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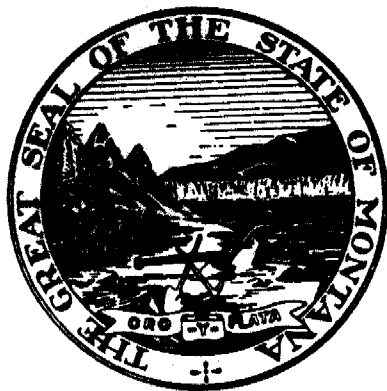
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**MONTANA
ADMINISTRATIVE
REGISTER**

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1985 ISSUE NO. 15
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PAGES 1043-1182



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON THE
of rules relating to probation)	PROPOSED ADOPTION OF RULES
for state employees)	RELATING TO PROBATION
)	FOR STATE EMPLOYEES

To: All Interested Persons.

1. On September 5, 1985, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the adoption of rules relating to probation for state employees.

2. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the probation policy.
(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that an employee newly hired or transferred into a permanent position shall complete a probationary period.

(2) It is the objective of this policy to provide minimum standards for the administration of a probationary period.
(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

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

(1) "Agency" means all executive branch departments, those agencies allocated to the state board of education under 2-15-1511, MCA, and those institutions in the department of institutions listed in 53-1-202, MCA. All attached to boards, commissions and their staffs are considered part of the department for purposes of these rules.

(2) "Discharge" means, for purposes of this policy, the termination of an employee's employment.

(3) "Employee" means all state employees except those exempted in 2-18-103 and 2-18-104, MCA.

(4) "Permanent position" means, as provided in 2-18-101, MCA, "a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA," or otherwise authorized by the legislature.

(5) "Permanent status" means, as provided in 2-18-101, MCA, "the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position."

(6) "Probationary period" means a trial period established by an agency when an employee is newly hired or transferred into a permanent or seasonal position to assess the employee's abilities to perform job duties; to assess the employee's conduct on the job, and to determine if the employee should be retained beyond the probationary period and attain permanent status.

(7) "Promotion" means the assignment of an employee or a position to a higher grade, except where the position moves to a higher grade as the result of reclassification.

(8) "Reassignment" means the assignment of an employee from one position to another position in the same agency.

(9) "Seasonal position" means, as provided in 2-18-101, MCA, "a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA, and which is a permanent position but which is interrupted by the seasonal nature of the position."

(10) "Temporary position" means, as provided in 2-18-101, MCA, "a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA, created for a definite period of time not to exceed 9 months."

(11) "Transfer" means a change of employment from one state agency to another state agency without a break-in-service.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE IV PERMANENT STATUS (1) An employee attains permanent status after satisfactorily completing an appropriate probationary period in a permanent or seasonal position.

(2) An employee in a temporary position or an employee temporarily hired into a permanent position for less than 9 months is not eligible to attain permanent status.

(3) Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001, et seq., and the reduction-in-work force policy, ARM 2.21.5005, et seq., apply to an employee who has attained permanent status as provided in this rule. (These policies are also found at 3-0130, the discipline handling policy; 3-0125, grievances, and 3-0155, reduction-in-work force policy in the Montana operations manual, volume III.)

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE V PROBATIONARY PERIOD (1) An agency shall establish a probationary period for employees newly hired or transferred into permanent or seasonal positions and set the length of the probationary period.

(2) An appropriate probationary period is a minimum of 6 calendar months to a maximum of 1 calendar year, unless otherwise provided by law, or extended beyond the maximum by Rule VI.

(3) The agency shall inform the employee of the length of the probationary period at the time of employment.

(4) An agency is permitted to, but not required to, credit time in an approved leave of absence without pay toward completion of a probationary period. This includes leaves of absence between seasons for a seasonal position. Employees returning from an approved leave of absence without pay are not required to begin a new probationary period.

(5) The agency shall complete a performance appraisal for an employee in a permanent position prior to the end of a probationary period, in accordance with the performance appraisal policy, ARM 2.21.6401 et seq., and specifically with ARM 2.21.6411(2) (also found at policy 3-0115, Montana operations manual, volume III). Performance appraisal may, at the agency's

discretion, be completed for an employee in a seasonal position, consistent with ARM 2.21.6411(3).

(6) Unless an employee receives written notification that the employee has not satisfactorily completed the established probationary period on or before the end of the probationary period, the employee attains permanent status.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE VI EXTENSION OF PROBATIONARY PERIOD (1) An agency may extend the length of a probationary period up to an additional 6 calendar months. The agency may not extend a probationary period more than 6 calendar months.

(2) When the probationary period is extended, the agency must notify the employee in writing on or before the end of the established probationary period that the probationary period has been extended and the agency must inform the employee of the length of the extension.

(3) An employee whose probationary period has been extended does not attain permanent status until the employee successfully completes the additional probationary period.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE VII DISCHARGE OF A PROBATIONARY EMPLOYEE (1) An employee who has not attained permanent status may be discharged at any time during the probationary period.

(2) The agency shall take reasonable steps necessary to verify the reason for discharge prior to discharge and the reason for discharge shall be communicated to the employee.

(3) Provision of the discipline handling policy, ARM 2.21.6505 et seq., the grievance policy, ARM 2.21.8001 et seq., and the reduction-in-work force policy, 2.21.5005 et seq., do not apply to a probationary employee, except as provided in Rule VIII (2).

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE VIII PROMOTED OR REASSIGNED EMPLOYEES WITH PERMANENT STATUS (1) An employee who has attained permanent status and who is internally promoted or internally reassigned retains permanent status in the new position, as provided in Rule IV, with the following exception.

(2) An employee who is internally promoted shall serve a probationary period, as provided in Rules V and VI, only for purposes of evaluating whether to retain the employee in the promoted position or to return the employee to the previous position or another position equivalent to the previous position.

(3) Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001, et seq., and the reduction-in-work force policy, ARM 2.21.5005, et seq., do not apply to a decision by the agency to return the employee to the previous position or another position equivalent to the previous position during the probationary period following promotion.

(4) Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001, et seq., and the reduction-in-work force policy, ARM 2.21.5005, et seq.,

do apply to any other personnel action which might be taken during the probationary period following promotion.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE IX TRANSFERRED EMPLOYEES (1) An employee who has attained permanent status in an agency and who applies for and is transferred to another agency loses permanent status and shall have no rights to the position held in the former agency.

(2) The transferred employee shall complete a probationary period with the new agency.

(3) Where a position or work unit is transferred between agencies as a result of reorganization, an employee retains permanent status in the agency to which the position or work unit transfers. The employee shall have no rights to a position in the agency from which the position or work unit is transferred.

(4) Pay for an employee who transfers shall be administered in compliance with the pay plan rules, policy 3-0505, Montana operations manual, volume III. (Copies available at the state personnel division, department of administration.)

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

RULE X CLOSING (1) Provisions of this policy not required by statute shall be followed unless they conflict with negotiated labor contracts, which will take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

3. "Permanent status" is a term defined in 2-18-101 (11), MCA, as "the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position." By attaining permanent status, certain rights and benefits are extended in administrative rules on personnel, including the right to disciplinary action for cause, the right to reinstatement following reduction-in-work force, and the right to file a grievance. The statutes do not describe an "appropriate probationary period" or what an employee must do to "satisfactorily" complete such a period and attain permanent status. To date, each department or agency has used its discretion to make these determinations. The agencies have requested consistent administrative rules on probation for several years. The State Personnel Division, Department of Administration also receives numerous inquiries from employees regarding probation. These rules are proposed to establish consistent minimum standards to be applied by all agencies to administer a probationary period and to determine when an employee attains permanent status.

4. The rules as proposed include a short title, a policy and objectives statement and definitions.

RULE IV, PERMANENT STATUS, identifies employees who are eligible to attain permanent status and specifically applies provisions of the discipline handling policy, reduction-in-work force policy and grievance policy to employees who have attained permanent status.

RULE V, PROBATIONARY PERIOD, establishes time frames for an appropriate probationary period, provides that an employee must be informed of the length of the probationary period at the time of employment, provides that performance appraisal must be completed in accordance with the performance appraisal rules and provides that an employee must receive written notice on or before the end of the probationary period, if the period is to be extended and the employee is not to attain permanent status. The rule is proposed to provide consistent administration of the procedures for a probationary period.

RULE VI, EXTENSION OF PROBATIONARY PERIOD, deals with procedures to be followed if the probationary period is to be extended, including written notice of the length of the extension and a maximum extension of no more than six months. An extension of a probationary period may be necessary to provide the employee with additional time to demonstrate competence on the job. This rule is proposed to give agencies the flexibility to extend the additional time to the employee, rather than automatically discharge the employee who has not successfully completed the original probationary period. The time is limited to six months so that some determination is made in a reasonable period of time regarding continuing employment for the employee.

RULE VII, DISCHARGE OF A PROBATIONARY EMPLOYEE, addresses steps required of an agency to discharge an employee who has not attained permanent status and provides that rules do not apply on discipline handling, reduction-in-work force and grievance to the discharge of a probationary employee. This rule is proposed to guide agencies in the discharge of a probationary employee in light of recent court decisions.

RULE VIII, PROMOTED OR REASSIGNED EMPLOYEES WITH PERMANENT STATUS, provides that employees who are promoted or reassigned within an agency do not lose permanent status which they have already attained, with one exception. Such an employee will serve a probationary period only for purposes of evaluating whether to retain the employee in the new position or to return the employee to the previous position or an equivalent position. Rules on discipline handling, reduction-in-work force and grievance would not apply to a decision to return the employee to the former position, but would apply to any other personnel action taken during the probationary period. This rule is proposed to address the need expressed by the agencies to have a period of time to evaluate an employee who has been promoted or reassigned in the same manner a new hire is evaluated. The rule contains protections for employees who have attained permanent status for all personnel actions, except a decision to return the employee to the former position.

RULE IX, TRANSFERRED EMPLOYEES, provides that an employee who applies for and is transferred to another agency loses permanent status, has no rights to a position in the previous agency and must complete a new probationary period. This rule reflects current practice. Agencies have expressed the need for

an evaluation period for transferred employees, who are, in essence new employees to the agency, although not new to state government. Because each agency recruits and hires independently, it would create an unfair burden to force an agency to reinstate an employee who voluntarily accepts a transfer to another agency, but does not successfully complete probation in the new position. The exception to this procedure is the transfer between agencies of a position or work unit as the result of reorganization. In this case, the employee would retain permanent status in the new agency and would have no reinstatement rights in the former agency.

RULE X, CLOSING, exempts conflicting provisions of negotiated labor contracts from these rules.


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

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

no later than September 16, 1985.

6. Mark Cress, Chief, Employee Relations Bureau, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed adoption is based on 2-18-102, MCA, and the rules implement 2-18-101 and 2-18-102, MCA.



Ellen Weaver, Director
Department of Administration

Certified to the Secretary of State August 5, 1985.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

and

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

In the matter of the adoption of) NOTICE OF PUBLIC HEARING
rules pertaining to discrimination) ON THE PROPOSED ADOPTION
in insurance and retirement plans.) OF RULES I THROUGH VI

To: All Interested Persons

1. On September 13, 1985 at 9:00 a.m., a public hearing will be held in room C-209, Cogswell Building, 1401 Lockett, Helena, Montana, to consider the adoption of proposed rules pertaining to the implementation of 49-2-309, MCA relating to discrimination in insurance and retirement plans.

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

3. The proposed rules provide as follows:

RULE I. DEFINITIONS (1) The term "insurer" as used in these rules includes the definition of insurer found in section 33-1-201(6), MCA, the definition of financial institution found in section 49-2-101(10), MCA, and the definitions of person found in sections 33-1-202(3) and 49-2-101(15), MCA.

(2) The term "renewal" as used in these rules means the act whereby an insurer and insured agree to an extension or continuation of an existing insurance policy, plan or coverage or retirement plan, program or coverage when no consideration was given in the original contract for the right to renew under the same terms. The fact that the contract formed by extension or continuation is identical to the original contract is not material if no consideration for the right to extend or continue the original terms of the contract was given.

AUTH: 49-2-204, MCA and 33-1-313, MCA; IMP: 49-2-309, MCA.

RULE II RATES OR PREMIUMS (1) Rates or premiums for any insurance policy, plan, or coverage on a risk, when the risk is resident, located, or to be performed in the State of Montana shall not be based on sex or marital status.

(2) Rates or premiums for any pension or retirement plan, program, or coverage, which is issued in Montana or where the participant resides in Montana, shall not be based on sex or marital status.

(3) Factors which may be taken into account to determine rates or premiums for motor vehicle liability and property coverage include, but are not limited to:

- (a) The age of the driver.
- (b) The length of driving experience.
- (c) The number of years licensed to operate a motor vehicle.
- (d) A determination of which driver, among several insured individuals, is the primary driver of a covered vehicle, based upon the proportionate use of each vehicle insured under the policy by individual drivers insured or to be insured under the policy.
- (e) Average number of miles driven over a period of time.
- (f) Type of use, such as business, farm, or pleasure use.
- (g) Vehicle characteristics, features, and options such as engine displacement, ability of vehicle and its equipment to protect passengers from injury, vehicle make and model, and design characteristics related to damagability of the vehicle.
- (h) Commuting mileage over a period of time.
- (i) The number of cars insured or number of licensed operators in the household, without regard to the sex or marital status of the licensed operators. An insurer may not utilize a policy of establishing insurance rates for an individual based upon the driving record of a spouse who is a licensed operator but not a primary driver of the vehicle to be insured unless the policy is applied in the same manner to households of individuals not married to each other.
- (j) The amount of insurance.
- (k) The income of the insured.
- (l) The anticipated cost of vehicle repairs or replacement, which may be measured by age, price, cost, or value of the insured automobile, and other related factors.
- (m) Geographic location.
- (n) The accident record of the insured, including accidents for which the insured, although not cited, was substantially at fault.
- (o) The driving record of the insured, including

citations.

(4) Rates or premiums charged by any insurer as a provider of a life or disability insurance policy, plan, program, or coverage may be based on factors such as age, weight, general health, personal habits such as smoking or other use of tobacco, consumption of alcoholic beverages, and the hazardous nature of work or recreation engaged in by the insured.

(5) No rates or premiums established to comply with these rules shall be excessive or unreasonably high or shall result in undue enrichment to an insurer. No insurer may attempt to comply with §49-2-309, MCA, or these rules, by merely raising rates for women to the same level previously charged to men or by merely raising rates for men to the same level previously charged to women, unless those rates are based on reasonable grounds.

(6) Every insurer shall file for record purposes its rates or premiums for any insurance policy, plan or coverage or retirement plan, program or coverage to be offered on or after October 1, 1985 with the Office of Insurance Commissioner in a format acceptable by that office. The rates and premiums to be filed for record purposes are those which the insurer proposes to use in compliance with Section 49-2-309, MCA, and these rules. The filings will serve to meet the applicable requirements of Title 33 of Montana Code Annotated and will be reviewed by the Insurance Commissioner if specific statutory authority permits. Copies of the filings will be made available to the Human Rights Commission by the Insurance Commissioner or by the insurer upon request.

AUTH: 49-2-204 and 33-1-313, MCA; IMP: 49-2-309, MCA.

RULE III PAYMENTS OR BENEFITS (1) No payments or benefits of any insurance policy, plan, or coverage or retirement plan, program, or coverage shall be based on sex or marital status.

(2) No payments or benefits of any insurance policy, plan, or coverage or retirement plan, program, or coverage shall result in undue enrichment to an insurer. No insurer may attempt to comply with §49-2-309, MCA, or these rules by merely lowering payments or benefits to the same level previously paid to men or by merely lowering the payments and benefits to the same level previously paid to women unless those payments and benefits are based on reasonable grounds.

AUTH: 49-2-204, MCA and 33-1-313, MCA; IMP: 49-2-309, MCA.

RULE IV APPLICABILITY DATE (1) All insurance policies, plans, or coverages and retirement plans, programs or coverages subject to the laws of Montana and issued or entered into on or after October 1, 1985 shall not discriminate in issuance on the basis of sex or marital status and any payments or benefits provided by such

policies, plans, programs or coverages shall be provided without discrimination on the basis of sex or marital status.

(2) Any term, payment, or benefit of an insurance policy, plan, or coverage or retirement plan, program or coverage in effect prior to October 1, 1985, may be exercised in accordance with the terms of that policy, plan, program, or coverage. Options to increase or decrease coverage, annual rate adjustments (as opposed to annual renewals), and settlement options in life insurance policies are examples of terms which if included in a policy, plan, program or coverage in effect prior to October 1, 1985, may be exercised without regard to §49-2-309, MCA, or these rules.

(3) Section 49-2-309, MCA, and these rules, are applicable to any renewal of any insurance policy, plan, or coverage or retirement plan, program or coverage on or after October 1, 1985.

(4) Section 49-2-309, MCA, and these rules, are applicable to any new certificate issued under any group insurance policy, plan or coverage or group retirement plan, program or coverage on or after October 1, 1985. AUTH: 49-2-204, MCA and 33-1-313, MCA; IMP: 49-2-309, MCA.

RULE V JURISDICTION (1) Section 49-2-309, MCA, and these rules, do not apply to any insurance policy, plan, or coverage or retirement plan, program or coverage issued to or provided to a person who resided in a state other than Montana at the time the policy, plan, program or coverage became effective. Section 49-2-309, MCA, and these rules apply to any insurance policy, plan or coverage or retirement plan, program or coverage renewed by a person who resides in Montana, regardless of the place of issuance.

(2) Section 49-2-309, MCA, and these rules, apply to any insurance policy, plan, or coverage or retirement plan, program or coverage issued or provided to a person who resides in Montana, regardless of the place of issuance. An insurer shall be on notice that a person resides in Montana if the address for the person on the application or policy is a Montana address.

(3) Section 49-2-309, MCA, and these rules, apply to any group insurance policy, plan, or coverage or group retirement plan, program or coverage when individuals residing in Montana are solicited to purchase or join the group insurance policy, plan, or coverage or group retirement plan, program or coverage.

(4) Section 49-2-309, MCA, and these rules, apply to any benefit or payment contract issued or to be performed in Montana regardless of the place of the original policy issuance.

AUTH: 49-2-204, MCA and 33-1-313, MCA; IMP: 49-2-309, MCA.

RULE VI SEVERABILITY If any provision of these rules or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the rules and application of such provisions to other persons or circumstances shall not be affected thereby.

AUTH: 49-2-204, MCA and 33-1-313, MCA; IMP: 49-2-309, MCA.

4. These rules are proposed to implement the Montana Act to prohibit discrimination on the basis of sex or marital status in the issuance or operation of insurance policies and retirement plans.

5. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing no later than September 12, 1985 to:

Robert R. Throssell, Chief Legal Counsel
State Auditor & Insurance Commissioner's Office
Room 270, Mitchell Building or P.O. Box 4009
Helena, MT 59620 Helena, MT 59604

and to:

Anne L. MacIntyre, Administrator
Human Rights Division
Room C-317, Cogswell Building
Capitol Station
Helena, MT 59620

6. John Bebee has been designated to preside over and conduct the hearing on behalf of the Insurance Commissioner.

7. Anne L. MacIntyre has been designated to preside over and conduct the hearing on behalf of the Human Rights Commission.

8. The authority of the Insurance Commissioner to make the proposed rules is based on section 33-1-313, MCA, and the rules implement section 49-2-309, MCA.

9. The authority of the Human Rights Commission to make the proposed rules is based on section 49-2-204, MCA and the rules implement section 49-2-309, MCA.

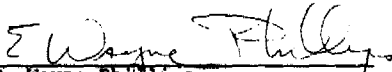
HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By:


Anne L. MacIntyre, Administrator
Human Rights Division

STATE AUDITOR AND COMMISSIONER
OF INSURANCE
ANDREA "ANDY" BENNETT

By:


E. Wayne Phillips
Chief Deputy Auditor

Certified to the Secretary of State this 5th day of
August, 1985.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.28.501 concern-) OF 8.28.501 APPROVAL OF
ing approval of schools) SCHOOLS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 14, 1985, the Board of Medical Examiners proposes to amend rule 8.28.501.

2. The proposed amendment amends subsection (1) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-867, Administrative Rules of Montana)

"8.28.501 APPROVAL OF SCHOOLS (1) Acupuncture schools or colleges which offer a minimum course of 50 1000 hours in recognized branches of acupuncture and are approved by the American Medical Association or have any equivalent curricula as determined by the board, will be approved by the board.

(2) ..."

Auth: 37-13-201 (1), MCA Imp: 37-13-302 (2)(c), MCA

3. The board feels that 50 hours of acupuncture education is not sufficient to practice acupuncture, and also wants to conform to the minimum qualifications needed to sit for the National Acupuncture Examination.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 12, 1985.

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 Medical Examiners, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 12, 1985.

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 no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF MEDICAL EXAMINERS

JOHN A. LAYNE, M.D.,

PRESIDENT

BY: Keith L. Colbo

KEITH L. COLBO, DIRECTOR

DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

MAR NOTICE NO. 8-28-29

15-8/15/85

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.32.402 concern-	)	CONCERNING 8.32.402 LICENSURE
ing licensure by examination,	)	BY EXAMINATION, 8.32.408
8.32.408 concerning temporary	)	TEMPORARY WORK PERMIT, 8.32.409
work permits, 8.32.409 concern-	)	PREPARATION OF LICENSES, 8.32.
ing preparation of licenses,	)	413 CONDUCT OF NURSES, 8.32.507
8.32.413 concerning conduct of	)	CONSIDERATION OF REAPPLICATION
nurses, 8.32.507 concerning	)	FOR A LICENSE AFTER PREVIOUS
consideration of reapplication	)	DENIAL, REVOCATION OR SUSPEN-
for a license after previous	)	SION, 8.32.603 OFFICERS, 8.32.
denial, revocation or suspen-	)	606 DUTIES OF MEMBERS, and
sion, 8.32.603 concerning of-	)	PROPOSED ADOPTION OF NEW
ficers, 8.32.606 concerning	)	RULES CONCERNING STANDARDS
duties of board members, and	)	FOR NURSING PRACTICE
proposed adoption of new)	
rules concerning standards)	
for nursing practice)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 14, 1985, the Board of Nursing proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.32.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-975 and 8-975.1, Administrative Rules of Montana)

"8.32.402 LICENSURE BY EXAMINATION (1) ...

(3) A letter "F" on a transcript in a required course is not considered "successful completion" as required by law for admission to the licensing examination and such candidate with an "F" on a transcript in a required course will not be allowed to sit for the licensing examination for either registered nurses or practical nurses.

(4) All candidates desiring to write the licensing examination for registered nursing or practical nursing shall make application for licensure to the board on a form provided by the board and shall make application for the examination to the National Licensing Examinations (NCLEX) on a form distributed by the board as provided by the National Council of State Boards of Nursing.

(5) (4) ...

(7) (6) The application for the examination and the appropriate fee shall be submitted to and received by the National Council Licensing Examination (NCLEX). for Nursing no less than 7 The postmark deadline for submitting the examination application is eight weeks prior to the examination date.

(8) (7) A standard scaled score of 1600 shall be required as a minimum passing score for licensure as a registered professional nurse.

{9} (8) A standard scaled score of 350 shall be required as a minimum passing score for licensure as a practical nurse.

{10} (9) Candidates who pass shall be notified regarding the examination scores by mail in writing only.

{11} (10) ...

{12} (11) Candidates who fail shall receive the results of the examination and a ~~letter of notification~~ notice of the next scheduled examination date.

{13} (12) ..."

Auth: 37-8-202, MCA Imp: 37-8-202, 406, 416, MCA

3. The amendment is proposed to conform to the current licensing examination process and to establish a uniform deadline date for submitting applications for licensure by examination and for use of the examination. The different deadline dates have been confusing to the applicant for licensure by examination and have often resulted in late receipt of the applications.

4. The proposed amendment of 8.32.408 will amend subsection (1) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-977 and 8-978, Administrative Rules of Montana)

"8.32.408 TEMPORARY WORK PERMIT (1) Graduates of approved professional nursing educational programs or practical nursing education programs pending the results of the first licensing examination scheduled by the board following such graduation, and for which they are eligible may accept employment in Montana as a professional or practical nurse and be granted a temporary work permit provided that:

(a) ..."

Auth: 37-8-202, MCA Imp: 37-8-430, MCA

5. The amendment to 8.32.408, as well as 8.32.409, 8.32.603 and 8.32.606 is being proposed to delete obsolete statements and to extend and clarify other statements.

6. The proposed amendment of 8.32.409 will read as follows: (new matter underlined, deleted matter interlined)

"8.32.409 PREPARATION OF LICENSES (1) The executive secretary and the president of the board shall sign the original licenses and the necessary names shall be printed on the new forms."

Auth: 37-8-202, MCA Imp: 37-8-202, 401, MCA

7. The amendment is proposed for the reasons stated in paragraph 5.

8. The proposed amendment of 8.32.413 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-979 and 8-980, Administrative Rules of Montana)

"8.32.413 CONDUCT OF NURSES (1) ...

(2) Unprofessional conduct, for purposes of defining subsection ~~(6)~~ (5) of section 37-8-411, MCA, is determined by the board to mean nursing behavior (acts, knowledge, and practices) which fails to conform to the accepted standards of the nursing profession and which could jeopardize the health and welfare of the people and shall include but not be limited to the following:

(a) ...

(j) altering and/or manipulating drug supplies, narcotics, or patients' records;

(k) falsifying patients' records, or intentionally charting incorrectly, failing to chart;

(l) ...

(w) failing to report, to the board of nursing through the proper channels facts known to the individual regarding the incompetent, unethical, or illegal practice of any licensed health care professional, or unlicensed person practicing nursing;

(y) ...

Auth: 37-8-202, MCA Imp: 37-8-202, 441, MCA

9. The amendment is proposed to more explicitly define and expand the components of unprofessional conduct.

10. The proposed amendment of 8.32.507 will amend subsection (1) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-980.6, Administrative Rules of Montana)

"8.32.507 CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL, REVOCATION OR SUSPENSION (1)

Reapplication: Reapplication for a license previously denied, revoked or suspended must include evidence of rehabilitation, or elimination or cure of the conditions for denial, revocation or suspension.

(2) Evaluation-of-reapplication: ..."

Auth: 37-8-202, MCA Imp: 37-8-202, 37-1-136, MCA

11. The amendment is proposed as licenses may be revoked and suspended, as well as denied. The amendment will include those licensees who have had a license revoked or suspended for consideration of reapplication for a license.

12. The proposed amendment of 8.32.603 will amend subsection (1) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of

the rule is located at page 8-982, Administrative Rules of Montana)

"8.32.603 OFFICERS (1) The terms term of office of for each officers officer shall be for one year and shall begin at the close of the annual meeting. The term of office for each shall be until the next annual meeting.

(2) ..."

Auth: 37-8-202, MCA Imp: 37-8-202, MCA

13. The amendment is proposed for those reasons stated in paragraph 5.

14. The proposed amendment of 8.32.606 amends subsections (1)(d) and (f) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-983, Administrative Rules of Montana)

"8.32.606 DUTIES OF MEMBERS (1) The members acting as the board of nursing shall:

(a) ...

(d) develop and amend rules and regulations consistent with the law, to fulfill the provisions of the nursing practice act;

(e) ...

(f) recommend the budget according to the laws and regulations rules of the state of Montana."

Auth: 37-8-202, MCA Imp: 37-8-202, MCA

15. The amendment is proposed for those reasons stated in paragraph 5.

16. The proposed new rules relating to standards of nursing practice will read as follows:

"I. DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) 'Board' - the Montana board of nursing.

(2) 'Competency' - performing skillfully and proficiently the functions that are within the role of the licensee; and demonstrating the interrelationship of essential knowledge, judgment and skills.

(3) 'Health team' - a group of health care providers which may, in addition to health care practitioners, include the client, family and significant others.

(4) 'Nursing process' - the traditional systematic method nurses use when they provide nursing care, including assessment, nursing analysis, planning, nursing intervention and evaluation.

(5) 'Peer review' - the process of evaluating the practice of nursing, conducted by other nurses with similar qualifications.

(6) 'Prescribing' - specifying nursing intervention(s) intended to implement the defined strategy of care. This includes the nursing behaviors that nurses shall perform when delivering nursing care, though not necessarily sequentially or all in each given situation: assessment, nursing analysis, planning, nursing intervention and evaluation.

(7) 'Standard' - an authoritative statement by which the board can judge the quality of nursing education or practice.

(8) 'Strategy of care' - the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to well being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen, including but not limited to the administration of medications."

Auth: 37-1-131, 37-8-202, MCA Imp: 37-1-131, 37-8-202, MCA

"II. PURPOSE OF STANDARDS OF NURSING PRACTICE FOR THE REGISTERED NURSE The purpose of the standards is

(1) to establish minimal acceptable levels of safe effective practice for the registered nurse.

(2) to serve as a guide for the board to evaluate safe and effective nursing care."

Auth: 37-1-131, 37-8-202, MCA imp: 37-1-131, 37-8-202, MCA

"III. STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS The registered nurse shall:

(1) conduct and document nursing assessments of the health status of individuals and groups by:

(a) collecting objective and subjective data from observations, examinations, interviews, and written records in an accurate and timely manner. The data includes but is not limited to;

- (i) biophysical, emotional and mental status,
- (ii) growth and development,
- (iii) cultural, spiritual and socio-economic background,
- (iv) family health history,
- (v) information collected by other health team members,
- (vi) client knowledge and perception about health status and potential, or maintaining health status,
- (vii) ability to perform activities of daily living,
- (viii) patterns of coping and interacting,
- (ix) consideration of client's health goals,
- (x) environmental factors (e.g. physical, social, emotional and ecological), and

- (xi) available and accessible human and material resources.
 - (b) sorting, selecting, reporting and recording the data;
 - (c) validating, refining and modifying the data by utilizing available resources, including interactions with the client, family, significant others, and health team members.
 - (2) establish and document nursing analysis which serves as the basis for the strategy of care;
 - (3) develop the strategy of care based upon data gathered in the assessment and conclusions drawn in the nursing analysis. This includes:
 - (a) identifying priorities in the strategy of care;
 - (b) collaboration with the client to set realistic and measurable goals to implement the strategy of care;
 - (c) prescribing nursing intervention(s) based on the nursing analysis;
 - (d) identifying measures to maintain comfort, to support human functions and positive responses, to maintain an environment conducive to teaching to include appropriate usage of health care facilities.
 - (4) implement the strategy of care by:
 - (a) initiating nursing interventions through;
 - (i) giving direct care,
 - (ii) assisting with care,
 - (iii) delegating care,
 - (iv) collaboration and/or referral when appropriate.
 - (b) providing an environment conducive to safety and health,
 - (c) documenting nursing interventions and responses to care to other members of the health team;
 - (d) communicating nursing interventions and responses to care to other members of the health team.
 - (5) evaluate the responses of individuals or groups to nursing interventions. Evaluation shall involve the client, family, significant others and health team members of the health team.
 - (a) Evaluation data shall be documented and communicated to appropriate members of the health care team.
 - (b) Evaluation data shall be used as a basis for reassessing client health status, modifying nursing analysis, revising strategies of care, and prescribing changes in nursing interventions.
 - (c) Research data shall be utilized in nursing practice."
- Auth: 37-1-131, 37-8-202, MCA imp: 37-1-131, 37-8-202, MCA

"IV. STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION The registered nurse shall:

- (1) have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of nursing practice.
- (2) accept responsibility for individual nursing actions and competence and base practice on validated data.
- (3) obtain instruction and supervision as necessary when implementing nursing techniques or practices.
- (4) function as a member of the health team.
- (5) collaborate with other members of the health team to provide optimum client care.
- (6) consult with nurses and other health team members and make referrals as necessary.
- (7) contribute to the formulation, interpretation, implementation and evaluation of the objectives and policies related to nursing practice within the employment setting.
- (8) participate in the evaluation of nursing through peer review.
- (9) report unsafe nursing practice to immediate supervisor and the board of nursing and unsafe practice conditions to recognized legal authorities.
- (10) report practice of nursing by unlicensed individuals to the board of nursing.
- (11) delegate to another only those nursing measures which that person is prepared or qualified to perform.
- (12) supervise others to whom nursing interventions are delegated.
- (13) retain professional accountability for nursing care when delegating nursing interventions.
- (14) conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin or handicap.
- (15) respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.
- (16) respect the client's right to privacy by protecting confidential information unless obligated by law to disclose the information.
- (17) respect the property of clients, family, significant others and the employer."

Auth: 37-1-131, 37-8-202, MCA Imp: 37-1-131, 37-8-202, MCA

"V. PURPOSE OF STANDARDS OF NURSING PRACTICE FOR THE LICENSED PRACTICAL NURSE The purpose of the standards is to:

- (1) establish minimal acceptable levels of safe practice for the licensed practical nurse; and
- (2) serve as a guide for the board to evaluate safe and effective nursing care."

Auth: 37-1-131, 37-8-202, MCA Imp: 37-1-131, 37-8-202, MCA

"VI. STANDARDS RELATED TO THE LICENSED PRACTICAL NURSE'S CONTRIBUTION TO THE NURSING PROCESS The licensed practical nurse shall:

- (1) contribute to the nursing assessment by:
 - (a) collecting, reporting and recording objective and subjective data in an accurate and timely manner. Data collection includes;
 - (i) observation about the condition or change in condition of the client,
 - (ii) signs and symptoms of deviation from normal health status.
 - (2) participate in the development of the strategy of care by:
 - (a) providing data;
 - (b) contributing to the identification of priorities;
 - (c) contributing to setting realistic and measurable goals;
 - (d) assisting in the identification of measures to maintain comfort, support human functions and responses, maintain an environment conducive to well-being, and provide health teaching.
 - (3) participate in the implementation of the strategy of care by:
 - (a) providing care for clients under the supervision of a registered nurse, a physician, dentist, osteopath, or podiatrist;
 - (b) providing an environment conducive to safety and health;
 - (c) documenting nursing interventions and responses to care;
 - (d) communicating nursing interventions and responses to care to appropriate members of the health team.
 - (4) contribute to the evaluation of the responses of individuals or groups to nursing interventions;
 - (a) evaluation data shall be documented and communicated to appropriate members of the health care team;
 - (b) the licensed practical nurse shall contribute to the modification of the strategy of care on the basis of the evaluation."

Auth: 37-1-131, 37-8-202, MCA Imp: 37-1-131, 37-8-202, MCA

"VII. STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S RESPONSIBILITIES AS A MEMBER OF THE HEALTH TEAM The licensed practical nurse shall:

- (1) have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of practical nursing practice.
- (2) accept responsibility for individual nursing actions and competence.

- (3) function under the supervision of a registered nurse, a physician, dentist, osteopath or podiatrist.
 - (4) consult with registered nurses and/or other health team members and seek guidance as necessary.
 - (5) obtain instruction and supervision as necessary when implementing nursing techniques or practices.
 - (6) function as a member of the health team.
 - (7) contribute to the formulation, interpretation, implementation and evaluation of the objectives and policies related to practical nursing practice within the employment setting.
 - (8) participate in the evaluation of nursing through peer review.
 - (9) report unsafe nursing practice to the board and unsafe practice conditions to recognized authorities.
 - (10) report the practice of nursing by unlicensed individuals to the board.
 - (11) conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national original or handicap.
 - (12) respect the dignity and rights of clients regardless of social and economic status, personal attributes or nature of health problems.
 - (13) respect the client's right to privacy by protecting confidential information, unless obligated by law to disclose such information.
 - (14) respect the property of clients, family, significant others and the employer."
- Auth: 37-1-131, 37-8-202, MCA imp: 37-1-131, 37-8-202, MCA

17. The board is proposing adoption of rules I. through VII. to establish minimal accepted levels of safe practice for the registered nurse and the licensed practical nurse and to serve as a guide and a base line for the board to evaluate safe and effective nursing care in matters of unprofessional conduct.

18. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Nursing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 12, 1985.

19. If a person who is directly affected by the proposed amendments and adoptions 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 Nursing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 12, 1985.

20. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly

affected by the proposed amendments and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 114 based on the 11,493 licensed registered and practical nurses in Montana.

BOARD OF NURSING
THERESE SULLIVAN, R.N.
PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

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

In the matter of the proposed amendments of 8.97.301 concerning definitions, 8.97.402 concerning criteria for determining eligibility, 8.97.503 concerning increasing pooled program from \$1,000,000 to \$3,000,000, 8.97.504 concerning clarification of bonding limit, 8.97.505 concerning eligibility for pooled projects 8.97.509 concerning guarantee fee and proposed adoption of new rules under sub-chapter 4, concerning the loans to Capital Reserve Account or Guarantee Fund and rules concerning the creation of a loan loss reserve fund for the in-state investment fund)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS OF 8.97.301 DEFINITIONS, 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY, 8.97.503 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM, 8.97.504 BONDING LIMIT, 8.97.505 ELIGIBILITY REQUIREMENTS, 8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES, AND PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 4, LOANS TO CAPITAL RESERVE ACCOUNT ON GUARANTEE FUND, AND LOAN LOSS RESERVE FUND
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TO: All Interested Persons.

1. On September 6, 1985 at 10:00 a.m. a public hearing will be held in the upstairs conference room of the Department of Commerce, at 1424 9th Avenue, Helena, Montana, to consider the amendment and adoption of the above-stated rules.

2. The proposed amendment of 8.97.301 will add three new definitions to be placed alphabetically. Current subsections will be realphabetized accordingly. The rule will read as follows: (new matter underlined) (full text of the rule is located at pages 8-3469 - 8-3471, Administrative Rules of Montana)

"8.97.301 DEFINITIONS (1) As used in Sub-Chapters 3 through 8, and unless the context clearly requires another meaning:

(a) ...

(p) 'loan loss reserve fund for the in-state investment fund' means the fund established in rule II.

(q) ...

(v) 'pooled IDB program' means the program established in ARM 8.97.503 (4)(a).

(z) ...

(dd) 'stand alone program' means the program established in ARM 8.97.503 (4)(c).

(2) ...

Auth: 17-6-324, MCA Auth. Extension, Chapter 640,
Section 6, L. 1985 Imp: 17-6-315, MCA

15-8/15/85

MAR Notice No. 8-97-14

3. The board is proposing the rule amendment to provide definitions in the general definition section for programs described in detail elsewhere in the rules.

4. The proposed amendment of 8.97.402 will amend subsection (3) of the rule and will read as follows: (new matter underlined, deleted matter interline) (full text of the rule is located at pages 8-3488 and 8-3489, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY The board shall determine that an application for financing is eligible under this Sub-Chapter only if it finds that:

(1) ...

(3) All financing except short-term certificates of deposit and loans purchased under the Interim Funding of Pooled Industrial Revenue Bond Loans Program, and loans to the capital reserve account or the guarantee fund authorized by section 17-6-308 (2), MCA and rule I. must be for the benefit of a business engaged in 'basic' economic activity, import substitution activity, or the wholesale or retail distribution of Montana-made goods as defined in ARM 8.97.401. For purpose of this section, 'business' shall mean the applicant for financing or such other person as may be shown to directly and substantially benefit from the financing to the satisfaction of the board through reduced rental rates or other verifiable means for the term of the loan.

(4)

Auth: 17-6-324, MCA, Auth Extension: Chapter 640,
Section 6, Laws of 1985 Imp: 17-6-308, MCA

5. The board is proposing the amendment of this rule to create a program to make loans to capital reserve account or guarantee fund for pooled IDB bond issues as authorized by SB 349, passed as Chapter 640, Laws of 1985.

6. The proposed amendment of 8.97.503 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3498 and 8-3499, Administrative Rules of Montana)

"8.97.503 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM (1) The board is authorized to issue industrial development revenue bonds and to

(a) use the proceeds to purchase loans from approved financial institutions for projects located in the state,

(b) acquire projects located in the state from financial institutions and lease them to others, or

(c) make loans to financial institutions, requiring the proceeds to be used by the financial institution for the purpose of financing projects located in the state-

(d) finance projects located in the state upon such terms and conditions as determined by the board. The bonds

are payable solely from loan repayments and one or more reserve or guarantee funds. Except for bonds issued under the Stand-Alone program, loan repayments must be guaranteed in whole or in part by public or private insurance, which may include the board's guarantee created pursuant to section 17-5-1519, MCA.

(2) For projects financed under the pooled IDB program for which the financing to be provided by the board is less than \$1,000,000 not more than \$3,000,000, the originator or another approved financial institution must participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board. For projects for which the financing to be provided by the board exceeds \$1,000,000 but the cost of the project is less than \$10,000,000, the originator shall participate in the financing of the project at the discretion of the board. In determining whether to require such participation the board shall consider:

(a) the extent to which, if any, the board's resources or funds, other than revenues from the project, are pledged to the project;

(b) the credit worthiness of the applicant;

(c) the collateral securing the financing;

(d) any other factor deemed relevant by the board;

(3) ...

(4) The board will issue its industrial development revenue bonds under one of its two programs, the Pooled IDB Program or the Stand Alone Program.

(a) under the Pooled IDB Program, the board will issue one or more series of bonds to finance loans for projects for which the financing to be provided by the board is less than \$1,000,000 only not more than \$3,000,000. The bonds will be secured by the loan repayments and other forms of common security as the board deems appropriate and as allowed pursuant to sections 17-5-1515 and 17-5-1520, MCA.

(b) under the Stand Alone Program, projects may be financed by the issue of a single bond for each project. Bonds issued pursuant to this program will not be secured by any common reserves and may be sold to a purchaser selected by the borrower.

(5) The requirements of ARM 8.97.503 (2) and (3) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or its capital reserve account authorized by 17-5-1515."

Auth: 17-5-1521, MCA Auth. Extension, Chapter 296,
Section 3, Laws of 1985 Imp: 17-5-1526, 1527, MCA

7. The board is proposing the amendment of the rule to increase from \$1,000,000 to \$3,000,000 the size of projects that may be financed in the Pooled IDB program and to clarify

that certain requirements do not apply to bonds that are not secured by the board's guarantees or capital reserve account.

8. The proposed amendment of 8.97.504 deletes the current rule in its entirety and replaces it with the following language. (new matter underlined, deleted matter interlined)

"8.97.504 BONDING LIMIT The total amount of outstanding bonds for financing projects for which the cost or appraised value does not exceed \$800,000 may not exceed \$25,000,000. The total amount of outstanding bonds for financing projects for which the cost or appraised value exceeds \$800,000 may not exceed \$50,000,000. The total amount of bonds secured under 17-5-1515 and 17-5-1519 MCA, outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed \$75 million."

Auth: 17-5-1521, MCA Auth. Extension, Chapter 640, Section 6, Laws of 1985 Imp: 17-5-1505, MCA

9. The amendment implements the statute that combines the separate laws establishing separate bonding limits for projects under and over \$800,000. The combining of the \$25,000,000 in authority for projects under \$800,000 and the \$50,000,000 in authority for projects over \$800,000, does not increase the board's authority but gives the board greater flexibility in using its total bonding capacity.

10. The proposed amendment of 8.97.505 will amend subsection (c) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3499 and 8-3500, Administrative Rules of Montana)

"8.97.505 ELIGIBILITY REQUIREMENTS (1) In order to qualify for financing under the Economic Development Bond Program, the board shall determine that a project meets the following criteria:

(a) ...

(c) the financing for the a pooled project is insured or guaranteed in whole or in part by a private governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to section 17-5-1519, MCA, as required by the board;

(d) ..."

Auth: 17-5-1521, MCA Imp: 17-5-1526, (1)(d), 1527 (1)(d), MCA

11. The amendment is proposed to correct a clerical error so that the rule will correspond to statute.

12. The proposed amendment of 8.97.509 will amend subsection (4) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3503 and 8-3504, Administrative Rules of Montana)

"8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES (1) ...

(4) Borrowers under Pooled IDB Program shall remit to the board monthly an administrative and ~~loan loss reserve guarantee~~ fee equal to .50% per annum of the outstanding loan balance.

(5)(a) ..."

Auth: 17-5-1521, MCA Imp: 17-5-1504, 1521, MCA

13. The amendment renames the fee to eliminate confusion with other fees.

14. The proposed new rules will read as follows:

"1. LOANS TO CAPITAL RESERVE ACCOUNT OR GUARANTEE FUND

(1) As authorized by section 17-6-308 (3), MCA, the board may by resolution, make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 MCA, and the guaranty fund created pursuant to 17-5-1520 MCA, to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under sections 17-5-1501 through 17-5-1529, MCA, subject to the prior pledge of the revenues to the bonds and notes.

(2) The total principal amount of loans guaranteed under ARM 8.97.410 and bonds guaranteed under 17-6-303 (1), MCA, and of outstanding loans and obligations to make loans to the Capital Reserve Account and Guaranty Reserve Account shall not exceed, as of the date of guaranty, loan or obligation, eight times the Guaranty and Loan Base.

(3) The Guaranty and Loan Base shall, at the time of determination, be an amount equal to 25% of the current market value of all assets of the board in the Investment Fund.

(4) All guaranties shall be in a written form approved by the board and providing that the board is fully subrogated to the rights of the obligor under the loan or bond, including all such rights in mortgages, security agreement and other security devices to which the obligor is a beneficiary. The board may require additional security for its obligations under the guarantee as circumstances require.

(5) All loans to the Capital Reserve Account and Guaranty Fund shall be repayable from the revenues of the board realized from the bond programs, subject to the prior

pledge thereof to secure the bonds and shall contain such other terms and conditions as the board shall determine.

(6) The board shall include in all loans made from bonds secured by the Capital Reserve Account and Guaranty Fund a charge, expressed as a fee or a component of the interest charged on the loan, to reflect the cost to the investment fund of loans and the obligation to make such loans to the Capital Reserve Account and Guaranty Fund and shall also obligate each borrower to reimburse the board for all loans to the Capital Reserve Account or Guaranty Fund and the interest thereon resulting from defaults by the borrower. The fee shall be deposited in the guarantee fund created by ARM 8.97.509 (4).

(7) Each loan which is made from the proceeds of a bond which is guaranteed or secured by the Capital Reserve Account and Guaranty Fund shall be guaranteed or insured, other than by the board, in such manner and to such extent as the board shall determine as is required to minimize the risk of loss to the investment fund.

(8) In determining whether to agree in connection with the issuance of bonds or notes to make such loans as authorized by this rule to the Capital Reserve Account and Guaranty Fund, the board will apply the credit standards applicable to all other credit decisions made by the board with respect to its bond programs and in addition shall consider the following factors:

(a) the economic benefit to the state and its political subdivisions of the project to be financed;
(b) the availability and cost of other sources of credit enhancement for the loans and bonds;
(c) the necessity of the commitment to the marketability of the bonds and loans and the viability of the project financed thereby;

(d) the geographical distribution and diversity of the projects subject to the board's commitment under this rule."

Auth: 17-6-324, MCA Auth. Extension, Chapter 640,
Section 6, Laws of 1985 Imp: 17-6-308, MCA

"II. LOAN LOSS RESERVE ACCOUNT FOR THE IN-STATE INVESTMENT FUND (1) As authorized by section 17-6-315 (2), MCA, the board establishes a loan loss reserve fund to protect the in-state investment fund from losses.

(2) All fees collected under ARM 8.97.308 shall be deposited to the loan reserve fund.

(3) An amount equal to 0.25% of all interest on coal tax loans collected under rule 8.97.308 shall be deposited to the loan loss reserve fund.

(4) In the event of a principal loss to the in-state investment fund, the board shall by resolution direct that any funds in the loan loss reserve fund be deposited to the in-state investment fund to replace the loss of principal.

(5) Surplus assets in the loan loss reserve fund beyond a total of 1 1/2% of all in-state investment fund invested at risk may be used for other authorized purposes.

(6) For the purpose of this section 'at risk' includes investments made under ARM 8.97.408, 8.97.409, 8.97.410, 8.97.413, and I."

Auth: 17-6-324, MCA Auth. Extension, Chapter 640,
Section 6, Laws of 1985 Imp: 17-6-315, MCA

15. The proposed adoption of rule I is proposed to create a program to make loans to the capital reserve account or guarantee fund for pooled IDB bond issues as authorized by Chapter 640, Laws of 1985 (Senate Bill 349).

The board is proposing the adoption of rule II to create a loan loss reserve fund to protect the in-state investment fund from loss as authorized by Chapter 640, Laws of 1985 (Senate Bill 349).

16. 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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

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

In the matter of the proposed amendments of 8.97.301 concerning definitions, 8.97.402 concerning criteria for determining eligibility, 8.97.403 concerning preferences, 8.97.404 concerning investment authorized by rule, 8.97.505 concerning eligibility requirements)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF 8.97.301 DEFINITIONS, 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY, 8.97.403 PREFERENCES, 8.97.404 INVESTMENT AUTHORIZED BY RULE, 8.97.505 ELIGIBILITY REQUIREMENTS
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TO: All Interested Persons.

1. On September 6, 1985 at 10:00 a.m. a public hearing will be held in the upstairs conference room of the Department of Commerce, at 1424 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The proposed amendment of 8.97.301 will add a new subsection (1)(1), realphabetize the remaining subsections, and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is found at pages 8-3469 through 8-3471, Administrative Rules of Montana)

"8.97.301 DEFINITIONS (1) As used in Sub-Chapters 3 through 8, and unless the context clearly requires another meaning:

(a) ...

(1) 'employee-owned enterprise' means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(1) (m) ..."

Auth: 17-6-324, MCA, Auth. Extension, Chapter 408, Session 3, Laws of 1985 Imp: 17-6-302 (3), 309 (1), MCA

3. This amendment and the amendment to rule 8.97.403 implement SB 353, passed as Chapter 408, Laws of Montana, which provides that employee owned enterprises are given a preference in the selection process for coal tax loans established in section 17-6-309, MCA.

4. The proposed amendment of 8.97.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3488 and 8-3489, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY (1) ...

(5) The financing will not result in the borrower receiving a benefit from or incurring a debt to the Montana in-state investment fund in excess of 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund, and

(6) The financing is consistent with that degree of judgment and care, under circumstances from time to time prevailing, which individuals of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the following factors, with the prudent expert principle which requires any investment manager to:

(a) the probable safety of their capital; discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) the probable income to be derived, taking into consideration the preservation of purchasing power of capital during periods of sustained high monetary inflation; and diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) the long-term benefit to the Montana economy; discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(7) The financing will provide long-term benefit to the Montana economy.

(8) The loan offered to the board for financing was closed by the lender subsequent to March 1, 1984.

(9) The financing will not result in an undue concentration of the board's loans or investments in a single industry.

(10) An applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents as defined in 18-2-401 (4), MCA, in the performance of the work on the projects if their qualifications are substantially equal to those of non-residents. Substantially equal qualifications means the qualification of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons. The board is not authorized by law to enforce the statement submitted by an applicant.

(9) (11) ..."

Auth: 17-6-324, MCA Auth. Extension, Chapter 418, Section 9, Chapter 653, Section 4, Laws of 1985 Imp: 17-6-302 (3), 309 (1), MCA

5. The amendments to subsection (6) implement the change to the prudent expert principle required by Senate Bill 11, Chapter 418, Laws of 1985. This change was intended to

increase the discretion of the board in considering potential investments. The amendment to subsection (10) implements the requirements of HB 554, Chapter 653, Laws of 1985 that the applicants must submit a statement indicating any construction contracts will require the contractor to give preference to the employment of bona fide Montana residents.

6. The proposed amendment of 8.97.403 will add a new subsection (1)(a), reletter the following subsections and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3489, Administrative Rules of Montana)

"8.97.403 PREFERENCES (1) As provided in section 17-6-309, MCA, when deciding which of several eligible investments of equal or comparable security and return to finance when sufficient funds are not available to finance all possible investments, the board shall give preference to investments that:

(a) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy.

(a) (b) ..."

Auth: 17-6-324, MCA, Auth. Extension, Chapter 408, Session 3, Laws of 1985 Imp: 17-6-302 (3), 309 (1), MCA

7. The amendment is proposed for those reasons as stated in paragraph 3.

8. The proposed amendment of 8.97.404 will read as follows: (new matter underlined, deleted matter interlined)

"8.97.404 INVESTMENT AUTHORIZED BY RULE (1) in addition to the investments authorized as permissible investments under section 17-6-211, MCA As permitted by section 17-6-308 MCA, the board authorizes the investments and deposits established in ARM 8.97.405 through II." (see proposed rule II in MAR Notice no. 8-97-14, Montana Administrative Register 15)

Auth: 17-6-324, MCA Auth. Extension, Chapter 418, Section 9, Laws of 1985 Imp: 17-6-308, MCA

9. The board is amending the rule so it conforms to the statutory amendments approved in Senate Bill 11, Chapter 418, Laws of 1985. The law eliminated the detailed listing in the law of authorized investments.

10. The amendment of 8.97.505 will change subsection (1) (g) to (f) as it should have been and will add a new subsection (g) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3499 and 8-3500, Administrative Rules of

Montana)

"8.97.505 ELIGIBILITY REQUIREMENTS (1) In order to qualify for financing under the Economic Development Bond Program, the board shall determine that a project meets the following criteria:

(a) ...
(f) upon completion, the project will have complied with all applicable local, state and federal laws and regulations;

(g) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents as defined in 18-2-401 (4), MCA, in the performance of work on the projects, if their qualifications are substantially equal to those of nonresidents. Substantially equal qualifications means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons, the board is not authorized by law to enforce the statements submitted by an applicant.

(2) ..."
Auth: 17-5-1521, MCA Auth. Extension, Chapter 653,
Section 4, Laws of 1985 Imp: 17-5-1526, 1527, MCA

11. The amendment implements the requirements of HB 554, (Chapter 418, 1985 Laws of Montana) that applicants must submit a statement indicating any construction contract will require the contractor to give preference to the employment of bona fide Montana residents.

12. 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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

15-8/15/85

MAR Notice No. 8-97-15

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

In the matter of the proposed amendment of 8.97.402 (3) concerning criteria for determining eligibility, and proposed adoption of a new rule concerning purchase of guaranty of debentures of qualified Montana capital companies)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY and PROPOSED ADOPTION OF A NEW RULE PURCHASE OF GUARANTY OF DEBENTURES OF QUALIFIED MONTANA CAPITAL COMPANIES
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TO: All Interested Persons.

1. On September 6, 1985 at 10:00 a.m. a public hearing will be held in the upstairs conference room of the Department of Commerce, at 14 24 9th Avenue, Helena, Montana, to consider the amendment and adoption of the above-stated rules.

2. The proposed amendment of 8.97.402 will amend subsection (3) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at pages 8-3488 and 8-3489, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY The board shall determine that an application for financing is eligible under this Sub-Chapter only if it finds that:

(1) ...

(3) All financing except purchase or guarantee of the debenture of qualified Montana Capital Companies, short-term certificates of deposit and loans purchased under the Interim Funding of Pooled Industrial Revenue Bond Loans Program must be for the benefit of a business engaged in "basic" economic activity, import substitution activity, or the wholesale or retail distribution of Montana-made goods as defined in ARM 8.97.401. For purposes of this section, "business" shall mean the applicant for financing or such other person as may be shown to directly and substantially benefit from the financing to the satisfaction of the board through reduced rental rates or other verifiable means for the term of the loan.

(4) ..."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

3. The board is proposing the amendment of this rule and subsequent adoption of the following rule to authorize the board to purchase or guarantee the debenture of qualified Montana Capital Companies. The purchase or guarantee of debentures will permit the capital companies to leverage their funds. The amount of debentures is limited to 75% of the net worth of a capital company and the debentures are superior to all other debts of the capital companies.

4. The proposed new rule will read as follows:

"1. PURCHASE OF GUARANTY OF DEBENTURES OF QUALIFIED MONTANA CAPITAL COMPANIES (1) In order to facilitate the venture capital investments in Montana businesses and at the same time protect the instate investment fund from loss, the MEDB may provide leverage to any qualified Montana Capital Company through the purchase or guaranty of debentures of the capital company.

(2) For the purpose of this section, a 'debenture' is a bond which is secured only by unpledged assets and the general credit of the issuer.

(3) (a) In no event shall the amount of debentures purchased by MEDB be in excess of 75% net worth of the capital company.

(b) Upon written notice by MEDB, the entire indebtedness and/or the principal amount of the debentures may be declared immediately due and payable if the capital company fails to maintain the minimum ratio described above, or is determined to be in violation of any provision of Title 90, Chapter 9, MCA, by the annual examination provided for by 90-8-313, MCA.

(4) The board may specify terms and conditions to be included in the debenture.

(5) The maximum terms of a debenture is ten years.

(6) The board may not purchase more than \$2,000,000 in debentures of all capital companies.

(7) (a) A qualified capital company may apply to the board for the purchase or guarantee of its debentures on an application form approved and provided by the board.

(b) The capital company shall pay a \$200 application fee to the board.

(c) The application shall identify the specific investments and loans to be financed by the debenture and the terms and conditions of the investments and shall certify that the investments are consistent with the terms and conditions of the Montana Capital Company Act.

(d) the provisions of ARM 8.97.306 and 8.97.307 apply to review and approval of an application by the administrator and board.

(e) The capital company shall pay a one time fee of \$10 per thousand on the par value (face amount) of the debentures.

(f) The board shall adapt and periodically establish and make available to the public and capital companies a schedule of rates for the debentures of capital companies financed by a debenture purchased by the board.

(g) A capital company originating a loan or investment may charge the borrower a rate of interest or dividend no more than five percent above the board's interest rate on the debenture guaranteed or purchased by the board.

(h) The capital company shall file an annual CPA prepared financial statement and may be required to submit

more frequent reports at the request of the administrator on the status of its investment portfolio or financial statement."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

5. The board is proposing the adoption for the reason stated in paragraph 3.

6. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

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

In the matter of the proposed amendment of 8.97.402 concerning criteria for determining eligibility)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY
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TO: All Interested Persons.

1. On September 6, 1985 at 10:00 a.m. a public hearing will be held in the upstairs conference room of the Department of Commerce, at 1424 9th Avenue, Helena, Montana, to consider the amendment and adoption of the above-stated rule.

2. The proposed amendment of 8.97.402 will amend subsection (3) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3488 and 8-3489, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY The board shall determine that an application for financing is eligible under this Sub-Chapter only if it finds that:

(1) ...

(3) All financing except short-term certificates of deposit and loans purchased under the Interim Funding of Pooled Industrial Revenue Bond Loans Program or the 503 loan participation program must be for the benefit of a business engaged in "basic" economic activity, import substitution activity, or the wholesale or retail distribution of Montana-made goods as defined in ARM 8.97.401. For purposes of this section, "business" shall mean the applicant for financing or such other person as may be shown to directly and substantially benefit from the financing to the satisfaction of the board through reduced rental rates or other verifiable means for the term of the loan.

(4) ..."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

3. This amendment would authorize the board to finance buildings and equipment for non-basic sector businesses under the federal 503 program by purchasing 80% participation in a financial institution's share of a 503 finance package. Adopting this amendment would permit the board to help finance non-basic sector businesses while limiting the boards financial exposure and risk. Under a typical 503 financial package, the borrower would provide 10% equity, 40% is provided by SBA at treasury bond rates and 50% is a conventional bank loan. Under this rule amendment, the board would purchase 80% of the conventional bank loan equal to 40% of the entire package. The board is expanding eligibility to include non-basic sector businesses because it now has sufficient funds to meet the loan requests from basic sector

businesses and because the boards pooled IDB program which currently serves non-basic businesses is scheduled to sunset under federal law in 1986.

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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD

D. PATRICK MCKITTRICK
CHAIRMAN

BY:

Keith L. Colbo

KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

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

In the matter of the proposed amendment of 8.97.505 concerning eligibility requirements) NOTICE OF PUBLIC HEARING
) ON THE PROPOSED AMENDMENT OF
) 8.97.505 ELIGIBILITY REQUIREMENTS

TO: All Interested Persons.

1. On September 6, 1985 at 10:00 a.m. a public hearing will be held in the upstairs conference room of the Department of Commerce, at 1424 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rule.

2. The proposed amendment of 8.97.505 will delete subsection (4) (a), reletter the following subsections, and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3499 and 8-3500, Administrative Rules of Montana)

"8.97.505 ELIGIBILITY REQUIREMENTS (1) ...

(4) The board will finance projects for which the sole purpose is to provide residential housing (i.e., multifamily housing projects) through the Pooled IDB Program only upon the following terms and conditions:

(a) only new construction projects will be considered.
This does not include remodeling or rehabilitation of existing facilities.

(b) (a) ..."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1521, 1526, 1527, MCA

3. The board is eliminating the restriction on eligibility of multifamily housing projects to new construction because it believes rehabilitation of existing facilities is an activity that should be eligible for financing.

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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

BY:

Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

businesses and because the boards pooled IDB program which currently serves non-basic businesses is scheduled to sunset under federal law in 1986.

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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD

D. PATRICK MCKITTRICK
CHAIRMAN

BY:

Keith L. Colbo

KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of 8.97.505 con-) ON THE PROPOSED AMENDMENT OF
cerning eligibility require-) 8.97.505 ELIGIBILITY RE-
ments) QUIREMENTS

TO: All Interested Persons.

1. On September 6, 1985 at 10:00 a.m. a public hearing will be held in the upstairs conference room of the Department of Commerce, at 1424 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rule.

2. The proposed amendment of 8.97.505 will delete subsection (4) (a), reletter the following subsections, and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3499 and 8-3500, Administrative Rules of Montana)

"8.97.505 ELIGIBILITY REQUIREMENTS (1) ...

(4) The board will finance projects for which the sole purpose is to provide residential housing (i.e., multifamily housing projects) through the Pooled IDB Program only upon the following terms and conditions:

(a) only new construction projects will be considered.
~~This does not include remodeling or rehabilitation of existing facilities.~~

(b) (a) ..."

Auth: 17-5-1504, 1521, MCA Imp: 17-5-1521, 1526,
1527, MCA

3. The board is eliminating the restriction on eligibility of multifamily housing projects to new construction because it believes rehabilitation of existing facilities is an activity that should be eligible for financing.

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 Montana Economic Development Board, 1424 9th Avenue, Helena, Montana 59620, no later than September 12, 1985.

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1985.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMEND-
amendment of 23.3.231, concerning	)	MENT OF 23.3.231 CONCERN-
probationary driver's licenses,	)	ING PROBATIONARY DRIVER'S
and the proposed adoption of a	)	LICENSES, AND PROPOSED
rule concerning restrictions on	)	ADOPTION OF A RULE CON-
probationary driver's licenses	)	CERNING RESTRICTIONS ON
	)	PROBATIONARY DRIVER'S
	)	LICENSES.
)	
	)	NO PUBLIC HEARING CON-
	)	TEMPLATED

TO: All Interested Persons

1. On September 16, 1985, the Department of Justice proposes to amend and adopt the above-stated rules concerning probationary driver's licenses.

2. The proposed amendment to 23.3.231 will read as follows (new matter underlined):

23.3.231 PROBATIONARY LICENSES (1) The Division may issue a person a restricted probationary license in lieu of suspension of driving privilege for 6 months upon conviction or forfeiture of bail or collateral not vacated for the offense of driving or being in control of a motor vehicle while under the influence of alcohol or drugs for the first time in 5 years as detailed in section 61-5-208 MCA if:

(a) the judge of the court in which the conviction or forfeiture occurred recommends probation, and

(b) the licensee continues to comply with the alcohol treatment program or driver improvement school participation directed by the court.

(2) The Division may issue a restricted probationary license in lieu of suspension or revocation to any person, not covered in subsection (1), whose license or permission to operate a motor vehicle in Montana is subject to suspension or revocation if:

(a) the licensee is eligible for the Driver Rehabilitation Program under ARM 23.3.203 through 23.3.205, and

(b) the licensee enrolls and continues to participate in the Driver Rehabilitation Program.

(3) If a probationary licensee fails to continue to comply with the requirements for issuance of his or her probationary license or the restrictions thereon, the Division shall require the return of the person's probationary license and shall reinstate the full term of the originally authorized suspension or revocation.

(4) If a probationary licensee is convicted of or forfeits bail or collateral on any traffic violation during the period of suspension or revocation, the Division shall require

the return of the person's probationary license and shall reinstate the full term of the originally authorized suspension or revocation. Auth: 61-2-302(1), MCA; IMP: 61-2-302, MCA.

3. This amendment is proposed to clarify the sanction which will be imposed against a probationary licensee who is convicted of or forfeits bail or collateral on any traffic violation during the period that he or she is operating a motor vehicle under the authority of a probationary license, or who fails to continue to comply with the requirements for issuance of his or her license.

4. The proposed new rule will read as follows:

RULE I RESTRICTIONS ON PROBATIONARY LICENSES (1) The Division may restrict probationary licenses in the following manner:

(a) Licenses restricted to "occupational driving only" may only be used by the licensee to travel to and from the regular place of employment, or in search of employment, by the most direct route from the residence in a period of time no greater than is reasonable under existing traffic conditions; and during work hours at the specific direction of the employer for purposes of carrying out assigned job related functions.

(b) Licenses restricted to "home to school and return" may only be used by the licensee to travel between the residence and the school or educational institution in which the licensee is enrolled. Travel is only authorized immediately before and after regular school hours and must be by the most direct route between the residence and the school in a period of time no greater than is reasonable under existing traffic conditions. Driving to or from extracurricular activities is not allowed.

(c) Licenses restricted to "essential driving only" may only be used by the licensee for:

(i) occupational driving as defined in subsection (1) (a) above; and

(ii) home to school driving as defined in subsection (1) (b) above; and

(iii) travel to and from the regular residence in a period of time no greater than is reasonable under existing traffic conditions for purposes related to maintenance of the household.

(d) Licenses restricted to "daytime hours only" may only be used by the licensee to operate a motor vehicle from one-half hour before sunrise to one-half hour after sunset.

(2) The above list of restricted probationary licenses is not exclusive. The Division may impose additional restrictions on the use of the license with respect to time and purpose of use or impose any other condition or restriction deemed necessary to promote driver improvement or safety.

(3) All restricted probationary licenses issued by the Division may be used for travel to and from required alcohol programs.

Auth: 61-2-302(1), MCA; IMP: 61-2-302, MCA.

5. This rule is proposed to clarify the types of restrictions that the Motor Vehicle Division may place on probationary driver's licenses, and to specify the purposes for which restricted probationary licenses may be used by the licensee.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendment and adoption in writing to Jim Scheier, Assistant Attorney General, Department of Justice, 215 North Sanders, Helena, Montana 59620, no later than September 13, 1985.

7. If a person who is directly affected by the proposed amendment and rule wishes to present data or express his 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 Jim Scheier, Assistant Attorney General, Department of Justice, 215 North Sanders, Helena, Montana 59620, no later than September 13, 1985.

8. If the agency receives requests for a public hearing on the proposed amendment and rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and rule; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 63,500 persons based on the 635,000 licensed drivers in Montana.

9. The authority of the agency to make the proposed rule is based on section 61-2-302(1), MCA, and the rule implements section 61-2-302, MCA.


MIKE GREELY
Attorney General

Certified to the Secretary of State, July 30, 1985.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PROPOSED TRANSFER
ment and repeal of ARM	)	AND AMENDMENT, REPEAL AND
23.3.901 - 23.3.941 and the	)	ADOPTION OF NEW RULES
adoption of new rules I-V	)	PERTAINING TO ALCOHOL
pertaining to alcohol	)	ANALYSIS. NO PUBLIC HEARING
analysis	)	CONTEMPLATED.

TO: All Interested Persons:

1. On September 16, 1985, the Department of Justice proposes to adopt, amend and transfer Chapter 3 subchapter 9 to Chapter 4 subchapter 1 and repeal rules concerning alcohol analysis.

2. The proposed changes provide as follows:

~~23-3-901~~ 23.4.101 CERTIFICATION OF PERSONS, FACILITIES, AND INSTALLATIONS Every person, facility, or installation performing alcohol analyses pursuant to the provisions of section 61-8-405, MCA, must have valid certification issued in accordance with this subchapter. All testing devices and methodology are subject to approval of the Department.
AUTH: 61-8-405, MCA IMP: 61-8-405, MCA

~~23-3-902~~ 23.4.102 DEFINITIONS (1) "Accredited" means having achieved official authorization or status;
~~{1}~~ (2) "Alcohol" refers to ethyl alcohol except that if reference is made to alcoholic skin antiseptics it means any hydroxyl derivative of a hydro-carbon (Ethanol).
(a) "Methanol" refers to methyl alcohol ("Wood Alcohol");
(b) "Isopropanol" refers to iso-propylalcohol ("Rubbing Alcohol");
(c) "Acetone" refers to 2-propanone, a relatively nontoxic by-product of ketoacidosis in diabetics and metabolite of isopropyl alcohol.

~~{2}~~ (3) "Alcohol analyses or chemical tests" include the sum total of all manipulations required to achieve a result showing the alcohol concentration of an individual's blood, breath, urine or other bodily substance.

~~{3}~~ (4) "Alveolar" refers to the smallest air sacs of the lungs, the air in which is in equilibrium, with respect to alcohol, with the immediately adjacent pulmonary arterial blood plasma.

~~{4}~~ (5) "Blood" refers to whole blood or the cellular components and the serum of plasma of blood. preferably peripheral venous blood.

~~{5}~~ (6) "Breath" refers to that portion of exhaled air that is considered to be alveolar unless otherwise specified: lung air that is collected for alcohol analysis.

~~{6}~~ (7) "Certificate" means a document issued by the department certifying that a person, facility, or installation

has fulfilled the requirements set by this subchapter and may practice in the field of alcohol analysis.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(9) "College of American Pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, which surveys clinical laboratories upon their requests and accredits clinical laboratories which it determines meet its standards and requirements.

~~477~~ (10) "Department" means the Department of Justice, Division of Forensic Science.

(11) "Department of Health" means the Department of Health and Environmental Sciences provided for in Title 2, Chapter 15, Part 21, Montana Code Annotated.

(12) "Facility" means any location or law enforcement agency in which a department-approved breath-testing device has been installed and maintained.

~~48~~ (13) "Highway" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.

(14) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week. This includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~49~~ (15) "Individual" means any human being.

~~410~~ (16) "Installation" refers to the location of an alcohol analysis device or a laboratory where such analyses are performed. This excludes facilities utilizing department installed and maintained breath-testing devices.

~~411~~ (17) "Intoxicating liquor" means a distilled or fermented alcoholic beverage or any substance that contains alcohol in any concentration that may render a person under the influence.

(18) "Joint Commission on Accreditation of Hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it determines meets its standards and requirements.

~~412~~ (19) "Person" means any individual, corporation, partnership, firm, association, public or private institution,

group, political subdivision of this state and any legal representative, agent or agency of the foregoing other than federal government agencies.

(13) (20) "Physician" means any individual licensed to practice medicine.

(21) "Registered medical technologist" means any individual certified to practice as a medical technologist.

(14) (22) "Registered nurse" means a person licensed as a registered nurse.

(23) "Results" refers to analytical results being expressed in terms of the alcohol concentration in blood, based on the number of grams of alcohol per 100 cubic centimeters or per 100 milliliters, or the alcohol concentration in breath, based on the number of grams of alcohol per 210 liters of breath, or the alcohol concentration in urine, based on the number of grams of alcohol per 75.3 milliliters of urine. When referring to blood alcohol concentration, percent (%) and percent weight/volume shall be regarded as acceptable abbreviations of the phrase grams per 100 cubic centimeters or grams per 100 milliliters.

(15) (24) "Sample" means blood, breath, urine or other bodily substances to be analyzed for alcohol content pursuant to this subchapter.

(16) (25) "Testing device" means any instrument or device used in determining to determine the alcoholic content of alcohol concentration in blood, breath, urine or tissue pursuant to this subchapter.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-911~~ 23.4.103 INITIAL CERTIFICATION (1) Every person, facility, and installation involved in alcohol analyses must be certified by the department. Every person, facility, or installation not already certified must become certified before such analyses are considered valid by the department.

(2) Certification does not imply approval of anything any tests or procedures carried out by an installation, facility, or person other than what the certificate specifies.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-903-INSTALLATION-CERTIFICATE~~ An installation meets the qualifications for certification by:

(1) Employing at least one certified operator supervisor;
(2) Having approved testing devices and related accessories;

(3) Passing an on-site inspection by the department; and
(4) Showing ability to meet the requirements set forth in this subchapter. {History: See 61-8-405(6) MCA, IMP 61-8-405(6) MCA, FRANG, from Department of Health and Environmental Sciences, 1978 MAR p: 1622, Eff: 12/15/78}

Rule I EXEMPTION OF CLINICAL AND HOSPITAL LABORATORIES
The following are exempt from testing certification required by this subchapter:

- (1) All clinical and hospital laboratories either
(a) Licensed by the Department of Health; or
(b) Accredited by the "College of American Pathologists,"
or the "Joint Commission on Accreditation of Hospitals," or
other nationally recognized organizations; and
(2) Under the direct supervision of a pathologist or
certified medical technologist, where routine laboratory
procedures, including alcohol analyses, are performed.
AUTH: 61-8-405, MCA IMP: 61-8-405, MCA

Rule II REQUIREMENTS FOR CERTIFICATION OF PERSONS,
FACILITIES, OR INSTALLATIONS NOT EXEMPT FROM CERTIFICATION
REQUIREMENTS (1) Certification requirements shall include,
but are not limited to the following:

(a) An individual, facility director or personnel, or
installation director or personnel who will be performing
alcohol analyses shall submit evidence to the department, in
writing, of the scientific training and experience in clinical
chemistry or toxicology of the individual, facility director or
personnel, or installation director or personnel;

(b) Laboratory equipment and testing areas must pass
inspection by department personnel or department designees;

(c) Individuals and personnel must participate in an
alcohol testing proficiency program approved by the department.
Copies of the results of such proficiency programs must be
submitted to the department within 10 working days after
completion.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23.3.922~~ 23.4.106 TRAINING LEVELS (1) To receive cert-
ification as an operator supervisor, an applicant must
successfully complete a course of instruction which includes
the following:

(a) Instruction on the effects of alcohol on the human
body;

(b) Instruction on the operational principles of the
equipment to be employed, which shall include a functional
description and a detailed operational description with
appropriate demonstration;

(c) Instruction of the legal aspects of chemical tests
generally, and of the particular method employed;

(d) Instruction on supplemental information including
nomenclature appropriate to the field of chemical tests for
alcohol;

(e) Laboratory participation using appropriate equipment.
Laboratory practice must include the use of the reference
standard; and analyses using the approved field sampling
devices;

(f) Practical application of approved techniques using
approved equipment;

(g) Instruction on selected field tests and field
sampling;

(g) Instruction on forms, records and reporting; and

(h) Formal examination to determine competency and qualification.

(2) Persons classified as operators must have received department-approved instruction in the operation of the specific testing device to be employed and/or must have passed a written examination.

(3) Each installation must have at least one operator supervisor who is responsible for the maintenance and calibration of testing devices, record keeping, reporting results and ensuring that the installation adheres to this subchapter.

(4) (3) At the discretion of the department, any phase or portion of the training program is subject to alteration to update the program as technological advances are made, or to eliminate portions considered inappropriate.

23-3-904-OPERATOR-SUPERVISOR-CERTIFICATE A person meets the qualifications for an operator supervisor certificate by:

(1) Having successfully completed training approved by the department and/or passing an examination prescribed by the department;

(2) Having successfully completed a course in chemical tests for alcohol including legal aspects of chemical testing, the effect of alcohol on the human body, operational principles of the selected testing methods and laboratory participation using the appropriate equipment; and

(3) Demonstrating the ability to adhere to the provisions of this subchapter. (History: Sec. 61-8-405(6) MGA; IMP 61-8-405(6) MGA; TRANS, from Department of Health and Environmental Sciences, 1978 MAR pr 1622; Eff. 12/15/78; AMB, 1978 MAR pr 1622; Eff. 12/15/78.)

23-3-905--OPERATOR'S-CERTIFICATE A person meets the qualifications for an operator's certificate by:

(1) Exhibiting through examination and/or demonstration to the department sufficient skill in the operation of and interpretation of results from the testing device to be utilized; or

(2) Successfully completing training approved by the department and/or passing an examination prescribed by the department. (History: Sec. 61-8-405(6) MGA; IMP 61-8-405(6) MGA; TRANS, from Department of Health and Environmental Sciences, 1978 MAR pr 1622; Eff. 12/15/78.)

23-3-906 EXEMPTION-FROM-CERTIFICATION. Installations where routine laboratory procedures (including alcohol analyses) are performed under the direct supervision of a laboratory director and employees in such installations are exempt from certification requirements, if the laboratory director and the persons performing alcohol analyses meet the minimum educational and experience requirements contained in "Conditions for Coverage of Services of Independent Laboratories Under the Federal Insurance for the Aged Act," Title 20 Code of Federal Regulations chapter III, part 405.

(History: Sec. 61-8-405(6) MCA; IMP 61-8-405(6) MCA; TRANS, from Department of Health and Environmental Sciences, 1978 MAR pr 16227 Eff. 12/15/78.)

Rules 97 through 10 reserved.

23-3-913 23.4.107 CERTIFICATION APPLICATION FORMS

(1) Applications for certification and renewal of certification must be made on forms furnished by the department. The applicant shall set forth all pertinent information called for by requested on the form.

(2) Copies of the application form are available upon request from the Department of Justice, Division of Forensic Science, Laboratory of Criminalistics Bureau, Suite 115 Wilma Building, Missoula, Montana 59801- 275 West Front Street, Missoula, Montana 59802.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

23-3-910 23.4.108 TESTS Upon instruction from the department, each applicant for certification shall perform and permit the department to perform reasonable tests that the department considers necessary to administer this subchapter, including, but not limited to, tests to evaluate:

(1) Instrumentation; Instruments;

(2) Facilities where testing devices are used;

(3) Personnel training levels; and

(4) Other equipment and devices used in connection with alcohol analyses.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

23-3-916 23.4.109 CERTIFICATE RECORDS The certificate becomes part of the permanent records available to the courts for legal proceedings or available to the department under this subchapter.

23-3-912 23.4.110 RENEWAL OF CERTIFICATION (1) Every certified person, facility, or installation shall renew the certification with the department during July of every odd-numbered year as long as the activity requiring such certification continues; and at such other times as the department considers necessary. every three years from the date of initial certification, so long as the activity requiring such certification continues.

(2) Requirements for renewal of certification shall include, but are not limited to the following:

(a) Attendance at a local or regional training course in a manner specified by the department.

(b) Successful completion of a training course as outlined in 23.3.906 of this subchapter.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

23-3-914 SPECIAL CERTIFICATION If the reporting of each installation or other information called for is impractical, the department, upon the request of an applicant, may approve

certification in a special form as prescribed by the department. (History: See 61-8-405(6) MCA; IMP 61-8-405(6) MCA; TRANS, from Department of Health and Environmental Sciences 1970 MAR pr 16227 Effr 12/15/70-)

23-3-915 23.4.111 REPORT OF CHANGE OR DISCONTINUANCE The person responsible for the operation of an installation shall report within 30 days any change of address or discontinuance of an installation to the department, in writing, within 30 days of the change or discontinuance.
AUTH: 61-8-405, MCA IMP: 61-8-405, MCA

23-3-917 23.4.112 ACCESS TO PREMISES FOR INSPECTION The department or its duly authorized representatives may, for reasonable cause, enter at all reasonable times upon any private or public property to determine whether there is compliance the premises comply with the provisions of this subchapter. However, entry into areas under the jurisdiction of the federal government may be effected only with the concurrence of the federal government or its duly designated representative.
AUTH: 61-8-405, MCA IMP: 62-8-405, MCA

23-3-919 23.4.113 SURVEYS AND PROFICIENCY TESTS Persons and installations which are certified or applying for certification are subject to on-site surveys by representatives of the department. The person or installation shall accept evaluation samples, perform analyses and report the results to the department. These tests are used to evaluate the accuracy of the analyses performed by the certificate holder.
AUTH: 61-8-405, MCA IMP: 62-8-405, MCA

23-3-920 23.4.114 SUSPENSION OR REVOCATION The department may in its discretion suspend, modify or revoke the certificate of any person or installation if:

(a) The certificate was obtained falsely or deceitfully;
(b) The certificate holder makes any material false statement either in the application or required by this subchapter for a certificate or makes any false statement in the course of fulfilling duties set by this subchapter;

(c) Conditions which would warrant the department to refuse to grant an initial certification are revealed by the applications, by a statement of fact required under this subchapter, by any record, report, or inspection, or by any other means;

(d) The certificate holder fails to obtain satisfactory results in the alcohol proficiency program required by section 23.3.905 of this subchapter;

(e) The certificate holder fails to demonstrate satisfactory accuracy, 0-01% weight/volume, in the analyses of the evaluation samples. If an installation fails to meet the requirements on an evaluation sample, a new sample must be submitted. If the installation fails on the second sample, it will be placed on probation for 30 days. If the requirements

are not met on the next evaluation, certification will be withdrawn. During the probation period, results of alcohol analyses by the installation are considered invalid by the department. accuracy to within 0.01 of the appropriate weight/volume in the analyses of the evaluation samples. (Ref. 23.3.902(23) of this subchapter.) If a certificate holder fails to meet the requirements on an evaluation sample, the results of alcohol analyses by the certificate holder are considered invalid by the department until proficiency has been demonstrated by the certificate holder;

(a) (E) The certificate holder violates any provisions of the certificate, the act under which this subchapter is promulgated, or any rule or order of the department.

(2) The department may terminate a specific certificate upon request to the department submitted in writing by the certificate holder.

(3) If an installation's certificate is revoked, the installation may obtain reinstatement by applying anew and complying with original requirements.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-921~~ 23.4.115 TRAINING COURSE APPROVAL Any agency, laboratory, institution, school or college conducting a course of instruction for persons to be certified under this subchapter shall submit a course resume and list of instructors and their qualifications to the department for approval. The course of instruction must be approved by the department if the participants are to be eligible for initial certification.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-939~~ 23.4.116 BREATH TEST RECORDS An installation A facility performing breath analysis shall maintain the following records:

(1) Records of certification, including:

(a) Installation certification; and

(b) Certification of personnel;

(2) Records of tests performed and results;

(3) Records reflecting training levels of certified personnel; and

(1) Copies of certificates;

(2) Records of training levels of certified personnel;

(3) Records of tests performed on samples and the results;

(4) A copy of this rule.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-940~~ 23.4.117 BLOOD AND URINE TEST RECORDS An installation performing blood and urine tests shall maintain the following records:

(1) Records of certification, including:

(a) Certification of installation when applicable; and

(b) Certification of personnel when applicable;

(2) Records of tests on samples from fatalities and others. These records must include information required to complete forms furnished by the department;

(3) Records of maintenance of instrumentation when applicable;

(4) Records of personnel training levels when applicable;

(1) Copies of certificates;

(2) Records of training levels of certified personnel;

(3) Records of tests performed on samples and the results;

(4) Records of maintenance of instrumentation;

(5) A detailed description of techniques or methodology employed; and

(6) A copy of this rule.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-941~~ 23.4.118 REPORTING TEST RESULTS (1) An installation qualifying for certification shall submit to the department a monthly report including all information required to complete forms furnished by the department. Copies of this form will be furnished by the department to the installations. The installation

(1) Every person, facility, and installation shall complete a monthly report form. The report forms will be furnished by the department. The persons, facilities, and installations shall submit the form to the department not later than the tenth day of the month following the month of record.

(2) Copies of the reporting form are available upon request from the Laboratory of Criminalistics Bureau, Suite 115 Wilma Building, Missoula, Montana 59801.

(2) Copies of the report form are available upon request from the Department of Justice, Division of Forensic Science, Laboratory of Criminalistics Bureau, 275 West Front Street, Missoula, Montana 59802.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

Rule III REQUIRED CERTIFICATION FOR BREATH ALCOHOL TESTING The following persons and facilities are required to be certified in order to administer breath alcohol testing:

(1) All law enforcement personnel administering breath alcohol tests in accordance with this subchapter;

(2) All individuals or laboratories except the Department of Justice, Division of Forensic Science, Criminalistics Laboratory;

(3) All clinical and/or hospital laboratories not meeting requirements for exemption from certification.

AUTH: 61-8-405, MCA

IMP: 71-8-405, MCA

Rule IV BI-ANNUAL INSPECTION Each breath alcohol testing instrument installed by the department shall be subject to bi-annual inspection and/or maintenance by department personnel or an authorized department representative.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

Rule V OPERATOR SUPERVISOR REQUIRED Each breath testing facility shall have at least one operator supervisor who is

responsible for the maintenance and calibration monitoring of testing devices, record keeping, result reporting, and ensuring that the facility adheres to this chapter.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23.3+93+~~ 23.4.122 BLOOD SAMPLING (1) Blood samples may be collected from living individuals only by persons authorized by law, upon written request of a peace officer. The skin at the area of puncture must be thoroughly cleansed and disinfected with an aqueous solution of nonvolatile antiseptic (e.g. zephiran chloride, Betadine, etc.) Alcohol of phenolic solution may not be used as a skin antiseptic.

(2) Whenever a postmortem blood sample is collected, all practical precautions to ensure a representative, uncontaminated sample must be employed. Samples must be obtained prior to the start of an embalming procedure. Blood samples may not be collected from the circulatory system effluent during arterial injection of embalming fluid. Care must be taken to avoid contamination by alcohol from the gastrointestinal tract directly or by diffusion therefrom. If it is necessary to sample heart blood, there must be adequate mixing before withdrawal. If a heart blood sample is taken without autopsy, precautions against dilution of the blood with pleural or pericardial fluids must be employed.

+3+ At least 5 milliliters of blood should be collected for analysis.

+4+ (3) The blood sample must be deposited into in a clean dry container, containing a solid anti-coagulant and preservative. The container should then be capped or stoppered and sealed in a mailing container with at least the following information:

(a) Name of suspect;

(b) Date, time and site (location of body) of collection;

The container should then be capped or stoppered, sealed and the following information provided:

(a) Name of subject;

(b) Date and time of collection;

(c) Name or initials of persons collecting and/or sealing sample.

+5+ (4) Sodium flouride or its equivalent may be used as a preservative. Sodium citrate or potassium oxalate or equivalent may be used as an anticoagulant. If no additive or additives other than those listed above are used, a comment so stating should accompany the sample. additive or additives are used, a statement so stating should accompany the sample. If other additives are employed, the name of the additive and its quantity should be listed.

+6+ (5) When possible, the officer requesting blood sampling shall observe sample collection collection of the sample so that he or she may attest to the sample's authenticity. The officer should then initial or mark the sample seal for further identification.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-932~~ 23.4.123 URINE SAMPLING (1) Urine sampling should be considered only when other methods of determining equivalent alcohol concentrations in breath or blood are not practical, except when the urine sampling is performed under strictly controlled conditions (e.g., hospitalized subject), or when the urine sampling is performed for the limited purpose of demonstrating recent ingestion of alcohol. Chemical tests of breath or blood are preferred.

(2) When urine collection is necessary, the specimen must be deposited into a clean, dry, glass container and capped or stoppered. The container should be sealed in a mailing container with at least the following information:

(a) Name of suspect; subject should empty his or her bladder. Twenty (20) minutes after first voiding the bladder, a urine specimen should be collected and deposited into a clean, dry container and capped or stoppered. The container should be sealed and the following information provided:

(a) Name of subject;

(b) Date and time of collection; and

(c) Name or initials of person witnessing collection and/or sealing sample.

(3) Urine samples collected from living individuals must be witnessed to assure that the sample may be authenticated.

(4) If preservatives are used, a comment specifying the preservative and amount used should accompany the sample.

(5) At least 5 milliliters of urine is considered sufficient quantity for analysis.

(6) (5) If it is necessary to analyze an individual's urine after death, all practical precautions must be taken to ensure a representative, uncontaminated sample. The sampling must occur before any embalming procedure begins. The sample must exclude other body fluids, such as contents of the gastrointestinal tract, that may have contaminated the urine either through direct inclusion or diffusion therefrom.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

~~23-3-933~~ 23.4.124 BREATH SAMPLING (1) Breath samples must be collected according to techniques supplied by the manufacturer of the testing or sampling device employed. The device and the techniques must be department-approved.

(2) Breath samples are taken outside an installation by an alcohol capture device may only be taken by a person who has been trained and certified as an operator. The sample should be sealed in a container with at least the following information:

(a) Name of suspect; and the following information provided:

(a) Name of subject;

(b) Date and time of collection; and

(c) Name or initials of person collecting and/or sealing sample.

(3) The quantity of breath may be established only by direct volumetric measurement, or by collection and analysis of a fixed breath volume. at constant known temperature-

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

23-3-934 23.4.125 SAMPLING OF OTHER BODILY SUBSTANCES

Sampling of bodily substances other than blood, breath, or urine is considered valid only in postmortem cases. All postmortem bodily materials must be obtained prior to the start of any embalming procedure. The sample must be taken by or under the direction of a physician, and analysed by an installation meeting the qualifications set forth in ARM 23-3-906. The sample or samples must be taken by the county coroner or a designated representative of the county coroner.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

23-3-935 METHODS OF ANALYSIS

Analysis of blood, breathy urine, or other bodily substances to determine equivalent blood alcohol content must be by one of the following approved methods:

(1) Dichromate-sulfuric acid method. This method consists of the oxidation of alcohol by means of potassium dichromate and sulfuric acid with coincident reduction of the dichromate to chromium sulfate to a degree corresponding to the amount of alcohol oxidized.

(2) Iodine pentoxide method. This method consists of oxidation of alcohol by passing it through heated iodine pentoxide and measuring the amount of iodine thus liberated.

(3) Potassium permanganate method. This method consists of oxidation of alcohol by use of permanganate and sulfuric acid.

(4) Gas chromatographic method. This method may be employed using a gas chromatograph which has satisfactory accuracy, precision, sensitivity, and a suitable column. The method shall be used only by persons who qualify under ARM 23-3-906.

(5) Alcohol-specific gas chromatographic method. If the gas chromatograph is designed specifically for alcohol analysis of blood, breathy or urine, a certified operator supervisor may utilize the method. Certified operators may analyze only direct breath samples on a gas chromatograph specifically designed to automatically measure the breath sample, provided they have had approved training.

(6) Other approved methods. Direct distillation, enzymatic, diffusion or other methods may be approved by the department on receipt of a detailed description of the method, type of installation and training level, and experience of personnel involved in such analytical methods. (History: Sec- 61-8-405(6) MCA, IMP 61-8-405(6) MCA, TRANS, from Department of Health and Environmental Sciences, MAR pr 1622, Eff. 12/15/70.)

23-3-936 23.4.126 BREATH-TESTING INSTRUMENTS (1)

A breath-testing instrument or technique, including a manufacturer-suggested technique, employed pursuant to this subchapter must be approved by the department. Approved instruments will be placed on a list, copies of which are

available upon request from the Laboratory of Criminalistics Bureau, Suite 115 Wima Building, Missoula, Montana 59801.

(2) A breath-testing instrument not on the approved list may be submitted to the department for approval. The instrument must be accompanied by a detailed set of instructions including which includes information concerning its operation and interpretation of its results.

(3) The department shall examine and evaluate any breath-testing instrument submitted for its approval. The department may approve the instrument if the instrument and technique meet the following criteria:

(a) The quantity of breath analyzed for its alcohol content may be established only by direct volumetric measurement or by collection and analysis of a fixed breath volume;

(b) Breath specimens collected for analysis must be essentially alveolar in composition;

(c) The instrument must be capable of analyzing a suitable reference sample, such as air equilibrated with a reference solution of known alcohol content at a known temperature. The results of such analysis must agree with the reference sample value within the limits of 0.01% weight/volume to within 0.01 of the appropriate weight/volume (Ref. 23.3.902(23) of this subchapter) or such other limits set by the department; and

(d) The specificity of the procedure must be adequate and appropriate for the analyses of breath specimens for the determination of alcohol concentration in traffic law enforcement for the analyses of breath specimens for the determination of alcohol concentration is adequate and appropriate for use in traffic law enforcement.

AUTH: 61-8-405, MCA

IMP: 61-8-405, MCA

23-3-937 EXPRESSION OF RESULTS (1) For the purpose of this subchapter, three-fourths of the determined concentration of alcohol in the urine is equivalent to the corresponding blood alcohol concentration.

(2) The breath analysis of the calculation of the blood alcohol concentration must be on the basis of alveolar air to blood ratio of 2:100:1 and of mixed expired air to blood ratio of 3:200:1.

(3) The results of an analysis of blood, breath, urine or other bodily substance shall be expressed in terms of percent by weight and volume; that is, grams of alcohol per 100 milliliters of blood, to the second decimal place as found. For example, 0.237% found shall be reported as 0.23%. Percent by weight/volume is obtained by dividing the weight of alcohol expressed in grams in a sample by the volume of the sample expressed in milliliters, and multiplying by 100. It is then equivalent to grams of alcohol per 100 milliliters of fluid analyzed. (History: See 61-8-405(6) MCA; IMP 61-8-405(6) MCA; TRANS, from Department of Health and Environmental Sciences, 1978 MAR p: 1622, Eff: 12/15/78.)

23.4.127 OPERATION OF BREATH-TESTING DEVICES Breath-testing instruments or devices must be operated in compliance with manuals provided by the manufacturer of the instrument or device and approved by the department.

AUTH: 61-8-405, MCA IMP: 61-8-405, MCA
~~23-3-938--CALIBRATION-OR-STANDARDIZATION~~ Instruments or procedures must be calibrated or standardized by methods approved by the department. (History: See: 61-8-405(6) MCA; IMP 61-8-405(6) MCA; TRANS, from Department of Health and Environmental Sciences, 1978 MAR pr 1622, Eff: 12/15/78; AMD, 1978 MAR pr 1622, Eff: 12/15/78)

3. The rules regarding alcohol analysis are being amended to update the procedures and requirements outlined therein to conform with the 1983 changes in the pertinent statutes.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Mike Greely, Attorney General, 215 North Sanders, Helena, Montana 59620, no later than September 13, 1985.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mike Greely, Attorney General, 215 North Sanders, Helena, Montana 59620, no later than September 13, 1985.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed adoption, or a request from a governmental subdivision or agency or from the administrative code committee or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The amended rules will affect licensed drivers in the state, law enforcement officials and technicians who do alcohol analysis. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the department to make the proposed rule is based on and implements section 61-8-405, MCA.


MIKE GREELY

Certified to Secretary of State August 5, 1985

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)
of Rule I through Rule XXXIII)
to implement the Video Draw)
Poker Machine Control Law of)
1985.)

NOTICE OF PUBLIC HEARING on
the Proposed Adoption of Rule I
through Rule XXXIII to implement
the Video Draw Poker Machine
Control Law of 1985.

TO: All Interested Persons:

1. On September 6, 1985, at 9:00 a.m., a public hearing will be held in the Social and Rehabilitation Services Auditorium, at Fifth and Sanders, Helena, Montana, to consider the adoption of new rule I through new rule XXXIII to implement the Video Draw Poker Machine Control Law of 1985.

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

RULE I STATEMENT OF DEPARTMENT POLICY The public health, safety, and welfare, is the primary consideration in promulgating electronic video draw poker machine rules and shall continue to be the primary consideration in their application and enforcement.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

RULE II DEFINITIONS (1) As used throughout this chapter, the following definitions apply:

(a) "Act" means the Video Draw Poker Machine Control Law of 1985.

(b) "Applicant" means any person who has applied for or is about to apply for a license for a video draw poker machine.

(c) "Draw poker" means a game of poker in which each player makes a wager, then is dealt 5 cards. After the initial deal, the player may raise his wager (if that option is available), discard one or all unwanted cards and then receive in return that same number of cards prior to playing out the hand.

(d) "License" means machine license.

(e) "Machine" means an electronic video draw poker device (as defined in the act) or any other electronic or mechanical device which simulates the game of poker.

(f) "Machine license" means a license issued by the state of Montana which authorizes a specific machine to be operated as an electronic video draw poker machine.

(g) "Simulates the game of poker" means plays by or mimics the generally accepted rules or methods of any of the various card games known as "poker", whether played against another player or the house. Methods include, but are not limited to, symbols used for or in place of images of playing cards, description, and wagering techniques. For purposes of this definition, a determination that a machine plays the game of poker is not solely based on the name of the game.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

RULE III APPLICATION FOR LICENSE, LICENSE FEE, AND LICENSING REQUIREMENT (1) An application to license an electronic video draw poker machine must be submitted to the video draw poker program of the department of revenue upon forms prescribed by the department. The application is not complete unless it is dated and signed by the applicant, and contains all information and statements required by the department.

(2) A separate application must be completed for each machine.

(3) The license fee required by section 10, chapter 720, L. 1985, must accompany each license application.

(4) (a) A machine licensed under section 12, chapter 720, L. 1985, must comply with all required specifications in these rules and the act except section 3, subsections (4)(j), (k), and (o), chapter 720, L. 1985.

(b) A license issued under section 12, chapter 720, L. 1985, will be issued for one year from the date of issuance.

(c) Further licensure of a machine licensed for one year under section 12, chapter 720, L. 1985, requires adding the ticket voucher printer required at section 3, subsections (4)(j), (k), and (o), chapter 720, L. 1985.

(5) A machine licensed under section 10, chapter 720, L. 1985, must comply with all specifications of section 3, chapter 720, L. 1985 of the act and these rules.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 8, and 10, Ch. 720, L. 1985.

RULE IV PRORATION OF LICENSE FEE (1) An applicant must state the month the electronic video draw poker machine is intended to be placed in service.

(2) The license fee paid must be equal to the number of months remaining in the license year multiplied by \$125. The license year commences July 1 and expires at midnight of June 30.

(3) No proration is allowed which would cause the license to expire before June 30. No license shall be issued for a partial year or seasonal period which expires before June 30.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 10, Ch. 720, L. 1985.

RULE V REFUND OF LICENSE FEE Refund of a license fee will be allowed only if the application for license is denied or withdrawn before issuance of the license. No license fee, in part or whole, will be refunded after a license is issued, regardless of whether the license is used after issuance.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 10, Ch. 720, L. 1985.

RULE VI DISTRIBUTION OF LICENSE FEE TO LOCAL GOVERNING BODY The department shall pay quarterly to each treasurer of the local governing body the proportion of the license fee provided by section 10, subsection (2), Chapter 720, L. 1985.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 10, Ch. 720, L. 1985.

RULE VII ISSUANCE OF LICENSE DECAL (1) Upon approval of an application and payment of a license fee, the department will issue a license decal.

(2) The licensee must affix the license decal to the machine cabinet as instructed by the department so that the decal is visible and easily read. The machine may not abut another machine, wall, or other obstruction which would obscure a person's ability to see and read the license decal.

(3) The license decal must be affixed to a machine before a machine is placed in service.

(4) A license decal may only be affixed to the machine licensed and is not transferable to any other machine.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 10, Ch. 720, L. 1985.

RULE VIII AUTHORITY TO OPERATE (1) When temporary authority to operate an establishment licensed for on-premises consumption of alcoholic beverages is granted by the department of revenue, liquor division, pursuant to § 16-4-404(6), MCA, and ARM 42.12.208, the recorded owner of the alcoholic beverages license in transfer remains responsible for the legal operation of electronic video draw poker machines licensed under his name until the day the alcoholic beverage license transfers to the new owner.

(2) Issuance of temporary authority to operate does not entitle the recipient of that authority to be a licensee under the act. The person issued temporary authority must apply for a machine license. The application shall not be approved until the alcoholic beverages license transfers from the recorded owner.

(3) The licensee may permit the person issued temporary authority to manage the licensee's machines pending transfer of the alcoholic beverages license. However, the licensee remains responsible for the legal operation of a machine and the person issued temporary authority may only act as the licensee's agent.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 8, 10, Ch. 720, L. 1985.

RULE IX LICENSE NOT TRANSFERABLE (1) A license to operate an electronic video draw poker machine is only valid for the licensee and the premises identified on the license application.

(2) A license is further restricted to the particular machine approved by the department and identified on the license application.

(3) A license issued pursuant to the act and these rules is a privilege and not personal property.

(4) A machine may not be moved from a licensee's establishment and placed in service at another establishment unless application is made for an electronic video draw poker machine license describing the new location, the machine is inspected, the license fee is paid, and a new license is issued. A new license

is required even if a machine has a current, unexpired license for the former location.

(5) If a machine is destroyed and then replaced by a newly licensed machine, the unused portion of the fee paid on the destroyed machine will be applied as a credit to the fee due on the replacement machine. The department may require proof of destruction before credit is applied.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 8, 10, Ch. 720, L. 1985.

RULE X EXPIRATION -- RENEWAL OF LICENSE (1) All licenses, except licenses originally issued under section 12, chapter 720, L. 1985, expire at midnight of June 30.

(2) An application for a new license must be submitted to the video draw poker program of the department upon forms prescribed by the department, the license fee paid, new license issued, and a new license decal affixed to the machine before a previously licensed machine may be operated after midnight of June 30.

(3) The department will consider the same criteria for renewal of license as for the original issuance of license. Failure to satisfy licensing criteria contained in the act and these rules may result in denial of renewal of license.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 10, Ch. 720, L. 1985.

RULE XI LICENSEE BUSINESS RELATIONSHIPS (1) The department may deny an application or revoke, suspend, restrict, or limit a license or approval of a machine when it finds that a business relationship between a licensee and another person or business entity is unsuitable or endangers the health, safety, or welfare of the citizens of this state. In determining the suitability of other persons or business entities in a business relationship, the department may consider the person or business entity's:

(a) general character, including honesty and integrity;

(b) financial security and stability, competency, and business experience in the capacity of the relationship;

(c) record, if any, of violations which may affect the legal and proper operation of a machine including a violation affecting another licensee and any violation of the laws of this state, other states, and countries without limitations as to the nature of the violation;

(d) refusal to provide access to records, information, equipment, or premises to the department or peace officers when such access is reasonably necessary to ensure or protect public health, safety, or welfare.

(2) The licensee remains responsible for the legal operation of a machine and is liable for any violation involving a machine or its operation.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 11, Ch. 720, L. 1985.

RULES XII LICENSEE QUALIFICATIONS - DENIAL OF APPLICATION
-- NONRENEWAL OF LICENSE - FAIR HEARING -- JUDICIAL REVIEW (1)
When the department's video draw poker program denies an application for license or renewal of license, the applicant may request a fair hearing. Upon the department's receipt of written request, a fair hearing shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act.
(2) Administrative procedures conducted by the department are subject to judicial review in accordance with the provisions of the Montana Administrative Procedure Act, title 2, chapter 4, part 7, MCA.
AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 8, 10, Ch. 720, L. 1985.

RULE XIII QUARTERLY REPORTING REQUIREMENTS Licensee quarterly reporting requirements are as follows:

(1) For each machine the licensee or his representative must file with the department a quarterly video draw poker machine meter report signed by the licensee. The forms prescribed and supplied by the department require readings from the mechanical meters as required by section (3), subsection (4)(1), chapter 720, L. 1985, and the electronic meters as required by section (3), subsection (4)(m), chapter 720, L. 1985. The report will be used by the department to verify the winning percentage of the machine as required by section 4, chapter 720, L. 1985. The following requirements apply:

(a) the report must be delivered to the department of revenue, video draw poker program, Mitchell Building, Helena, Montana 59620, or bear a United States postal service postmark not later than midnight of the 15th of each month following the quarters ending March 31, June 30, September 30, and December 31 of each calendar year;

(b) the meter reading must be taken and recorded for the report within 7 days of the close of the licensee's last day of business in the reporting quarter; and

(c) the report is due on each machine after it has been licensed regardless of whether the machine was in use during a subsequent quarter of the licensed year.

(2) If a licensee leases, rents, or shares machine ownership, or a machine's revenues with another person or business entity, the licensee or his representative must provide upon the same form prescribed by the department in subsection (1) above, quarterly information for each machine as follows:

(a) full identification including name, address, and social security number (or federal identification number) of all persons or business entities involved in the above-mentioned business relationship;

(b) percentages of participation in machine income by each person or business entity involved in the above-mentioned business relationship; and

(c) specific machine income (total collections less amounts paid to players without adjustment for expenses) paid to or received by each person or business entity involved in the above-mentioned business relationship.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

RULE XIV RECORD RETENTION REQUIREMENTS Record requirements are as follows:

(1) Machine operation records must be maintained and made available for inspection by the department upon request. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law.

(2) The records must, but are not limited to, include:

(a) the accounting ticket provided by section 3, subsection

(4)(c), chapter 720, L. 1985, and corresponding licensee records containing the performance synopsis of the machine;

(b) the exact copy of the printed ticket voucher as provided by section 3, subsection (4)(k), chapter 720, L. 1985; and

(c) in the event a licensed machine qualifies as a used video machine which does not produce the ticket copies, records and books necessary to provide the performance synopsis of the machine. The information shall be obtained from the electronic and mechanical meters required by section 3, chapter 720, L. 1985, and must be recorded each time the cash area is accessed.

(3) The licensee's records required by this rule must be maintained in the state of Montana by the licensee or his representative for a minimum of 3 years.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

RULE XV GENERAL SPECIFICATIONS OF VIDEO DRAW POKER MACHINE

Detailed specifications for video draw poker machines are required by the department in addition to those specifications provided by chapter 720, L. 1985. Such specifications are required to ensure the legal operation and integrity of each machine and provide the department with methods to monitor the machines.

(1) All hardware and software modifications made to a licensed video draw poker machine must be submitted to the department for approval prior to installation.

(2) The department may revoke, suspend, restrict, or limit a license or approval at any time when it finds that any machine or machine component does not comply with statutes and rules governing electronic video draw poker machines. The department may also revoke, suspend, restrict, or limit the licenses or approval of other similar model machines or machine components in use in the state.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 3, Ch. 720, L. 1985.

RULE XVI HARDWARE SPECIFICATIONS A video draw poker machine must include the following hardware specifications:

(1) All electrical and mechanical parts and design principles shall follow acceptable industrial codes and standards in both design and manufacture.

(2) A video draw poker machine shall be designed to ensure that the player will not be subjected to any physical, electrical, or mechanical hazards.

(3) A machine shall be equipped with a surge protector that will feed all A.C. electrical current to the machine and a battery backup power supply to maintain the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine.

(4) The design of a machine shall ensure there are no readily accessible game function related points which would allow any input and that there is no access to input or output circuits unless it is necessary for the proper operation of the machine.

(5) The nonresetable mechanical meters required by section 3, subsection (4)(1), chapter 720, L. 1985, must meet the following specifications:

(a) either the meters must be located so they can be viewed and read externally from the front of the machine or the keys to the cash area must be immediately available at the licensed premises;

(b) the meters shall be situated in a left to right or top to bottom configuration according to function and visibly labeled as follows:

- (i) coins in;
- (ii) credits played;
- (iii) credits won;
- (iv) credits paid; and

(c) the mechanical meters shall be manufactured in such a way as to prevent access to the internal parts of the meter.

(6) The department may require and provide a validating identification sticker to be attached to the mechanical meters to verify the meters are assigned to a specific licensed machine.

(7) A machine must have a separate and locked area for the logic board and software as provided by section 3, subsection (4)(g), chapter 720, L. 1985. The department must be allowed immediate access to this locked area. Access may be provided by retaining a key for the locked area immediately available at the licensed premises.

(8) The ticket printing mechanism provided in section 3, subsection (4)(j), chapter 720, L. 1985, must be located in the locked logic area to ensure the safekeeping of the audit copy provided by section 3, subsection (4)(k), chapter 720, L. 1985. The printing mechanism must produce a printed original and duplicate that will remain legible throughout the retention period required by these rules.

(9) The logic and printer interface boards shall be mounted within the logic area so they are not visible upon opening the logic area door.

(10) A machine must have a nonremovable identification device externally attached to the machine which shall include the following information about the machine:

- (a) manufacturer;
- (b) serial number;
- (c) model or make; and
- (d) any other information required by the department.

(11) The logic board must have a unique serial number that may be used to identify the board for approval and inspection purposes. The serial number shall be in 10 symbol configuration. The first 4 symbols shall identify the manufacturer and the last 6 symbols shall identify the board.

(12)(a) The electronic meters provided in section 3, subsection (4)(m), chapter 720, L. 1985, shall be able to maintain totals no less than 8 digits in length with the exception of the following which shall be at least 6 digits in length:

- (i) one pair;
- (ii) two pair;
- (iii) three of a kind;
- (iv) straight;
- (v) flush;
- (vi) full house;
- (vii) four of a kind;
- (viii) straight flush;
- (ix) five of a kind; and
- (x) errors from the logic board random access memory.

(b) In addition to the above totals, the electronic meters for all machines not licensed under section 12, chapter 720, L. 1985, must keep 2 additional 6 digit totals:

- (i) the number of times the logic board was accessed; and
- (ii) the number of times the cash area was accessed.

(13) Printing of all totals from the electronic meters shall occur automatically, by means of a switch attached to either the door or the lock for that door each time access to either the logic compartment or the cash area occurs.

(14) Any necessary resetting of electronic meters shall be done in a manner that is easily verifiable by the department.

(15) The face of each machine shall be clearly labelled so as to inform the public that no one under the age of 18 years is allowed to play.

(16) The printer mechanism shall have a paper sensing device that will prevent play if there is insufficient paper to print a ticket for a customer or an audit ticket. Upon sensing a "paper low" or "paper out" condition, the machine must display a message to that effect on the monitor.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 4, Ch. 720, L. 1985.

RULE XVII SOFTWARE SPECIFICATIONS A machine is required to possess software specifications that enable it to play the game of draw poker with the operation set forth by section 3, subsection (4), chapter 720, L. 1985. The software logic must have the following characteristics:

(1) The logic of the program must not intervene in any way with expected random play.

(2) The random number selection process shall conform to an acceptable random order of occurrence and uniformity of distribution.

(3) The deck of cards used must consist of 52 standard playing cards. Jokers may also be used as long as the payback odds are set to meet the 80% minimum payback.

(4) After the shuffle and before the deal, the deck is to be frozen, with all cards used for play taken in order from the top of the deck. For the initial 5 card deal, all possible 5 card combinations from the original playing deck must have equal probability of being dealt. All unused cards must have equal probability of replacing discarded cards.

(5) The logic must be programmed to have an identifiable routine that:

(a) shuffles one deck of cards after each hand by using a random number generator;

(b) deals the first 5 cards from the top of that deck; and

(c) replaces discarded cards with remaining cards in that deck starting with the sixth card and drawing any additional cards in the order of that deck.

(6) If there is a distinction made for payoff purposes between a straight flush and a royal flush, provisions must be made in the electronic meters to track those totals separately.

(7) Any variable data, e.g., location name, shall not reside on the PROM modules that contain the poker program.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 4, Ch. 720, L. 1985.

RULE XVIII SOFTWARE INFORMATION TO BE PROVIDED TO THE DEPARTMENT A licensee may be required to provide information to the department necessary to ensure the machine's software and logic are in compliance with the act and these rules. The information may be provided directly by the licensee, the distributor or the manufacturer of the machine. The information shall include, but not be limited to:

(1) all technical manuals, instructions, wiring, and logic diagrams for the machine;

(2) all microprocessor manuals;

(3) all source listings, including programmer's comments, and flow charts for the poker programs and printer routines;

(4) a hexadecimal dump of all compiled programs;

(5) model PROM's containing compiled poker programs and character sets, including those that may reside on the printer interface board;

(6) access to a compiler for the programming language used if the department is unable to compile the program with the equipment it has available;

(7) the algorithm for the random number generator along with a written description;

(8) a photo or drawing of the display which shows all setup and test modes with detailed written descriptions and instructions;

(9) a listing of the payback values and the probabilities of the outcome of winning hands for the program logic used;

(10) the schedule of proposed payout odds and overall payback percentage;

(11) tabulated results of 5 separate simulations of not less than 200,000 hands of poker using the poker program;

(12) instructions on the means, including assumptions made, by which the simulations in subsection (11) were created so the department can verify the simulation results; and

(13) a description of the methods of all testing criteria if performed and the results of the tests for the following:

- (i) random number generator;
- (ii) electromechanical interference;
- (iii) radio frequency interference;
- (iv) FCC standards;
- (v) A.C. line noise;
- (vi) static electricity; and
- (vii) extreme temperature conditions.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 4, 7, Ch. 720, L. 1985.

RULE XIX RESTRICTIONS ON OPTIONAL GAME FORMAT OR FEATURES

(1) A machine shall only offer the game of draw poker as provided by the act and these rules and shall not offer any other game or variant which will award free games or credits that may be redeemed by a player. This restriction applies to bonus, progressive, or any other means of awarding games or credits which deviates from the award of games or credits for a winning hand of draw poker.

(2) The department shall determine what optional features may be allowed and such features must be approved by the department prior to inclusion in a machine's game format.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 4, Ch. 720, L. 1985.

RULE XX PROHIBITED MACHINES (1) Any machine including an amusement machine which, in substance, simulates the game of poker without conforming to the requirements of the act or these rules and is placed in service for play by the public is prohibited. The machine is subject to immediate seizure and destruction in accordance with the provisions of §§ 23-5-121 and 23-5-122, MCA.

(2) Any person who owns or operates a machine described in subsection (1) is in violation of the act, these rules and title 23, part 3, MCA. The civil and criminal penalties provided in those titles shall apply.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 4, 5, 7, 11, Ch. 720, L. 1985.

RULE XXI POSSESSION OF UNLICENSED MACHINES BY MANUFACTURER, SUPPLIER, DISTRIBUTOR, OWNER, OR REPAIR SERVICE A manufacturer, supplier, distributor, owner, or repair service may possess or own unlicensed machines, logic boards, meters, and machine components which conform to the statutory requirements and rules relating to electronic video draw poker machines. Such machines possessed or owned may not be operated except when inspected, licensed, and placed on a licensee's premises.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

RULE XXII LOCATION OF MACHINES ON PREMISES (1) An electronic video draw poker machine must be placed in such a manner that:

(a) each machine remains within the sight and control of the licensee or employees of the licensee;

(b) each machine is segregated from amusement machines in such a manner that a minor who tries to play a machine is immediately observed by the licensee or the licensee's employees; and

(c) public access is, to the greatest extent possible, limited to persons over the age of 18.

(2) If a licensee's premises are operated in conjunction with another business, a machine must be confined to that part of the premises that is used primarily for the consumption of alcoholic beverages.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 9, Ch. 720, L. 1985.

RULE XXIII CONDITIONAL APPROVAL OF VIDEO DRAW POKER MACHINES BY DEPARTMENT (1) The department may conditionally approve specific models of machines based on its finding that the machines conform to the act and these rules.

(a) Final approval of each machine is required even if a machine has been conditionally approved.

(b) Conditional or final approval may be withdrawn by the department subsequent to finding that a machine does not conform to specifications, including new or revised requirements that differ from those in effect at the time conditional or final approval was granted.

(2) Approval includes inspection of the hardware and software and all information provided to the department under rule XVIII to determine whether a machine meets all requirements of the act and these rules.

(3) The department may accept shipment of a machine for the purpose of providing conditional approval of that particular make or model provided the following conditions are met:

(a) the department will not be responsible for any purchase, shipping, or handling charges;

(b) all the information required in rule XVIII must accompany the machine; and

(c) prior to shipment, the department approved such shipment of a machine for scheduled testing and approval.

(4) New rules may be adopted which redefine or set forth new specifications that previously approved machines do not comply with. In such cases, and only in such cases, the department shall allow up to 90 days for a licensee to bring a machine into compliance with a new or modified specification.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 7, Ch. 720, L. of 1985.

RULE XXIV DISSEMINATION OF INFORMATION (1) Certain information collected by the department is known to contain confidential information. The information in subsection (2) is confidential and may not be revealed by the department except under order of a court of competent jurisdiction.

(2) Information designated as confidential includes but is not limited to the following:

(a) technical manuals, instructions, wiring, or logic diagrams for the machine;

(b) listings of source codes and flow charts;

(c) results of simulations and related information explaining simulation methodology;

(d) model PROMS or logic boards containing compiled programs; or

(e) background information on applicants, licensees, and business relationships.

(3) Information relating to the results of actual operations as shown on a machine's meters is not confidential and may be used to compile studies or reports.

(4) Persons with access to confidential information as described in subsection (2) may not use or reveal anything of a confidential nature outside the scope of its intended purpose.

(5) The department shall secure confidential information and restrict all persons from access, except designated employees whose duties include testing and interpretation of the information. Such information is not public record and may not be released to any member of the public.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 7, Ch. 720, L. 1985.

RULE XXV REPAIRING MACHINES - APPROVAL (1) When the department approves the software and logic board of a machine, it may use a prescribed security seal process to guard against any unauthorized tampering or changes to the method by which the game of draw poker is played on the machine.

(2) Any repair made to a machine's logic board which requires the breaking of a department seal must be reported to the department before the seal is removed or broken. At that time, readings of the machine's electronic meters and mechanical meters must be provided to the department. After repair, the logic board must be reapproved by the department and initial electronic and mechanical meter readings provided to the department before the machine is again placed in operation on the licensee's premises.

(3) Any repair or replacement made to a machine's meters must be reported to the department before a seal is removed or broken and the readings of the machine's electronic and mechanical meters must be provided to the department. After repair, the initial readings of the electronic and mechanical meters must be provided before the machine is again placed in operation. The department must subsequently be given access to the machine to reseal the meters and verify their proper operation.

(4) To assure the integrity, security, and monitoring of machines in service, a licensed machine may not be substituted or replaced until the replacement machine has been licensed by the department.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 3, 7, Ch. 720, L. 1985.

RULE XXVI DEPARTMENT INVESTIGATORS - PEACE OFFICER STATUS

In accordance with section 7, subsection (4), chapter 720, L. 1985, the department designates all its investigations program investigators as "peace officers" for the purpose of this act.
AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7(4), Ch. 720, L. 1985.

RULE XXVII INSPECTION AND SEIZURE OF MACHINES (1)

The department or its duly authorized representative has the right at all times to make an examination of any machine being used to play or simulate video draw poker. Such right of inspection includes immediate access to all machines and unlimited inspection of all machine parts. The department or its authorized representatives may immediately seize and remove any machine or device which violates state law or these rules.

(2) Given reasonable cause, the department may remove a machine or parts from a machine for laboratory testing and analysis.

(3) The department may seal any machine left on the licensee's premises pending the department's investigation. The breaking or removal of the department's seal will subject the licensee to seizure of the entire machine and suspension or revocation of the license.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 11, Ch. 720, L. 1985.

RULE XXVIII INVESTIGATION OF LICENSEE

The department may, upon its own motion, and shall upon receipt of a written, verified complaint of any person, investigate the actions of any licensee and the operations of any machine. The investigation shall be undertaken for the purpose of gathering evidence and determining whether a violation of the act or these rules has occurred.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 11, Ch. 720, L. 1985.

RULE XXIX CIVIL VIOLATIONS -- CRIMINAL CITATIONS (1)

When the department determines a licensee has violated the act or these rules, the department shall issue a civil violation to the licensee.

(2) A violation may be issued for, but is not limited to the following acts:

- (a) the operation of an unlicensed machine;
- (b) the use of more than 5 electronic video draw poker machines on a premises;
- (c) allowing a person under the age of 18 years to play a machine;
- (d) the falsification of application or reporting documents;
- (e) the refusal to allow inspection of a machine;
- (f) the failure to comply with documentary reporting requirements;

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(g) the destruction of printed ticket voucher and accounting ticket copies as referred to in section 3, subsections (4)(k) and (o), chapter 720, L. 1985; or

(h) the failure to comply with any provision of the act or these rules.

(3) Any person, including licensees, their agents, servants, or employees may be arrested by a peace officer of this state for tampering with a machine, attempting or conspiring to manipulate the outcome or payoff of a machine by physical tampering or other interference with the proper functioning of a machine.

(4) When the department's investigator has reasonable cause to believe a person has committed a crime as provided by section 11, subsection (2), chapter 720, L. 1985, the investigator may exercise his powers as a peace officer, in accordance with the provisions of the act, and issue criminal citation.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 11, Ch. 720, L. 1985.

RULE XXX PENALTIES FOR CIVIL VIOLATION ISSUED BY DEPARTMENT (1) The department may suspend a license after opportunity for fair hearing when:

(a) the department receives:

(i) a certified copy (or other credible evidence) of any judgment or conviction of any licensee or his agent, servant, or employee for any violation of any criminal law or ordinance of the United States, the state of Montana or of any Montana county, city, or town relating to video draw poker machines; or

(ii) a certified copy of the record (or other credible evidence) of the forfeiture by any licensee or his agent or employee of bond to appear to answer charges of violating any law or ordinance relating to video draw poker machines; or

(b) the department, after investigation, has reasonable cause to believe that any licensee, his agent or employee has violated the provisions of the act or these rules and issue violation or citation.

(2) The department may suspend a license prior to the opportunity for fair hearing when the department, after investigation, has reasonable cause to believe continued operation of the licensed machine endangers public health, safety, and welfare. During the period of suspension, the licensee shall not operate such machine.

(3) A license may be revoked, subsequent to opportunity for a fair hearing, as penalty for violation of the act or these rules. In addition to the penalties provided in this section, a machine may be seized and treated in accordance with §§ 23-5-121 and 23-5-122, MCA, when reasonable cause exists to believe the machine is being operated in violation of the act or these rules. AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 7, 11, Ch. 720, L. 1985.

RULE XXXI ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW

(1) The department shall conduct a fair hearing:

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- (a) following the emergency suspension of a license, and
 - (b) prior to the revocation of a license.
 - (2) All fair hearings must be held in accordance with the Montana Administrative Procedure Act.
 - (3) Administrative procedures conducted by the department are subject to judicial review in accordance with the provisions of the Montana Administrative Procedure Act, title 2, chapter 4, part 7, MCA.
- AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Secs. 8, 11, Ch. 720, L. 1985.

RULE XXXII TRANSPORTATION OF MACHINES INTO STATE All shipments of video draw poker machines into this state must comply with the act of the congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being Ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171-1177.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

RULE XXXIII REGISTRATION OF MANUFACTURERS, SUPPLIERS, OR DISTRIBUTORS OF VIDEO DRAW POKER MACHINES (1) Any person desiring to sell, distribute, lease, or rent video draw poker machines in this state must:

- (a) be issued and maintain all required federal, state, county, and municipal licenses;
 - (b) apply to the department on forms prescribed by the department for registration; and
 - (c) furnish to the department monthly reports identifying the quantities and models of machines the manufacturer, supplier, distributor, or coin operator ships into Montana or receives from outside Montana, and such other information the department may determine is necessary to regulate and control video draw poker machines in accordance with the act and these rules.
- (2) Any person desiring to participate in the income from a video draw poker machine by or through ownership, operation, lease, rental, or sharing of the machine with a licensee in this state must:

- (a) be issued and maintain all required federal, state, county, and municipal licenses; and
 - (b) apply to the department on forms prescribed by the department for registration.
- (3) No person shall take revenue from a video draw poker machine operated in this state or ship a video draw poker machine into this state until his application for registration is granted by the department.

(4) Registration may be suspended or revoked by the department upon the department's determination, after notice and opportunity for fair hearing, that the registrant has not complied with the conditions of registration.

AUTH: Sec. 7, Ch. 720, L. 1985; IMP: Sec. 7, Ch. 720, L. 1985.

3. The Department proposes to adopt rules I through XXXIII to implement Chapter 720, L. 1985. On May 13, 1985, the

Governor signed House Bill No. 236 which enacted the Video Draw Poker Machine Control Law of 1985. Section 7 of House Bill No. 236 requires the Department of Revenue to adopt rules to administer and enforce the provisions of the law. The law makes the use of certain specific types of video draw poker machines legal in Montana, requires allocation of license fees between the state and local governments, and grants investigative powers to the Department including powers of search, seizure, and arrest.

The Statement of Intent attached to House Bill No. 236 places a further requirement on the Department to adopt rules to protect the health, safety, and welfare of the public and cites several specific topics for which rules should be adopted to assure compliance with the bill.

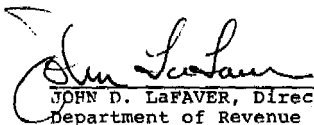
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than September 12, 1985.

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

6. The authority of the Department to adopt these rules is found in section 7, Chapter 720, L. 1985. The rules implement Chapter 720, L. 1985.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/5/85

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-)	NOTICE OF PUBLIC HEARING FOR
ment of rules pertaining to)	PROPOSED AMENDMENT OF RULES -
fees for filing documents)	Fees for Filing Documents and
and issuing certificates.)	Issuing Certificates (Business
	Corporations and Limited Partner-
	ships)

TO: All Interested Persons:

1. On September 5, 1985, at 10:00 a.m., a public hearing will be held in the Secretary of State's Office, Room 225, State Capitol, Helena, Montana, to consider the amendment of rules pertaining to fees for filing documents and issuing certificates for business corporations, limited partnerships and miscellaneous charges.

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

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

- (1) filing articles of incorporation and issuing a certificate of incorporation, ~~\$45.00~~, \$20.00,
- (2) filing articles of amendment and issuing a certificate of amendment, \$15.00,
- (3) filing restated articles of incorporation and issuing a restated certificate of incorporation, \$15.00,
- (4) filing articles of merger, consolidation, or exchange and issuing a certificate of merger, consolidation or exchange, ~~\$47.50~~, \$20.00,
- (5) filing an application to reserve a corporate name, \$10.00,
- (6) filing a notice of transfer of a reserved corporate name, \$5.00,
- (7) filing a statement of change of address of registered office or change of registered agent, or both, ~~\$7.50~~, \$5.00,
- (8) filing a statement of the establishment of a series of shares, \$20.00,
- (9) filing a statement of cancellation of shares, ~~\$42.50~~, \$20.00,
- (10) filing a statement of reduction of stated capital, ~~\$45.00~~, \$20.00,
- (11) filing a statement of intent to dissolve, ~~\$42.50~~, \$15.00,
- (12) filing a statement of revocation of voluntary dissolution proceedings, \$20.00,
- (13) filing articles of dissolution and issuing a certificate of dissolution, ~~\$42.50~~, \$15.00,
- (14) filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, ~~\$45.00~~, \$20.00,

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(15) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, ~~\$42.50~~, \$15.00,

(16) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ~~\$42.50~~, \$15.00,

(17) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, ~~\$45.00~~, \$20.00,

(18) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ~~\$42.50~~, \$15.00,

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

(20) filing an application for renewal of registration of corporate name of a foreign corporation, \$10.00 per year,

~~(20)~~ (21) filing an annual report within allotted time, \$10.00,

~~(21)~~ (22) filing an annual report after the April 15 statutory deadline, \$15.00,

~~(22)~~ (23) filing any other statement or report, except an annual report, of a domestic or foreign corporation, ~~\$42.50~~, \$15.00,

~~(23)~~ (24) filing a statement of change, changing only the business address of the registered agent, ~~\$7.50~~, \$5.00 each for 1-25 corporations, ~~\$6.50~~ \$4.50 each for 25-50 corporations, and ~~\$5.00~~ \$4.00 for over 50 corporations,

~~(24)~~ (25) issuing a certificate of good standing, ~~\$2.50~~, \$5.00,

~~(25)~~ (26) issuing a certificate of fact, ~~\$42.50~~, \$15.00,

(27) for furnishing a computerized printout of business corporation information, \$1.00.

AUTH: 35-1-1202, MCA

IMP: 35-1-1202, MCA

44.5.105 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - LIMITED PARTNERSHIPS The secretary of state shall charge and collect for:

(1) filing a certificate of limited partnership and issuing a certificate, ~~\$45.00~~, \$20.00,

(2) filing a certificate of amendment of limited partnership and issuing a certificate, \$15.00,

(3) filing a certificate of cancellation of limited partnership and issuing a certificate, ~~\$42.50~~, \$15.00,

(4) filing an application to reserve a limited partnership name, \$10.00,

(5) filing a notice of transfer of a reserved limited partnership name, \$5.00,

(6) filing a statement of change of address of specified office or change of specified agent, or both, ~~\$7.50~~, \$5.00,

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(7) filing an application for registration of a foreign limited partnership and issuing a certificate, ~~\$45.00~~, \$20.00,

(8) filing a certificate of cancellation or correction of a foreign limited partnership and issuing a certificate, ~~\$42.50~~, \$15.00,

(9) filing any other statement or report of a domestic or foreign limited partnership, ~~\$42.50~~, \$15.00,

(10) issuing a certificate of fact of limited partnership, ~~\$42.50~~, \$15.00.

AUTH: 35-12-521, MCA

IMP: 35-12-521, MCA

44.5.105 MISCELLANEOUS CHARGES - LIMITED PARTNERSHIPS The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument or paper relating to a limited partnership, 50 cents per page and \$2.00 for the certificate,

(2) for furnishing any certificate not mentioned in this rule or ARM 44.5.105, ~~\$5.00~~, 15.00,

(3) for furnishing a computerized printout of limited partnership information, \$1.00.

AUTH: 35-12-521, MCA

IMP: 35-12-521, MCA

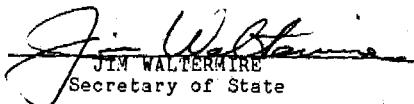
4. The rules are being proposed to establish fees for filing documents and issuing certificates required by Title 35, Chapter 1 and Title 35, Chapter 12, MCA. Amendments and new rules are necessary to adjust fees to reflect changes in costs and to satisfy the statutory requirement that fees must be reasonably related to costs. Records to support the fees charged for the filing requirements are maintained in the Office of the Secretary of State and are available to the public.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bobby June Day, Room 225, State Capitol, Helena, Montana, 59520, no later than September 12, 1985.

6. Bobby June Day, Room 225, State Capitol, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

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

Dated this 5th day of August, 1985.


JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING FOR
of rules pertaining to fees)	PROPOSED ADOPTION OF RULES -
for filing documents and)	Fees for Filing Documents and
issuing certificates.)	Issuing Certificates (Nonprofit
	Corporations, Assumed Business
	Names and Trademarks)

TO: All Interested Persons:

1. On September 5, 1985, at 10:00 a.m., a public hearing will be held in the Secretary of State's office, Room 225, Capitol Building, Helena, Montana, to consider the adoption of rules pertaining to fees for filing documents and issuing certificates for nonprofit corporations, assumed business names and trademarks.

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

3. The proposed rules provide as follows:

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

(1) filing articles of incorporation and issuing a certificate of incorporation, \$20.00,

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

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

(4) filing articles of merger, consolidation, or exchange and issuing a certificate of merger, consolidation or exchange, \$20.00,

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

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

(7) filing a statement of change of address of registered office or change of registered agent, or both, \$5.00,

(8) filing articles of dissolution and issuing a certificate of dissolution, \$15.00,

(9) filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, \$20.00,

(10) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, \$15.00,

(11) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, \$15.00,

(12) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, \$20.00,

(13) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$15.00,

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

(15) filing an application for renewal of registration of corporate name of a foreign corporation, \$10.00 per year

(15) filing an annual report within allotted time, \$10.00,

(17) filing an annual report after the April 15 statutory deadline, \$15.00,

(13) filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$15.00,

(19) filing a statement of change, changing only the business address of the registered agent, \$5.00 each for 1-25 corporations, \$4.50 each for 25-50 corporations, and \$4.00 for over 50 corporations,

(20) issuing a certificate of good standing, \$5.00,

(21) issuing a certificate of fact, \$15.00.

AUTH: 35-2-1001, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

IMP: 35-2-1001, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

RULE II MISCELLANEOUS CHARGES - NONPROFIT CORPORATIONS The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument or paper relating to a nonprofit corporation, 50 cents per page and \$2.00 for the certificate,

(2) for furnishing any certificate not mentioned in this rule or Rule I, \$15.00,

(3) for furnishing a computerized printout of corporation information, \$1.00.

AUTH: 35-2-1001, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

IMP: 35-2-1001, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

RULE III FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - ASSUMED BUSINESS NAMES The secretary of state shall charge and collect for:

(1) filing an application for registration of assumed business name and issuing a certificate, \$15.00,

(2) filing an application for renewal of registration of assumed business name and issuing a certificate, \$15.00,

(3) filing an application for an amendment to the registration of assumed business name and issuing a certificate, \$15.00,

(4) filing an application to reserve an assumed business name and issuing a certificate, \$10.00,

(5) filing an application for cancellation of an assumed business name, \$5.00,

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(6) filing any other statement or report of an assumed business name, \$15.00,

AUTH: 30-12-217, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

IMP: 30-12-217, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

RULE IV MISCELLANEOUS CHARGES - ASSUMED BUSINESS NAMES The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument or paper relating to an assumed business name, 50 cents per page and \$2.00 for the certificate,

(2) for furnishing any certificate not mentioned in this rule or Rule III, \$15.00,

(3) for furnishing a computerized printout of assumed business name information, \$1.00.

AUTH: 30-12-217, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

IMP: 30-12-217, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

RULE V FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - TRADEMARKS The secretary of state shall charge and collect for:

(1) filing an application for registration of trademark and issuing a certificate, \$20.00,

(2) filing an application for renewal of registration of trademark and issuing a certificate, \$20.00,

(3) filing an application for an assignment of the registration of trademark and issuing a certificate, \$20.00,

(4) filing a cancellation of a trademark and issuing a certificate, \$20.00,

(5) filing any other statement of a trademark, \$20.00,

AUTH: 30-13-311 to 30-13-318, MCA & Sec. 1, Ch. 119, Montana Sessions Laws of 1985

IMP: 30-13-311 to 30-13-318, MCA & Sec. 1, Ch. 119, Montana Sessions Laws of 1985

RULE VI MISCELLANEOUS CHARGES - TRADEMARKS The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument or paper relating to a trademark, 50 cents per page and \$2.00 for the certificate,

(2) for furnishing any certificate not mentioned in this rule or Rule V, \$15.00,

(3) for furnishing a computerized printout of trademark information, \$1.00.

AUTH: 30-13-311 to 30-13-318, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

IMP: 30-13-311 to 30-13-318, MCA & Sec. 1, Ch. 119, Montana Session Laws of 1985

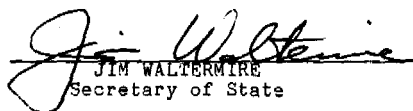
4. The rules are being proposed to establish fees for filing documents and issuing certificates required by Title 35, Chapter 2, and Title 30, Chapter 13, MCA. Records to support the fee charged for the filing requirements are maintained in the Office of the Secretary of State and are available to the public.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bobby June Day, Room 225, State Capitol, Helena, Montana, 59620, no later than September 12, 1985.

6. Bobby June Day, Room 225, State Capitol, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

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

Dated this 5th day of August, 1985.


JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING FOR
of rules pertaining to fees) PROPOSED ADOPTION OF RULES -
for filing documents.) Filing Documents (Uniform
) Commercial Code)

TO: All Interested Persons:

1. On September 5, 1985, at 10:00 a.m., a public hearing will be held in the Secretary of State's office, Room 225, Capitol Building, Helena, Montana, to consider the adoption of rules pertaining to fees for filing documents in the Uniform Commercial Code Bureau.

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

3. The proposed rules provide as follows:

RULE 1 FEES FOR FILING DOCUMENTS - UNIFORM COMMERCIAL CODE

(1) The secretary of state shall charge and collect for:

- (a) filing a financing statement, \$7.00;
- (b) filing a termination statement, no fee;
- (c) filing a continuation statement, \$5.00;
- (d) filing a financing statement indicating an assignment, \$5.00;
- (e) filing a statement of partial release of collateral, \$5.00;
- (f) filing a statement adding to or changing collateral, \$5.00;
- (g) filing any amendment changing debtor name, secured party name, and/or addresses, \$5.00;
- (h) filing any other amendment, \$5.00;
- (i) issuing a certificate from the filing officer showing that an effective financing statement is on file, \$7.00;
- (j) any of the filing and indexing in subsections (a), (b), or (e) where the collateral is equipment or rolling stock of railroads or street railways, \$15.00.

AUTH: H.B. 150 L 1985

IMP: 30-9-403, MCA

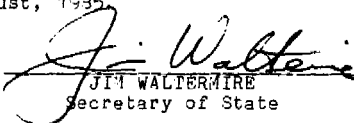
4. The rules are being proposed to establish fees for filing documents and issuing certificates required by Title 30, Chapter 9, MCA. Records to support the fee charged for the filing requirements are maintained in the Office of the Secretary of State and are available to the public.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bobby June Day, Room 225, State Capitol, Helena, Montana, 59620, no later than September 12, 1985.

6. Bobby June Day, Room 225, State Capitol, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

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

Dated this 5th day of August, 1985.


JIM WALTERMIRE
Secretary of State

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.12.102	)	THE PROPOSED AMENDMENT OF
pertaining to Medical	)	RULE 46.12.102 PERTAINING
Assistance, Definitions	)	TO MEDICAL ASSISTANCE,
	)	DEFINITIONS

TO: All Interested Persons

1. On September 10, 1985, at 9:00 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 46.12.102 pertaining to Medical Assistance, Definitions.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (2)(e) remain the same.

(i) Experimental services or services, except heart transplants, which are generally regarded by the medical profession as unacceptable treatment will not be considered medically necessary for the purpose of the medical assistance program. Heart transplants are included as a service until June 30, 1987, unless specifically extended by future legislation.

(A) Experimental services are procedures and items, including prescribed drugs, considered experimental by the U.S. department of health and human services or the department's designated review organization or procedures and items approved by the U.S. department of health and human services for use only in controlled studies to determine the effectiveness of such services.

(ii) Emergency service means inpatient and outpatient hospital services that are necessary to prevent the death or serious impairment of the health of a recipient.

Subsections (3) through (34) remain the same.

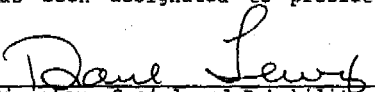
AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. The Department has always sought guidance from Medicare for the determination of experimental procedures. Because Medicare considers heart transplants experimental, these procedures have not been a benefit of Medicaid services. HB 500 directs the Department to cover heart transplant procedures for Medicaid recipients. This will not include any donor costs.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 12, 1985.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1985.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of Rule 46.10.512	)	ON THE PROPOSED AMENDMENT
pertaining to AFDC daycare	)	OF RULE 46.10.512
earned income disregards	)	PERTAINING TO AFDC DAYCARE
	)	EARNED INCOME DISREGARDS

TO: All Interested Persons

1. On September 5, 1985, at 9:00 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 46.10.512 pertaining to AFDC Daycare Earned Income Disregards.

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

46.10.512 EARNED INCOME DISREGARDS Subsections (1) through (1)(b) remain the same.

(1) The amount actually paid in the budget month will be deducted. This amount may include payment for charges incurred in the month immediately prior to the budget month; however, payments charges incurred but not paid in the budget month will not be allowed as a deduction under this rule.

Subsections (1)(c) through (2)(d) remain the same.

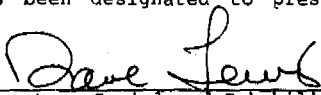
AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

3. This amendment is being submitted to clarify and make ARM 46.10.512 consistent with the federal regulation found at 45 CFR 233.20(a)(11)(i)(C), and the federal statute at 42 USC § 602(8)(A)(iii). The amendment provides for an income disregard when testing net monthly income. This disregard includes child care costs incurred in the month prior to the budget month as well as those paid in the budget month. The current rule is ambiguous regarding an allowance for paid expense within the budget month.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 12, 1985.

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


Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1985.

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 Rules 46.13.106,	)	THE PROPOSED AMENDMENT OF
46.13.107, 46.13.203,	)	RULES 46.13.106, 46.13.107,
46.13.205, 46.13.206,	)	46.13.203, 46.13.205,
46.13.302, 46.13.303,	)	46.13.206, 46.13.302,
46.13.304, 46.13.305,	)	46.13.303, 46.13.304,
46.13.401, 46.13.402 and	)	46.13.305, 46.13.401,
46.13.403 pertaining to the	)	46.13.402, AND 46.13.403
Low Income Energy Assistance	)	PERTAINING TO THE LOW
Program	)	INCOME ENERGY ASSISTANCE
	)	PROGRAM

TO: All Interested Persons

1. On September 9, 1985, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.13.106, 46.13.107, 46.13.203, 46.13.205, 46.13.206, 46.13.302, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 and 46.13.403 pertaining to the Low Income Energy Assistance Program.

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

46.13.106 FRAUD/TRANSFER OF PROPERTY (1) Whoever

knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device low income energy assistance to which he is not entitled is guilty of theft as provided in 45-6-301, MCA and is ineligible for assistance for the entire current heating season.

Subsections (2) through (4) remain the same.

(5) Fuel assistance shall not be granted to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance. Any person who has transferred real property or interest in real property within one year of the date of application without receiving adequate consideration in money or money's worth shall be presumed to have made such transfer for the purpose of qualifying for assistance.

(a) The applicant or recipient may submit evidence that he did not make the transfer of property for the purpose of qualifying for assistance.

(b) It is the responsibility of the applicant to submit this evidence.

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

46.13.107 OVERPAYMENTS AND UNDERPAYMENTS Subsections (1) and (1)(a) remain the same.

(2) Current and future program year payments of low income energy assistance will be reduced the full amount of prior overpayments, unless the administrative cost would exceed the amount of overpayment.

Subsection (2)(a) remains the same.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.203 PLACE OF APPLICATION (1) The place main office of application shall be open ~~from 8:00 a.m. to 5:00 p.m.~~ during normal business hours, Monday through Friday, except for recognized holidays. Applicants sixty or more years old and handicapped individuals may apply through senior centers, home visits, by phone or mail.

Subsection (2) remains the same.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.205 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

(1) Procedures followed in determining eligibility for low income energy assistance are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and benefit award. An applicant who fails to provide information necessary for a determination of eligibility within 45 days of the date of initial application shall be determined ineligible but may reapply for assistance. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons for approval or disapproval of his application. Eligible applicants shall be notified that benefits are computed for heating costs only for the period October 1 through April 30.

(b) Eligibility requirements that must be verified are:

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

(ii) income/resources;

Subsections (1)(b)(iii) through (c) remain the same.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.206 NOTIFICATION OF ELIGIBILITY (1) An individual who makes application for low income energy assistance and/or weatherization will receive written notice of eligibility within 45 days of the date of completed application. If the applicant is determined ineligible, notification shall

include the reasons for nonapproval. The notice of decision shall be made by the local contractor immediately following final decision on the application.

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

46.13.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS

Subsections (1) through (3) remain the same.

(4) Eligible individuals living in rental housing who also receive a heating subsidy are eligible for the difference between the portion of that heating subsidy ~~attributable to the seven heating season months~~ and the LIEAP matrix benefit when the LIEAP matrix benefit exceeds the heating subsidy by \$10.00.

Subsections (5) and (5) (a) remain the same.

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

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS

(1) The income standards in the table in (2) below are 125% of the 19845 U.S. government office of management and budget poverty level for households of different sizes. This table applies to all households, including self-employed households. Households with annual gross income at or below 125% of the 19845 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the 19845 poverty level are ineligible for low income energy assistance.

(2) Income standards for all households:

Family Size	125% OMB	
	Poverty Standard	
1	\$ 6,225	6,562
2	8,400	8,812
3	10,575	11,062
4	12,750	13,312
5	14,925	15,562
6	17,100	17,812
each additional member	2,175	2,250

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

46.13.304 INCOME (1) Definitions:

Subsections (1) (a) and (1) (b) remain the same.

(c) Medical and dental deductions mean all medical and dental payments for allowable costs, as described in (4), made

by members of the household in the twelve months immediately preceding the month of application. Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party. Medical deductions can only be subtracted from annual gross income that is 150% or less of the 19845 U.S. government office of management and budget poverty level for the particular household size. Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for benefits.

Subsections (1)(d) through (2)(l) remain the same.

(m) all weekly incentive allowances paid under Pub. 93-203, the Comprehensive Employment and Training Act of 1973 Job Training Partnership Act, P.L. 97-300 of 1982;

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

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

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

- (a) cash on hand;
- (b) certificate of deposits;
- (c) checking/savings accounts;
- (d) market value of stocks or bonds;
- (e) ~~equity value of business property in excess of \$12,500~~ market value of contract for deed and/or other negotiable resources.

(2) A household having equity value in business property in excess of \$12,500 shall be ineligible.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES (1) Definitions:

- (a) LC means local contractor.
- (b) MPC means Montana Power Company.
- (c) MDU means Montana-Dakota ~~Utilities~~ Resources Inc.
- (d) GFG means Great Falls Gas Company.

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

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if below 100% of OMB poverty, 75% if between 101% - 125% of OMB poverty level) type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. Applicants may claim no more bedrooms than household members. The maximum benefit also varies by local

contractor districts to account for weather climatic differences across the state.

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

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

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	369 384	259 215	314 284	446 425	312 297	379 361
Fuel Oil	647 697	453 488	550 592	789 851	552 596	670 723
Propane	672 593	471 415	572 504	821 724	575 567	698 616
Electricity	560 525	392 367	476 446	684 641	479 449	582 545
R.E.A.	935 844	654 591	795 717	1142 1031	800 722	971 877
Electricity						
M.D.U.						
Coal (tons)	242 197	170 138	206 167	303 263	212 184	258 223
Wood (cords)	263 263	184 184	223 223	328 328	238 238	278 278

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	501 493	350 345	425 419	560 561	392 393	476 477
Fuel Oil	997 968	628 678	762 823	1005 1084	703 759	854 921
Propane	933 823	653 576	793 708	1045 922	732 645	889 784
Electricity	778 729	544 518	661 619	871 816	610 571	740 694
R.E.A.	1298 1172	909 828	1104 996	1454 1313	1018 919	1236 1116
Electricity						
M.D.U.						
Coal (tons)	364 328	255 230	309 279	424 394	297 276	361 335
Wood (cords)	394 394	276 276	395 395	468 468	322 322	391 391

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
	318	223	270	400	280	340
Natural Gas	355	229	302	452	316	384
	658	461	559	802	562	682
Fuel Oil	745	521	633	910	633	774
	706	494	600	862	603	733
Propane	634	444	539	775	542	658
	588	411	500	718	503	611
Electricity	561	393	477	686	488	583
	254	178	216	318	223	270
Coal (tons)	259	181	226	324	227	275
	207	145	176	276	193	234
Wood (cords)	201	137	169	251	186	228

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
	459	322	391	523	366	445
Natural Gas	524	367	445	596	417	507
	912	639	775	1022	716	869
Fuel Oil	1035	725	888	1159	811	985
	980	686	833	1097	768	933
Propane	880	616	748	986	690	838
	816	571	694	914	640	777
Electricity	779	545	662	873	611	742
	382	267	324	445	312	378
Coal (tons)	389	272	330	454	318	386
	345	241	293	413	289	351
Wood (cords)	421	295	358	491	344	418

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

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

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single	Multi-	Mobile	Single	Multi-	Mobile
	Family	Family		Family	Family	
	Unit	Unit	Home	Unit	Unit	Home
Natural Gas	312	218	265	390	273	331
G.F.G.	367	257	312	464	325	395
Natural Gas	276	193	235	347	243	295
M.P.C.	317	222	269	409	282	342
Fuel Oil	589	412	501	718	503	611
	664	465	565	811	568	690
Propane	612	429	521	748	524	636
	565	396	488	691	483	587
Electricity	510	357	434	623	436	530
	508	358	425	611	428	528
Coal (tons)	221	155	188	276	193	235
	291	162	196	289	202	246
Wood (cords)	179	126	152	239	167	203
	258	175	213	313	219	266

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single	Multi-	Mobile	Single	Multi-	Mobile
	Family	Family		Family	Family	
	Unit	Unit	Home	Unit	Unit	Home
Natural Gas	446	312	379	506	354	430
G.F.G.	537	376	457	610	427	519
Natural Gas	399	279	339	454	318	386
M.P.C.	467	327	397	532	372	452
	817	572	694	915	641	778
Fuel Oil	923	646	785	1034	723	878
	850	595	723	952	667	809
Propane	785	549	667	879	615	747
	708	496	602	793	555	674
Electricity	695	486	591	778	545	661
	331	232	282	386	270	328
Coal (tons)	347	243	295	404	283	344
	299	209	254	359	251	305
Wood (cords)	346	263	319	438	307	372

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

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

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	309 317	216 205	263 269	389 403	272 282	331 342
Fuel Oil	660 664	462 465	561 565	804 811	563 568	684 690
Propane	605 565	423 396	514 480	738 691	517 483	628 567
Electricity	571 500	400 350	485 475	698 611	489 428	593 520
Coal (tons)	247 291	173 162	210 196	309 289	216 202	263 246
Wood (cords)	201 250	141 175	171 213	268 313	187 219	228 266

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	446 467	313 327	380 397	509 532	356 372	432 452
Fuel Oil	914 923	640 646	777 785	1025 1034	717 723	871 878
Propane	839 785	587 549	713 667	940 875	658 615	799 747
Electricity	793 695	555 486	674 591	888 778	622 545	755 661
Coal (tons)	371 347	260 243	315 295	433 404	303 283	368 344
Wood (cords)	335 376	234 263	285 319	402 438	281 307	341 372

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural Gas	338	237	288	421	295	358
M.D.U.	291	204	247	370	259	315
Natural Gas	261	183	222	328	230	279
M.P.C.	209	203	246	368	250	313
	557	390	474	679	475	577
Fuel Oil	607	425	516	742	519	630
	579	405	492	707	495	601
Propane	516	361	439	631	442	536
	482	338	410	590	413	501
Electricity	735	515	625	899	629	764
	209	146	177	261	183	222
Coal (tons)	211	148	180	264	185	224
	170	119	144	226	158	192
Wood (cords)	229	160	194	286	200	243

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural Gas	481	337	409	546	382	464
M.D.U.	430	301	365	489	342	416
Natural Gas	377	264	321	430	301	365
M.P.C.	427	299	363	486	346	413
	772	541	657	866	606	736
Fuel Oil	843	590	717	944	661	803
	804	563	683	901	630	765
Propane	717	502	616	803	562	683
	670	469	569	750	525	638
Electricity	1021	715	868	1144	801	932
	313	219	266	365	256	311
Coal (tons)	317	222	269	370	259	314
	283	198	240	339	238	288
Wood (cords)	349	240	292	400	280	340

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural Gas	294 352	206 215	250 282	370 422	259 296	314 359
Fuel Oil	628 697	439 488	533 592	765 851	536 596	650 723
Propane	652 593	457 415	555 584	797 724	558 587	677 616
Electricity	543 526	380 367	462 446	644 641	465 449	564 545
Coal (tons)	235 242	165 170	200 206	294 303	206 212	250 258
Wood (cords)	191 263	134 184	162 223	255 328	178 238	217 279

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural Gas	425 498	297 343	361 417	484 558	339 398	411 474
Fuel Oil	870 968	609 678	740 823	975 1084	682 759	829 921
Propane	906 823	634 576	770 788	1014 922	710 645	862 784
Electricity	755 729	528 518	641 619	845 816	592 571	718 694
Coal (tons)	353 364	247 255	300 309	412 424	288 297	350 361
Wood (cords)	319 394	223 276	271 335	382 468	268 322	325 391

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	294	206	250	370	259	314
Fuel Oil	335	216	285	436	298	362
Propane	603	422	512	735	514	625
Electricity	762	491	597	858	600	729
Coal (tons)	627	439	533	765	536	651
Wood (cords)	597	418	508	738	511	622
	543	380	462	664	465	564
	529	370	450	646	452	549
	235	165	200	294	206	250
	244	171	208	305	214	260
	191	134	162	255	178	217
	265	185	225	331	232	281

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	425	297	361	484	339	411
Fuel Oil	494	346	428	562	393	478
Propane	836	585	710	936	655	796
Electricity	976	683	829	1093	765	929
Coal (tons)	870	609	739	974	682	828
Wood (cords)	838	581	705	929	650	790
	755	528	641	845	592	718
	734	514	624	823	576	699
	353	247	300	412	288	350
	366	257	312	428	299	363
	319	223	271	382	268	325
	397	278	337	463	324	394

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
	309	216	263	389	272	331
Natural Gas	334	216	285	425	298	362
	620	434	527	756	529	643
Fuel Oil	702	491	597	858	600	729
	668	467	568	816	571	693
Propane	597	418	508	730	511	621
Electricity	571	400	485	698	489	593
M.P.C.	529	370	450	646	452	549
Electricity	658	461	559	804	563	684
P.P.L.	677	474	575	827	579	703
	247	173	210	309	216	263
Coal (tons)	244	171	208	305	214	260
	201	141	171	268	187	228
Wood (cords)	265	185	225	331	232	281

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
	446	313	380	509	356	432
Natural Gas	494	346	428	562	393	478
	860	602	731	964	675	819
Fuel Oil	976	683	829	1093	765	929
	927	649	788	1038	727	882
Propane	830	581	705	929	650	790
Electricity	793	555	674	888	622	755
M.P.C.	734	514	624	823	576	699
Electricity	914	640	777	1024	717	870
P.P.L.	948	658	799	1053	737	895
	371	260	315	433	303	368
Coal (tons)	366	257	312	428	299	363
	335	234	285	402	281	341
Wood (cords)	397	278	337	463	324	394

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
	285	200	242	359	251	305
Natural Gas	392	215	282	422	296	359
Fuel Oil	614	430	522	749	524	637
	697	488	592	861	596	723
	549	384	467	671	470	570
Propane	593	415	504	724	507	616
	527	369	448	644	451	547
Electricity	525	367	446	641	449	545
	190	133	162	238	166	202
Coal (tons)	242	170	206	303	212	250
	185	130	157	247	173	210
Wood (cords)	263	184	223	328	230	279

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
	412	288	350	469	328	399
Natural Gas	490	343	417	558	390	474
	852	596	724	954	668	811
Fuel Oil	968	678	823	1064	759	921
	762	534	648	854	598	726
Propane	823	576	708	922	645	784
	732	512	622	819	574	696
Electricity	729	510	619	816	571	694
	285	200	242	333	233	283
Coal (tons)	364	255	309	424	297	361
	309	216	262	371	259	315
Wood (cords)	394	276	335	460	322	391

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

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

Type Fuel	1 Bedroom Home			2 Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	348 332	244 215	296 282	438 422	307 296	372 359
Fuel Oil	750 697	525 488	638 592	915 851	640 596	777 723
Propane	772 593	541 415	656 564	943 724	660 587	802 616
Electricity	643 525	450 367	547 446	786 641	550 449	668 545
Coal (tons)	278 242	195 170	237 206	348 303	244 212	296 258
Wood (cords)	226 263	158 184	192 223	302 328	211 238	256 279

Type Fuel	3 Bedroom Home			4+ Bedroom Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural Gas	503 498	352 343	427 417	573 558	401 398	487 474
Fuel Oil	1040 968	728 678	884 823	1165 1084	816 759	991 921
Propane	1072 823	750 576	911 788	1201 922	841 645	1021 784
Electricity	893 729	625 510	759 619	1000 816	700 571	850 694
Coal (tons)	418 364	292 255	355 309	487 424	341 297	414 363
Wood (cords)	377 394	264 276	320 335	452 468	317 322	385 391

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

46.13.402 DETERMINING BENEFIT AWARD (1) For applications filed during the period October 1 through April 30, households found eligible will receive the applicable benefit amount, determined from the matrix table found in 46.13.401 which corresponds to the household's type and cost of primary heating fuel, the number of bedrooms in and type of dwelling unit, the relative climatic condition by heating district and the level of household income, if available ~~the full amount of their applicable matrix, if available.~~

Subsections (1) (a) and (1) (b) remain the same.

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

(3) Benefit award will be prorated for applicants new to the state or not previously responsible for heating costs from the date of residency or responsibility for the remainder of the heating season.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.403 METHOD OF PAYMENT (1) Definitions:

(a) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1, are ineligible for payment under the current year's program.

(i) Notwithstanding the above, eligible energy costs may include energy delivered ~~15 days~~ prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

(2) For eligible households that are billed for energy costs directly by the fuel vendor:

Subsection (2) (a) remains the same.

(b) The amount of the benefit or adjusted award remaining after the application of (a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance in excess of \$100 attributable to the benefit or adjusted award ~~for eligibility periods after September 30 will remain in the recipient's account~~ after June 30, must be returned to the department.

(c) ~~No individual's~~ Application for new benefits will not be processed until benefits attributable to previous years' program awards total less than \$100.

(d) All credit balances are presumed to be from previous program awards unless the applicant provides proof to the contrary.

(3) For eligible households that have their energy costs included in their rental payments:

(a) Reimbursement at the rate of 1/7 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. Reimbursement will be made by check directly payable to the household ~~and in no more than two installments~~. Paid eligible energy costs claimed by the household must be supported by rent receipts.

(4) Households using wood to heat their home may be reimbursed for wood purchased between July 1 and October 1, if supporting receipts are available.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

3. Several modifications to LIEAP are being proposed to enable the program to meeting continuing high demands with decreasing resources.

For 1985-86, program resources are anticipated to be as limited as they have been since the program's inception in 1981. In addition to Federal revenues possibly being reduced as much as \$700,000, recent state legislative actions will transfer over \$2,000,000 to other programs.

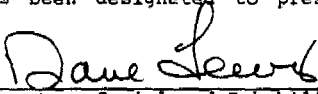
Accordingly, the department plans to meet this problem by implementing a sliding income scale whereby only the poorest will receive full benefits, allowing clients to claim no more bedrooms than household members and recapturing unused credits.

Another proposed change would require that LIEAP benefits unused as of June 30 be returned for use in the succeeding year.

A number of technical amendments are also being proposed which should solve specific problems which have not been addressed before, update the matrix to reflect increases or decreases in fuel prices and revise the income levels to correspond to current OMB guidelines.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 12, 1985.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1985.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF THE ADOPTION
of rules pertaining to the)	OF RULES 4.12.3501,
grading of certified seed)	4.12.3502, 4.12.3503,
potatoes.)	4.12.3504 AND 4.12.3505
	CERTIFIED SEED POTATO
	GRADING

TO: All Interested Persons.

1. On June 27, 1985, the Department of Agriculture published notice of a proposed adoption of rules concerning the grading of certified seed potatoes at pages 711-714 of the Montana Administrative Register, issue number 12.

2. The agency has adopted the rules as proposed.

3. The department did receive a phone call from Mary Kelly McCue, with the Administrative Code Committee, suggesting the department include a reference to Section 80-3-109, MCA, as further authority for Rule 4.12.3501 and Section 80-3-105, MCA, as further authority for all of the rules. The department also received a written statement from Steve McCullough from Townsend, Montana expressing some concern about "Blue Tag" cut and bruise requirements. He hoped it would not be too stringent. No other comments or testimony were received.

4. The authority for the rules is Section 80-3-110, MCA, and the rules implement Section 80-3-104, MCA.


W. Ralph Peck
Deputy Director

Certified to the Secretary of State August 5, 1985.

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

In the matter of the
adoption of emergency rules
relating to unfair trade
practices on cancellations,
non-renewals, or premium
increases of casualty or
property insurance

NOTICE OF ADOPTION
OF EMERGENCY RULES

TO: All Interested Persons

1. Statement of Reason for Emergency. The State Auditor and Commissioner of Insurance finds it necessary to adopt emergency rules restricting mid-term cancellations of entire lines of property casualty insurance, prohibiting mid-term increases in premiums for property-casualty insurance, and requiring timely notice of non-renewals for property-casualty insurance coverages. Due to current market conditions, Montana insurance consumers are currently suffering mid-term cancellation of existing policies for an entire line of business, mid-term rate increases on an existing contract, and little or no notice that an existing policy will not be renewed at its expiration date. Failure by the Commissioner to act promptly will result in serious harm to the insurance-buying public of the State of Montana, and these emergency rules are implemented for the following reasons:

A. The mid-term cancellation of an entire line of business: 1. breaches policyholder trust; 2. unfairly and prematurely terminates the bargain for agreement; 3. forces substituted insurance at greater cost, and 4. creates marketplace confusion precipitating market unavailability.

B. Mid-term increases in premiums are unauthorized, breached the insurance contract, and contravene Section 33-18-1003, MCA and illegally impose an undue financial hardship upon policyholders. These unfair practices result in the curtailment of employment operations and assail the very fabric of this state's economic system.

C. Insurer failure to provide timely non-renewal notice to policyholders precludes: 1. many businesses from securing affordable replacement coverage, or 2. some businesses from securing replacement on a timely basis hence being forced to operate without insurance protection.

The Commissioner further finds that prompt action must be taken to prevent unfair discrimination in pricing of insurance among risks of essentially the same degree of hazard. Delay in adopting rules fosters insecurity, distress, unfair pricing and unavailability of insurance to magnitudes where the insurance-buying public will be affected by extreme adversities.

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

RULE I PURPOSE AND APPLICABILITY

(1) The purpose of these rules is to protect the insurance-buying public in insurance transactions involving termination, renewal or non-renewal or premium increases on contracts of insurance by:

(a) Regulating the grounds for mid-term cancellation of an insurance policy;

(b) Prohibiting mid-term increases in premium;

(c) Increasing the opportunity for policyholders to shop for replacement or substitute insurance;

(d) Reducing the opportunity for breach of policy bargain, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) Increase the opportunity for agents to freely compete.

(2) [Rule I-IX] shall apply to all forms of insurance which are subject to Section 33-1-501, MCA, except to the extent these rules conflict with statutory cancellation requirements. The statutory requirements would prevail.

(3) These rules are not exclusive, and the Commissioner may also consider other provisions of the Insurance Code to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policy holders than are required by these rules. The rights provided by these rules are in addition and do not prejudice any other rights the policyholder may have at common law, under statutes or other Administrative Rules of Montana.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE II DEFINITIONS

As used in [Rules I through IX] the following definitions apply unless the context requires otherwise.

(1) "Anniversary date" means the month and day that rates, rating plans and rating systems are initially applied to a policy in effect and each annual anniversary thereafter, unless a different date is established by the filing of the insurer with the Insurance Department.

(2) "Classification" means a grouping of insurance risks according to classification system used by an insurer.

(3) "Classification system" means a schedule of classifications and a rule or set of rules used by an insurer for determining the classifications applicable to an insured.

(4) "Insurer" means any insurer authorized to write insurance in this state.

(5) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time regardless of the timing of actual charges.

(6) "Rate" means a monetary amount applied to the units of exposure basis assigned to a classification and used by an insurer to determine the premium for an insured.

(7) "Rating plan" means a rule or set of rules used by an insurer to calculate premium for an insured, and the parameter values used in such calculation, after application of classification premium rates to units of exposure.

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(8) "Rating system" means a collection of rating plans to be used by an insurer, rules for determining which rating plans are applicable to an insured, a classification system, and other rules used by an insurer for determining contractual consideration for an insured.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE III MID-TERM CANCELLATION

(1) Permissible grounds. Except as provided by subsection (3) no insurance policy may be cancelled by the insurer prior to the expiration of the agreed term or one year from the effective date of the policy or renewal, whichever is less, except for failure to pay a premium when due or on grounds stated in the policy which pertain to the following:

(a) Material misrepresentation;
(b) Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;
or

(c) Substantial breaches of contractual duties, conditions or warranties.

(2) Notice. Cancellation under subsection (1) shall not be effective prior to 10 days after the 1st class mailing or delivery of written notice to the policyholder.

(3) New policies. Subsections (1) and (2) do not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE IV ANNIVERSARY CANCELLATION AND ANNIVERSARY RATE INCREASES

(1) A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer by giving notice 30 days prior to any anniversary date.

(2) If a policy has been issued for a term longer than one year, and for additional premium consideration, an annual premium has been guaranteed, the insurer may not increase that annual premium for the term of that policy.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE V NON-RENEWAL

(1) A policyholder has a right to reasonable notice of non-renewal so coverage may be procured elsewhere. Unless otherwise provided by statute, at least 30 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date must be mailed or delivered to the policyholder.

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(2) With respect to payment of renewal premium, notice shall be given not more than 45 days nor less than 10 days prior to the due date of the premium which states clearly the effect of nonpayment of premium by the due date.

(3) Exceptions. This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage or has requested or agreed to nonrenewal, or if the policy is expressly designated as nonrenewable.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE VI RENEWAL WITH ALTERED TERMS

(1) General. Subject to subsection (2), if the insurer offers or purports to renew the policy but on less favorable terms or at higher rates, and/or higher rating plan, the new terms or rates and/or rating plan may take effect on the renewal date provided the insurer has sent by 1st class mail or delivered to the policyholder notice of the new terms or rates and/or rating plan at least 30 days prior to the expiration date. If the insurer has not so notified the policyholder the policyholder may elect to cancel the renewal policy within the 30 day period after receipt of such notice or delivery. Earned premium for period of coverage, if any shall be calculated pro rate.

(2) Exception. This section does not apply if:

(a) the change is a rate or plan filed with the Commissioner and applicable to the entire class of business to which the policy belongs, or

(b) the rate and/or plan increase results from a classification change based on the altered nature or extent of the risk insured against.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE VII INFORMATION ABOUT GROUNDS

(1) If a notice of cancellation or nonrenewal under [Rule III or Rule V] does not state with reasonable precision the facts upon which the insurer's decision is based, the insurer must, upon request, mail or deliver such information within 5 working days. No such notice is effective unless it contains adequate information about the policyholder's right to make the request.

(2) This does not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and if the notice so states.

AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE VIII UNFAIR TRADE PRACTICES

(1) Failure of an insurer to comply with [Rule III to VII] constitutes an unfair trade practice under Section 33-18-1003, MCA.

(2) Mid-term premium increases and/or policy coverage reductions attempted or executed in nonconformance with these rules constitute an unfair trade practice under Section 33-18-1003, MCA.

(3) Block cancellations or renewals of entire lines of insurance and/or withdrawal of classes of business are presumed to be unfairly discriminatory and constitute an unfair trade practice under [33-18-1003, MCA].

(4) Termination of an appointed agent, or attempt of such termination, solely to achieve block cancellation or nonrenewal of entire lines of insurance or other such instant reunderwriting of an agency book of business shall be presumed to constitute an unfair trade practice under [ORS 746.240] and unfair trade practice detrimental to free competition under [33-18-1003, MCA].


AUTH: 33-1-313, MCA

IMP: 33-18-1003, MCA

RULE IX SEVERABILITY

If any provision of these rules 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 authority for the agency to adopt these emergency rules is based on 33-1-313, MCA and the rule implements 33-18-1003, MCA.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary State this 19 day of July.
1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the	)	NOTICE OF AMENDMENTS
amendments of 8.56.402 concerning applications, 8.56.404 concerning certificate of licensure, 8.56.407 concerning renewals, 8.56.408 concerning duplicate or lost licenses, 8.56.409 fee schedule, 8.56.601 concerning definitions, 8.56.602 concerning permit applications 8.56.604 concerning temporary permits, 8.56.605 concerning verification of adequate evidence that the temporary permit applicant can safely perform x-rays without endangering the public, 8.56.606 concerning permit restrictions, repeal of 8.56.603 concerning requirements for approval of a physician specializing in radiology, and adoption of new rules concerning permits, course requirements for limited permit applicants, permit examinations, permit fees, and renewals.	)	OF 8.56.402 APPLICATIONS, 8.56.404 CERTIFICATE OF LICENSURE, 8.56.407 RENEWALS, 8.56.408 DUPLICATE OR LOST LICENSES, 8.56.409 FEE SCHEDULE, 8.56.601 DEFINITIONS, 8.56.602 PERMIT APPLICATIONS AS PER SECTION 37-14-306 (1), MCA, 8.56.604 TEMPORARY PERMITS, 8.56.605 VERIFICATION OF ADEQUATE EVIDENCE THAT THE TEMPORARY PERMIT APPLICANT CAN PERFORM X-RAY EXAMINATIONS WITHOUT ENDANGERING THE PUBLIC, 8.56.606 PERMIT RESTRICTIONS, REPEAL OF 8.56.603 REQUIREMENTS FOR APPROVAL OF PHYSICIAN SPECIALIZING IN RADIOLOGY, AND ADOPTION OF NEW RULES 8.56.602A - PERMITS, 8.56.602B REQUIREMENTS FOR LIMITED PERMIT APPLICANTS, 8.56.602C PERMIT EXAMINATIONS, 8.56.607 PERMIT FEES, 8.56.608 RENEWALS

TO: All Interested Persons:

1. On June 27, 1985, the Board of Radiologic Technologists published a notice of public hearing on the amendments, repeal and adoption of the above-stated rules at pages 721 through 730, 1985 Montana Administrative Register, issue number 12.

2. The hearing was duly held on July 18, 1985 in the downstairs conference room of the Department of Commerce Building, Helena, Montana. Board member Adrian Howe and Administrative Assistant Diana C. Cutler were present, in addition to Geoffrey L. Brazier, Presiding Officer. No persons appeared to offer testimony or comments. No written comments or testimony were received.

3. The board has amended, repealed and adopted the rules exactly as proposed.

DEPARTMENT OF COMMERCE
BEFORE THE BUREAU OF WEIGHTS AND MEASURES

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of a new rule concerning metric	)	A NEW RULE 8.77.202
sizing of fluid milk con-	)	METRIC PACKAGING OF FLUID
tainers	)	MILK PRODUCTS

TO: All Interested Persons:

1. On June 27, 1985, the Bureau of Weights and Measures published a notice of adoption of the above-stated rule at page 731, 1985 Montana Administrative Register, issue number 12.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, August 5, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)
of Rule I (42.5.201) to re-)
quire taxpayers to pay taxes)
due of \$500,000 or greater by)
electronic funds transfer.)

NOTICE OF THE ADOPTION of
Rule I (42.5.201) to require
taxpayers to pay taxes of
\$500,000 or greater by elec-
tronic funds transfer.

TO: All Interested Persons:

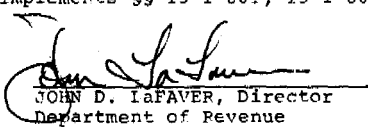
1. On June 3, 1985, the Department of Revenue published notice of the proposed adoption of rule I (42.5.201) requiring taxpayers to pay taxes due of \$500,000 or greater by electronic funds transfer, at page 657 of the 1985 MAR, issue no. 11.
2. The Department has adopted rule I (42.5.201) as proposed except as follows:

RULE I ELECTRONIC FUNDS TRANSFER (1) Effective July October 1, 1985, every taxpayer who has a tax liability of \$500,000 or greater must make payment by electronic funds transfer. Also, the department of revenue will accept voluntary payments by electronic funds transfer from any taxpayer that has a tax liability of less than \$500,000. The tax return must be filed and the electronic funds transfer made by the tax due date or the appropriate late filing and late payment penalties and interest will be applied.

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

3. No public hearing was held on the proposed adoption. The above change is made to reflect the correct effective date for the rule. No comments or testimony were received by the Department.

4. The authority of the Department to adopt the rule is § 15-1-803, MCA, and the rule implements §§ 15-1-801, 15-1-802, and 15-1-803, MCA.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/5/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-)
MENT of Rule 42.12.111 to add)
a processing fee for the beer)
importer license.)

NOTICE OF THE AMENDMENT of
Rule 42.12.111 to add a pro-
cessing fee for the beer
importer license.

TO: All Interested Persons:

1. On June 3, 1985, the Department of Revenue published notice of the proposed amendment of rule 42.12.111 relating to application processing fees for liquor licenses at page 659 of the 1985 MAR, issue no. 11.

2. The Department has amended rule 42.12.111 as proposed.

3. No public hearing was held on the proposed amendment. No comments were received by the Department.

4. The authority of the Department to make the proposed amendment is based on § 16-1-303, MCA; authorization was extended by Section 23, Chapter 19, Laws 1985, and the rule implements §§ 16-1-302 and 16-1-303, MCA.

IN THE MATTER OF THE REPEAL)
of Rule 42.12.123 to remove)
the requirement that a)
business operated on the same)
premises as a licensed alco-)
holic beverage business be)
"closed off" from 2 a.m. to)
8 a.m.)

NOTICE OF THE REPEAL of Rule
42.12.123 to remove the re-
quirement that a business
operated on the same premises
as a licensed alcoholic
beverage business be "closed
off" from 2 a.m. to 8 a.m.

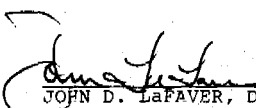
TO: All Interested Persons:

1. On June 3, 1985, the Department of Revenue published notice of the proposed repeal of rule 42.12.123 to remove the requirement that a business operated on the same premises as a licensed alcoholic beverage business be "closed off" from 2 a.m. to 8 a.m., at page 661 of the 1985 MAR, issue no. 11.

2. The Department has repealed rule 42.12.123 as proposed.

3. No public hearing was held on the proposed repeal. No comments were received by the Department.

4. The authority of the Department to repeal the rule is based on § 16-1-303, MCA, and the rule implements §§ 16-3-304 and 16-3-305, MCA.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/5/85

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

In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of Rule 46.8.110; the amend-	)	46.8.110; AMENDMENT OF
ment of Rule 46.8.102; and	)	46.8.102; AND ADOPTION OF
the adoption of rules	)	46.8.901 AND 46.8.902 PER-
pertaining to standards for	)	TAINING TO STANDARDS FOR
community services for	)	COMMUNITY SERVICES FOR
developmentally disabled	)	DEVELOPMENTALLY DISABLED
persons	)	PERSONS
)	

TO: All Interested Persons

1. On June 27, 1985, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rule 46.8.110; the amendment of Rule 46.8.102; and the adoption of rules pertaining to standards for community services for developmentally disabled persons at page 764 of the 1985 Montana Administrative Register, issue number 12.

2. The Department has repealed Rule 46.8.110 as proposed.

3. The Department has adopted Rule 46.8.901, STANDARDS: ADOPTION AND APPLICABILITY and Rule 46.8.902, DEPARTMENT ASSISTANCE as proposed.

4. The Department has amended Rule 46.8.102, DEFINITIONS as proposed with the following changes:

46.8.102 DEFINITIONS For purposes of this chapter, the following definitions apply: Subsections (1) through (6) remain as proposed.

(7) "At risk" means a child who is between FROM birth and THROUGH five years of age who may become developmentally delayed or developmentally disabled.

Subsections (8) through (23) remain as proposed.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: I do not support adoption of the proposed standards because I do not know which specific ACMRDD Standards would apply to Family and Children Services. To my knowledge, there has not been a survey of a Family and Children Service Provider in Montana by the Accreditation Council, thus we do not have direct experience or references regarding which

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ACMRDD Standards apply. In the past, when representatives from the Accreditation Council have been asked about the applicability of certain standards, their response has been that they cannot determine the appropriateness of the standard until a survey is completed.

RESPONSE: One feature of the proposed rule is to have service providers undergo two surveys without requiring accreditation. If experience shows that ACMRDD Standards are not suitable for use in the area of Family and Children Services, other more appropriate standards will be sought. As indicated, it is difficult to make such a judgement without more information. In the meantime, we have requested that ACMRDD supply us with a list of all standards which would clearly not apply to Family and Children Services.

COMMENT: Family and Children Services in Montana are based on the needs of children and their families. The services are provided in the family's home. Providers are guests in their homes. The services are sought by the families and no one is forced to accept them. Providers want to provide the services the family desires in a means that least disrupts their normal environment.

The ACMRDD Standards require intervention in a variety of areas that may be considered intrusive by many families. The standards also imply a certain "control" that a service agency may have in the way the family cares for and educates their child. Providers do not have control over the families served. Certain standards, when applied to the family setting, are in contradiction to ACMRDD Standard's fundamental principle of normalization.

RESPONSE: The Department will evaluate the extent to which ACMRDD standards "intrude" upon families based upon the information from the initial surveys. We want to avoid a system which places undue control on families and makes services less effective. We have expressed this concern in writing to ACMRDD.

COMMENT: The definition of "Children's community home services" may need modification in recognition of the utilization of Title XIX changes during the current fiscal period.

RESPONSE: The Title XIX changes do not necessitate a change in definition of this service.

COMMENT: The definition of "independent living" may require changes.

RESPONSE: The definition of "independent living" reflects the unsupervised and unstructured nature of the residential setting.

COMMENT: One person writes that he has had an opportunity to speak with a number of individuals involved in the delivery of services to DD individuals in such programs throughout the state. Without exception, they have expressed serious concern regarding the possible counter-productive effect of the adoption of these standards at this time. The consensus seems to be that if these standards were to be adopted, the effort required to bring programs into compliance would be so great that the program and thus the clients would suffer immeasurably.

He recommends that it would be appropriate and prudent to further delay the adoption of the ACMRDD Standards until these concerns can be validated or shown to be baseless.

RESPONSE: During the public hearing and the subsequent comment period only three individuals have questioned the intent of the proposed rule. Because the subject of standards has been studied and debated by numerous groups over the past several years, it is unclear how further study would provide more information on which to base a decision. The rule as written does build in a reasonable period (4-5 years) in which to identify clearly the fiscal and programmatic impacts of standards prior to requiring accreditation and as such appears to be a cautious approach.

COMMENT: The proposed standards would be costly to implement and a waste of taxpayer dollars which could be used to better address the needs of unserved and underserved Montanans. STEP estimates compliance with the ACMRDD Standards would cost an additional \$4,600 annually.

RESPONSE: The proposed standards address the issue of the quality of service provided to individuals with developmental disabilities and as such do not represent a waste of money. The Department would like to offer the TRIC library in Helena to act as a clearinghouse of information regarding standards, thereby reducing some of the need for duplicative efforts and minimizing administrative costs to programs as much as possible.

COMMENT: Other minimum standards could be used by either contracting with out-of-state objective surveyors who could evaluate Montana corporations based upon the standards selected or permitting all corporations to choose to be accredited by either the Council for Accreditation of Rehabilitation Facilities (CARF) or ACMRDD.


RESPONSE: Proposals similar to both of the ones you describe were considered and rejected by the Developmental Disabilities Contract Advisory Committee in favor of the plan outlined in the proposed rule. The Department continues to support that decision.

COMMENT: The proposed accreditation rule is unnecessarily complex. It need only state that by July 1, 1989, each provider wanting to contract with SRS has to provide proof of accreditation by ACMRDD. Those corporations accredited by CARF on July 1, 1985, need only maintain their CARF accreditation. The only monitoring necessary by SRS would be that relating to specific outcomes agreed to in contract.

RESPONSE: In order to provide one central source for coordination and information gathering the Department should be more directly involved during at least the initial two year period. The rules may eventually be amended to reflect that the relationship should be directly between ACMRDD and the provider.

COMMENT: The definition of "at risk" should be changed from "between birth and five years of age" to "from birth through five years of age".

RESPONSE: The Department agrees and has incorporated the change.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1985

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


In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 46.12.509	)	RULE 46.12.509 PERTAINING
pertaining to all hospital	)	TO ALL HOSPITAL REIMBURSE-
reimbursement, general	)	MENT, GENERAL

TO: All Interested Persons

1. On June 27, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.509 pertaining to all hospital reimbursement, general at page 770 of the 1985 Montana Administrative Register, issue number 12.

2. The Department has amended Rule 46.12.509 as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1985.

VOLUME NC. 41

OPINION NO. 21

SUBDIVISION AND PLATTING ACT - Application of "occasional sale" exception;
MONTANA CODE ANNOTATED - Sections 76-3-103, 76-3-104, 76-3-207, 76-3-207(1)(d), 76-3-501, 76-3-601 to 76-3-614;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 117 (1980), 40 Op. Att'y Gen. No. 16 (1983), 40 Op. Att'y Gen. No. 57 (1984), 41 Op. Att'y Gen. No. 3 (1985).

- HELD: 1. Land within a parcel subdivided without subdivision review pursuant to the "occasional sale" exception in the Montana Subdivision and Platting Act may not again benefit from such exception during the 12-month period following the original transfer.
2. When a parcel of land has been divided into parcels of 20 or more acres, the owners of the new parcels are entitled to use the "occasional sale" exception in the Montana Subdivision and Platting Act once during the 12-month period following the conveyance of such parcels.

31 July 1985

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have requested my opinion concerning a question which I have phrased as follows:

May a parcel of land, which has been created by a division of land, be again divided during the 12 months following its creation without subdivision review pursuant to the "occasional sale" exception in section 76-3-207(1)(d),

Montana Administrative Register

15-8/15/85

MCA, of the Montana Subdivision and Platting Act?

Your question has arisen from a factual situation which you described in these terms: Landowner A divides 600 acres he owns into thirty 20-acre parcels by filing certificate of survey number 1; landowners B, C, and D each buy one 20-acre parcel from A; B, C, and D thereafter, on the same day, file certificates of survey numbers 2, 3, and 4 to divide their 20-acre parcels into two 10-acre parcels and claim exemption from subdivision review on the basis of the "occasional sale" exception. I conclude that the "occasional sale" in section 76-3-207(1)(d), MCA, may be applied only once during a 12-month period with respect to any parcel of land. However, as developed below, I further conclude that, with respect to the transactions giving rise to your question, the "occasional sale" exemption was available to the later divisions of the several 20-acre parcels.

The general operation of the Montana Subdivision and Platting Act has been reviewed in several recent opinions. See 40 Op. Att'y Gen. No. 16 (1983); 40 Op. Att'y Gen. No. 57 (1984); 41 Op. Att'y Gen. No. 3 (1985). For present purposes it is sufficient to emphasize that the terms "division of land" and "subdivision" are separately defined, with the latter referring as a general matter to the creation of parcels containing less than 20 acres. §§ 76-3-103(3), (15), 76-3-104, MCA. Whether a particular transaction is a "subdivision" or merely a "division of land" is significant because of the additional regulation attendant to "subdivision" status. See §§ 76-3-501, 76-3-601 to 614, MCA.

Section 76-3-207, MCA, provides various exceptions to the review requirements associated with creation of a "subdivision." Subsection (1)(d) states:

(1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

....

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale.

The term "occasional sale" is defined in section 76-3-103(7), MCA, as "one sale of a division of land within any 12-month period." The 12-month period begins as of the actual transfer of the parcel of land from the grantor to the grantee. 38 Op. Att'y Gen. No. 117 at 412 (1980). Although the "occasional sale" exception could arguably be construed as applying separately to each new parcel of land created by a subdivision, such an interpretation would effectively permit multiple divisions of land during a 12-month period without compliance with subdivision review requirements. That result, however, runs counter to the express language of section 76-3-207(1)(d), MCA, limiting the exception to "a single division of a parcel"; clearly once a particular parcel of land has benefited from application of the exception, none of the land contained within that parcel may be exempted from subdivision review by operation of the "occasional sale" exception if subdivided during the next 12 months. See 40 Op. Att'y Gen. No. 16 (holding the "occasional sale" exemption unavailable when a certificate of survey created more than one lot). After twelve months each of the newly-created parcels is eligible for application of the occasional sale exemption if the requirements of section 76-3-207(1)(d), MCA, are satisfied. In this regard, I note that use of the occasional sale exemption, as well as the other exemptions under section 76-3-207, MCA, is unavailable if claimed "for the purpose of evading" the Act's requirements. Determination of that issue, however, is largely one of fact and normally an inappropriate matter for an opinion. See 40 Op. Att'y Gen. No. 16.

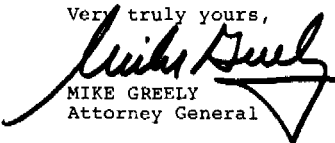
Finally, under the factual situation set forth in your letter, the divisions of the 20-acre parcels were eligible for exemption under the "occasional sale" provision because the initial division of the 600-acre parcel into 20-acre parcels was not a "subdivision." As stated above, the exceptions contained in section 76-3-207, MCA, apply only to divisions of land constituting "subdivisions" and are thus irrelevant when only a "division of land" creating parcels of 20 or more

acres is involved. None of the land contained within the 20-acre parcels had benefited from the "occasional sale" exception and the new owners of such parcels were entitled to utilize the exception when they later subdivided.

THEREFORE, IT IS MY OPINION:

1. Land within a parcel subdivided without subdivision review pursuant to the "occasional sale" exception in the Montana Subdivision and Platting Act may not again benefit from such exception during the 12-month period following the original transfer.
2. When a parcel of land has been divided into parcels of 20 or more acres, the owners of the new parcels are entitled to use the "occasional sale" exception in the Montana Subdivision and Platting Act, once during the 12-month period following the conveyance of such parcels.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 22

COUNTIES - Authority to form district boards of health;
COUNTY ATTORNEYS - Legal representation of district boards of health;
COUNTY COMMISSIONERS - Authority to contract to provide legal representation for district boards of health;
COUNTY COMMISSIONERS - Formation of district boards of health;
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES - District boards of health;
HEALTH BOARDS AND DISTRICTS - Formation of and provision of insurance and legal representation for district boards of health;
INSURANCE - Responsibility to provide insurance for district boards of health;
LEGISLATURE - Presumption as to validity of its acts;
LOCAL GOVERNMENT - Formation of health districts;
MONTANA CODE ANNOTATED - Sections 2-9-101, 2-9-101(3), 2-9-101(5), 2-9-211, 2-9-212, 7-4-2711, 7-4-2717, 50-2-101(3), 50-2-104, 50-2-107, 50-2-116, 50-2-116(1)(c), 50-2-117, 50-2-118;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 27 (1983);
REVISED CODES OF MONTANA, 1947 - Sections 82-4301 to 82-4335.

- HELD: 1. A district board of health formed pursuant to section 50-2-107, MCA, stands in place of the county boards of health of those counties that formed the district.
2. A district board of health has the responsibility of providing its own legal advisor.
3. The counties forming a district board of health are responsible for providing the insurance for the district board of health.

August 6, 1985

Gerry M. Higgins
Golden Valley County Attorney
Golden Valley County Courthouse
Ryegate MT 59074

Dear Mr. Higgins:

You recently requested my opinion concerning the following questions:

1. Is a district board of health created in addition to, or in place of, county boards of health?
2. Who is the legal advisor for a district board of health?
3. Who is responsible for obtaining insurance for a district board of health?

Section 50-2-104, MCA, states in pertinent part:

County boards of health. (1) There is a county board of health in each county ...

Section 50-2-107, MCA, authorizes two or more adjacent counties to form a district board of health by mutual agreement. Section 50-2-107, MCA, states in pertinent part:

(1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. ... [Emphasis added.]

A district board of health is a local board of health. § 50-2-101(3), MCA. As a local board of health the district board of health must comply with section 50-2-116, MCA, prescribing the powers and duties of local boards of health. The health officer of the district board of health, appointed pursuant to section 50-2-117, MCA, must comply with section 50-2-118, MCA, which sets out the powers and duties of local health officers.

County boards of health are also local boards of health. § 50-2-101(3), MCA. Both a county board of health and a local health officer must comply with the powers and duties of local boards of health and the powers and duties of local health officers prescribed by section 50-2-116, MCA, and section 50-2-118, MCA, respectively.

Section 50-2-104, MCA, appears to mandate the creation of a county board of health in each county. In contrast, section 50-2-107, MCA, grants the discretionary power to adjacent counties to unite to form district boards of health. If read literally sections 50-2-104 and 50-2-107, MCA, would seem to require each county to have a county board of health even if the county is also a member of a district board of health. Such an interpretation is, however, unreasonable because all local boards of health have the same powers and duties pursuant to section 50-2-116, MCA. If all counties were required to have a county board of health in addition to a district board of health, there would be a duplication of services in those counties belonging to district boards of health. Such a result would render the creation of district boards of health meaningless. The Legislature does not perform useless acts. Kish v. Montana State Prison, 161 Mont. 297, 301, 505 P.2d 891, 893 (1973).

A district board of health stands in place of the county boards of health in those counties which formed the district board of health. Once a county joins a district board of health there is no need for the county to maintain a county board of health.

With respect to your question concerning the legal advisor for district boards of health, the county attorney is the legal advisor of the board of county commissioners. § 7-4-2711, MCA. Section 7-4-2711, MCA, states in pertinent part:

County attorney to be legal advisor of county and other subdivisions. (1) The county attorney is the legal advisor of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

....

The county attorney must also "perform such other duties as are prescribed by law." § 7-4-2717, MCA.

The Legislature has specifically enumerated the duties of the county attorney concerning other types of

districts. See, e.g., § 7-4-2711, MCA. It has remained silent as to whether the county attorney is the legal advisor to a district board of health. In the absence of a specific statutory mandate, the county attorney is not the legal advisor to a district board of health. See 40 Op. Att'y Gen. No. 27 (1983).

The Legislature has provided the district board of health the power to employ necessary qualified staff. § 50-2-116(1)(c), MCA. A legal advisor is doubtless a necessary member of the staff of a district board of health. The district board of health has the responsibility of providing its own legal advisor.

Your third question concerns the responsibility for obtaining insurance for district boards of health. The legislative intent of the Tort Claims Act, §§ 82-4301 to 4305, R.C.M. 1947, now entitled the Liability Exposure and Insurance Coverage Act, §§ 2-9-101 to 805, MCA, was to make cities and other political subdivisions, rather than the State, responsible for the negligence of their employees. State v. District Court of the Thirteenth Judicial District, 170 Mont. 15, 20, 550 P.2d 382, 384 (1976). Section 2-9-102, MCA, provides in pertinent part:

Governmental entities liable for torts except as specifically provided by legislature.
Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment ...

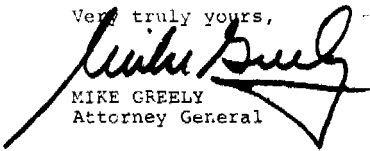
A governmental entity includes political subdivisions which, in turn, include counties. § 2-9-101(3) and (5), MCA. If a political subdivision desires to procure insurance, it may do so pursuant to the provisions set out in sections 2-9-211 to 212, MCA.

As a political subdivision, a county is the provider of insurance of its employees and agents, under the above statutes. Since a district board of health is created by its member counties, those counties are responsible for providing insurance for their district board of health.

THEREFORE, IT IS MY OPINION:

1. A district board of health formed pursuant to section 50-2-107, MCA, stands in place of the county boards of health of those counties that formed the district.
2. A district board of health has the responsibility of providing its own legal advisor.
3. The counties forming a district board of health are responsible for providing the insurance for the district board of health.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

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 March 31, 1985. This table includes those rules adopted during the period January 1, 1985 through June 30, 1985, 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 March 31, 1985, 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 1984 and 1985 Montana Administrative Registers.

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