

RESERVE  
KEM

9035

1973

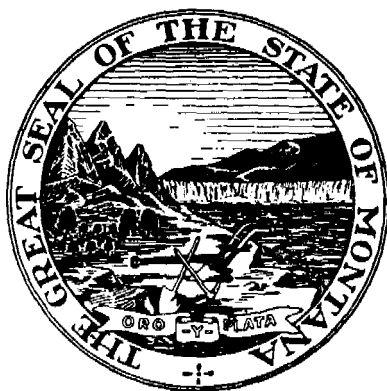
.A245a

# RESERVE

## MONTANA ADMINISTRATIVE REGISTER

STATE LAW LIBRARY  
OCT 28 1983  
OF MONTANA

1983 ISSUE NO. 20  
OCTOBER 27, 1983  
PAGES 1483-1563



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

TABLE OF CONTENTS

NOTICE SECTION

	<u>Page Number</u>
<u>ADMINISTRATION, Department of, Title 2</u>	
2-2-120 Notice of Proposed Repeal and Adoption-Discipline Handling. No Public Hearing Contemplated.	1483-1488
<u>AGRICULTURE, Department of, Title 4</u>	
4-2-82 Notice of Public Hearing on Proposed Amendment - Seed Laboratory Inspection Reports - Enforcement.	1489-1491
<u>STATE AUDITOR, Title 6</u>	
6-3 Notice of Proposed Adoption - Identical Nonforfeiture Values for Men and Women in Employer Sponsored Retirement Benefit Program. No Public Hearing Contemplated.	1492-1494
6-4 Notice of Proposed Adoption - Examination, Licensure, Bonding and Regulation of Public Adjusters. No Public Hearing Contemplated.	1495-1496
<u>COMMERCE, Department of, Title 8</u>	
8-52-9 (Board of Psychologists) Notice of Proposed Amendment - Fees. No Public Hearing Contemplated.	1497
8-86-13 (Board of Milk Control) Notice of Public Hearing on Proposed Amendment and Adoption - Price Formulas and Establishing a Statewide Pool.	1498-1508

Page Number

COMMERCE, Department of, Title 8 (Continued)

8-97-1 Notice of Public Hearing on Proposed  
Adoption of Rules for Montana Economic Develop-  
ment Board. 1509-1516

EDUCATION, Department of, Title 10

(Board of Public Education)  
10-3-70 Notice of Proposed Adoption of Rules for  
Deaf and Blind Foundation. No Public Hearing  
Contemplated. 1517-1518

10-3-71 Notice of Proposed Amendment - Mirrors.  
No Public Hearing Contemplated. 1519-1520

REVENUE, Department of, Title 42

42-2-247 Notice of Proposed Adoption - Wholesale  
Distributors, Obligations, Collection of Annual  
License Fee. No Public Hearing Contemplated. 1521-1522

SECRETARY OF STATE, Title 44

44-2-32 Notice of Proposed Amendment - Publication  
Schedule for Montana Administrative Register.  
No Public Hearing Contemplated. 1523-1524

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-396 Notice of Public Hearing on Proposed  
Amendment - Protective Services Information  
System Operation. 1525-1526

RULE SECTION

STATE AUDITOR, Title 6

EMERG Identical Nonforfeiture Values in  
NEW Retirement Benefit Program 1527-1529

NEW Examination, Licensure, Bonding, and  
Regulation of Public Adjusters 1530-1532

NEW Defining General Business Practice 1533-1534

COMMERCE, Department of, Title 8

NEW Public Contractors, Definitions 1535

LABOR AND INDUSTRY, Department of, Title 24

NEW Displaced Homemaker Program 1536-1539

20-10/27/83

-ii-

	<u>Page Number</u>
<u>LIVESTOCK, Department of, Title 32</u>	
(Board of Livestock)	
EMERG Waiving Brucellosis Test on Cattle Before	
AMD Change of Ownership or Movement in State	1540-1541
<u>REVENUE, Department of, Title 42</u>	
AMD Investment Tax Credit	1542-1543
AMD Mobile Homes - Improvement to Real Property	1544
NEW Statute of Limitations for Net Proceeds of Oil and Gas	1545-1546
NEW Adjustment of Allowable Deductions	1547
AMD Corporation License Tax Investment Credit	1548-1549
<u>SOCIAL AND REHABILITATION SERVICES, Department of, Title 46</u>	
AMD Foster Care Review Committee	1550

#### INTERPRETATION SECTION

#### Opinions of the Attorney General

24 Board of Land Commissioners - State Lands - Fair Market Value - Grazing Lease Fees	1551-1554
---	-----------

#### SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee	1555
How to Use ARM and MAR	1556
Accumulative Table	1557-1563

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of rules 2.21.6501 through	)	RULES 2.21.6501 THROUGH
2.21.6504 relating to	)	2.21.6504 AND THE
discipline handling and the	)	ADOPTION OF NEW RULES
adoption of new rules	)	No Public Hearing Contemplated

TO: All Interested Persons.

1. On November 28, 1983, the Department of Administration proposes to repeal rules 2.21.6501 through 2.21.6504 relating to discipline handling and adopt new rules.

2. The rules proposed to be repealed are on pages 2-1493 through 2-1495 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the discipline handling policy.  
(Auth. 2-18-102, MCA; IMP 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that employees, when appropriate, may be subject to discipline up to and including discharge.

(2) It is the objective of this policy that discipline be administered in accordance with established management practice. (Auth. 2-18-102, MCA; IMP 2-18-102, MCA)

RULE III DEFINITIONS (1) As used in this sub-chapter, the following definitions apply:

(1) "Corrective counseling" means steps taken to resolve a misconduct or performance problem independently prior to or during the administration of progressive discipline. The steps may include but are not limited to: performance appraisal, coaching or counseling, meetings, and skill training.

(2) "Employee Assistance" means counseling services or treatment programs received by an employee to address personal problems and return that employee's job performance and/or conduct to an acceptable level.

(3) "Management" means the employee's supervisor and other supervisors in a direct line of authority above the employee's supervisor.

(4) "Progressive discipline" means a system of management actions, each more serious in nature, which may range from an oral warning to discharge. Actions are imposed based on the initial severity, on the repeated nature or on a pattern of misconduct or poor performance.

(5) "Formal disciplinary action" means any disciplinary action taken by an agency which is formally documented.

(6) "Formal documentation" means a written record or other materials accumulated and used in the administration of a formal disciplinary action and which becomes a permanent part of any employee's personnel file.

(7) "Informal documentation" means supervisory notes which serve as a reminder for the supervisor. These materials may be made a formal document when used to support a formal disciplinary action or performance appraisal ratings.

(8) "Offense" means any conduct, action or inaction by, arising from, or directly connected with an employee's work, which is inconsistent with that employee's obligations to the employer. (Auth. 2-18-102, MCA; IMP. 2-18-102, MCA)

RULE IV PROGRESSIVE DISCIPLINE GENERALLY (1) The progressive discipline procedure is intended to increase in severity in sequential steps for repeated or continuing misconduct or performance problems. However, the steps need not be applied in sequence.

(2) In some cases, progressive discipline may include alternative actions, such as demotions, transfers, or job restructuring.

(3) Employee assistance may be suggested by a supervisor at any stage of the discipline process for a personal problem which adversely affects the employee's job performance and/or conduct.

(4) Each formal disciplinary action should include the following:

(a) statement of the problem, including specific citations of rules or standards violated, number of times violation has occurred, references to earlier disciplinary actions, to include corrective counseling, which have a bearing on this action;

(b) specific statement of the solution expected;

(c) statement of the time period in which the solution is to be demonstrated;

(d) for oral warnings, written warnings, and suspension without pay, a date for review of the disciplinary problem(s), and notice that there could be additional discipline up to and including discharge.

(e) response by the employee, as provided in Rule XI. (Auth. 2-18-102, MCA; IMP. 2-18-102, MCA)

RULE V ORAL WARNING (1) An oral warning is administered as the first progressive disciplinary step for offenses which would not warrant a written warning and where corrective counseling is inappropriate or has been unsuccessful.

(2) A supervisor must maintain at least an informal record of the date and subject of an oral warning. Informal records do not become part of the employee's personnel file, unless later referred to or included in a formal written warning, performance appraisal or other record.

(Auth. 2-18-102, MCA; IMP. 2-18-102, MCA)

RULE VI WRITTEN WARNING (1) A written warning may be issued to an employee when an offense initially warrants a more severe disciplinary action than an oral warning or when lesser offenses are not corrected after an oral warning was administered. (Auth. 2-18-102, MCA; IMP. 2-18-102, MCA)

RULE VII SUSPENSION WITHOUT PAY (1) A suspension without pay is a leave of absence without pay ordered by management which requires an employee to remain off the job for disciplinary reasons.

(2) A suspension without pay may be imposed when an offense initially warrants a more severe disciplinary action than a written warning or when lesser violations are not corrected with other progressive disciplinary actions.

(3) A suspension without pay may be initially issued verbally or in writing. If the suspension is initially issued verbally, a written notice must follow immediately.

(4) A written suspension notice must state the reasons for the suspension and its duration. Where a suspension initially is issued verbally, the duration of the suspension may be extended by written notice.

(5) An employee may be placed on an indefinite suspension without pay while awaiting the outcome of an investigation, charge or trial, the substance of which, in the opinion of agency management, seriously impairs the employee's effectiveness on the job. Following final resolution of an investigation, charge or trial, the agency may take appropriate disciplinary action, reinstate the employee, provide back pay or partial back pay, or take any other appropriate action.

(6) An employee who is placed on suspension without pay may not take accrued annual leave, sick leave, or compensatory time during the suspension.

(7) An employee accrues annual vacation leave, sick leave, and holiday pay in accordance with 2.21.706 ARM.

(8) The duration of a suspension without pay may interrupt payment of the state's share of the group insurance contribution for the employee.

(Auth. 2-18-102, MCA; IMP. 2-18-102, MCA)

RULE VIII DISCIPLINARY DEMOTION (1) A disciplinary demotion is the reclassification of an employee to a lower grade for disciplinary reasons. A disciplinary demotion must include a reduction in position duties corresponding with the new position title and grade.

(2) An employee may be demoted for disciplinary reasons when in the opinion of management it is warranted.

(3) A disciplinary demotion should be carried out in accordance with the rule on involuntary demotion found in Montana Operations Manual, Volume III, Policy 3-0505, the pay plan rules (copies available at the Personnel Division, Department of Administration.)

(Auth. 2-18-102, MCA; IMP. 2-18-102, MCA)

RULE IX DISCHARGE (1) For purposes of this policy, discharge is the severing of an employee from his employment for disciplinary reasons.

(2) An employee may be discharged when other discipline has failed or when the initial offense is so serious that, in the opinion of management, a lesser penalty is not sufficient.

(3) A discharge shall be noticed in writing to an employee with permanent status in a permanent position, as defined in Section 2-18-101, MCA, stating the reason(s) for the discharge and effective date. Whenever possible, this same information should be delivered verbally to the employee.

(4) An agency is under no obligation to grant a period of notice to an employee before discharge becomes effective.

(5) An agency may not pay severance pay, but may cash out accrued sick leave and annual leave in compliance with 2.21.141 and 2.21.232, ARM.

(6) The discharge of an employee may in certain instances preclude the payment of accrued sick and/or annual leave. In such instances, the employee must be so advised in writing. (See 2.21.143 and 2.21.232, ARM).  
(Auth. 2-18-102, MCA; IMP. 2-18-102, MCA).

RULE X DOCUMENTATION (1) All actions relating to the administration of a disciplinary action must be documented. Formal documentation may include, but is not limited to, citations of rules broken, records of disciplinary meetings, records of other disciplinary actions, performance appraisal forms, work samples, or time and attendance forms, or other factual support for actions taken. Informal documentation includes supervisor notes.

(2) All formal documentation used to support a disciplinary action must be available for review by the employee and his representative. Copies of material included in the employee's personnel file must be provided to the employee, upon written request, signed by the employee.

(3) The original copy of any disciplinary action shall be given to the employee and a copy retained for the employee's personnel file. Management may have access to that material, as provided in the Employee Record Keeping policy, title 2, chapter 21, sub-chapter 66, ARM.

(4) All formal documentation relating to a disciplinary action shall become a permanent part of an employee's personnel file, unless the agency head approves removal of discipline-related documentation.  
(Auth. 2-18-102 MCA; IMP. 2-10-102, MCA).

RULE XI EMPLOYEE'S RESPONSE (1) An employee may respond verbally, in writing or both to any disciplinary action. Any written response must be retained with management's record of the disciplinary action.

(2) An employee shall be asked to sign all written



disciplinary notices, indicating that the employee has seen the notice, but not necessarily agrees with it. If an employee refuses to sign, a witness should sign, indicating the employee has seen the notice, but refuses to sign it. (Auth. 2-18-102, MCA; IMP. 2-18-102, MCA).

RULE XII GRIEVANCES (1) An employee in a permanent position who has attained permanent status, as both terms are defined in 2-18-101, MCA, may file a grievance under the grievance policy, 2.21.8001 et. seq., ARM, based on receipt of a written warning, suspension without pay, demotion or discharge.

(2) An employee in a permanent position, who has not attained permanent status, or an employee in a position defined as temporary as all these terms are defined in 2-18-101, MCA, has no right to file a grievance under the grievance policy cited above for any disciplinary action.

(3) No employee may file a grievance based on corrective counseling or oral warnings. (Auth. 2-18-102, MCA; IMP. 2-18-102, MCA).

RULE XIII CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts or specified statutes, which shall take precedence to the extent applicable.

(Auth. 2-18-102, MCA; IMP. 2-18-102, MCA).

4. These rules are proposed to be repealed and replaced with new rules in order to clarify for the state's managers and supervisors the options available to them for taking disciplinary actions and requirements which they must follow in order to implement such actions.

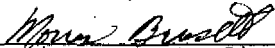
5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than November 25, 1983.

6. If a person who is directly affected by the proposed repeal and adoption of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 103, Mitchell Building, Helena, Montana 59620, no later than November 25, 1983.

7. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10%

or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 at least 25 persons.

8. The authority of the agency to make the proposed repeal and adoption is based on Section 2-18-102, MCA, and the rules implement Section 2-18-102, MCA.

  
\_\_\_\_\_  
Morris L. Brusett, Director  
Department of Administration

Certified to the Secretary of State October 17, 1983.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 4.12.3402, ) FOR AMENDMENT OF RULE  
SEED LABORATORY INSPECTION - ) 4.12.3402, SEED LABORATORY  
REPORTS - ENFORCEMENT ) - REPORTS - ENFORCEMENT

TO: All Interested Persons:

1. On November 17th, 1983 at 1:00 p.m. in Room 220 of the Agriculture/Livestock Building, Sixth & Roberts, Helena, Montana 59620, a public hearing will be held to consider the amendment of ARM 4.12.3402.

2. The proposed amendment will delete the existing fee schedule in paragraph (1) and replace it with a revised schedule as follows: (new matter underlined).

4.12.3402 SEED LABORATORY INSPECTION - REPORTS - ENFORCEMENT (1) The Montana Seed Laboratory, Montana State University, Bozeman, Montana will test samples of seeds submitted for purity germination and miscellaneous tests. All samples of seed analyzed and tested shall be at the following rates:

FEE SCHEDULE

KIND OF SEED	PURITY ONLY	GERMINATION ONLY	PURITY & GERMINATION
<u>Bentgrasses and</u>			
<u>Redtop</u>	11.00	9.00	19.00
<u>Bluegrass</u>	10.00	7.00	16.00
<u>Bluestems</u>	16.00	10.00	25.00
<u>Bromegrass</u>	9.00	7.00	15.00
<u>Canarygrass</u>	7.00	7.00	13.00
<u>Cereals - barley*,</u>			
<u>wheat,</u>			
<u>rye, corn,</u>			
<u>triticale</u>	6.00	5.00	10.00
<u>oats</u>	7.00	4.00	10.00
<u>spelt,</u>			
<u>emmer</u>	5.00	7.00	11.00
<u>Fescues</u>	9.00	7.00	15.00
<u>Flax</u>	5.00	5.00	9.00
<u>Foxtails - Creeping*,</u>			
<u>Meadow</u>	16.00	10.00	25.00
<u>Indian Ricegrass*</u>	9.00	8.00	16.00
<u>Legumes:</u>			
<u>Alfalfa, cicer milkvetch</u>			
<u>clovers, sweetclover,</u>			
<u>birdsfoot trefoil, beans,</u>			
<u>peas, lentils, faba,</u>			
<u>chickpeas</u>	5.00	5.00	9.00

KIND OF SEED	PURITY ONLY	GERMINATION ONLY	PURITY & GERMINATION
Milletts	7.00	6.00	12.00
Mustards, rapeseed	7.00	6.00	12.00
Needlegrass*	9.00	8.00	16.00
Orchardgrass	9.00	7.00	15.00
Prairie Sandreed	9.00	8.00	16.00
Reed Canarygrass	9.00	7.00	15.00
Ryegrass	8.00	7.00	14.00
Safflower	5.00	7.00	11.00
Sainfoin	8.00	8.00	15.00
Saltbushes - fourwing, nuttall	8.00	6.00	13.00
Sorghums - grain, sudangrass	7.00	7.00	13.00
Sugarbeets	5.00	6.00	10.00
Sunflower	5.00	7.00	11.00
Timothy	8.00	7.00	14.00
Wheatgrasses*	9.00	7.00	15.00
Wildryes	9.00	7.00	15.00
Vegetables	5.00	5.00	9.00

MIXTURES

2 kinds	9.00	8.00	16.00
3 kinds	11.00	10.00	20.00
4 or more kinds	13.00	12.00	24.00

BARLEY STRIPE MOSAIC VIRUS TEST (BSMV) 35.00

Tetrazolium test (TZ) cereals 10.00, small and large seed  
legumes 8.00, grasses 15.00

Seed Identification (ID) 3.00 - 5.00

Indigneous seeds and or samples of time consuming nature due  
to excessive dirt, chaff, weed seeds, et. will be charged an  
hourly rate of 12.00

Rush orders - 50% additional charge (does not apply to TZ  
tests)

Fluorescence test 5.00

\*May contain dormant seed - dormant seed determination (in  
addition to germination charges) cereals - 5.00, grasses -  
10.00, utricile fill determination (in addition to  
germination charges) - 5.00

3. The reason for the proposed amendment is to raise  
the fees, (which have not been raised for six years) to  
levels commensurate with amounts currently necessary to

assist in the funding of operating expenses. Such fees include a component covering the state regulatory tests.

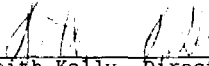
No seed categories have been deleted, although some are re-located under a different heading.

A new fee has been added for indigenous seeds to implement SB 415 (1983) which added this category.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Keith Kelly, Director, Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than November 24, 1983.

5. The Department of Agriculture or its designee will preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendment is based on Section 80-5-112 MCA and the amendment implements Sections 80-5-108 and 80-5-110 MCA.

  
\_\_\_\_\_  
Keith Kelly, Director  
Department of Agriculture

Certified to the Secretary of State October 13, 1983

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

In the matter of the adoption	)	NOTICE OF PROPOSED
of rules implementing 33-20-208(8),)	)	ADOPTION OF RULES
MCA, providing for identical	)	PROVIDING FOR IDENTICAL
nonforfeiture values for men and	)	NONFORFEITURE VALUES
women in an employer sponsored	)	UNDER AN EMPLOYER SPONSORED
retirement benefit program	)	RETIREMENT BENEFIT PROGRAM

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1983 the Commissioner of Insurance proposes to adopt rules implementing 33-20-208(8), MCA for an employer sponsored retirement benefit program.
2. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules are identical to those found in MAR Notice 6-3, Emergency Rules, and the proposed rules on their effective date will replace the Emergency Rules.
3. The proposed rules are as follows:

**RULE I PURPOSE.** The purpose of these rules is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits for both men and women. No change in minimum valuation standards is implied by this rule.  
AUTH: 33-1-313 and 33-20-208(8)(f), MCA.  
IMP: 33-20-208(8), MCA.

**RULE II DEFINITIONS.** For purposes of these rules, the following definitions apply:

(1) "1980 CSO Table, with or without Ten-Year Select Mortality Factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioner's 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

(2) "1980 CSO Table (M), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the

rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(3) "1980 CSO Table (F), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(4) "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

(5) "1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

(6) "1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

AUTH: 33-1-313 and 33-20-208(8)(f), MCA.

IMP: 33-20-208(8), MCA.

RULE III ADOPTION OF TABLES ALTERNATE TO THE 1980 CSO AND 1980 CET FOR NONFORFEITURE PURPOSES UNDER AN EMPLOYER SPONSORED RETIREMENT BENEFIT PROGRAM. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after October 1, 1983 that complies with 33-20-208, MCA and for all policies issued on or after January 1, 1989, the following may be substituted for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits:

(1) a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(2) the 1980 CSO Table (M), with or without Ten-Year Select Mortality Factors, may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(3) a mortality table which is of the same blend as used in (i) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F)

(4) the 1980 CET Table (M) may at the option of the company be substituted for the 1980 CET Table.

AUTH: 33-1-313 and 33-20-208(8)(f), MCA.

IMP: 33-20-208(8), MCA.

RULE IV UNFAIR DISCRIMINATION. It shall not be a violation of 33-18-206, MCA for an insurer to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis.

RULE V SEPARABILITY. If any provision of this Rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

4. The purpose of these rules is to supplement 33-20-208, MCA to allow compliance with the U. S. Supreme Court decision Arizona Governing Committee v Norris.

5. Interested persons may submit their data, view, or arguments, concerning the proposed rule in writing no later than November 25, 1983 to:

Richard E. Bach  
State Auditor's Office  
Insurance Division  
Room 204, Mitchell Building      or      P. O. Box 4009  
Helena, MT 59620                              Helena, MT 59604

6. 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 Richard Bach at the above address no later than November 25, 1983.

7. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be about 60 persons based on approximately 600 life insurers authorized to do business in this state.

8. The authority for the agency to adopt these rules is based on 33-1-313 and 33-20-208(8)(f), MCA, and the rule implements 33-20-208(8), MCA.

E. V. "Sonny" Omholt  
State Auditor & Ex Officio  
Commissioner of Insurance

Norma E. Seiffert, CPIW  
Chief Deputy Commissioner of Insurance

Certified to the Secretary of State      October 17, 1983



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

In the matter of the adoption of ) NOTICE OF  
a rule relating to examination, ) PROPOSED ADOPTION OF A  
licensure, bonding, and regulation ) RULE RELATING TO  
of public adjusters ) PUBLIC ADJUSTERS

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1983, the Commissioner of Insurance proposes to adopt a rule relating to public adjusters.
2. The proposed rule is an addition to the proposed rules relating to public adjusters published at 1221 of the Administrative Register, Issue No. 17, 1983.

3. The new rule proposed to be adopted reads as follows:

Rule XVI NONRESIDENT PUBLIC ADJUSTERS. (1) The commissioner shall license a nonresident applicant as a public adjuster if the applicants' state of residence affords equivalent treatment to Montana residents and the nonresident applicant meets the qualifications under 33-17-301(1)(2)(3), MCA.

(2) A nonresident applicant must file a completed application, the requisite fee, and a verification of good standing as a public adjuster from his/her state of residence. The verification of good standing must indicate if the applicant has passed a written examination. If the applicant has not passed a written examination in the state of residence, the commissioner shall require the applicant to pass the Montana Public Adjusters Examination.

AUTH: 33-1-313 and 33-17-102, MCA enacted by Chapter 518, Laws of 1983.

IMP: 33-17-102(1)(c), MCA.

4. This rule is proposed to provide for the doctrine of reciprocity within the rules pertaining to public adjusters which are published in another section of this register.

5. Interested parties may submit their data, view, or arguments concerning the proposed rule in writing no later than November 25, 1983 to:

Richard E. Bach  
State Auditor's Office  
Insurance Division  
Room 204, Mitchell Building or P. O. Box 4009  
Helena, MT 59620 Helena, MT 59604

6. If a person who is directly affected by the proposed rule 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 comments he has to Richard E. Bach at the above address no later than November 25, 1983.

7. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rule; 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 11.

8. The authority of the agency to adopt the proposed rule is based on Sections 33-1-313 and 33-17-102, MCA, and the rule implements Section 33-17-102(1)(c), MCA.

E. V. "Sonny" Omholt  
State Auditor & Ex Officio  
Commissioner of Insurance

  
Norma E. Seiffert, CPIW  
Chief Deputy Commissioner of Insurance

Certified to the Secretary of State October 17, 1983

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PSYCHOLOGISTS

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.52.616 concerning) OF ARM 8.52.616 FEE SCHEDULE  
fees. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 26, 1983, the Board of Psychologists proposes to amend the rule 8.52.616 concerning fees.

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

"8.52.616 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable.

(a) Application fee	\$65.00	75.00
(b) Examination fee	75.00	- 95.00*
(c) Renewal fee	65.00	<u>100.00</u>
(d) Certificate fee	10.00	

\*Effective July 1, 1984."

3. The board is proposing the fee increases to meet increased program costs. The examination fee increase is based on the increase in the cost of the Professional Examination Service exam which will become effective July 1, 1984.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Psychologists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 24, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Psychologists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 24, 1983.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent has been determined to be 11 based on the 119 licensees.

7. The authority of the board to make the proposed change is based on section 37-17-202, MCA and implements section 37-17-307, MCA.

BOARD OF PSYCHOLOGISTS  
JAMES WALSH, Ph.D., CHAIRMAN

BY:

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 17, 1983.  
MAR NOTICE NO. 8-52-9 20-10/27/83

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

In the matter of the Amendment ) NOTICE OF PUBLIC HEARING ON  
of Rule 8.86.301 (6)(a), (i) ) PROPOSED AMENDMENT OF RULES  
(vi), (8)(a), (b), (c), (d) ) 8.86.301(6)(a), (i)(vi).  
and (e), as they relate to the ) (8)(a), (b), (c), (d) AND (e)  
Class I and Class III price ) PRICING RULES AND PROPOSED  
formulas and proposed adoption ) ADOPTION OF A NEW RULE:  
of a new rule establishing a ) POOLING RULE  
state wide pool. )  
) DOCKET #67-83

TO: ALL INTERESTED PERSONS

1. On December 2, 1983 at 9:00 a.m., MST, or as soon thereafter as interested parties can be heard, a public hearing will be held in the Scott Hart Auditorium at 303 Roberts in Helena, Montana.

2. The hearing will be held at the request of Montana Dairymen's Association and Stacey J. Auch, D/B/A Misty Vale Dairy. The petition filed by Montana Dairymen's Association proposes, among other things, amending rule 8.86.301 (6)(a), (8)(a), (b), (c), (d) and (e) as shown below. The petition filed by Stacey J. Auch, D/B/A Misty Vale Dairy proposes amending Rule 8.86.301 (6)(i)(vi) as shown below. (full text of rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

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

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

(iv) Prices Received by Farmers - MT. ('47 - '49 = 100)	15%	.22960139
(v) Mixed Dairy Feed	20%	.32258065
(vi) Alfalfa Hay (Plus \$12.00 for Transportation)	12%	.48000000
(vii) Prices Paid by Farmers - U.S. ( '67 = 100)	23%	.41990335

100%

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

The following table will be used in computing producer prices:

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

FORMULA INDEX	PRICE PER CWT
201.5 - 205.1	\$ <del>12.86</del> 13.32
206.0 - 209.6	<del>13.09</del> 13.55
210.5 - 214.1	<del>13.32</del> 13.78
215.0 - 218.6	<del>13.55</del> 14.01
219.5 - 223.1	<del>13.78</del> 14.24
224.0 - 227.6	<del>14.01</del> 14.47
228.5 - 232.1	<del>14.24</del> 14.70
233.0 - 236.6	<del>14.47</del> 14.93
237.5 - 241.1	<del>14.70</del> 15.16
242.0 - 245.6	<del>14.93</del> 15.39
246.5 - 250.1	<del>15.16</del> 15.62
251.0 - 254.6	<del>15.39</del> 15.85
255.5 - 259.1	<del>15.62</del> 16.08
260.0 - 263.6	<del>15.85</del> 16.31
264.5 - 268.1	<del>16.08</del> 16.54
269.0 - 272.6	<del>16.31</del> 16.77
273.5 - 277.1	<del>16.54</del> 17.00
278.0 - 281.6	<del>16.77</del> 17.23
282.5 - 286.1	<del>17.00</del> 17.46
287.0 - 290.6	<del>17.23</del> 17.69

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

(b) . . .

(h) . . .

(i) . . .

(vi) ~~It is the intent of the board to set minimum on-the-farm prices for only products and quantities set forth in paragraphs (i) through (v) above.~~ Prices for products or quantities for on-the-farm sales other than those specified in paragraphs (i) through (v) above are ~~neither covered nor contemplated hereby and are therefore specifically denied.~~ calculated by subtracting differentials from the existing whole white milk on-the-farm price. The differentials will be the differences between the regular whole white milk retail price and the other appropriate established retail prices.

(j) . . .

(8) . . .

(a) Prices paid to producers for Class III milk will be the average Chicago area butter price (grade A, 92 score) as most recently reported by the United States Department of Agriculture, less ten percent (10%) and, in addition, when skim milk is utilized in this classification by any distributor, the average spray process non-fat milk solids price per pound, F.O.B. the Chicago area, as most recently reported by the United States Department of Agriculture, multiplied by 8.2, ~~less seventeen percent (17%)~~ eight and one half percent (8.5%).

~~(b) Fifty percent (50%) of all milk received by the plant of origin that is in excess of any beneficial use by said plant and is shipped to a different market for manufacturing purposes; nevertheless, assures the plant of an adequate supply of milk for plant needs and is therefore subject to the regularly established Class III price as prescribed by the formula established by the board.~~ ~~Fifty percent (50%) of all milk received by the plant of origin that is in excess of actual usage by said plant and must be shipped~~

to a different market for manufacturing purposes to prevent waste, such as milk being classified by statute and rule as Class III, shall be subject to a special reduced price as fixed by the board pursuant to the formula hereinafter provided. The special reduced price shall first be allocated by the bureau auditors on a pro-rata basis to those producers whose monthly production exceeds their average monthly production for the calendar years 1980 and 1981. The special reduced price to be applied to the remaining portion of the fifty percent (50%) of all milk received by the plant of origin, which is in excess of actual plant usage and therefore must be shipped to another market for manufacturing purposes, or the entire fifty percent (50%) excess, as the case may be, should there be no producer whose monthly production exceeds his average monthly production for the calendar years 1980 and 1981 shall be allocated equally between the remaining producers or all of the plant's producers as the case may be. Such special reduced price shall apply in any month of the year that the above conditions exist. The formula for the special reduced price to be applied to the fifty percent (50%) of all milk received by the plant of origin which is in excess of actual plant usage and therefore must be shipped to another market for manufacturing purposes, shall be derived by subtracting the difference between the price received by the plant for the excess milk shipped to another market and the established Class III price ordinarily paid to producers for Class III usage, from the plant's cost of hauling such excess milk to another market based on ninety-five cents (\$0.95) per running mile. In the event that the plant receives less than the established price for Class III milk as fixed by the board and ordinarily paid to producers for Class III usage for such excess milk shipped to another market, the difference will be added to the hauling as computed above.

(b) Milk received by a pool plant that is in excess of any beneficial use by said plant and is shipped to a different market for manufacturing purposes to prevent waste, such milk being classified by statute and rule as Class III, shall be subject to a special reduced price as fixed by the Board pursuant to the formula hereinafter provided. The price of this milk, which is in excess of plant needs and therefore must be shipped to another market for manufacturing purposes, shall be the price received by the selling plant from the purchaser,

less a haul charge of ninety-five cents (\$0.95) per running mile. If the selling plant receives a higher price for this milk than that established for Class III milk, the difference shall be subtracted from any allowable haul charge. All freight charges to producers must be based on reasonable economic loads. The selling plant has the burden of establishing the price received for this milk with the Milk Control Bureau and such price must be included with such plant's report of receipts and utilization so that it may be included in the Bureau's computations of the uniform pool blend prices. If the pool plant fails to satisfactorily establish the price received for this milk with the Milk Control Bureau, such milk shall be paid for at the regularly established Class III price and that value included in pool computations.

~~(e)--Any new producer entering the market after the effective date of this rule will be accorded plant usage for his milk until he has established a production record for a period not to exceed six (6) months exclusive of the months of May, June, and July. After he has established a production record, such producer will participate in milk shipped to other markets on the same basis as all other plant producers.~~

~~(d)--In the event that total Class III usage allocated to producers must be shipped to another market because of inventory differences supplying regular plant Class III usage, then all producers will share in such usage pro rata. This rule is maximum and permissive in that a plant is not required to charge its producers for shipments to other markets.~~

~~(e)(c) Price paid to producers for Class III milk will be computed and announced monthly in accordance with the above formula and the price calculated during the current month will be the price paid during the succeeding month.~~

~~(9) . . . " MTH & IMP 81-23-302, MCA~~

3. The purpose for Montana Dairymen's Association proposing to amend Rule 8.86.301 (6) (a), (8) (a), (b), (c), (d), (e) is to ensure an adequate supply of milk and dairy products. These pricing adjustments are intended to assure that a state wide pool does not create economic hardship on a few producers and to allow milk distributors to economically dispose of surplus milk that cannot be used for Grade A products. It is also noted that Montana Dairymen's Association proposes to increase the freight allowance to transport hay from dealers to producers from \$6.03 to \$12.00 a ton.

The purpose for Stacey J. Auch, D/B/A Misty Vale Dairy



proposing to amend Rule 8.86.301 (6) (i) (vi) is to allow for a special on-the-farm price for low fat milk.

4. The petition filed by Montana Dairymen's Association proposing to adopt a new rule appears as follows:

"I POOLING RULES"

(1) For purposes of this rule, the following definitions apply:

(a) "Statewide Pool" includes all areas within the borders of Montana.

(b) "Pool Plant" means any plant designated by the Department of Livestock as Grade A which purchases, processes and sells pool milk.

(c) "Pool Producer" means any producer whether located within or without Montana, licensed by the Milk Control Bureau, who produces and sells grade A milk to a pool plant.

(d) "Pool Producer-Distributor" means any producer-distributor who buys pool milk from sources other than his own production on a regular basis. Occasional purchases of bulk or package milk shall fall within the general exemption of producer-distributor in sub-section (3) herein.

(e) "Pool Milk" means all milk produced under a Milk Control Bureau license and sold to a pool plant.

(f) "Producer Settlement Fund" means a fund established by the Milk Control Bureau and maintained by payments from pool plants whose usage exceeds that of the pool average as determined by the Milk Control Bureau.

(2) All producers producing and selling milk to a Grade A plant in Montana shall be considered producers of record and included in the statewide pool. Likewise all Grade A milk produced in Montana shall be considered pool milk.

(3) Producers in other states selling to a Montana Grade A plant shall be qualified as pool producers and receive a uniform pool price for their milk. Producer-distributors who produce Grade A milk and sell it either on their own farm or on retail routes shall be excluded from the pool so long as they market only their own production. Milk received from other sources by such producer-distributors such as individual dairy farmers or bulk or packaged shipments from a Grade A pool plant and marketed either on his own farm or on wholesale or retail routes immediately qualifies the producer-distributor to be included in the pool and subject to pool rules and regulation.

(4) All Montana Grade A plants shall be fully regulated pool plants.

(5) Milk purchased from out-of-state shall be considered "non-pool" milk if adequate supplies of pool milk are available and can be economically delivered to a pool plant when needed. Such non-pool milk shall be allocated to plant usage in Class III, II, and I in that order.

(6) All pool plants shall report plant receipts of producer milk and the utilization thereof to the Milk Control Bureau not later than six (6) working days after the last day of the preceeding month.

(7) The Milk Control Bureau shall then compile all receipts and usage of pool milk, compute the uniform blend price pursuant to established class prices and notify the pool plants not later than ten (10) working days after the last day of the preceeding month.

(8) Pool plants shall make final settlement with producers for the milk received during the preceeding month within five (5) days after receiving notification of the uniform blend price from the Milk Control Bureau. This rule in no way prevents or prohibits advance payments to producers in accordance with established procedures of the Milk Control Bureau.

(9) (a) Pool plants shall pay their individual producers based on the pool-wide uniform price established by the Milk Control Bureau. Pool plants whose individual plant blend based on plant usage exceeds the established uniform pool blend price shall pay an amount to the Milk Control Bureau producer settlement fund equal to the difference in the blend prices based on their total receipts and utilization of pool milk. Payments to the producer settlement fund must be submitted to the Milk Control Bureau no longer than five (5) days after receiving notice of the uniform blend price from the Milk Control Bureau. Late payments shall bear an additional one percent (1%) penalty.

(b) Pool plants whose individual plant blend, based on plant usage, is less than the established uniform pool blend price may draw from the Milk Control Bureau producer settlement fund, an amount equal to the difference in the blend prices based on their total receipts and utilization of pool milk.

(c) The above procedures specified in (a) and (b) shall be according to procedures prescribed by the Board and the Milk Control Bureau."

5. The purpose for Montana Dairymen's Association proposing adoption of a new rule is to create a statewide pool, thereby assuring an adequate supply of milk and dairy products for

all consumers by stabilizing the market for dairy producers in Montana. The pool is intended to maintain the status quo by spreading the cost of surplus milk among all producers, rather than just a few. This in turn, would protect against some producers being forced out of business because of economic hardship.

It is intended that a statewide pool as proposed will enable the Board to more adequately administer the handling of surplus milk, thereby eliminating speculation and waste and providing that milk and milk products are made available to the consumer by the most direct method.

6. The Board proposes to consider the statutory factors set out in section 81-23-302 (5)(a) - (i) as relevant matters for discussion. They are as follows:

"81-23-302 Establishment of minimum prices. (1). . .

(5) . . .

(a) current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(d) the alternative opportunities, both farm and non-farm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient

costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(6) . . .

7. In its consideration of the merits of a new rule and the amendment of Rule 8.86.301 as proposed by Montana Dairymen's Association, the Board takes official notice as facts within its own knowledge of the disparity of blend prices paid individual producers and differences in transportation rates, examples are as follows:

TABLE I  
Blend price paid by plant before and after haul  
for period January 1, through June 30, 1983.

	Blend Price Paid Per CWT Before Freight	Farm-to- Plant haul Charged Per CWT	Inter- Area Haul Charged Per CWT	Net Blend Price Paid Per CWT After Freight
Beatrice Foods Co. Billings	\$13.64	.84	-0-	\$12.80
Beatrice Foods Co. Missoula	13.07	.62	-0-	12.45
Beatrice Foods Co. Great Falls	13.25	1.06	.03	12.16
Beatrice Foods Co. Kalispell	13.15	.48	.11	12.56
Brown Swiss Milk Co. - Billings	12.74	.70	-0-	12.04
Equity Supply Co. Kalispell	13.49	.39	.01	13.09
Gallatin Dairy Inc. Bozeman	13.12	.46	.14	12.52

Gate City Dairy Glendive	12.70	.84	-0-	11.86
Cloverleaf Dairy Inc. - Helena	14.07	.68	-0-	13.39
Ravalli County Crmy. - Hamilton	11.53	.47	-0-	11.06
Safeway Stores Inc. - Butte	13.10	.57	-0-	12.53
Vita Rich Dairy	<u>13.45</u>	<u>1.26</u>	<u>.06</u>	<u>12.13</u>
	\$13.13	.70	.04	\$12.38

The Board also takes official notice of prices received by producers in adjacent and surrounding areas, the following are examples:

TABLE II  
Producer Prices - August 1983

	<u>Class I</u> <u>Price</u>	<u>Class III</u> <u>Price</u>	<u>Blend</u> <u>Price</u>
Montana	\$14.24	\$10.88	**\$13.15
Eastern Colorado	14.80	12.48	14.13
Great Basin	14.40	12.48	13.50
Western Colorado	14.50	12.48	14.33
Black Hills	14.45	*12.48	13.37
Lake Mead	14.10	12.48	13.75
Oregon-Washington	14.45	12.48	13.36
Puget Sound	14.35	12.48	13.07
SW Idaho-Eastern Oregon	14.00	12.48	12.71
North Dakota	13.70	12.48	12.69
Inland Empire	14.45	12.48	13.40

\* Class II

\*\* Reported Figures

The Board also takes official notice that transportation problems and periods of shortages and surpluses have occurred in the past. For example, distributors have threatened to leave milk at the farm unless equitable transportation rates for surplus milk were established and distributors have paid prices in excess of the Montana minimum price in order to acquire needed milk for fluid milk bottling purposes.

8. Copies of the documents mentioned in paragraph seven (7) or more detailed information is available for inspection during regular business hours, at the offices of the Department of Commerce, Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620-0422. Copies will be provided upon request and payment of copying charges. Requests for copies should be made to the Department by visiting or writing the address given in this paragraph or by telephoning (406) 449-3163.

9. Interested persons may present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620-0422 no later than November 28, 1983.

10. Allen Chronister, Esq., 215 North Sanders, Helena, Montana has been designated to preside over and conduct the hearing.

11. The authority of the Board of Milk Control to take the actions and adopt the rules as proposed is in section 81-23-302, MCA. Such rules, if adopted will implement the same section.

BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

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

Certified to the Secretary of State October 17, 1983.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the adoption ) NOTICE OF PUBLIC HEARING ON  
of proposed rules for the ) THE PROPOSED ADOPTION OF RULES  
Montana Economic Development ) FOR THE MONTANA ECONOMIC  
Board. ) DEVELOPMENT BOARD

TO: All Interested Persons:

1. On Thursday, November 17, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1430 9th Avenue, Helena, Montana, to consider the adoption of rules for the Montana economic development board.

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

3. The proposed rules will read as follows:

"I. ORGANIZATIONAL RULE (1) The Montana economic development board (the 'board') was created in 1983 by section 2-15-1805, MCA.

(2) The board consists of seven members appointed by the governor in the manner prescribed by section 2-15-124, MCA. By statute the board is to be broadly representative of the state, is to be chosen in a manner that balances professional expertise, public interest, and public accountability, and is to include a representative of the financial community, a representative of small business, a representative of agriculture, and a representative of labor. The names and addresses of the members of the board are as follows:

G. Steven Brown, 1520 Highland, Helena, Montana 59620  
Karen K. Locke, Box 788, Eureka, Montana 59917  
John C. Orth, 3500 Hannibal Street, Butte, Montana 59701  
D. Patrick McKittrick, P. O. Box 1184, Great Falls, Montana 59403  
Jackson L. Schutte, Norwest Corporation, 750 Grand Building, 100 North 27th Street, Box 30058, Billings, Montana 59117  
Yvonne Snider, Gilt Edge Route, Lewistown, Montana 59457  
Jeremiah R. Sullivan, 521 Tamarack, Helena, Montana 59601

(3) The board is attached to the department of commerce ('the department') for administrative purposes. The department has the authority to hire and prescribe the duties and salaries of its staff. A chart of the organization of the department can be found in section 8.1.105 (5), A.R.M., and the board hereby adopts and incorporates this chart by reference into its organizational rule.

(4) Inquiries and applications regarding the board may be addressed to the chairman of the Montana Economic Development Board, c/o the Montana Department of Commerce,

1424 9th Avenue, Helena, Montana." (Authority: Sec. 17-6-324, MCA; Implement: Sec. 17-6-324, MCA)

Rules to be adopted under sub-chapter 2.

"II. PROCEDURAL RULES (1) The board hereby adopts and incorporates by reference rules 1 through 28 of the Attorney General's Model Procedural Rules. A copy of these rules may be obtained from the Chairman of the Montana Economic Development Board, c/o the Montana Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620. Hearings on applications shall not be considered contested cases." (Authority: Sec. 17-6-324, MCA; Implement: Sec. 2-4-201, MCA)

"III. CITIZEN PARTICIPATION RULES (1) The board hereby adopts and incorporates by reference the citizen participation rules of the department of commerce as set forth in sections 8.2.201 through 8.2.206, A.R.M. A copy of these rules may be obtained from the Chairman of the Montana Economic Development Board, c/o the Montana Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620." (Authority: Sec. 17-6-324, MCA; Implement: Sec. 2-4-201, MCA)

Rules to be adopted under sub-chapter 7, Montana Capital Companies

"IV. PURPOSE (1) The board is required by Title 90, Chapter 8, MCA, to designate both 'certified' and 'qualified' Montana capital companies in the order that completed applications for designations as a 'qualified' capital company are received by the board and as investments in the capital company are actually made. These rules establish the application procedure for initial designation of eligible entities as 'certified' Montana capital companies and the application procedure for designation of 'certified' capital companies as 'qualified' Montana capital companies when a 'certified' Montana capital company has been capitalized at a minimum level of \$200,000. The rules also provide for allocation of the tax credits to individual investors." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-103, MCA)

"V. DEFINITIONS (1) As used in this sub-chapter and unless the context clearly requires another meaning:

(a) the 'act' means the Montana capital companies act, Title 90, Chapter 8, MCA.

(b) 'administrator' means the administrative officer of the Montana economic development board created in sections 2-15-1806 and 2-15-1807, MCA.

(c) 'board' means the Montana economic development board created in section 2-15-1805, MCA.

(d) 'company' means a profit or non-profit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments. Companies include, but



are not limited to a profit or non-profit corporation, partnership, association, trust, United States small business administration 503 corporation, or United States small business administration small business investment company.

(e) 'completed application' means an application that meets the requirements of these rules and has been designated as complete by the administrator.

(f) 'small business' means a business that has a net worth less than \$6 million; has an average net income, after Federal income taxes, for the preceding two years of less than \$2 million (average net income to be computed without benefit of any carryover loss); and has less than 200 employees working in Montana.

(2) All definitions established in section 90-8-104, MCA, apply to this sub-chapter." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-101, 104, 201, 202, MCA)

"VI. APPLICATION PROCEDURE TO BECOME A 'CERTIFIED' MONTANA CAPITAL COMPANY (1) A development credit corporation created pursuant to Title 32, Chapter 4, MCA or a company organized and existing under the laws of Montana, created for the purposes of making venture or risk capital available for qualified investments as defined in Title 90, Chapter 8, MCA, shall make written application for certification to the board on application forms provided by the board. Said application form shall be signed by the duly authorized officers, or partner(s), and contain the following information and evidence in addition to any other information as may be required by the board pursuant to section 90-8-201, MCA:

(a) the full legal name of the company;  
(b) the address of the applicant's principal office in the state;  
(c) the names and respective addresses of the applicant's directors and officers or general and managing partners including street and number if any, city or town, state and zip code;

(d) a certified copy of the certificate of incorporation or a certified copy of the certificate of formation of a limited partnership or trust documents or other evidence that the company is organized and existing under the laws of Montana;

(e) information and evidence that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

(f) information and evidence that the applicant has filed with the Securities Commission a disclosure document

and a consent to service of process as required by 90-8-301, MCA or information and evidence that the applicant has registered the securities offering pursuant to the Securities Act of Montana, Section 30-10-101 et. seq. or information and evidence that the securities offering is exempt from registration under the Securities Act of Montana.

(g) information and evidence that the applicant has disclosed or will disclose to all investors that a tax credit is not available for an investment in a company until the company has been designated a 'qualified' Montana capital company and the investor has received a certificate approving the credit from the board;

(h) information and evidence that the applicant has disclosed or will disclose to all investors that a tax credit will not be made available until the company raises at least \$200,000 in equity capital after April 18, 1983, and has been designated a 'qualified' capital company, and all statutory limits on tax credits are disclosed;

(i) information and evidence that the applicant has disclosed or will disclose to all investors that the state of Montana is not liable for damages in accordance with section 90-8-205, MCA;

(j) a statement that if the investors in the company or partnership receive a tax credit under Title 90, Chapter 8, MCA, then the company will use the capital base included by such tax credit to make qualified investments as defined in section 90-8-104 (5), MCA and according to the schedule in section 90-8-301, MCA and within the limits established in section 90-8-302, MCA;

(k) a statement that the company will comply with all requirements of Title 90, Chapter 8, MCA, including the filing of quarterly reports of investors and qualified investments required in section 90-8-312, MCA;

(l) if a corporation, information on the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares without par value, and series, if any, with a class;

(m) if a corporation, information on the aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(n) information stating the total capital account of the applicant and how the value has been determined and how the equity portion has been determined for both the period before and after April 18, 1983;

(o) the names and respective addresses of persons or businesses that own twenty-five percent or more of the assets of the company or who otherwise own a controlling interest in the company;

(p) the amount of equity capitalization up to \$1,500,000 raised after April 18, 1983 that the company expects to qualify for the tax credits provided for in section 90-8-202, MCA.

(2) The form for applying to become a certified Montana capital company may be obtained from the administrator, Montana Economic Development Board, c/o the Montana Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620, and shall be filed at the same address.

(3) The time and date of filings shall be recorded at the time of filing in the office of the board and shall not be construed to be the date of mailing. Recording the filing time and date does not indicate the application is complete.

(4) The administrator shall review all applications and designate those he determines to be complete. In the event that the administrator determines an application is deemed incomplete in any respect, the applicants will be notified within fifteen days. An incomplete application shall be resubmitted.

(5) The administrator shall notify, within fifteen days, the applicant if the application is complete and shall place the application on the agenda of the next regularly scheduled board meeting occurring after such notification.

(6) The board, at its next regular meeting, after an application is designated complete by the administrator, shall designate as 'certified' Montana capital companies those companies which are development corporations created pursuant to Title 32, Chapter 4, MCA and those companies which the board determines are organized for the purpose of encouraging and assisting in the creation, development, and expansion of Montana based business and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

(7) The board shall notify the applicants of its action designating 'certified' Montana capital companies and the notice shall specify the level of equity capitalization that the applicant expects to qualify for the tax credits provided under section 90-8-202, MCA. The specification of the expected level of capitalization does not reserve an equivalent level of tax credits because tax credits shall be distributed as provided in rule X." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-201, MCA)

"VII. APPLICATION PROCEDURE TO BECOME A 'QUALIFIED' MONTANA CAPITAL COMPANY (1) A 'certified' capital company shall make written application to the board on application forms provided by the board. Said application form shall be signed by the duly authorized officers or partners

and contain the following information and evidence in addition to any other information as may be required by the board pursuant to section 90-8-202, MCA:

- (a) the full legal name of the company;
- (b) any changes, new information or evidence regarding items (b) through (g) of the company's application to become a 'certified' capital company;
- (c) adequate proof of a minimum level of equity capitalization of \$200,000 raised after April 18, 1983;
- (d) the information required in rule X on the forms required in rule X.

(2) The form for applying to become a qualified Montana capital company may be obtained from the administrator, Montana Economic Development Board, c/o the Montana Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620, and shall be filed at the same address.

(3) The time and date of filings shall be recorded at the time of filing in the office of the board and shall not be construed to be the date of mailing. Recording the filing time and date does not indicate the application is complete.

(4) The administrator shall review all applications and designate those he determines to be complete. In the event that the administrator determines an application is deemed incomplete in any respect the applicants will be notified within fifteen days. An application shall not be deemed complete for purposes of section 90-8-202 (2), MCA until approved as complete by the administrator.

(5) The administrator shall notify, within fifteen days, the applicant if the application is complete and shall place the application on the agenda of the next regularly scheduled board meeting occurring after such notification.

(6) The board, at its next regular meeting after an application is designated complete by the administrator, shall designate as 'qualified' Montana capital companies those certified Montana capital companies which have filed complete applications to become qualified companies and which the board finds to have a minimum level of \$200,000 in equity capitalization raised after April 18, 1983.

(7) Upon designation as a 'qualified' Montana capital company, the board shall reserve available tax credits for those investors in the 'qualified' company whose investments are documented in the company's application to become qualified. These reserved tax credits shall be distributed as provided in Rule X.

(8) The board shall notify the applicants of its action and the notice shall specify the level of capitalization that the applicant expects to qualify for tax credits provided in section 90-8-302, MCA. The specification

of the expected level of capitalization does not reserve an equivalent level of tax credit, because tax credits shall be distributed as provided in rule X.

(9) The board shall suspend qualification of companies when all available tax credits have been distributed." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-202, MCA)

"VIII. COMPLETED APPLICATION DATE (1) The date a completed application is received by the board is determined by the date the original is filed with the board." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-201, 202, MCA)

"IX. AMENDMENT OF APPLICATION (1) A 'certified' or 'qualified' capital company may amend an application designated complete by the administration at any time by submitting new information or evidence. The same procedural requirements and fifteen day notification period apply to an amendment." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-201, 202, MCA)

"X. ALLOCATION OF TAX CREDITS (1) Each qualified Montana capital company shall report to the board on a quarterly basis beginning April 1, 1984 on forms provided by the board:

- (a) the name of each new investor in the qualified Montana capital company;
- (b) the amount of each investor's investment; and
- (c) the amount of the tax credit allocated to the investor and the date on which the investment was made.

(2) The board shall quarterly allocate available tax credits to the investors in qualified companies in the order the companies completed applications for designation as 'qualified' capital companies were received by the board and within the amount specified for each company in the certificates of 'certification' and 'qualification'. Priorities for tax credits among investors in an individual company shall be determined by earliest investment date.

(3) The board shall provide each investor in a qualified Montana capital company entitled to a tax credit with a certificate authorizing the tax credit, and the certificate shall be submitted with each tax return requesting a credit under section 90-8-202, MCA.

(4) The board shall quarterly notify each qualified company of the total tax credits allocated to each qualified company's investors.

(5) All tax credits available during the period before June 30, 1985 and the period between July 1, 1985 and June 30, 1987 shall be allocated by the board sequentially as determined by this section.

(6) The board shall quarterly, beginning April 1, 1984,

notify certified and qualified companies of the amount of undistributed tax credits. When all tax credits authorized under section 90-8-202, MCA, are allocated, the board shall, within ten days, notify all certified and qualified companies." (Authority: Sec. 90-8-105, MCA; Implement: Sec. 90-8-202, MCA)

4. The board is proposing the rules to commence implementation of the tax credit program for investment in Montana small business as set forth in Title 90, Chapter 8, MCA.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Dale Harris, Assistant to the Director, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620, no later than November 24, 1983.

6. G. Steven Brown, board member, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority and implementing sections are listed after each proposed rule.

MONTANA ECONOMIC DEVELOPMENT  
BOARD

D. PATRICK MCKITTRICK, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 17, 1983.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PROPOSED ADOPTION  
of Rules relating to the ) OF RULES I - IV, SCHOOL FOR  
School for the Deaf and Blind ) THE DEAF AND BLIND FOUNDATION  
Foundation ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1983, the Board of Public Education proposes to adopt Rules I, II, III, and IV that relates to the School for the Deaf and Blind Foundation.

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

RULE I BOARD OF PUBLIC EDUCATION POLICY STATEMENT

(1) All real and personal property transferred to the Board of Public Education, Montana School for the Deaf and Blind, or School for the Deaf and Blind Foundation by purchase, gift, devise, bequest or otherwise acquired and the proceeds, interest and income of such property for the use and benefit of the School and its students shall be vested in the School for the Deaf and Blind Foundation.

AUTH: 20-8-103 IMP: 20-8-111

RULE II CONTRACT BETWEEN THE BOARD OF PUBLIC EDUCATION AND THE SCHOOL FOR THE DEAF AND BLIND FOUNDATION (1) The Board of Public Education shall contract with the School for the Deaf and Blind Foundation for the management of such property and its proceeds, interest and income.

AUTH: 20-8-103 IMP: 20-8-111

RULE III CONTENTS OF THE CONTRACT (1) The contract between the Board of Public Education and the Foundation requires the Foundation to have:

(a) Articles of incorporation which without limitation stipulate that:

(i) The Board of Public Education shall have one of its members serve as a member of the Board of Directors of the Foundation for the duration of his term as Board of Public Education member;

(ii) The Board of Public Education shall appoint the directors of the Foundation;

(iii) The Board of Public Education shall have the right to increase or decrease the number of Foundation directors; and

(iv) The Superintendent of the School for the Deaf and Blind shall by virtue of his office be one of the directors of the Foundation until his successor is duly appointed;

(b) Bylaws which without limitation cover selection of officers, meetings, compensation for services and amendment procedures;

(c) Policy which covers the acceptance, management and expenditure of Foundation property, proceeds, interest and income.

AUTH: 20-8-103

IMP: 20-8-111

RULE IV QUARTERLY REPORT (1) The presiding officer of the Foundation or his designee shall report to the Board of Public Education each quarter at one of its regular meetings:

(a) Principal and income statement identifying investment holdings;

(b) List of designated funds or restricted gifts;

(c) Receipts and expenditures;

(d) Meetings held and minutes.

AUTH: 20-8-103

IMP: 20-8-111

3. The board of public education is proposing these rules for the management of the School for the Deaf and Blind Foundation.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Harriett C. Meloy, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 25, 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 Harriett C. Meloy, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 25, 1983.

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

7. The authority of the agency to adopt the proposed rules is based on section 20-8-103, MCA, and the rules implement section 20-8-111, MCA.

*Harriett C. Meloy*

HARRIETT C. MELOY, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By *David L. ...*

Certified to the Secretary of State October 17, 1983

20-10/27/83

MAR Notice No. 10-3-70



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT  
of Rule 10.64.421 Mirrors, ) OF RULE 10.64.421 MIRRORS,  
Chapter 64, Transportation ) Chapter 64, Transportation  
 ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1983, the Board of Public Education proposes to amend rule 10.64.421, Mirrors, relating to school bus standards.

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

10.64.421 MIRRORS (1) Interior mirror: shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. Mirror shall be a minimum of 6" x 30". Mirror shall have rounded corners and protected edges.

(2) Exterior mirrors: exterior left side and one exterior right side rear view mirror with a minimum of 50 square inches each of flat mirror glass. Exception: Type A and B vehicles shall be manufacturer's standard.

(3) Each bus shall have a minimum of one exterior right side convex mirror with a minimum of 35 square inches to provide localized vision on the right side of the bus.

(4) Cross-over vision mirrors (right and left): when a rod 30 inches is placed upright on the ground at any point along a traverse line 1 foot forward of the forward-most point of a school bus and extending the width of the bus; at least 7½" of the length of the rod shall be visible to the driver, either by direct view or by means of an indirect visibility system.

(5) All mirrors listed in (1), (2) and (3) above shall be fitted on all buses regardless of when the bus was purchased or built.

3. The Board of Public Education is proposing the amendment so that all school buses manufactured before 02/29/82 will be retrofitted to comply with the standards.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Harriett Meloy, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 25, 1983.

5. If a person who is directly affected by the proposed rule 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 Harriett Meloy, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than November 25, 1983.

6. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 approximately 60 persons based on approximately 600 persons involved in the state of Montana.

7. The authority of the agency to adopt the proposed rule is based on section 20-2-121, MCA, and the rule implements section 20-10-111, MCA.

Harriett C. Meloy  
HARRIETT C. MELOY, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By

Heidi Ann Dejeu

Certified to the Secretary of State October 17, 1983 .

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED ADOPTION
ADOPTION of Rules I, II and	)	of Rules I, II and III
III relating to wholesale	)	relating to wholesale dis-
distributors, their obliga-	)	tributors, their obligations,
tions, and to provide for the	)	and to provide for the collec-
collection of an annual	)	tion of an annual license fee.
license fee.	)	No Public Hearing Contemplated

TO: All Interested Persons:

1. On November 28, 1983, the Department of Revenue proposes to adopt rules I, II, and III relating to wholesale distributors, their obligations, and to provide for the collection of an annual license fee.

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

RULE I WHOLESALE DISTRIBUTOR (1) As used in §15-70-201(6)(c), MCA, and these rules, the term "wholesale distributor" and "wholesale distribution" includes any person who:

(a) purchases gasoline and subsequently sells and delivers the gasoline to retailers in bulk quantities;

(b) elects to become licensed under §15-70-201(6)(c), MCA, to assume the Montana state gasoline tax liability and the other obligations of a "distributor" pursuant to title 15, chapter 70, part 2, MCA, and these rules, and

(c) pays the license fee.

(2) The terms "wholesale distributor" and "wholesale distribution" do not include any person who is a producer or importer.

(3) The term "wholesale distribution" does not include a parent corporation or company that sells gasoline only to its wholly owned subsidiary service stations.

AUTH: 15-70-104, MCA; IMP: 15-70-201, MCA.

RULE II WHOLESALE DISTRIBUTOR'S OBLIGATIONS (1) A wholesale distributor shall comply with all the laws, rules, and other obligations which are imposed on a "distributor" of gasoline.

AUTH: 15-70-104, MCA; IMP: 15-70-201, MCA.

RULE III ANNUAL LICENSE, LICENSE FEES AND LICENSE RENEWAL (1) The annual license provided for in §15-70-202(2), MCA, shall run from January 1 until December 31 of each year. All licenses will expire on December 31 of the licensed year.

(2) All licensees shall pay a fee of \$200 for each license regardless of the length of time the license is in effect.

(3) The application, bond, and fee for each license renewal shall be due on or before the 15th of December of the year preceding the licensed year.

AUTH: 15-70-104, MCA; JMP: 15-70-201, MCA.

3. The Department is proposing the adoption of these rules because the 1983 Legislature enacted Chapter 514 which allows a person who engages in the wholesale distribution of gasoline in Montana to be licensed as a "gasoline distributor" upon application and the payment of a fee. Proposed rule I defines the term "wholesale distribution," proposed rule II defines the obligations of wholesale distributors, and proposed rule III provides for the collection and remittance of the initial fee and annual renewal fee to the Department of Revenue.

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

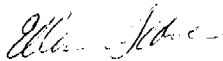
Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building

no later than November 25, 1983.

5. If a person who is directly affected by the proposed amendments 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 November 25, 1983.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having 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 two based on the number of persons currently licensed under the existing law.

7. The authority of the agency to make the proposed amendment is based on §15-70-104, MCA, and the rule implements §15-70-201, MCA.

  
ELIEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 10/17/83

20-10/27/83

MAR Notice No. 42-2-247

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amend- )	NOTICE OF PROPOSED AMENDMENT
ment of rule pertaining to )	1.2.419 FILING, COMPILING,
scheduled dates - Montana )	PRINTER PICKUP AND PUBLICATION
Administrative Register. )	SCHEDULE FOR THE MONTANA ADMINI-
	STRATIVE REGISTER.

No Public Hearing Contemplated.

TO: All Interested Persons.

1. On January 1, 1984, the Secretary of State proposes to amend the rule pertaining to the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION  
SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

1984 schedule

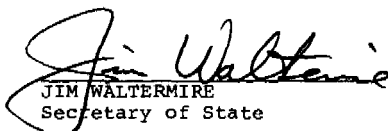
<u>filing</u>	<u>compiling</u>	<u>printer pickup</u>	<u>publication</u>
January <u>3</u>	January <u>4</u>	January <u>5</u>	January <u>12</u>
January <u>16</u>	January <u>17</u>	January <u>18</u>	January <u>26</u>
February <u>6</u>	February <u>7</u>	February <u>8</u>	February <u>16</u>
February <u>21</u>	February <u>22</u>	February <u>23</u>	February <u>29</u>
March <u>5</u>	March <u>6</u>	March <u>7</u>	March <u>15</u>
March <u>19</u>	March <u>20</u>	March <u>21</u>	March <u>29</u>
April <u>2</u>	April <u>3</u>	April <u>4</u>	April <u>12</u>
April <u>16</u>	April <u>17</u>	April <u>18</u>	April <u>26</u>
May <u>7</u>	May <u>8</u>	May <u>9</u>	May <u>17</u>
May <u>21</u>	May <u>22</u>	May <u>23</u>	May <u>31</u>
June <u>4</u>	June <u>5</u>	June <u>6</u>	June <u>14</u>
June <u>18</u>	June <u>19</u>	June <u>20</u>	June <u>28</u>
July <u>2</u>	July <u>3</u>	July <u>5</u>	July <u>12</u>
July <u>16</u>	July <u>17</u>	July <u>18</u>	July <u>26</u>
August <u>6</u>	August <u>7</u>	August <u>8</u>	August <u>16</u>
August <u>20</u>	August <u>21</u>	August <u>22</u>	August <u>30</u>
September <u>4</u>	September <u>5</u>	September <u>6</u>	September <u>13</u>
September <u>17</u>	September <u>18</u>	September <u>19</u>	September <u>27</u>
October <u>1</u>	October <u>2</u>	October <u>3</u>	October <u>11</u>
October <u>15</u>	October <u>16</u>	October <u>17</u>	October <u>25</u>
November <u>5</u>	November <u>7</u>	November <u>8</u>	November <u>15</u>
November <u>19</u>	November <u>20</u>	November <u>21</u>	November <u>29</u>
December <u>3</u>	December <u>4</u>	December <u>5</u>	December <u>13</u>
December <u>17</u>	December <u>18</u>	December <u>19</u>	December <u>27</u>

(2) All material to be published must be submitted by 5:00 p.m., on the scheduled filing date. All material submitted after the scheduled filing date will not be published until the next scheduled publication date.

AUTH: 2-4-312, MCA IMP: 2-4-312, MCA

(3) The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1984.

(4) Interested parties may submit their data, views or arguments concerning the schedule in writing to Julie Glosser, Office of the Secretary of State, State Capitol, Helena, Montana, 59620, no later than November 25, 1983.

  
JIM WALTERMIRE  
Secretary of State

Dated this 17th day of October, 1983.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rule 46.5.116	)	THE PROPOSED AMENDMENT OF
pertaining to protective	)	RULE 46.5.116 PERTAINING TO
services information system	)	PROTECTIVE SERVICES INFOR-
operation; community serv-	)	MATION SYSTEM OPERATION
ices	)	

TO: All Interested Persons

1. On November 18, 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 proposed amendment of Rule 46.5.116 pertaining to protective services information system operation; community services.

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

46.5.116 PROTECTIVE SERVICES INFORMATION SYSTEM OPERA-  
TION (1) Requirements:

(a) The department is responsible for maintaining a protective services information system on all referrals for child abuse and neglect.

(b) The protective services information system is maintained and administered by the community services division, hereafter referred to as the division.

(2) Confidentiality of reports:

(a) All reports of the protective services information system are confidential.

(b) Misuse of the information by any employee of the department is grounds for immediate dismissal.

(c) Misuse of information by persons other than department employees shall be grounds for termination of the person's rights to such information.

(d) Periodic statistical reports will be compiled.

(3) Operation of central registry file:

(a) Definitions:

~~(i) "Expungement" means the process of destroying child abuse and neglect information contained in the protective services information system.~~

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

(ii) "Substantiated" means that, upon investigation, the reporting worker has determined that the reported complaint is or has occurred (does not require that all evidence be court acceptable).

(iii) "Unsubstantiated" means that, upon investigation, the reporting worker has determined or was unable to determine that the reported complaint has not occurred.

(b) ~~Unvalidated--referrals must be expunged by the division.~~ Unsubstantiated reports will be retained on the system for a one year period and after the expiration of one year shall be removed from the system.

(c) Persons who are subjects of the reports have the right to examine the protective services information system material on their case and request changes of incorrect or inaccurate information.

(i) Request for examination of protective services information system records or changes in the information shall be made to community services division.

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

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


AUTH: Section 41-3-208, MCA

IMP: Section 41-3-202, MCA

3. The proposed amendment of the rule is necessary to update the rule regarding changes made in the operation of the protective services information system.

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 November 28, 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 \_\_\_\_\_ October 17, 1983.



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

In the matter of the adoption	)	NOTICE OF ADOPTION
of emergency rules implementing	)	OF EMERGENCY RULES:
33-20-208(8), MCA providing for	)	IDENTICAL NONFORFEITURE
identical nonforfeiture values	)	VALUES FOR MEN AND WOMEN
for men and women in an employer	)	IN AN EMPLOYER SPONSORED
sponsored retirement benefit program)	)	RETIREMENT BENEFIT PROGRAM

TO: All Interested Persons

1. Statement of Reason for Emergency.

The U. S. Supreme Court in its decision Arizona Governing Committee v. Norris held that Title VII of the Civil Rights Act of 1964 prohibits an employer from offering its employees a retirement benefit option in which a woman receives lower retirement benefits than a man who has made the same contribution. The effective date of the judgment was August 1, 1983, and provided that all retirement benefits derived from contributions made after that date must be calculated without regard to the sex of the beneficiary. Effective October 1, 1983 insurers authorized to do business in this state may use the 1980 CSO (commissioner's 1980 standard ordinary mortality table) and 1980 CET (commissioner's 1980 extended term insurance table) tables to determine nonforfeiture values. The 1980 CSO and 1980 CET mortality tables contain rates that vary both by sex and age. From these tables it would be difficult if not impossible for companies to determine actual nonforfeiture values that are identical for men and women under an employer sponsored retirement benefit plan as required by Arizona Governing Committee v. Norris. Therefore, the Department finds that the welfare of the people of the State of Montana is in imminent peril because an insurer utilizing the the currently approved 1980 CSO and CET tables would violate the insured's rights as shown by Norris. For this reason, adoption of these emergency rules is required immediately, without notice, in order to conform to the 1980 CSO and CET tables, currently in use in Montana, to the Norris decision.

2. The text of the proposed emergency rules are as follows:

RULE 1. PURPOSE. The purpose of these rules is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits for both men and women. No change in minimum valuation standards is implied by this rule.

AUTH: 33-1-313 and 33-20-208(8)(f), MCA.

IMP: 33-20-208(8), MCA.

RULE II DEFINITIONS. For purposes of these rules, the following definitions apply:

(1) "1980 CSO Table, with or without Ten-Year Select Mortality Factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioner's 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

(2) "1980 CSO Table (M), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(3) "1980 CSO Table (F), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(4) "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

(5) "1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

(6) "1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

AUTH: 33-1-313 and 33-20-208(8)(f), MCA.

IMP: 33-20-208(8), MCA.

RULE III ADOPTION OF TABLES ALTERNATE TO THE 1980 CSO AND 1980 CET FOR NONFORFEITURE PURPOSES UNDER AN EMPLOYER SPONSORED RETIREMENT BENEFIT PROGRAM. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after October 1, 1983 that complies with 33-20-208, MCA and for all policies issued on or after January 1, 1989, the following may be substituted for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits:

(1) a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(2) the 1980 CSO Table (M), with or without Ten-Year Select Mortality Factors, may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(3) a mortality table which is of the same blend as used in (i) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F)

(4) the 1980 CET Table (M) may at the option of the company be substituted for the 1980 CET Table.

AUTH: 33-1-313 and 33-20-208(8)(f), MCA.

IMP: 33-20-208(8), MCA.

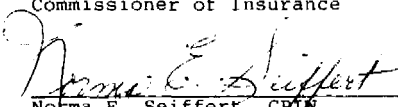
RULE IV UNFAIR DISCRIMINATION. It shall not be a violation of 33-18-206, MCA for an insurer to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis.

RULE V SEPARABILITY. If any provision of this Rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

3. The purpose of these rules is to supplement 33-20-208, MCA to allow compliance with the U. S. Supreme Court decision Arizona Governing Committee v Norris.

4. The authority for the agency to adopt these emergency rules is based on 33-1-313 and 33-20-208(8)(f), MCA, and the rule implements 33-20-208(8), MCA.

E. V. "Sonny" Omholt  
State Auditor & Ex Officio  
Commissioner of Insurance

  
Norma E. Seiffert, CRIW  
Chief Deputy Commissioner of Insurance

Certified to the Secretary of State October 17, 1983

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
rules relating to examination,	)	RULES RELATING TO
licensure, bonding, and regulation	)	EXAMINATION, LICENSURE
of public adjusters	)	BONDING, AND REGULATION
	)	OF PUBLIC ADJUSTERS
		Rules 6.6.1601 - 6.6.1615

TO: All Interested Persons

1. On September 15, 1983, the State Auditor, in his capacity as the Commissioner of Insurance, published notice of the proposed adoption of rules concerning examination, licensure, bonding, and regulation of public adjusters at pages 1221 through 1224 of the 1983 Montana Administrative Register, Issue No. 17.

2. The agency has adopted Rule I through Rule III (6.6.1601 through 6.6.1603), Rule V and Rule VI (6.6.1605 and 6.6.1606), Rule VIII and Rule IX (6.6.1608 and 6.6.1609), Rule XII (6.6.1612), and Rule XIV and Rule XV (6.6.1614 and 6.6.1615) as proposed.

3. The agency has adopted Rule IV (6.6.1604), Rule VI and Rule VII (6.6.1606 and 6.6.1607), Rule X and Rule XI (6.6.1610 and 6.6.1611), and Rule XIII (6.6.1613) as proposed with the following changes:

6.6.1604 QUALIFICATIONS FOR A PUBLIC ADJUSTER'S LICENSE.

(1) Remains as proposed.

(2) Applicants for a public adjuster's license must successfully pass an examination as required by the commissioner under ~~Rule-X~~ 6.6.1609.

(3) Applicants for a public adjuster's license shall require a bond as required in ~~Rule-X~~ 6.6.1611.

6.6.1607 SCOPE OF EXAMINATION. (1) Each examination of a ~~licensee~~ licensee as a public adjuster shall be as the commissioner may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to a kind of insurance which may be dealt with under the license applied for and the duties and responsibilities of, and laws of this state applicable to such a licensee.

(2) The commissioner shall prepare and make available to applicants a manual ~~of instructions~~ of instructions specifying in

general terms the subjects which may be covered in any examination for such a license.

6.6.1610 THE COMMISSIONER SHALL COLLECT IN ADVANCE THE FEES FOR PUBLIC ADJUSTERS LICENSE AND EXAMINATION. (1) Fees as for an adjusters license under 33-2-708(j)(i), MCA, and (2) Remains as proposed.

6.6.1611 PUBLIC ADJUSTERS BOND. (1) Prior to the issuance of a license ~~and as~~ a public adjuster, the applicant therefor shall file with the commissioner a surety bond in favor of the people of Montana, executed by a surety company authorized to do business in the state in the amount of five thousand dollars. The total aggregate liability on the bond may be limited to the payment of five thousand dollars. The bond shall be conditioned on the accounting of the adjuster to any insured whose claim he is handling for moneys or any other settlement received in connection with the claim.

(2) Remains as proposed.

6.6.1613 POWERS CONFERRED BY THE PUBLIC ADJUSTER'S LICENSE. A public adjuster has authority under his license only to investigate and report to his principal, ~~on-behalf-of-the-insured~~. Public adjusters shall adjust first party physical damage claims only.

4. COMMENTS AND RESPONSES:

a. Comment:

Should an additional rule be offered which would authorize reciprocity for those individuals who are licensed as public adjusters in other states?

Response:

An additional rule, Rule XVI (6.6.1616), is published for proposal in another section of this register to allow for reciprocity for those public adjusters of other states which afford equal consideration for residence of this state. It requires that state nonresident public adjusters successfully pass a written test to certify as to their expertise in the field of public adjusting.

b. Comment:

Should a provision for "grandfathering" be included in the rules?

Response:

Prior to October 1, 1983, the effective date of Sec. 5, Ch. 518, Laws of Mont. (1983), public adjusters were not authorized to transact business in this state. Therefore, a "grandfather" clause would be inappropriate.

c. Comment:

Is the required bond of \$5,000 adequate to cover a public adjuster in the event of liability on a claim?

Response:

The \$5,000 bond required under Rule XI (6.6.1611) is identical to the bond required in the states of Illinois and Washington, and greater than that required in a number of others including New York (\$1,000), California (\$2,000), and Colorado (\$2,500). In the interests of reciprocity, the commissioner feels that the bond requirements for the state should be comparable to those of other states and therefore should not be raised to an amount greater than the proposed \$5,000.

5. The authority for the agency to adopt this rule is based on Sections 33-1-313 and 33-17-102, MCA (1983), and the rule implements Section 33-17-102(1)(c), MCA (1983).

E. V. "Sonny" Omholt  
State Auditor & Ex Officio  
Commissioner of Insurance

By: 

Norma E. Seiffert, CPIW  
Chief Deputy Insurance Commissioner

Certified to the Secretary of State, \_\_\_\_\_

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

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of rule I defining general	)	RULE I (6.6.1701) DEFINING
business practice or general	)	GENERAL BUSINESS PRACTICE
course of business practice for	)	OR GENERAL COURSE OF
purposes of claim settlement	)	BUSINESS PRACTICE

TO: All Interested Persons

1. On September 15, 1983, the Commissioner of Insurance published notice of proposed adoption of a rule concerning a definition of general business practice or general course of business practice for purposes of claim settlement at page 1219 of the 1983 Montana Administrative Register, issue number 17.

2. The Commissioner is adopting Rule I (6.6.1701) exactly as proposed.

3. The Commissioner received the following comments:

COMMENT:

Multiple unfair claim settlement practice violations occurring in the same claim would not allow for occasional clerical error or similar isolated mistakes by the insurer in settlement of a claim.

RESPONSE:

It is not the intent of the unfair claim settlement practice law to punish an insurer for a simple mistake in settling a claim. Multiple violations must be found, and the violations enumerated in 33-18-201, MCA, run the gamut of the claim process. The Montana Supreme Court in Klaudt v. Flink, Mont. \_\_\_\_, 658 P. 2d 1065 (1983) found such multiple violations in one claim could constitute violation of that code section.

COMMENT:

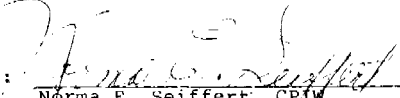
Chapter 300 Laws of 1983 was intended to apply a fine if settlement of only one claim by a company went beyond 30 days without good reason.

RESPONSE:

Chapter 300 Laws of 1983 Section 2 states that the Commissioner must find such delay is a "general course of business practice of the insurer" before a penalty can be imposed. Since the legislature did not include a definition for general course of business practice in its bill, we have relied on a recent Montana Supreme Court decision for that definition. An unlawful general course of business practice has been interpreted by the Montana Supreme Court in Klaudt v. Flink to mean either multiple unfair claim settlement practice violations occurring in the same claim or unfair claim settlement practice violations by the same company in different cases. One isolated incident would not constitute an unlawful general course of business practice.

E. V. "Sonny" Omholt  
State Auditor & Ex Officio  
Commissioner of Insurance

By:

  
Norma E. Seiffert, CPA  
Chief Deputy Insurance Commissioner

Certified to the Secretary of State,

October 17, 1983



STATE OF MONTANA  
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the adoption ) NOTICE OF ADOPTION OF A NEW  
of a new rule under public con-) RULE 8.115.301 DEFINITIONS  
tractors regarding definitions.)

TO: All Interested Persons:

1. On September 15, 1983, the Department of Commerce published a notice of proposed adoption of a new rule under Chapter 115 entitled Definitions, at pages 1238 and 1239, 1983 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN  
DIRECTOR

Certified to the Secretary of State, October 17, 1983.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of rules pertaining to the	)	RULES PERTAINING TO THE
Displaced Homemaker Program	)	DISPLACED HOMEMAKER PROGRAM

TO: All Interested Persons

1. On July 20, 1983 at 10:00 a.m. a public hearing was held by the Department of Labor and Industry to consider the adoption of rules pertaining to the Displaced Homemaker Program.

2. The original draft of these rules was published at 1983 Mont. Admin. Reg. page 696.

3. The proposed rules, based on the comments of interested parties and the Administrative Code Committee have been changed substantially. Language repetitive of statutory language has been deleted. Subject matter included in Rules XII, XIII and XV, it was decided, would be most appropriately included in grant contracts with individual program operators rather than in departmental rules.

4. The Department intends to adopt these rules, as amended, on October 28, 1983.

5. The Department has substantially amended the rules. The rule, as presently proposed, reads as follows:

24.12.101 DISPLACED HOMEMAKER PROGRAM PURPOSE

(1) It is the purpose of this program to implement the "Displaced Homemaker Act" (Title 39, Chapter 7, Part 3, MCA) by providing those services enumerated in 39-7-302, MCA, for displaced homemakers.

(Auth. 39-7-306, MCA, Imp. 39-7-302)

24.12.102 DISPLACED HOMEMAKER PROGRAM DEFINITIONS

As used in the Subchapter, unless the context requires otherwise, the following definitions apply:

(1) "Act" means the Displaced Homemaker Act, 1983 Mont. Laws, Ch. 709.

(2) "Counseling" means the process of assisting participants in realistically assessing their needs, abilities, and potential; of providing guidance in the development of vocational goals and the means to achieve them; and of helping with the solution of a variety of individual problems occurring during participation.

(3) "Employability Development Plan" (EDP) means a written plan for each participant which outlines the steps necessary to obtain unsubsidized employment.

(4) "Participant" means an individual who is determined eligible and is enrolled into any employment, training or services program.

(5) "Performance Standards" means factors used to evaluate the performance of programs.

(6) "Placement" means the act of securing unsubsidized employment for or by a participant.

(7) "Program" means a multipurpose service program

established by the Commissioner to serve Displaced Homemakers.

(8) "Underemployed individuals" means (a) persons who are working part time but seeking full time work; or (b) persons who are working full time but whose current annualized wage rate is not in excess of "for a family of one" the higher of either (1) the poverty level, or (2) seventy percent of the lower living standard income level.

(9) "Unemployed individuals" means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor and Industry in defining individuals as unemployed.

(10) "Operational costs" mean the total budget to operate the state displaced homemaker program, including administration, training and services.

(Auth. 39-7-36, MCA, Imp. 39-7-301-310, MCA)

24.12.103 DISPLACED HOMEMAKER PROGRAM, ADMINISTRATIVE ENTITIES

(1) Administrative entities selected to operate multipurpose service programs will assure through the grant agreement or contract that they will maintain acceptable fiscal and programmatic systems.

(Auth. 39-7-306, MCA, Imp. 39-7-308, MCA)

24.12.104 DISPLACED HOMEMAKER PROGRAM, CRITERIA FOR GRANTMAKING

(1) Administrative entities will be selected annually by the Commissioner through a competitive solicitation process to operate multipurpose service programs.

(2) The Commissioner will provide public notice of fund availability, accept and review proposals and award grants based on standard selection criteria.

(3) Public and private non-profit agencies or organizations may apply to be administrative entities.

(4) Selection criteria will be included in the solicitation package developed by the Commissioner.

(5) Selection criteria will include but are not limited to:

- (a) agency training plan, including a full description of proposed activities and potential benefits to displaced homemakers;
- (b) performance standards, including proposed job training and placement goals;
- (c) demonstrated effectiveness, including past program performance, administrative systems, and fiscal systems;
- (d) administrative capability, including a program administrator, sufficient staff, and office site; and
- (e) coordination mechanisms with appropriate local community service agencies.

(Auth. 39-7-306, MCA, Imp. 39-7-304, MCA)

24.12.105 DISPLACED HOMEMAKER PROGRAM, GRADUATED FEE SCHEDULE

(1) Any program may adopt a graduated fee schedule for services with prior written approval by the Commissioner. Documentation justifying the fee schedule must accompany the approval request.

(2) Graduated fee schedules should be based on the participant's ability to pay and the cost of services provided.

(Auth. 39-7-306, MCA, Imp. 39-7-306 MCA)

24.12.106 DISPLACED HOMEMAKER PROGRAM, ELIGIBILITY

(1) Any Montana resident who meets the definition of displaced homemaker is eligible to receive training and services.

24.12.107 DISPLACED HOMEMAKER PROGRAM, ALLOWABLE ACTIVITIES

(1) Allowable activities may include but are not limited to:

- (a) Job counseling;
- (b) Job training, including assistance to displaced homemakers in gaining admission to training and educational programs;
- (c) job placement;
- (d) referral to other social service agencies;
- (e) development of social service programs;
- (f) support services; and
- (g) development of outreach programs to rural areas.

(2) Job counseling should consist of development of an employability development plan, identification of job barriers and skill assessment, and may also include testing, personal and career goal setting and similar activities.

(3) Job training includes, but is not limited to, enrollment in a public or proprietary school or other institutional setting for pre-vocational or vocational instruction.

(4) Job placement means the hiring into unsubsidized employment of an individual served by this program.

(5) Referral to other social service agencies includes those agencies that provide information and assistance with respect to such items as health care, financial matters, education, nutrition, and legal problems.

(6) Development of social service programs includes assistance to and coordination of activities with other social service agencies in fields such as health care, financial matters, education, nutrition, and legal problems.

(7) Support services include such items as child care for preschool children, transportation assistance to participate in the program, health care, financial counseling, temporary shelter, grants for education, and post-termination services.

(8) Development of outreach programs to rural areas includes the provision of job counseling, training, placement and referral services in outlying areas. Services should be

advertised in advance, through such means as the media and local service organizations or agencies. A field office may be set up for this purpose.

(Auth. 39-7-306, MCA, Imp. 39-7-304 and 305, MCA)

24.12.108 DISPLACED HOMEMAKER PROGRAM, ANNUAL REPORT

Evaluation of the program requires submission of an annual report to the Commissioner by the administrator of each designated program:

(1) The annual report shall contain an assessment of all activities to evaluate the program's effectiveness in meeting performance standards, objectives, and performance goals as set in the grant.

(2) The annual report shall contain a final account of all expenditures incurred during the period of the grant.

(Auth. 39-7-306, MCA, Imp. 39-7-308, MCA)

24.12.109 DISPLACED HOMEMAKER PROGRAMS, FISCAL MANAGEMENT

(1) The administrator must have or must develop a acceptable system of accounting for the program, in order to achieve efficient and effective operations and to adequately report on the custody of resources under his/her management.

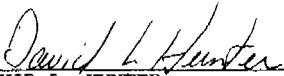
The authority of the department to adopt the rule is based on 39-7-306, MCA and the rule implements 39-7-308(2), MCA.

24.12.110 DISPLACED HOMEMAKER PROGRAM, EVALUATION

(1) The administrator must participate in the Commissioner's Management Information System (MIS) in order to provide a client tracking system, including a record on applicants, participants and terminees, to provide an evaluation of the effectiveness of the program.

(Auth. 39-7-306, MCA, Imp. 39-7-308)

5. The authority for the rule is found at 39-7-306 and the rule implements 39-7-301 thru 39-7-310, MCA.

  
\_\_\_\_\_  
DAVID L. HUNTER  
Commissioner  
Department of Labor and Industry

Certified to the Secretary of State October 17, 1983

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF THE ADOPTION OF AN
of an emergency rule pertain- )	EMERGENCY RULE WAIVING (IN
to a brucellosis test per- )	FORTY NINE COUNTIES) THE
formed on livestock before )	REQUIRED BRUCELLOSIS TEST ON
they are moved or sold in )	CATTLE BEFORE CHANGE OF
Montana. )	OWNERSHIP OR MOVEMENT WITHIN
)	THE STATE

TO: All Interested Persons.

1. On February 2, 1983 the Animal Health Division, Montana Department of Livestock requested the USDA/APHIS/VS to grant Montana national recognition as being classified "BRUCELLOSIS FREE" in 49 counties and "CLASS A" in seven counties. At present the entire state is classified "CLASS A". The change of status would give immediate economic relief to all cattle producers in the proposed "BRUCELLOSIS FREE" area. No longer would the cattle of these producers be subject to certain costly and time consuming tests for the disease of brucellosis. In the past eight years the cost that the Montana cattle industry has borne for these tests has been approximately \$4,891,948 for an average cost of \$611,493/year.

According to federal regulations, before an area may be granted a federal classification of "BRUCELLOSIS FREE" it must have had no known natural infection of the disease of brucellosis for 12 months or longer. In the proposed "BRUCELLOSIS FREE" area of 49 counties, the last known natural infection was eliminated in March of 1982.

After the initial request for change in state classification was submitted by the Department of Livestock, the USDA requested that the Brucellosis Advisory Committee of the United States Animal Health Association study the request and give their opinion on whether or not the request should be granted.

On August 26, 1983, this Committee unanimously agreed that the request is justified and should be granted. The USDA has not, as of this date, granted the request, although all regulations and criteria of the USDA have been met. Recently, however, the State of Wyoming, under similar circumstances, was recognized by the USDA as being partially "BRUCELLOSIS FREE" and partially "CLASS A".

If the classification change request is not granted, all cattle in Montana must continue to undergo a test for brucellosis with a negative finding before they can be moved to another state.

The forthcoming fall season is a time when sales and movement of cattle (both intrastate and interstate) are at their peak. Continued requirement of brucellosis testing in the proposed "BRUCELLOSIS FREE" area would be an unnecessary economic hardship.

The Board of Livestock finds this matter to be an economic emergency, and in the interests of eliminating or preventing a

peril to the welfare of the cattle industry of Montana, proposes to take emergency action. Due to federal interstate requirements the Board of Livestock, without federal recognition, cannot relieve the burden of testing on the interstate cattle seller but it can relieve the burden on the intrastate seller. The Board can do this by eliminating the requirement for testing of cattle which originate in the proposed "BRUCELLOSIS FREE" area in Montana and are not consigned to an out of state destination.

If the Board of Livestock were to adopt through normal procedures an Administrative Rule amendment eliminating these test requirements, which would provide relief to the owners of approximately 94% of all test eligible cattle in Montana, a great deal of money and time would be expended unnecessarily. Therefore, for the reasons stated above, the Board of Livestock intends to adopt the following emergency rule amendment.

2. The text of the rule is as follows:

32.3.406 TESTING OF ANIMALS

(1) Remains the same.  
(2) Remains the same.  
(3) Any female cattle, bison or elk under domestication, capable of breeding in which the eruption of the first pair of permanent incisor teeth has occurred, or which are in the third trimester of the first pregnancy and female swine and boars 6 months of age and over not consigned for immediate slaughter or to an out-of-state destination which change ownership, shall in the counties of Flathead, Lincoln, Lake, Sanders, Mineral, Missoula, and Ravalli

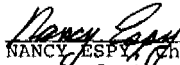
(a) Be determined to be negative as the result of an official test for brucellosis performed not more than 30 days prior to the date sold or moved, as evidenced by an official brucellosis test form of the department showing the results of the test; or

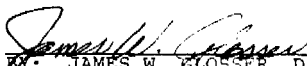
(b), (c), (d), (e), and (f) remain the same.

(4) Remains the same.

AUTH: 81-2-102, 81-2-103 MCA IMP: 81-2-102

The emergency action is effective October 4, 1983.

  
NANCY ESPY, Chairman  
Board of Livestock

  
Dr. JAMES W. GLOSIER, D.V.M.  
Administrator & State Veterinarian  
Animal Health Division

Certified to the secretary of state October 4, 1983.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT of Rule
Amendment of Rule 42.15.504	)	42.15.504 relating to the
relating to the investment	)	investment tax credit.
tax credit.	)	

TO: All Interested Persons:

1. On August 11, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.15.504 relating to the investment tax credit at pages 1021 to 1024 of the 1983 Montana Administrative Register, issue number 15.

2. The Department has amended rule 42.15.504 as proposed except for the following changes:

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 1983,  
except for short period  
periods beginning on or after  
January 1, 1983, which are  
subject to the 5% rate.



5%

Beginning after December 31,  
1982.

Subsections (2), (3), and (4) remain the same.

3. On September 6, 1983, a public hearing was held on this matter. No persons appeared to present testimony either in support of or in opposition to the proposed amendment. Mr. Ken Morrison, Income Tax Division Administrator, appeared on behalf of the Department. The Hearing Officer held that the Department had fully provided an opportunity for public input and there being none, it might proceed with the amendment of the rule. The rule is being changed to further clarify the effective dates for the investment credit rates. The rule as originally proposed did not address taxpayers who have fiscal years beginning in 1982 and ending in 1983. The change allows those taxpayers to use the 30% rate rather than the 5% rate.

4. The authority for the rule is §15-30-305, MCA, and the rule implements §15-30-162, MCA.

  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 10/17/83

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

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


TO: All Interested Persons:

1. On August 11, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.21.112 relating to mobile homes at pages 1047 and 1048 of the 1983 Montana Administrative Register, issue number 15.

2. The Department has amended rule 42.21.112 as proposed.

3. On September 1, 1983, a public hearing was held on this matter. No persons appeared to present testimony either in support of or in opposition to the rule. Mr. Randy Wilke, Real Property Bureau Chief, presented an oral justification for the Department's action in amending the rule. The comments of the Hearing Officer reflect that the justification is sufficient to support the amendment of the rule.

4. The authority for the rule is §15-1-201, MCA, and the rule implements §15-1-101, MCA.

  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 10/17/83

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF ADOPTION of Rule
of Rule I (42.22.1207) )	I (42.22.1207) relating to
relating to a 5-year statute )	a 5-year statute of limita-
of limitations for net )	tions for net proceeds of
proceeds of oil and gas. )	oil and gas.

10: All Interested Persons:

1. On August 11, 1983, the Department of Revenue published notice of the proposed adoption of rule I (42.22.1207) relating to a 5-year statute of limitations for net proceeds of oil and gas at pages 1043 and 1044 of the 1983 Montana Administrative Register, issue number 15.

2. The Department has adopted rule I (42.22.1207) as proposed except for the following changes:

42.22.1207 STATUTE OF LIMITATIONS (1) The statute of limitations pertaining to adjustments to the net ~~and gross~~ proceeds of oil and gas has been changed to 5 years - effective for production years ending on ~~on~~ or 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 the 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.

<u>Production Year</u>		<u>Statute Expiration Date</u>
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	<u>April 15</u>	March 31, 1986
1981	<u>April 15</u>	March 31, 1987
1982		April 15, 1988
1983		April 15, 1989
1984		April 15, 1990

3. Written comments on this rule were received from Mr. C. H. Macdonald, representing Shell Oil Company, and from Mr. Michael Zimmerman, representing the Montana Power Company.

Shell commented that the legislation being implemented states that the 5-year statute of limitations is effective beginning after December 31, 1977.

Response: The statement by Shell was apparently based upon a draft version of the legislation. The legislation, as enacted, is effective for taxable periods covered by returns due after December 31, 1980.

Shell commented that the legislation amending the date of filing the return from March 31st to April 15th was effective for returns after December 31, 1982, and therefore the proposed rule incorrectly states that the expiration date for 1980 and 1981 is April 15th.

Response: Comment accepted. The rule is amended accordingly.

Montana Power Company commented that the rule was not necessary because it does not make law and the statute is clear.

Response: The rule is intended to assist taxpayers in complying with the legislation by supplying a table of statute expiration dates.

Montana Power Company commented that §15-8-601, MCA, is not a statute of limitations and therefore the rule is erroneous and should not be adopted.

Response: Section 15-8-601, MCA, is a 10-year statute of limitations and the rule correctly implements this statute.

4. The authority for the rule is §15-23-108, MCA, and the rule implements §§15-8-601 and 15-23-116, MCA.

  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 10/17/83

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF ADOPTION of Rules
of Rules I and II (42.23.416 )	I and II (42.23.416 and
and 42.23.417) relating to a )	42.23.417) relating to a
formula for adjusting )	formula for adjusting
interest income exempt under )	interest income exempt under
federal law. )	federal law.

TO: All Interested Persons:

1. On August 11, 1983, the Department of Revenue published notice of the proposed adoption of rules I and II (42.23.416 and 42.23.417) relating to a formula for adjusting interest income exempt under federal law at pages 1045 and 1046 of the 1983 Montana Administrative Register, issue number 15.

2. The Department has adopted rule I (42.23.416) as proposed except for the following changes:

42.23.416 ADJUSTMENT OF ALLOWABLE DEDUCTIONS

Subsections (1)(a) through (e) remain the same.

Subsection (1)(f) is amended to provide as follows:

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

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

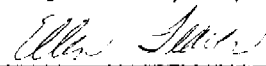
Subsection (2) remains the same.

Rule II (42.23.417) is adopted as proposed.

3. Rule I (42.23.416) was changed at the suggestion of the Montana Banker's Association. The amendment clarifies that the list of federal obligations as set forth in subsections (1)(a) through (f) is not exhaustive and that any other federal obligations will be given exactly the same treatment if the federal law is similar in its nature with respect to exemption from state taxation.

Comments on these rules were also received from Burlington Northern, Inc. B. N. presented concerns regarding the legality of the legislation being implemented (Chapter 673, Laws 1983). The comment is noted. However, the Department of Revenue is required to implement the legislation as enacted by the Montana Legislature.

4. The authority for the rules is §15-31-501, MCA, and the rules implement §15-31-116, MCA.

  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 10/17/83  
20-10/27/83 Montana Administrative Register

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

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

TO: All Interested Persons:

1. On August 11, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.23.502 relating to the investment tax credit at pages 1049 to 1051 of the 1983 Montana Administrative Register, issue number 15.

2. The Department has amended rule 42.23.502 as proposed except as follows:.

42.23.502 CORPORATION LICENSE TAX 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 these 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

20%

For Tax Years

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 1983, except for short period returns beginning on or after January 1, 1983, which are subject to the 5% rate.

5%


Beginning after December 31, 1982.

Subsections (2), (3), and (4) remain the same.

3. On September 6, 1983, a public hearing was held on this matter. No persons appeared to present testimony either in support of or in opposition to the proposed amendment. Mr. Lynn Chenoweth, Natural Resource and Corporation Tax Division Assistant Administrator, appeared on behalf of the Department. The Hearing Officer held that the Department had fully provided an opportunity for public input and there being none, it might proceed with the amendment of the rule.

The rule is being changed to further clarify the effective dates for the investment credit rates. The rule as originally proposed did not address taxpayers who have fiscal years beginning in 1982 and ending in 1983. The change allows those taxpayers to use the 30% rate rather than the 5% rate.

4. The authority for the rule is §15-31-501, MCA, and the rule implements §15-31-123, MCA.

  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 10/17/83

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


In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.5.508 per-	)	RULE 46.5.508 PERTAINING TO
taining to foster care	)	FOSTER CARE REVIEW
review committee	)	COMMITTEE

TO: All Interested Persons

1. On June 16, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.5.508 pertaining to foster care review committee at page 636 of the Montana Administrative Register, issue number 11.

2. The Department has amended the rule as proposed.

3. No written comments or testimony were received.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State \_\_\_\_\_ October 17 \_\_\_\_\_, 1983.



VOLUME NO. 40

OPINION NO. 24

BOARD OF LAND COMMISSIONERS - Board required to seek fair market value in state grazing lease fees;  
STATE LANDS - Board of Land Commissioners required to seek fair market value in state grazing lease fees;  
MONTANA CODE ANNOTATED - Sections 77-6-205, 77-6-507(1)(b), 77-6-507(3)(a);  
MONTANA CONSTITUTION - Article X, section 11.

HELD: The Board of Land Commissioners in establishing state grazing lease fees has not only the authority to negotiate leases in excess of the formula established by statute, but, in light of its constitutional sources, an absolute duty to achieve fair market value on each grazing lease it negotiates.

11 October 1983

Dennis Hemmer, Commissioner  
Department of State Lands  
1625 Eleventh Avenue  
Helena, Montana 59620

Dear Mr. Hemmer:

You have requested my opinion on the following issue raised by the Legislative Audit Committee pursuant to a recent audit report, "State-Owned and Leased Land," June, 1983 (hereinafter referred to as "audit report"):

Under section 77-6-507, MCA, may the Board of Land Commissioners charge a rental rate on state grazing lands higher than the minimum specified by statute?

Section 77-6-507, MCA, contains a formula enacted by the Montana Legislature in 1949 (with subsequent amendments) to determine a "minimum annual rental per section" in state lands leased for grazing purposes. It is the position of the Legislative Auditor that the use of the term "minimum" implies authority for the Board to seek greater fees where possible. I concur.

It is helpful to review how the leasing process actually works. Since most state lands suitable for grazing are already under lease, the key statutory provision concerns renewal of leases. Section 77-6-205, MCA, provides that the current lessee has a "preference right" to meet the highest bid made by any other applicant. This provision provides little incentive for outside bidding. The results seem to bear this out: of the 5,711 grazing leases examined in the audit report, only 284 were established by competitive bids, approximately five percent. (Audit report, p. 25, ill. 5.)

If there are no other bids, the current lessee is entitled to renew "at the rental rate provided by law." § 77-6-205, MCA. The Department of State Lands has interpreted that phrase to refer to the statutory formula contained in section 77-6-507, MCA. It has further maintained, and that is the basis of the controversy here, that it has no authority to go beyond the fee established by the statutory formula.

The formula varies according to the capacity of the land involved but its basic determinant is "six times the average price per pound of beef cattle on the farm in Montana for the previous year." § 77-6-507(3)(a), MCA. Consequently, under the formula a grazing fee is established which is unrelated to market value. The resulting disparity is indicated in the audit report: private grazing leases range from \$8 to \$12 an A.U.M. (animal-unit-month as defined in § 77-6-507(1)(b), MCA); state grazing leases charged a minimum rental rate of \$2.97 per A.U.M. for 1983.

If this were merely a matter of statutory interpretation it would be arguable to uphold the Board's position that it does not have authority to negotiate beyond the formula price established in section 77-6-507, MCA. However, as I discuss below, this subject matter touches on the basic sources of our statehood.

The requirement that the State obtain fair market value for the disposition of any interest in state lands arises from two fundamental sources.

One is the Enabling Act of 1889, the terms of which Montana accepted in exchange for the establishment of its statehood within the United States. Section 10 of

the Act (25 Stat. 676) granted the sixteenth and thirty-sixth sections of every township to the State "for the support of the common schools." Section 11 further provides:

[N]one of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state. [Emphasis added.]

The second fundamental source is the Montana Constitution which, in furtherance of this compact with the federal government, provides in article X, section 11:

No such land [referring to lands granted by Congress] or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state. [Emphasis added.]

The mandate to obtain fair market value, because of its fundamental sources, cannot be negated or diminished by statute. The Legislature may, however, establish a formula for calculating the lease price of state lands where its application results in obtaining fair market value. Indeed that was the decision in a case involving the statutorily-established 12½% royalty interest for oil and gas leases of state land. State ex rel. Strandberg v. State Board of Land Commissioners, 131 Mont. 58, 307 P.2d 234 (1957).

A recent case in South Dakota, involving a statutory framework apparently quite similar to ours, is Fox v. Kniep, Members of the Board of School and Public Lands and Kane, Commissioner, 260 N.W.2d 371 (S.D. 1977). Kane was the Commissioner of Schools and Public Lands. He compiled information which satisfied him that the return from state grazing leases was substantially below

fair market value. South Dakota had a statutory formula for establishing the state grazing fee unrelated to market value. Without having statutory authority to do so, Kane increased all state grazing leases by 50% citing the fair market value requirements in the South Dakota Constitution and Enabling Act.

A lessee brought suit charging that Kane acted beyond his authority. The South Dakota Supreme Court held that the State Constitution and Enabling Act required Kane to seek fair market value on state grazing leases. The court did not find the statutory formula violative of the fair market value standard per se, as long as it was just a starting point for bids.

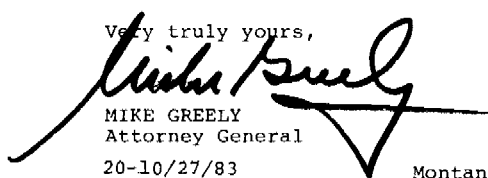
An even more recent case in point is the one of Oklahoma Education Association, v. Nigh, Commissioners of the Land Office, 642 P.2d 230 (Okla. 1982). Although the statutory formula for establishing grazing fee rentals was different from Montana's, the court found that its application resulted in substantially less than full market value and thus violated the "sacred trust" undertaken by the state in the Enabling Act and the Oklahoma Constitution.

In light of this consideration of relevant cases and fundamental sources of law, it is apparent that any statutory formula used in establishing grazing fees must result in the State's obtaining fair market value for its leasehold interest. Nothing less will satisfy the requirements of the Montana Constitution and Enabling Act. Under the Department's narrow interpretation of its authority to negotiate leases, it is possible that the entire statutory framework for establishing grazing lease fees would be found constitutionally infirm.

THEREFORE, IT IS MY OPINION:

The Board of Land Commissioners in establishing state grazing lease fees has not only the authority to negotiate leases in excess of the formula established by statute, but, in light of its constitutional sources, an absolute duty to achieve fair market value on each grazing lease it negotiates.

Very truly yours,



MIKE GREELY  
Attorney General

20-10/27/83

Montana Administrative Register

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<br>Subject<br>Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.  |
| Department                          | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.<br><br>3. Locate volume and title. |
| Subject<br>Matter and<br>Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.  |
| Title Number<br>and Department      | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.   |
| Title<br>Number and<br>Chapter      | 6. Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing the rule.)   |
| Statute<br>Number and<br>Department | 7. Go to cross reference table at end of each title which lists each MAR 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 1983 Montana Administrative Registers.

#### ADMINISTRATION, Department of, Title 2

- I-II State Assistance to Governmental Entities in  
Presidentially Declared Disasters, p. 915, 1246
- I-VII Sexual Harassment, p. 194, 287, 845
- I-IX Administration of Veterans' and Handicapped  
Civilians' Preference, p. 918, 1343
- I-XXXI Procedures of the Office of the Workers'  
Compensation Court, p. 1394
- 2.21.123 and other rules - Sick Leave, p. 1129, 1455

#### AGRICULTURE, Department of, Title 4

- I-IV Grading of Certified Seed Potatoes, p. 679
- 4.12.1202 and other rules - Alfalfa Leafcutting Bees, p. 676,  
1081

#### STATE AUDITOR, Title 6

- I Defining General Business Practices or General  
Course of Business Practice, p. 1219
- I-XV Public Adjusters, p. 1221

#### COMMERCE, Department of, Title 8

- (Board of Chiropractors)
- 8.12.603 and other rules - Examinations - Reciprocity -  
Renewals - Investigations - Complaint Procedures,  
p. 924, 1247

- (Board of Cosmetologists)  
8.14.816 and other rules - Salons - Examination - Fee Schedule - Electrology Schools - Sanitary Rules, p. 1225
- (Hearing Aid Dispensers)  
8.20.401 Traineeship Requirements and Standards, p. 1132, 1457
- (Board of Horse Racing)  
8.22.610 and other rules - Stewards - Objections, Protests - General Provisions - Imposition of Penalty and Hearing Examiner - Powers and Duties of Executive Secretary - Definition of Conduct Detrimental to Best Interest of Racing - Exotic Forms of Wagering and Bonus for Owners of Montana Breds, p. 683, 1082, 1457
- (Nursing Home Administrators)  
8.34.414 Examinations, p. 1282  
8.34.414 and other rules - Examinations - Continuing Education - Fee Schedule, p. 516, 929, 1349
- (Board of Optometrists)  
8.36.406 General Practice Requirements, p. 1410
- (Physical Therapy Examiners)  
8.42.401 and other rules - Applications - Examinations - Fees - Temporary Licenses - Foreign Trained Applicants, p. 1134
- (Renewals)  
8.44.405 and other rules - License Renewal Dates for Plumbers, Professional Engineers and Land Surveyors, Optometrists, p. 1412
- (Private Investigators and Patrolmen)  
8.50.416 License Renewal - Fee Schedule, p. 1414  
8.50.422 Fee Schedule, p. 49
- (Board of Public Accountants)  
I-VII Enforcement, p. 367, 617
- (Radiologic Technologists)  
8.56.402 and other Rule - Applications - Fee Schedule, p. 1284
- (Board of Veterinarians)  
8.64.501 Application Requirements, p. 1286
- (Milk Control Division)  
8.79.101 Transactions Involving the Purchase and Resale of Milk Within the State, p. 689, 1140
- (Board of Milk Control)  
8.86.301 Pricing Rules, p. 1142, 1459
- (County Printing)  
8.91.303 and other rule - Official Publications and Legal Advertising - Schedule of Prices, p. 795
- (Financial Bureau)  
I Retention of Bank Records, p. 693, 1458  
I Semi-Annual Assessment, P. 372  
I-IV State Grants to Counties for District Court Assistance, p. 519, 1248



(Coal Board)

- 8.101.301 and other rules - Policy Statement - Preapplication Form - Agreement Form - Submittal Deadlines - Water and/or Sewer Systems Provided by Districts, 1416

(Public Contractors)

- I Definitions, 1238

(Health Facility Authority)

- I-VIII Montana Health Facility Authority Rules, p. 1288

EDUCATION, Title 10

(Superintendent of Public Instruction)

- 10.6.122 Appellate Procedure, Notice of Appeal, Filing, p. 522, 850  
10.16.102 and other rules - Special Education Programs, p. 1148  
10.16.903 and other rules - Special Education, p. 1150  
(Board of Public Education)  
I-VII External Diploma Program, p. 930, 1249  
10.57.207 and other rules - Teacher Certification, p. 524, 990

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I-IV Game Bird Farms, p. 1428  
I-IV Fur Farms, p. 1426  
I-VIII Game Farms, p. 1422  
I-IX Captive Breeding of Raptors, p. 1430  
12.7.101 Commercial Fishing Permits, p. 1420

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I (Emergency Rule) Water Supply System or Wastewater Treatment Plant Operators, p. 602  
I Certificate of Need - Health Care Facilities, p. 1295  
I Fees for Examinations and Certification of Water and Wastewater Operators, p. 936, 1250  
I Minimum Standards for a Hospice Program, Licensing and Certification, p. 1159, 1460  
I Access to Vital Statistics Records, p. 618, 935, 1351  
I-LXII Hazardous Waste Management, p. 797, 800, 1252  
16.2.101 Model Rules, p. 1009, 1350  
16.10.101 Food Standards, p. 2123  
16.16.803 Fee Schedule for Subdivision Review, p. 535, 851  
16.18.101 and other rules - Water and Wastewater Operators, p. 1011  
16.18.102 Water and Wastewater Operators, P. 1013, 1352  
16.28.701 and other rules - School Immunization, p. 527, 852  
16.30.202 Ambulance Service Licensure, p. 934, 1251  
16.38.501 and other rules - Serological Tests, p. 1006, 1353  
16.44.202 and other rules - Hazardous Waste Management, p. 797, 800, 1261

HIGHWAYS, Department of, Title 18

- 18.5.102 and other rules - Approach Standards for Montana  
Highways, p. 538, 991  
18.6.202 Outdoor Advertising Definitions, p. 620

INSTITUTIONS, Department of, Title 20

- 20.3.201 and other rules - Approval of Chemical Dependency  
Programs - Guidelines for County Chemical  
Dependency Plans and Certification Systems for  
Chemical Dependency Personnel, p. 1162, 1463  
20.7.102 Emergency Rule - Prisoner Application Procedure,  
General Statute Requirements, p. 1084

JUSTICE, Department of, Title 23

- 23.3.119 and other rules - Vision Standards - Road Signs and  
Road Rules - Incomplete Examinations - Person  
Eligible for Driving Rehabilitation Program -  
Driver Rehabilitation Program - Cancellation for  
Withdrawal of Consent for a Minor - Other  
Information Resulting in Change of Status of  
Driver's License - Altered Driver's License, p.  
323, 853  
23.3.131 and other rules - Proof of Name and Date of Birth -  
Military Persons - Dishonored Checks - Driver's  
License, p. 395, 855

LABOR AND INDUSTRY, Department of, Title 24

- I-V Emergency Rules - Assessment on Employers in Lieu  
of Contributions and the Apportionment of Monies  
Received by Experience Rated Employers, p. 1293  
I-VI Assessment on Employers Making Payments in Lieu of  
Contributions and the Apportionment of Monies  
Received by Experience Rated Employers, p. 1240  
(Board of Labor Appeals)  
I Standards and Procedure for Reconsideration of  
Decisions, p. 938, 1464  
I-XVII Displaced Homemaker Program, p. 696  
(Human Rights Commission)  
I-VII Maternity Leave, p. 1017  
24.9.225 and other rules - Dismissal of No Cause Complaints  
- Right to Sue Letters, p. 399, 857  
24.9.226 Prehearing; Conciliation, p. 1014  
(Unemployment Insurance Division)  
(Workers' Compensation Division)  
I-VII Licensing Requirements for Hoisting Operators and  
Crane Operators, p. 1300 )  
24.29.201 and other rules - Procedural Rules, p. 622, 992

LIVESTOCK, Department of, Title 32

- I Department of Livestock License Fees, Permit Fees, and Miscellaneous Fees, p. 712, 1264

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I-XXXVI Exemption of Certain Transmission Lines From the Provisions of the Major Facility Siting Act, p. 244, 1085
- 36.22.501 and other rules - Shot Location Limitations - Plugging and Abandonment - Identification, p. 716, 1193
- 36.22.1012 and other rules - Sample of Cores and Cuttings - Filing of Completion Reports, Well Logs, Analyses Reports and Surveys - Reports by Producer, p. 720, 1195

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-II Customers' Liability for Incorrect Billings, p. 1242
- I-V Electric and Gas Line Extensions, p. 1309
- 38.4.101 and other rules - Intrastate Rail Rate Proceedings, p. 252, 1354
- 38.4.142 and other rules - Intrastate Rail Rate Proceedings, p. 1433
- 38.4.101 and other rules - Intrastate Rail Rate Proceedings, p. 252, 1354
- 38.5.201 and other rules - Compensation for Consumer Intervenor in PURPA-Related Proceedings, p. 1312

REVENUE, Department of, Title 42

- I Deductions from the Net Proceeds of Nonmetallic Mines, p. 1441
- I Deductions for Small Business Donations of Computer Equipment to Schools, p. 1437
- I Deductions for Corporate Donations of Computer Equipment to Schools, p. 1439
- I Deduction of Windfall Profits Tax From Net Proceeds, p. 1326
- I Imputed Value of Coal, p. 1329
- I Voluntary Refund Checkoff for Nongame Wildlife Fund, p. 1331
- I Deductions From Net Income, p. 943, 1265
- I Voluntary Refund Checkoff for Nongame Wildlife, p. 970, 1328
- I Nonresident Deductions for Keogh and IRA Plans, p. 1033, 1358
- I Sub S Corporation and Partnership Losses, p. 1037, 1358
- I Deduction for Insurance, Welfare, Retirement, Mineral Testing, Security and Engineering, p. 1039

- I Five Year Statute of Limitations for Net Proceeds of Oil and Gas, p. 1043
- I-II Three Year Exemption of Natural Gas from Severance Tax and One Half of the Tax on Net Proceeds, p. 1041, 1359
- I-II Formula for Adjusting Interest Income Exempt Under Federal Law, p. 1045
- 42.15.305 Trust and Estate Returns, p. 940, 1265
- 42.15.421 Standard Deduction, p. 954, 1465
- 42.15.424 Deductions for Expenses to Allow Taxpayer to be Employed, p. 945, 1465
- 42.15.425 Conformance to Federal Filing Status Required in Certain Cases, p. 1035, 1357
- 42.15.504 Investment Tax Credit, p. 1021
- 42.15.506 Computation of Residential Property Tax Credit for Elderly, p. 950, 1265
- 42.15.511 Credit for Nonfossil Energy Generation System, p. 948, 1266
- 42.16.1113 Taxation of Intangible Personal Property (Interest Income), p. 1029, 1357
- 42.17.103 Wages, p. 952, 1465
- 42.17.105 Computation of Withholding Tax, p. 628, 996
- 42.20.141 and other rules - Appraisal of Agricultural Lands, p. 58, 121, 972
- 42.21.101 and other rules - Valuation of Personal Property, p. 956, 1266
- 42.21.112 Mobile Homes, p. 1047
- 42.22.1215 Deductions for Drilling Costs and Capital Expenditures, p. 1031, 1357
- 42.23.502 Investment Tax Credit, p. 1049
- 42.24.101 and other rules - Small Business Corporation Elections, p. 1025, 1358
- 42.27.401 and other rule - Treatment of Gasohol - Alcohol Distributors, p. 631, 997
- 42.28.302 Expiration Date of Special Fuel User's Permit, p. 555, 862
- 42.31.2101 and other rules - Definition of Public Contractor - Deduction From the Gross Receipts Tax, p. 973, 1466

SECRETARY OF STATE, Title 44

- 1.2.204 and other rules - General Provisions and Format, p. 975, 1268
- 1.2.421 and other rule - Subscription to the Code-Cost - Agency Filing Fees, p. 723, 1105
- 44.5.101 Fees for Filing Documents and Issuing Certificates (Business Corporations), p. 1052, 1360

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- 46.4.129 and other rules - Home and Community Based Medicaid Service for Elderly, Physically Disabled and Developmentally Disabled Persons, p. 557, 863

20-10/27/83

Montana Administrative Register

- 46.5.505 and other rules - Licensing of Youth Foster Homes,  
p. 1333
- 46.5.508 Foster Care Review Committee, p. 428
- 46.5.508 Foster Care Review Committee, p. 636
- 46.5.801 and other rules - Licensing of Community Homes for  
Persons who are Developmentally Disabled, p. 1442
- 46.5.904 and other rules - Day Care for Children of  
Recipients, p. 725, 1196
- 46.5.1204 Payment Standards for Recipients of State  
Supplemental Payments, p. 843, 1269
- 46.10.510 Excluded Earned Income - AFDC Program, p. 1054,  
1361
- 46.11.101 Notice of Adoption of an Amendment to a Federal  
Agency Rule Incorporated by Reference - Food Stamp  
Program, p. 1244
- 46.11.111 and other rules - Food Stamp Program Retrospective  
Budgeting and Monthly Reporting, p. 638, 1107
- 46.12.102 and other rules - Medical Services, Co-payment, p.  
597, 1197
- 46.12.502 Service Not Provided by the Medicaid Program, p.  
2010
- 46.12.1201 Reimbursement for Skilled Nursing and Intermediate  
Care Services, p. 643
- 46.12.3603 and other rule - Notice of Adoption of an Amendment  
to a Federal Agency Rule Incorporated By Reference  
- Medicaid Program, p. 1079
- 46.13.102 Low Income Energy Assistance Program, p. 1063, 1362
- 46.14.102 and other rules - Low Income Weatherization  
Assistance Program, p. 1055, 1377
- 46.14.304 Low Income Weatherization Assistance Program;  
Income, p. 1341
- 46.16.101 and other rules - End Stage Renal Program, p. 600,  
897