76-3-501 to 76-3-507, MCA, require persons claiming an exemption to provide an affidavit to the effect that the exemption was claimed in good faith and not for purposes of evading the Act. It would also be legitimate for the local government to establish by rule some sort of hearing procedure to allow the local government to evaluate the evidentiary basis for the claimed exemption and allow or disallow it. I am aware that the Supreme Court has invalidated regulations adopted under the Act to define the "occasional sale" exemption. State ex rel. Department of Health and Environmental Sciences v. LaSorte, 182 Mont. 267, 596 P.2d 477 (1979); State ex rel. Swart v. Casne, 172 Mont. 302, 564 P.2d 983 (1977). However, the regulations invalidated in LaSorte and Casne were held to be inconsistent with the express terms of the statute. In contrast, a regulation establishing procedures for evaluation of claimed exemptions gives substance to the Act's policy of local government control of land use, and is certainly consistent with the Act's requirement in section 76-3-301(2), MCA, that the clerk and recorder notify the local governing body when a certificate of survey is presented for filing claiming an exemption under section 76-3-207(1), MCA.

Applying the rule announced in Florence-Carlton, the party claiming the exemption should bear the burden of establishing his entitlement to it. The local governing body should evaluate all relevant circumstances in assessing the claimant's intent. These circumstances might include, inter alia, the nature of the claimant's business (i.e., whether the claimant is in the business of dividing and selling land), the prior history of the particular tract in question (i.e., whether this claimant has engaged in prior exempt transactions involving the tract), and the proposed configuration of the tract after the allegedly exempt transactions are completed. The exemptions in section 76-3-207(1), MCA, are not provided to allow a developer to create a subdivision of land which is for all intents and purposes nothing less than an unreviewed subdivision. Rather, they were provided to deal with exceptional circumstances under which, in the Legislature's judgment, full plenary subdivision review is unnecessary. A claimant who attempts to engage in a pattern of exempt transactions which will result in the equivalent of a subdivision without local government review, see, e.g., State ex rel. Department of Health v. LaSorte, 182 Mont. 267, 269, 596 P.2d 477, 479 (1979) (dictum), should be denied exemption. If necessary, the county attorney may take action to ensure that conveyances do not occur in such circumstances. § 76-3-301(3), MCA. To allow an exemption in such circumstances would obviously subvert the Act's public policy requiring a priori review of divisions of land which may have substantial impact on public health, safety, and general welfare. § 76-3-102, MCA.

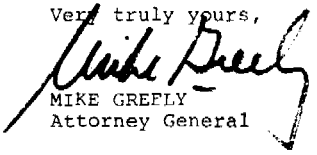
THEREFORE, IT IS MY OPINION:

1. A single certificate of survey may not reflect the creation of more than one lot to be conveyed under the "occasional sale" exemption embodied in section 76-3-207(1)(d), MCA.

2. The question of whether an exemption is claimed "for the purpose of evading" review under the act is one of fact to be decided by the local government in the first instance, taking into consideration all of the surrounding circumstances.

3. A local government may require a person claiming exemption from subdivision review to furnish evidence of entitlement to the claimed exemption.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 17

COUNTIES - General powers, lack of explicit or implicit statutory power to administer community development block grant program;
COUNTIES - General powers, lack of inherent power to administer community development block grant program;
COUNTY HOUSING AUTHORITY - Implicit power to administer community development block grant program;
INTERGOVERNMENTAL COOPERATION - Interlocal agreement between city and county unavailable to empower county to administer community development block grant program;
INTERGOVERNMENTAL COOPERATION - Interlocal agreement between municipal housing authority and county may empower county to administer community development block grant program within ten miles of city limits;
LOCAL GOVERNMENT - Powers of general power local governments under 1972 Montana Constitution;
MUNICIPAL HOUSING AUTHORITY - Interlocal agreement conferring power on county to administer community development block grant program within ten miles of city limits;
MONTANA CODE ANNOTATED - Sections 7-11-103, 7-11-104, Title 7, chapter 15, parts 21, 44, and 45, 7-15-2101, 7-15-2112, 7-15-2122, 7-15-4102, 7-15-4103, 7-15-4413;
MONTANA CONSTITUTION - Article XI, sections 4, 5, and 6;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 4 (1981), 39 Op. Att'y Gen. No. 37 (1981).

HELD: 1. A county with general government powers has no inherent authority to administer a program for the rehabilitation of privately owned housing funded under the CDBG block grant program.

2. A county housing authority has implicit statutory power to administer the CDBG project for the rehabilitation of privately owned housing, and a general power county government may therefore administer the CDBG program through a county housing authority.

3. A county with general government powers and a city generally may not enter into an interlocal agreement under which the county could administer the CDBG project for the rehabilitation of privately owned housing.

4. If the city has created a municipal housing authority, the municipal housing authority and county may enter an interlocal agreement under which the county may administer the CDBG project for the rehabilitation of privately owned housing within ten miles of the city limits.

2 August 1983

Richard M. Weddle, Esq.
Department of Commerce
1424 Ninth Avenue
Helena, Montana 59620

Dear Mr. Weddle:

You have requested my opinion on the following questions:

1. Does a county not having self-government powers have the authority to administer a federally-funded grant program for the rehabilitation of substandard privately owned residences?

2. If not, may such a county administer such a program through either a county housing authority or an interlocal agreement with a municipality?

Your letter informs me that the Department of Commerce administers the federal "Small Cities" Community Development Block Grant (CDBG) program. Under the program, local government units may compete for federal funds to be used to rehabilitate substandard housing units owned and occupied by low and moderate income families. "Municipal corporations," i.e., cities and towns, are explicitly authorized to finance the rehabilitation of privately owned dwellings under sections 7-15-4102 and 7-15-4103, MCA. No similar explicit authorization extends such powers to county governments. Your first question is whether a general power county government has the inherent power to

provide such service in the absence of an explicit statutory grant of authority.

Montana's 1972 Constitution effected a fundamental change in the law pertaining to local governments. Prior to 1972, it was settled law that a county possessed "only such powers as are conferred on it by the Constitution and statutes of the state, or such powers as arise by necessary complication from those expressly granted, or such as are required for performance of duties imposed on it by law," and that "[a]ny reasonable doubt concerning the existence of a power should be resolved against a county's exercise of that power." See DeLong v. Downes, 175 Mont. 152, 155, 573 P.2d 160, 162 (1977), overruled in dictum, Tipco Corp. v. City of Billings, 39 St. Rptr. 600, 603, 642 P.2d 1074, 1077 (1982). Article XI of the 1972 Constitution altered these principles in two significant ways. First, article XI, sections 5 and 6 allowed local government units to adopt charters providing self-government powers. Under such a charter, the local government unit is authorized to exercise "any power not prohibited by constitution, law, or charter." Mont. Const. art. XI, § 6. Beyond this fundamental change in the extent of local government power, the new constitution altered the manner in which courts evaluate the extent of those powers by requiring that "[t]he powers of incorporated cities and towns and counties shall be liberally construed." Mont. Const. art. XI, § 4(2). The new rule of construction stated in article XI, section 4(2), does not of its own force confer new powers on local governments. Rather, it simply reverses the presumption which applied under prior law. Under the rule stated in DeLong, all reasonable doubts were resolved against the existence of local government power. Under article XI, section 4(2), reasonable doubts must be resolved in favor of the existence of the power.

Missoula County has not adopted a self-government charter, and it therefore may exercise only the "legislative, administrative, and other powers provided or implied by law." Mont. Const. art. XI, § 4(1)(b). The initial analysis under this provision is identical to that required by pre-1972 law; the question is whether the Legislature has expressly or implicitly authorized the county to exercise the power in question. I reject the suggestion that general power county

governments possess inherent power to provide any kind of services, since the constitution expressly limits county general powers to those provided by the Legislature or constitution. Recognition of "inherent" powers of general power county governments would effectively obliterate the distinction between general powers and self-government powers, a result which is obviously inconsistent with article XI of the Montana Constitution. The fact that the CDBG program may be beneficial to Missoula County does not confer on the county the power to administer the program. If the county has such power, its source must be found in some statutory provision explicitly or implicitly authorizing the county to act.

My research discloses no statutes expressly conferring on general power county governments the power to finance the rehabilitation of privately owned buildings. Cf. §§ 7-15-4102 and 7-15-4103, MCA, (allowing a "municipal corporation" to "finance the rehabilitation of...unsanitary or unsafe privately owned dwelling accommodations." However, county governments are not without power to act in the area of housing. Section 7-15-2101, MCA, recognizes that substandard housing exists in rural as well as urban areas in this state. Title 7, chapter 15, part 21, MCA, authorizes counties to establish a county housing authority to deal with these problems. In addition to the specific powers enumerated in this part, section 7-15-2112(2), MCA, allows county housing authorities to exercise any power conferred on municipal housing authorities by Title 7, chapter 15, parts 44 and 45, MCA. These provisions must be examined to determine whether they implicitly authorize a housing authority to administer a CDBG program.

Section 7-15-2101, MCA, recognizes the existence of substandard housing in rural areas and provides that "the clearance, replanning, and reconstruction of areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired." (Emphasis added.) While housing authorities generally fulfill their roles through the acquisition of property to be converted into housing projects owned and operated by the housing authority, see, e.g., § 7-15-2122, MCA, this is not the

exclusive method by which they may operate. In 39 Op. Att'y Gen. No. 4 (1981), I recognized that a municipal housing authority could administer a federal "section 8" rent supplement program even though it did not involve the acquisition and operation of a "housing project," reasoning that the federal program provided safe and sanitary dwellings for persons of low income and therefore was sufficiently related to the duties of a housing authority. A similar rationale applies here. The renovation of substandard housing occupied by "low or moderate income families" certainly contributes to the eradication of the unsafe or unsanitary housing identified in section 7-15-2101, MCA, as the target of the county housing authority. While the failure explicitly to empower the authority to operate this program, as cities are authorized to do under sections 7-15-4102 and 7-15-4103, MCA, suggests that the Legislature did not intend to confer the power, I am obligated by article XI, section 4(2) of the Montana Constitution to resolve reasonable doubts in favor of the existence of the power. Since I believe it is reasonably within the ambit of a county housing authority's responsibility to administer a CDBG project for the rehabilitation of privately owned housing, I conclude that a county housing authority is implicitly granted the power to do so.

Your final question is whether a county may acquire the authority to administer this program by entering into an interlocal agreement with a city. I assume for purposes of this question that the county has no housing authority. In such case, neither the county nor the city is authorized to administer the program outside the city limits. The city's authority under sections 7-15-4102 and 7-15-4103, MCA, is limited to financing the rehabilitation of unsanitary or unsafe private dwellings "within the limits of the city or town." Section 7-11-104, MCA, allows "public agencies," which include cities and counties, to contract for the performance of "any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized to perform." In this case the service to be performed under the proposed agreement--the administration of the CDBG grant program outside the city limits--is one which neither the city nor the county alone is statutorily authorized to perform. The city and the county may not enter an

interlocal agreement to provide a service which neither was authorized to provide alone.

The result is somewhat different, however, if the city has created a municipal housing authority under Title 7, chapter 15, part 44, MCA. The reasoning which produced the conclusion that a county housing authority may participate in the CDBG program applies with equal force to municipal housing authorities. The jurisdictional area of municipal housing authorities extends ten miles beyond the city limits, § 7-15-4413, MCA, see 39 Op. Att'y Gen. No. 4 (1981), and the municipal housing authority could therefore administer the CDBG program within that area. Since a municipal housing authority is a "public agency" under section 7-11-103, MCA, 39 Op. Att'y Gen. No. 37 (1981), the municipal housing authority could contract to have the county perform this service within the ten mile area under section 7-11-104, MCA.

THEREFORE, IT IS MY OPINION:

1. A county with general government powers has no inherent authority to administer a program for the rehabilitation of privately owned housing funded under the CDBG block grant program.

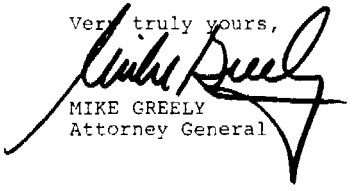
2. A county housing authority has implicit statutory power to administer the CDBG project for the rehabilitation of privately owned housing, and a general power county government may therefore administer the CDBG program through a county housing authority.

3. A county with general government powers and a city generally may not enter into an interlocal agreement under which the county could administer the CDBG project for the rehabilitation of privately owned housing.

4. If the city has created a municipal housing authority, the municipal housing authority and county may enter an interlocal agreement under which the county may administer the CDBG

project for the rehabilitation of privately owned housing within ten miles of the city limits.

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with 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 1, 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 the rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule In ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1983. This table includes those rules adopted during the period July 1, 1983 through September 30, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1983, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1982 and 1983 Montana Administrative Registers.

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