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# MONTANA ADMINISTRATIVE REGISTER

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1987 ISSUE NO. 14  
JULY 30, 1987  
PAGES 1149-1228



# MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 OFFICE OF THE WORKERS' COMPENSATION JUDGE  
OF THE STATE OF MONTANA

In the matter of	)	NOTICE OF PROPOSED
the amendment of	)	AMENDMENT OF RULES
procedural rules.	)	ARM 2.52.310 AND
		2.52.348
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons.

1. On August 29, 1987, the Office of the Workers' Compensation Judge proposes to amend the procedural rules of the Court.

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

2.52.310 TIME AND PLACE OF TRIAL GENERALLY (1) through (6) No Change.

(7) For petitions filed after July 1, 1987, and as provided by law, the 60 days notice requirement set forth in ARM 2.52.310 (6) does not apply if the parties have completed the mediation proceedings required by statute or if an appeal is filed from a final division order.

(8) Following the completion of the mediation procedures by the department of labor and industry and upon the taking of an appeal from a final division order, all time deadlines to comply with the procedural rules of the court shall be set by the court on an individual case basis. (AUTH. and IMP. Sect. 2-4-102 MCA)

2.52.348 APPEALS (1) No Change.

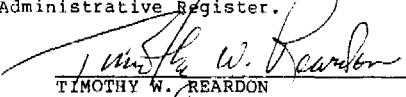
(2) The appellant's required ~~appearance~~ filing fee-is \$20.00--This fee shall accompany the notice of appeal when sent to the workers' compensation court. The check shall be made payable to the clerk of the supreme court. (AUTH. and IMP. Sect. 2-4-102 MCA)

3. The rationale for amending ARM 2.52.310 is to allow for flexibility and to avoid delay in scheduling matters which have been through the mediation process or which has been appealed from a final decision of the division. The rationale for amending ARM 2.52.348 is to delete the conflict with the rules of the Montana Supreme Court.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to Clarice V. Beck, Hearing Examiner, Workers' Compensation Court, P.O. Box 537, Helena, Montana, 59624-0537 by August 27, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Clarice V. Beck, address above, no later than August 27, 1987.

6. If the Court receives requests for a public hearing on the proposed amendment, from 25 persons who are directly affected by the proposed amendment or ten percent of the population of the State of Montana; 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. The rule will affect each individual in the state. Notice of Hearing will be published in the Montana Administrative Register.

  
TIMOTHY W. REARDON  
JUDGE

CERTIFIED TO THE SECRETARY OF STATE:

July 10, 1987  
Date

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON  
of ARM 2.5.201, 2.5.301, ) THE PROPOSED AMENDMENT OF ARM  
2.5.402, 2.5.403, 2.5.502, ) 2.5.201, 2.5.301, 2.5.402,  
2.5.503, 2.5.601, 2.5.602, ) 2.5.502, 2.5.503, 2.5.601,  
2.5.603, and 2.5.604 per- ) 2.5.602, 2.5.603, AND 2.5.604  
taining to contracting for ) PERTAINING TO CONTRACTING FOR  
supplies and services ) SUPPLIES AND SERVICES

TO: All Interested Persons.

1. On August 20, 1987, at 1:00 pm, in Room 160, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.5.201, 2.5.301, 2.5.402, 2.5.403, 2.5.502, 2.5.503, 2.5.601, 2.5.602, 2.5.603, and 2.5.604 pertaining to contracting for supplies and services.

2. The proposed amendments provide as follows:

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, Chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) - (3) remains the same.

(4) "Central stores" means the enterprise program operated by the department which develops standard specifications, procures, warehouses and delivers certain common use supplies for using state agencies.

(5) - (8) remains the same.

(9) "Montana-made" means manufactured or produced in the state and made with the use of parts, material, or supplies of which 50% or more were manufactured in this state; or employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401, MCA.

(10) "Non-resident bidder" means a bidder whose residence is not in this state as determined under 18-1-103, MCA.

(9) - (15) remains the same but will be re-numbered.

††6†(18) "Resident bidder" means any person, firm, partnership, or corporation whose domicile or offered materials, supplies, or equipment meets the requirements of 18-1-103, MCA.

††7†(19) "Restrictive specification" means specifications that unnecessarily limit competition by eliminating supplies and services that would be capable of satisfactorily meeting actual needs.

††8†(20) "Solicitation" means an Invitation for Bids, a Request for Proposals, a Request for Quotations, or any other document issued by the state for the purpose of soliciting bids or proposals to perform a state contract.

(19) - (22) remains the same but will be re-numbered.

(Auth. & Imp. 18-1-114 & 18-4-221, MCA)

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) A designee-of-the-Department State agencies shall exercise delegated purchasing authority in accordance with the written delegation agreement described in ARM 2.5.202, with the Montana Procurement Act, and with these rules. ~~Without a written delegation agreement each state agency is herein delegated authority to make "small purchases" up to \$500.00~~ Purchases may only be made within the limits of the delegation authority for non-controlled items and authority to make or as "exigency" purchases according to these rules. Agencies are hereby delegated authority to purchase up to \$1999.00 for non-controlled items and to make "exigency" purchases according to these rules.

(2) To initiate development of a delegation agreement with the department, a using state agency should submit a written request to the department.

(3) Unless specifically addressed in a delegation agreement, using state agencies must buy controlled items from through the Requisition Time Schedule, Term Contracts, and Central Stores. Using State agencies can procure non-controlled items and controlled items not available from the above sources by the procedures established in these rules. Sole source purchases over the agency delegation shall be forwarded to the department as described in ARM 2.5.604.

(4) remains the same.  
(Auth. 18-4-221, MCA; IMP 18-4-221 and 18-4-222, MCA)

2.5.402 SUSPENSION OR REMOVAL FROM BIDDERS LIST (1) The department has the authority to suspend or remove a vendor from the bidders list if the department determines the vendor is: (a) non-responsible as defined in 18-1-113, MCA; or ~~(a)~~ (b) non-responsive as defined in 18-4-301, MCA; or ~~(b)~~ (c) non-responsive as defined in 18-4-301, MCA.

(2) remains the same.

(a) The department may suspend a vendor from the state bidders list upon written determination by the department that probable cause exists for removal under 18-1-113 and 18-4-241, MCA. A notice of suspension, including a copy of the determination, shall be sent to the affected vendor. The notice must state that:

(i) - (ii) remains the same.

(iii) the suspended vendor may request a redetermination of-the-determination.

(b) remains the same.

(3) remains the same.

(a) remains the same.

(i) The department may remove a vendor from the state bidders list upon written determination by the department that cause exists under 18-1-113 and 18-4-241, MCA.

(ii) The department shall prepare a written decision regarding a removal and send a copy to the affected vendor. The final decision shall: recite the facts relied upon; ~~The written decision shall indicate the length term of the removal, not to exceed five three years; indicate the reasons for the action, and to what extent affiliates are affected.~~

(iii) A removal decision is effective upon issuance and receipt by the affected vendor and remains effective until its expiration date unless otherwise terminated by the department or a court.

(b) For failure to respond:

(i) The department may remove vendors from the bidders list for particular items, ~~vendors who fail for failure to respond to Invitations for Bids on three (3) consecutive procurements of those items.~~ Prospective bidders may be reinstated on such lists as described in ARM 2.5.401: after completion of the removal.

(4) Maintenance of list of removed for cause or suspended vendors. The department shall maintain an updated list of vendors removed or suspended from the bidders list as described in (3) (a) above. The list shall be available to all using state agencies and to the public upon request. (Auth. 18-1-114, 18-4-221, MCA; Imp. 18-1-113, 18-4-241 and 18-4-308, MCA)

2.5.403 RESIDENT BIDDING PREFERENCES (1) The department determines eligibility of vendors for bidding preferences authorized by 18-1-101 through 18-1-113, MCA.

(2) To determine assess eligibility, the department requires vendors to apply for preference by completing the applicable sections of the Bidder Affidavit form described in ARM 2.5.401 18-1-113, MCA. The affidavit must be on file with the department at the time of bid or proposal opening, or be submitted with the bid to be considered. Vendors who knowingly submit inaccurate information on this form may be deemed non-responsible and subject to the provisions of ARM 2.5.402.

(3) To apply the preferences the amount of the The applicable preference percentage shall be to added to the non-preferred bid, which shall then be compared to preferred bids not subtracted from the preferred bid. For example, according to the following procedures:

-Resident-Bid-----Non-Resident-Bid

---\$100.00-----\$-99.00

-x-----1x03

-----\$101.97

(a) If Montana-made products are bid, add 5% to non-resident, non-Montana-made product bids; if no Montana-made products are involved, see (e) following;

(b) Add 3% to Montana resident with non-Montana-made products as defined in 18-1-102 (1) (a) (ii) (C);

(c) Eliminate 5% preference for bids with Montana-made products if they are over 5% of non-resident, non-Montana-made product bids;

(d) Eliminate 5% preference for bids with Montana-made products if over 3% of resident bids with non-Montana-made product bids;

(e) If no Montana-made products remain, remove all preferences and add 3% resident preference to non-resident bids.

(f) If a certified blind vendor preference is indicated, add a 3% preference to all other bidders, as defined in 18-3-501 through 18-5-504, MCA.

(4) "Montana-made" means manufactured or produced in this state and made with the use of parts, material, or supplies of which 50% or more were manufactured or produced in this state. "Non-resident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

(Auth. 18-1-114 and 18-4-221, MCA; Imp. 18-1-113, 18-4-221, MCA)

2.5.502 BID AND CONTRACT PERFORMANCE SECURITY (1) - (4) remains the same.

(a) The preferred types of security are bonds as described in 18-4-312(2) (3) (a) and cash as described in 18-4-312(2) (3) (c) and (d), MCA.

(b) - (c) remains the same.

(5) remains the same.

(a) - (d) remains the same.

(6) All bid security, except bonds, will be returned to the unsuccessful bidders within 30 days from date of the award.

(6)(7) Contract Performance Security. If contract performance security is required, the amount of the security shall be no less than 25% of the total contract price. Factors to consider in requiring contract performance security and in determining the amount of the security include:

(a) type of commodity;

(b) past state experience;

(c) labor required to perform contract;

(d) materials required to perform contract;

(e) amount and number of subcontracts;

(f) damages chargeable to the state if the contractor defaults;

(g) estimated dollar amount of total contract.

(8) All performance security, except bonds, will be returned to the successful bidder upon completion of the contract, or at the discretion of the Purchasing Officials as documented to assure contract completion, or warranty period as declared within the contract.

(Auth. 18-4-221, MCA, Imp. 18-1-201 and 18-4-312)

2.5.503 PUBLIC NOTICE (1) - (3) remains the same.

(4) The state may determine that bids and proposals should be solicited through advertising to secure adequate competition. If so, the advertisement shall be made in at least three newspapers (one of which must be a daily) of general circulation printed within the state, once each week for 2 consecutive weeks. The advertisement shall identify the supply or service solicited, the time, date and location where bids and or proposals will be received and where to obtain copies.

(5) A copy of all invitations for Bids and Requests for Proposals shall be made available for public inspection.

46+ In the event that it is either not practicable or not advantageous to the state to furnish bids to the number of ~~all the~~ bidders listed on the central bidders list for a specific commodity, the purchasing agency may elect to shorten a bidders list by randomly selecting a number sample of bidders ~~and adding to that list the names of past competitive vendors.~~ (Auth. 18-4-221 MCA; 18-4-303 and 18-4-304, MCA)

2.5.601 COMPETITIVE SEALED BIDS (1) "Sealed bid" is the preferred method of competitive procurement for state supply contracts and service contracts. Sealed bids shall be solicited with an Invitation for Bids.

(2) The Invitation for Bids shall include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and date established for bid opening ~~set for receipt for bids~~, the address of the office to which bids are to be delivered, ~~the maximum time for bid acceptance by the state~~, and any other special information;

(b) - (c) remains the same.

(3) The Invitation for Bids may incorporate documents by reference if the Invitation for Bids specifies where such documents can be obtained.

(4) Amendments shall be sent to all vendors who received an Invitation for Bids.

(5) The Invitation for Bids shall be on a form prescribed or approved by the department.

(6) Upon receipt of a bid, an employee of the agency ~~other than~~ the procurement officer will cause it to be time-stamped and stored in a secure place, unopened, until the time and date set for bid opening.

(7) Bids shall be opened publicly at the time, date and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud or otherwise made available. ~~Such information also shall be recorded at the time of bid opening that is, the bids shall be tabulated or a bid abstract made.~~ The record of this information shall be available for public inspection as indicated in ARM 2.5.503.

(8) - (9) remains the same.

(a) - (b) remains the same.

(10) Nothing in this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if such bidder is not also the lowest bidder as determined under subsection (8). Further, this rule does not permit negotiations with any bidder.

(11) If low tie bids are received which are not resolved by the provisions of section 18-1-111, MCA, award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the department or the head of a Purchasing Agency, award shall be made in any permissible manner that will discourage tie bids. If no permissible methods will be effective in discouraging tie

bids and a written determination is made so stating, award may be made by drawing lots. Records shall be made of all Invitations for Bids on which tie bids are received showing the following information:

(a) - (c) remains the same.

(Auth. Sec. 18-4-221, MCA; Imp. 18-4-303, MCA)

2.5.602 COMPETITIVE SEALED PROPOSALS (1) remains the same.

(a) Competitive sealed bidding is practicable if the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery, or performance schedule, and all other terms and conditions of the Invitation for Bids.

(b) remains the same.

(i) - (v) remains the same.

(2) - (4) remains the same.

(a) a statement that discussions may be conducted with offerors who submit proposals but that proposals may be accepted and a contract issued without such discussions; and

(b) remains the same.

(5) Proposals shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service offered. The Register of Proposals shall be open to public inspection only after award of the contract. Proposals and modifications shall be shown only to state personnel having a legitimate interest in them. Proposal documents, such as financial information and trade secrets, that are identified, justified by the proposer or offeror, and agreed to by the department as requiring confidentiality will remain confidential after award.

(6) - (7) remains the same.

(a) - (c) remains the same.

(8) - remains the same.

(a) - (b) remains the same.

(9) - remains the same.

(Auth. Sec. 18-4-221 MCA; Imp. 18-4-304 MCA)

2.5.603 SMALL PURCHASES OF SUPPLIES AND SERVICES (1) The department or Purchasing state agency may procure supplies or services costing less than \$2,000 under this rule.

(2) This rule does not apply to controlled items as defined in ARM 2.5.201 and items described in ARM 2.5.202 subsections (4), (5) and (6); however, if a using state agency's annual aggregate total procurements of an item on the department's Requisition Time Schedule is reasonably anticipated to be less than \$200 \$300, the using state agency may purchase the item according to the provisions of this rule.

(3) If a supply or service is available from only one business vendor, the sole source procurement methods set forth in ARM 2.5.604 shall be used even if the procurement is a small purchase as specified in subsection (1).

(4) Procurement requirements shall not be artificially divided or sequenced to avoid using the other source selection methods set forth in Title 18, Chapter 4, MCA.

(5) For small purchases of supplies or services over \$500 and under \$2,000, the Procurement Officer shall solicit no less than three (3) businesses vendors to submit written quotations, and shall record the quotations and place them in the procurement file. The Procurement Officer shall award a contract to the business vendor offering the lowest acceptable quotation. The names of the businesses vendors submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

(6) For small purchases of supplies or services over \$300 and up to \$500, the Procurement Officer shall solicit a minimum of three businesses vendors to provide telephone quotations, and shall record the quotations and place them in the procurement file. The Procurement Officer shall make the award to the business vendor offering the lowest acceptable quotation.

(7) - (8) remains the same.  
(Auth. 18-4-221, MCA; Imp. 18-4-305 MCA)

2.5.604 SOLE SOURCE PROCUREMENT (1) - (2) remains the same.

(a) - (b) remains the same.

(3) The determination as to whether a procurement shall be made as a sole source shall be made by the Department or as delegated by a written delegation agreement. The determination and the basis therefore must be in writing. In cases of reasonable doubt, competition should be solicited. A request by a using state agency that a procurement be restricted to one potential-contractor vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(4) - (5) remains the same.

(a) each contractor's vendor's name;

(b) - (c) remains the same.

(Auth. 18-4-221 MCA; Imp. 18-4-306 MCA)

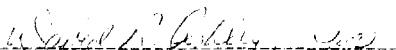
3. These amendments are made to correct errors in grammar and punctuation and to more clearly reflect the actual daily operations of the purchasing division and state agencies within the context of existing statutes and recently enacted legislation.

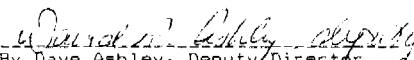
4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Michael S. Muszkiewicz, Administrator  
State Purchasing Division  
Department of Administration  
Room 165, Mitchell Building  
Helena, MT 59620

no later than August 28, 1987.

S. Bruce Swick, Purchasing Agent, Purchasing Bureau, State Purchasing Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

  
Ellen Feaver, Director  
Department of Administration

  
By Dave Ashley, Deputy Director  
Department of Administration

Certified to the Secretary of State July 20, 1987.

TO: All Interested Persons:

1. ARM 2.31.101 through 2.31.110 are being transferred from the Department of Administration to the Department of Commerce. These rules will be under Chapter 72 and will be numbered as ARM 8.72.101 through 8.72.110.

2. On August 31, 1987, the Passenger Tramway Advisory Council proposes to amend 8.72.101. The amendment of 8.72.101 (2.31.101) will read as follows: (new matter underlined, deleted matter interlined)

Auth: 23-2-721, MCA Imp: 23-2-721, MCA

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments either 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 Passenger Tramway Advisory Council, Building Codes Bureau, Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620, no later than August 27, 1987.

6. If the Council 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.

PASSENGER TRAMWAY ADVISORY  
COUNCIL  
W. JAMES KEMBEL, ADMINISTRATOR

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

Certified to the Secretary of State, July 20, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE HARD-ROCK MINING IMPACT BOARD

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.104.203A con- ) OF 8.104.203A DEFINITIONS  
cerning definitions )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 31, 1987, the Hard-Rock Mining Impact Board proposes to amend the above-stated rule.

2. The proposed amendment of 8.104.203A will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3707, Administrative Rules of Montana)

"8.104.203A DEFINITIONS For purposes of these rules, the following definitions apply:

(1)--The "~~estimated number of persons coming into the impact area as a result of the development~~" means:

(a)--~~those immigrating persons who are or will be employed in the construction or operation of the development and their immigrating family members;~~

(b)--~~those immigrating persons who will provide service or support to the development or to those persons encompassed by (a) and their immigrating family members; and~~

(c)--~~any other persons identified in an approved impact plan as being expected to move into the impact area as a result of the development;~~

(2)--The term "impacted area" means the jurisdictional area or areas of the affected local government units identified in an impact plan or in an amendment to an impact plan."

Auth: 90-6-305, MCA AUTH Extension, Sec. 7, Ch. 311, L. 1987, Eff. 3/31/87 Imp: 90-6-305, MCA

3. This amendment has been directed by the 1987 Legislature (Section 6, Chapter 311, Laws of 1987) pursuant to section 2-4-412(2), MCA.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Hard-Rock Mining Impact Board, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than August 27, 1987.

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 the Montana Hard-Rock Mining Impact Board, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than August 27, 1987.

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. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the total population of the state of Montana.

HARD-ROCK MINING IMPACT BOARD  
LEONARD McKINNEY, CHAIRMAN

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

Certified to the Secretary of State, July 20, 1987.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF  
THE STATE OF MONTANA

In the matter of the adop-	)	NOTICE OF THE PROPOSED
tion of temporary rules	)	ADOPTION OF TEMPORARY RULES
pertaining to youth place-	)	PERTAINING TO YOUTH PLACE-
ment committees	)	MENT COMMITTEES
	)	
	)	NO PUBLIC HEARING CONTEM-
	)	PLATED

TO: All Interested Persons

1. The Department of Family Services hereby gives notice of the proposed adoption of temporary rules pertaining to youth placement committees. These rules are proposed to implement Sections 15 through 19 of Ch. 609, L. 1987, which shall become effective on September 1, 1987, by Executive Order No. 5-87 signed by the Governor on June 15, 1987. Pursuant to Section 2-4-303, MCA, as amended by Ch. 261, L. 1987, these rules shall become effective upon filing a notice of adoption to be published in the Montana Administrative Register and shall be effective until October 1, 1987.

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

RULE I DEFINITIONS (1) For the purpose of this rule, the following definitions apply:

(a) "Committee" means a youth placement committee appointed by the department.

(b) "Department" means the Department of Family Services.

(c) "Mental health professional" means a psychiatrist, psychologist or a professional person certified pursuant to section 53-21-106, MCA.

(d) "Residential placement" means placement in a youth care facility or a youth correctional facility for a period exceeding 45 days.

(e) "Youth care facility" means a licensed youth foster home, youth group home or child care agency as defined in section 41-3-1103(6), (7) and (8), MCA.

(f) "Youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as the Pine Hills School and Mountain View School.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

RULE II COMPOSITION AND MEMBERSHIP REQUIREMENTS (1) Within each judicial district, the department will appoint a youth placement committee of not less than five (5) members including:

(a) a representative of the department;

(b) a representative of the county department of public welfare;  
(c) a youth probation officer;  
(d) a mental health professional; and  
(e) a representative of a school district located within the boundaries of the judicial district.

(2) The department may appoint more than one (1) youth placement committee in a judicial district if it will serve the best interests of the youth and expedite the placement process.

(3) The committee may adopt policies regarding membership and composition consistent with these rules.

(4) The department representative shall act as coordinator for the committee and shall be responsible for performing the following tasks:

(a) convene meetings within time guidelines established by [Rule IV];

(b) notify all committee members of scheduled meetings;

(c) provide referral packet to all committee members;

(d) record information relating to committee deliberations; and

(e) forward recommendations to the department, the county attorney and the youth court judge.

(5) A simple majority of appointed members constitutes a quorum. A quorum must be present to conduct a meeting.

(6) Committee members shall service a term of two (2) years; however, a member may be reappointed to additional terms.

(7) Committee members shall serve without compensation.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

RULE III REFERRALS TO THE COMMITTEE (1) The probation officer shall submit a referral as defined in subsection (3) to the committee for any youth who will be placed in a residential placement for a period exceeding forty-five (45) days pursuant to a consent adjustment without petition under section 41-5-401, MCA, or an informal adjustment under section 41-5-403, MCA.

(2) The probation officer shall submit a referral as defined in subsection (3) to the committee for any youth committed to the department pursuant to section 41-5-523, MCA.

(3) A referral shall be made in writing and shall include the following information:

(a) a referral form provided by the department;

(b) a social summary or predisposition report;

(c) any evaluations pertaining to the youth;

(d) any school reports available to the probation officer which may be relevant to the selection of an appropriate placement;

(e) any medical reports which may be relevant to the selection of an appropriate placement;

(f) any legal documentation pertaining to the youth; and

(g) the probation officer's recommendations as to available facilities which may be appropriate for the youth, including information regarding estimated costs of care and proposed length of treatment necessary for the youth.

(4) Five copies of the referral shall be submitted to the placement committee coordinator.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

#### RULE IV PROCEDURES FOR YOUTH PLACEMENT COMMITTEE MEETINGS

(1) The committee shall conduct regular meetings as necessary, provided that the committee shall meet within 72 hours (excluding weekends and holidays) of the submission of a referral when the youth is in a detention facility or in cases identified by the probation officer and coordinator as an emergency referral. All other referrals shall be considered by the committee within ten (10) working days from the time the referral is submitted.

(2) Meetings may be conducted by telephone.

(3) Each committee member shall be provided a copy of the referral prior to the meeting.

(4) Committee deliberations shall be closed to the public to protect the youth's right of individual privacy.

(5) A majority of committee members present at the meeting must concur in the recommendation forwarded to the department.

(6) The county attorney, the youth's attorney or the parents, guardian or custodian may submit a written statement pertaining to the selection of an appropriate placement for the youth and may request an opportunity to appear before the committee to present any information relevant to the selection of an appropriate placement of the youth.

(7) At its discretion, the committee may invite persons with specific or special knowledge to provide information to the committee which will assist the committee in developing placement recommendations for the youth.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

RULE V DUTIES OF THE COMMITTEE (1) The committee shall be responsible for the review of any youth referred to the committee under [Rule IV] for the purpose of recommending an appropriate placement for the youth to the department.

(2) To determine the recommended placement, the committee shall:

(a) review the referral and all information relevant to the placement of a youth referred to the committee or committed to the department;

(b) consider available resources appropriate to meet the needs of the child;

- (c) consider the treatment recommendations of any professional person who has evaluated the youth;
- (d) consider the age and treatment needs of the youth;
- (e) consider the relative costs of care in the facilities considered;
- (f) recommend an appropriate placement for the youth in a licensed youth care facility or juvenile correctional facility; and
- (g) submit the committee's recommendation in writing to the department and the appropriate district court judge.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

RULE VI PLACEMENT RECOMMENDATION PROCEDURES (1) The committee shall submit a written recommendation to the department within 48 hours of the meeting, excluding weekends and legal holidays. A copy of the recommendation shall be sent to the district court judge with jurisdiction over the youth, the county attorney and the youth's probation officer.

(2) The recommendation shall be signed by a majority of committee members present.

(3) The committee may notify the department of its recommendation by telephone prior to submitting its written recommendation.

(4) Upon receipt of the written recommendation, the department shall determine if it will accept the committee's recommendation within 48 hours of receipt of the recommendation, excluding weekends and legal holidays. The department shall notify the committee of its decision within three (3) working days.

(a) if the department accepts the committee's recommendation, it shall notify the committee and the youth's probation officer who will make the necessary arrangements to place the youth in the recommended facility.

(b) if the department rejects the committee's recommendation, it shall notify the committee in writing of the reasons for rejecting the recommendation and shall send a copy of the notice to the district court judge, the county attorney and the youth's probation officer.

(5) Upon receipt of a notice of rejection from the department, the committee shall recommend an alternative placement for the youth and submit its recommendation in writing within 48 hours of receipt of the notice of rejection.

(6) At the time of submitting the original recommendation, the committee may recommend a placement and an alternative placement to be considered in the event the recommended placement is not accepted by the department. If the department accepts the alternative placement, it shall notify the committee in writing of the reasons for rejecting the recommended placement.

(7) If the department rejects the committee's recommended placement and the alternative placement recommended by the committee, the department shall notify the committee in writing of the reasons for rejecting each placement and shall make arrangements with the youth's probation officer for the placement of the youth in an appropriate facility determined by the department. The department shall notify the committee, the county attorney and the appropriate district court judge of the facility selected for the placement of the youth.

(8) If the committee fails to act within the time limits set forth in this rule, the department may select an appropriate placement for the youth without the benefit of the committee's recommendation.

AUTH: Sec. 5(17), Ch. 609, L. 1987  
IMP: Sec. 15-19, Ch. 609, L. 1987

RULE VII TEMPORARY AND EMERGENCY PLACEMENTS (1) Any temporary or emergency placement of a youth which will not exceed 45 days is exempt from the requirements of [Rules IV-VI].

(2) If the temporary or emergency placement shall continue for more than 45 days, the youth shall be referred to the placement committee pursuant to [Rule IV].

AUTH: Sec. 5(17), Ch. 609, L. 1987  
IMP: Sec. 15-19, Ch. 609, L. 1987

RULE VIII CONFIDENTIALITY OF COMMITTEE MEETINGS AND RECORDS

(1) Meetings of a youth placement committee shall be closed to the public to protect the youth's right to individual privacy.


(2) Information presented to the committee about a youth and committee records are confidential and shall not be disclosed to persons other than:

- (a) committee members;
- (b) department employees;
- (c) the district court judge with jurisdiction over the youth;
- (d) the youth's parents, guardians or custodians;
- (e) the county attorney;
- (f) the youth's attorney;
- (g) the youth's probation officer; or
- (h) the youth care facility or juvenile correctional facility where the youth is placed.

AUTH: Sec. 5(17), Ch. 609, L. 1987  
IMP: Sec. 15-19, Ch. 609, L. 1987

3. These rules are necessary to implement the provisions of Sections 15-19, Ch. 609, L. 1987. The rules set forth the composition and membership rules for the youth placement committee and outline the procedures to be followed by the

committee in developing its recommendations for the placement of youths committed to the Department under the Montana Youth Court Act.

  
Director, Department of Family  
Services

Certified to the Secretary of State July 20, 1987.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF  
THE STATE OF MONTANA

In the matter of the adop-	)	NOTICE OF PUBLIC HEARING ON
tion of rules pertaining to	)	THE PROPOSED ADOPTION OF
youth placement committees	)	RULES PERTAINING TO YOUTH
	)	PLACEMENT COMMITTEES

TO: All Interested Persons

1. On September 2, 1987, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of rules pertaining to youth placement committees.

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

RULE I DEFINITIONS (1) For the purpose of this rule, the following definitions apply:

(a) "Committee" means a youth placement committee appointed by the department.

(b) "Department" means the Department of Family Services.

(c) "Mental health professional" means a psychiatrist, psychologist or a professional person certified pursuant to section 53-21-106, MCA.

(d) "Residential placement" means placement in a youth care facility or a youth correctional facility for a period exceeding 45 days.

(e) "Youth care facility" means a licensed youth foster home, youth group home or child care agency as defined in section 41-3-1103(6), (7) and (8), MCA.

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AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

RULE II COMPOSITION AND MEMBERSHIP REQUIREMENTS

(1) Within each judicial district, the department will appoint a youth placement committee of not less than five (5) members including:

(a) a representative of the department;

(b) a representative of the county department of public welfare;

(c) a youth probation officer;

(d) a mental health professional; and

(e) a representative of a school district located within the boundaries of the judicial district.

(2) The department may appoint more than one (1) youth placement committee in a judicial district if it will serve the best interests of the youth and expedite the placement process.

(3) The committee may adopt policies regarding membership and composition consistent with these rules.

(4) The department representative shall act as coordinator for the committee and shall be responsible for performing the following tasks:

(a) convene meetings within time guidelines established by [Rule IV];

(b) notify all committee members of scheduled meetings;

(c) provide referral packet to all committee members;

(d) record information relating to committee deliberations; and

(e) forward recommendations to the department, the county attorney and the youth court judge.

(5) A simple majority of appointed members constitutes a quorum. A quorum must be present to conduct a meeting.

(6) Committee members shall service a term of two (2) years; however, a member may be reappointed to additional terms.

(7) Committee members shall serve without compensation.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

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(2) The probation officer shall submit a referral as defined in subsection (3) to the committee for any youth committed to the department pursuant to section 41-5-523, MCA.

(3) A referral shall be made in writing and shall include the following information:

(a) a referral form provided by the department;

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(c) any evaluations pertaining to the youth;

(d) any school reports available to the probation officer which may be relevant to the selection of an appropriate placement;

(e) any medical reports which may be relevant to the selection of an appropriate placement;

(f) any legal documentation pertaining to the youth; and

(g) the probation officer's recommendations as to available facilities which may be appropriate for the youth,

including information regarding estimated costs of care and proposed length of treatment necessary for the youth.

(4) Five copies of the referral shall be submitted to the placement committee coordinator.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

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(1) The committee shall conduct regular meetings as necessary, provided that the committee shall meet within 72 hours (excluding weekends and holidays) of the submission of a referral when the youth is in a detention facility or in cases identified by the probation officer and coordinator as an emergency referral. All other referrals shall be considered by the committee within ten (10) working days from the time the referral is submitted.

(2) Meetings may be conducted by telephone.

(3) Each committee member shall be provided a copy of the referral prior to the meeting.

(4) Committee deliberations shall be closed to the public to protect the youth's right of individual privacy.

(5) A majority of committee members present at the meeting must concur in the recommendation forwarded to the department.

(6) The county attorney, the youth's attorney or the parents, guardian or custodian may submit a written statement pertaining to the selection of an appropriate placement for the youth and may request an opportunity to appear before the committee to present any information relevant to the selection of an appropriate placement of the youth.

(7) At its discretion, the committee may invite persons with specific or special knowledge to provide information to the committee which will assist the committee in developing placement recommendations for the youth.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

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- (c) consider the treatment recommendations of any professional person who has evaluated the youth;
- (d) consider the age and treatment needs of the youth;
- (e) consider the relative costs of care in the facilities considered;
- (f) recommend an appropriate placement for the youth in a licensed youth care facility or juvenile correctional facility; and
- (g) submit the committee's recommendation in writing to the department and the appropriate district court judge.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

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(2) The recommendation shall be signed by a majority of committee members present.

(3) The committee may notify the department of its recommendation by telephone prior to submitting its written recommendation.

(4) Upon receipt of the written recommendation, the department shall determine if it will accept the committee's recommendation within 48 hours of receipt of the recommendation, excluding weekends and legal holidays. The department shall notify the committee of its decision within three (3) working days.

(a) if the department accepts the committee's recommendation, it shall notify the committee and the youth's probation officer who will make the necessary arrangements to place the youth in the recommended facility.

(b) if the department rejects the committee's recommendation, it shall notify the committee in writing of the reasons for rejecting the recommendation and shall send a copy of the notice to the district court judge, the county attorney and the youth's probation officer.

(5) Upon receipt of a notice of rejection from the department, the committee shall recommend an alternative placement for the youth and submit its recommendation in writing within 48 hours of receipt of the notice of rejection.

(6) At the time of submitting the original recommendation, the committee may recommend a placement and an alternative placement to be considered in the event the recommended placement is not accepted by the department. If the department accepts the alternative placement, it shall notify the committee in writing of the reasons for rejecting the recommended placement.

(7) If the department rejects the committee's recommended placement and the alternative placement recommended by the committee, the department shall notify the committee in writing of the reasons for rejecting each placement and shall make arrangements with the youth's probation officer for the placement of the youth in an appropriate facility determined by the department. The department shall notify the committee, the county attorney and the appropriate district court judge of the facility selected for the placement of the youth.

(8) If the committee fails to act within the time limits set forth in this rule, the department may select an appropriate placement for the youth without the benefit of the committee's recommendation.

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

RULE VII TEMPORARY AND EMERGENCY PLACEMENTS (1) Any temporary or emergency placement of a youth which will not exceed 45 days is exempt from the requirements of [Rules IV-VI].

(2) If the temporary or emergency placement shall continue for more than 45 days, the youth shall be referred to the placement committee pursuant to [Rule IV].

AUTH: Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 15-19, Ch. 609, L. 1987

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(2) Information presented to the committee about a youth and committee records are confidential and shall not be disclosed to persons other than:

- (a) committee members;
- (b) department employees;
- (c) the district court judge with jurisdiction over the youth;
- (d) the youth's parents, guardians or custodians;
- (e) the county attorney;
- (f) the youth's attorney;
- (g) the youth's probation officer; or
- (h) the youth care facility or juvenile correctional facility where the youth is placed.

AUTH: Sec. 5(17), Ch. 609, L. 1987

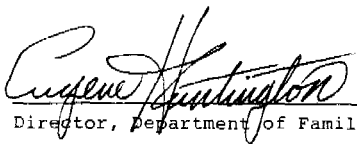
IMP: Sec. 15-19, Ch. 609, L. 1987

3. These rules are necessary to implement the provisions of Sections 15-19, Ch. 609, L. 1987. The rules set

forth the composition and membership rules for the youth placement committee and outline the procedures to be followed by the committee in developing its recommendations for the placement of youths committed to the Department under the Montana Youth Court Act.

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 Legal Unit, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than August 28, 1987.

5. Charlie McCarthy, Program Officer II, of the Department of Family Services has been designated to preside over and conduct the hearing.

  
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Director, Department of Family  
Services

Certified to the Secretary of State July 20, 1987.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF  
THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.5.922	)	PROPOSED AMENDMENT OF RULE
pertaining to staffing	)	46.5.922 PERTAINING TO STAF-
requirements in child day	)	FING REQUIREMENTS FOR CHILD
care centers	)	DAY CARE CENTERS

TO: All Interested Persons

1. On August 19, 1987, at 1:00 p.m., the Department of Family Services will hold a public hearing in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.5.922 pertaining to the staff-to-child ratio in child day care centers.

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

46.5.922 DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) Child/staff ratio.  
(a) 4:1 for infants 0 to 24 months;  
(b) 8:1 for children 2 to 4 years;  
~~(c) 10:1 for children 4 to 6 years;~~  
(d) 14:1 for children over 6 years;  
(e) only the provider, primary caregiver(s) and aides may be counted as staff in determining the staff ratio.  
Subsections (2) through (8) remain the same.

AUTH: Sec. 53-4-503, MCA

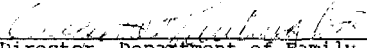
IMP: Sec. 53-4-504 and 53-4-508, MCA

3. The Rule 46.5.922 which is proposed to be amended is on page 46-288 of the Administrative Rules of Montana.

4. This proposal, to amend the staff ratio from 8:1 to 10:1 for children 2 to 6 years, is in response to numerous requests from day care center operators. The operators indicated that they are losing good child care staff because they cannot afford to give pay raises and still comply with the staff/child ratios. By changing the staff ratio for 2 to 4 year olds quality will suffer very little. Operators can then afford to provide increased compensation to their more experienced staff. The proposed staff ratio is consistent with recommended staff ratios developed by other states.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Legal Unit, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than August 28, 1987.

6. Legal Counsel for the Department of Family Services has been designated to preside over and conduct the hearing.

  
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Director, Department of Family  
Services

Certified to the Secretary of State July 20, 1987.

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

In the matter of the )  
amendment of rule 24.16.9007 ) NOTICE OF PROPOSED  
 ) AMENDMENTS TO RULE  
 ) 24.16.9007, REQUIRING  
 ) THE ANNUAL ADOPTION OF  
 ) PREVAILING RATE OF  
 ) WAGES. NO PUBLIC  
 ) HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 9, 1987, the Department of Labor and Industry proposes to amend rule 24.16.9007, A.R.M., which requires the Commissioner of Labor and Industry to annually adopt the standard prevailing wage rates.

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

24.16.9007 ANNUAL ADOPTION OF STANDARD PREVAILING RATE OF WAGES (1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, shall be adopted in accordance with the Montana Administrative Procedure Act and rules implementing the Act.

(a) A notice of proposed adoption of the commissioner's determination shall be published in the Montana Administrative Register 30 to 45 days prior to adoption according to regular publication dates scheduled in ARM 1.2.419.

~~(b) Such minimum wage rates shall become effective on the first day of December, and shall supersede and replace all previously adopted wage rates for corresponding classifications.~~ Adopted wage rates shall remain in effect until superseded and replaced by a subsequent adoption.

(c) An adoption of wage rates shall have no effect on contracts for public works awarded during the effective period of a previous adoption of rates under these rules.

(d) The wage rates proposed and the wage rates adopted shall be incorporated by reference in respective notices published in the Montana Administrative Register.

(2) The commissioner will maintain a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information will be distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request delivered to the Administrator, Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P. O. Box 1728, Helena, MT 59624. Copies of adopted wage rates will be available at reproduction cost for a period of five years following their effective date.

(3) The standard prevailing rates of wages, effective ~~December-17-1986-through-November-30-1987~~ September 25, 1987, are hereby adopted and incorporated by reference. These rates are effective until the adoption of new rates pursuant to Sections 18-2-401, 18-2-402, and 18-2-411, MCA, as amended October 1, 1987. Copies of the rates are available upon request from the Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P. O. Box 1728, Helena, MT 59624, (406) 444-5600. Authority: Sec. 18-2-431 MCA; IMP, Sec. 18-2-402 MCA

3. The proposed amendments are intended to serve as a transition between the present prevailing wage rates and those rates adopted under Sections 18-2-401, 18-2-402, and 18-2-411, MCA, as amended October 1, 1987.

The current rule provides that the present prevailing wage rates will not be effective after November 30, 1987. The proposed amendments would strike the effective dates of the present rates and would establish a new effective date for the "transition" prevailing wage rates. These transition rates will remain in effect only until new rates can be established under the new law. Properly noticed public hearings on the new rates and rules are expected to be held in the spring of 1988.

No public hearing is contemplated for the transition rates because they are considered temporary and are, in great part, a readoption of the 1986-1987 rates with the following exceptions:

(a) The heavy highway construction rates have been updated to reflect the current federally established Davis-Bacon rates; and

(b) new rates for the following positions will be added:

- (i) glaziers;
- (ii) welders;
- (iii) tile setters;
- (iv) roofers;
- (v) plasterers;
- (vi) partition assemblers;
- (vii) material handlers;
- (viii) snow-plow operators, trucks;
- (ix) carpet layers;
- (x) auto accessory installers; and
- (xi) radio mechanics.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Administrator, Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P. O. Box 1728, Helena, MT 59624, no later than August 31, 1987.


5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Administrator,

Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P. O. Box 1728, Helena, MT 59624, no later than August 31, 1987.

6. If the agency receives requests for a public hearing on the proposed amendment from 25 of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The commissioner has determined that 10% of those persons directly affected would far exceed 25 persons. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed amendments is based on section 18-2-431, MCA, and the rule implements sections 18-2-402, MCA.

DEPARTMENT OF LABOR & INDUSTRY

  
Mary M. Hartman  
Commissioner

Certified to the Secretary of State July 16, 1987.

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT OF  
amendment of ARM 36.21.415 ) ARM 36.21.415, FEE SCHEDULE,  
concerning the fee schedule ) AND PROPOSED ADOPTION OF NEW  
and the proposed adoption of ) RULES UNDER SUB-CHAPTER 7  
new rules relating to ) RELATING TO MONITORING WELL  
monitoring well constructor ) CONSTRUCTOR LICENSES.  
licenses. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 29, 1987, the Board of Water Well Contractors proposes to amend ARM 36.21.415 concerning fee schedules, and proposes to adopt new rules relating to the monitoring well constructor's license.

2. The proposed amendment of ARM 36.21.415 will add a fee for the monitoring well constructor's application, examination, and re-examination, and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-393.16 and 36-393.17, Administrative Rules of Montana)

"36.21.415 FEE SCHEDULE

(1) Application and Examination

(a) ...

(c) Monitoring Well Constructor 110

(2) Re-examination

(a) Water Well Contractor and Driller 150

(b) Monitoring Well Constructor 50

(3) ..."

Auth: 37-43-202, MCA; Auth. Extension, Sec. 11, Ch. 728, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87; Imp: 37-43-202, 303, 305, MCA.

3. The purpose of the proposed amendment is to add fees for license application, examination, and re-examination for monitoring well constructors. The 1987 legislature authorized the Board to license monitoring well constructors. Sec. 8, Ch. 538, L. 1987. The proposed fees are based on costs for reviewing applications, administering the exams and issuing licenses. The re-examination fee is less, as the application will have prior approval.

4. The proposed new rules will read as follows:

"1. VERIFICATION OF EXPERIENCE (1) Section 16, chapter 538, Laws of 1987, provided for initial licensure as a monitoring well constructor. Prior to May 31, 1988, verification of one year of experience in the past 4 years shall consist of:

(a) a listing of monitoring well work performed in the past 4 years including:

- (i) location of job site and name and address of company for whom the monitoring work was performed,
- (ii) description of the work,
- (iii) length of work,
- (iv) other details which will assist in verifying the work;
- (b) three professional references other than persons within the firm by whom you are employed."

Auth: 34-43-202, MCA; Auth. Extension, Sec. 11, Ch. 728, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87; Imp: Sec. 16, Ch. 538, L. 1987.

"II. APPLICATION APPROVAL AND EXAMINATION (1) Applications accompanied by proper verification and fees will be reviewed at regularly scheduled meetings of the board of water well contractors.

(2) After approval by the board, applicants may take the examinations at the board office in Helena or the department of natural resources and conservation water rights bureau field offices in Billings, Bozeman, Glasgow, Havre, Kalispell, Lewistown, Miles City, or Missoula.

(3) A grade of 80% is necessary to pass the examination. Grading will be completed by the National Water Well Association.

(4) Any applicant who has failed the monitoring well constructor examination and wishes to retake the exam will be required to pay the re-examination fee prescribed in ARM 36.21.415."

Auth: 37-43-202, MCA; Auth. Extension, Sec. 11, Ch. 728, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87; Imp: 37-43-303, 305, MCA; Sec. 16, Ch. 538, L. 1987, Eff. 7/1/87.

"III. CONTENTS OF LICENSE (1) Each monitoring well constructor's license shall show on its face the name of the constructor, his firm name and address, the license number, and the date issued.

(2) Firm name and address changes shall be submitted to the board office within ten (10) days after the change occurs.

(3) Changes in name and address must be accompanied by the fee prescribed in ARM 36.21.415."

Auth: 37-43-202, MCA; Auth. Extension, Sec. 11, Ch. 728, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87; Imp: 37-43-202, 302, MCA.

5. The proposed rules will implement legislation created by House Bill 831, signed into law as Chapter 538, Session Laws of 1987. Rule I defines what will be considered for verification of the one year of experience for monitoring well constructors. This will maintain specific and uniform verification for all applicants.

Rule II describes the procedure for application approval, allows for exams to be given in Helena and the eight (8)

Department of Natural Resources and Conservation Water Rights Bureau field offices, and provides a passing score for the monitoring well constructor's exam. The use of the field offices will allow prospective licensees easy access to the exam. The Board proposes to use the National Water Well Association's monitoring well exam. The 80% exam score corresponds to the water well exam passing score. The passing score has also been set based on a staff review of the exam.

Rule III sets out the contents of the monitoring well constructor's license. Based on experience with the water well contractors and driller's licenses, the Board finds it necessary that these items be shown on the licenses.

6. Interested persons may submit their data, views, or arguments concerning the proposed adoption in writing to the Board of Water Well Contractors, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620 no later than August 27, 1987.

7. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with written comments he has to the Board of Water Well Contractors, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620 no later than August 27, 1987.

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

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay  
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, July 20, 1987.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rules I through IV )	the PROPOSED ADOPTION of Rules
relating to Operating Liquor )	I through IV relating to
Stores. )	Operating Liquor Stores.

TO: All Interested Persons:

1. On August 31, 1987, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through IV, relating to Operation of Liquor Stores.

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

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

RULE I DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(a) "Agency store" means a state liquor store operated by an agent.

(b) "Agent" means a person, partnership, or corporation that markets liquor on a commission basis under an agency agreement with the department and provides all the resources, including personnel and store premises, needed to market liquor under the agreement except the liquor product, which is owned by the department until purchased by a customer.

(c) "Liquor" includes table wine when the alcoholic beverage code permits the department to distribute table wine to a state liquor store.

(d) "State liquor store" includes agency stores and liquor stores operated by state employees.

(2) Other words and phrases used in these rules shall have the meaning ascribed to them in the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning. AUTH 16-2-101, MCA, Auth. Ext. Sec. 2, Ch. 648, L. 1987, Eff. 5/11/87, IMP, Sec. 1, Ch. 648, L. 1987.

RULE II CONVERSION TO AGENCY STORE (1) The department may convert a state liquor store operated by state employees to an agency store after fulfilling the following four provisions:

(a) the store has returned less than a 10% profit, as determined under (2), to the state for the 12 consecutive month period prior to the determination to convert the store, which determination shall be as close to the expiration date of the lease for the store premises as fulfilling these provisions will allow;

(b) the department of revenue has informed the revenue oversight committee by mail in advance of one of its meetings of plans to convert the store;

(c) the lease for the store premises has expired; and

(d) the department has signed an agency agreement with an agent selected in accordance with rule III.

(2) The profit percentage for a state liquor store is determined by dividing net income for a 12 consecutive month period by net sales for the same 12 consecutive month period.

(a) A store's net income is determined by subtracting from a store's gross sales, discounts for full case purchases, product costs, freight charges, store direct expense, store indirect expense, and taxes.

(b) A store's indirect expense is determined by multiplying the ratio of a store's gross sales to total gross sales times all expenses chargeable to the liquor division less direct expenses for all stores, and less the cost of the liquor division licensing bureau, the office of legal affairs, and the investigations and enforcement division (other than inspection costs directly attributable to a store).

(c) A store's net sales is determined by subtracting from a store's gross sales, discounts for full case purchases and taxes. AUTH 16-2-101, MCA, Auth. Ext. Sec. 2, Ch. 648, L. 1987, Eff. 5/11/87, IMP, Sec. 1, Ch. 648, L. 1987.

RULE III SELECTION OF AGENT (1) The agent for a state liquor store qualifying for conversion to an agency store, an agency store with a terminated agency agreement, or a new agency store, will be selected according to competitive procedures under the Montana Procurement Act, 18-4-121 through 18-4-407, MCA.

(a) For stores in communities with less than 3,000 population according to the federal bureau of the census' last decennial final census population count, the agent will be selected according to procedures for competitive sealed proposals as defined in ARM 2.5.602 with the agent's commission fixed at 10% of adjusted gross sales.

(b) For stores in communities with a population of 3,000 or more according to the federal bureau of the census' last decennial final census population count, the agent will be selected according to procedures for competitive sealed bids as defined in ARM 2.5.601 with the agent's commission being the percentage of adjusted gross sales bid by the lowest responsible and responsive bidder. AUTH 16-2-101, MCA, Auth. Ext. Sec. 2, Ch. 648, L. 1987, Eff. 5/11/87, IMP, Sec. 1, Ch. 648, L. 1987.

RULE IV CLOSURE OF A STATE LIQUOR STORE (1) The department may close a state liquor store without legislative approval after:

(a) the department finds it infeasible to continue operating the store because the store has returned less than a 10% profit, as determined under RULE II(2), to the state in the 12 consecutive month period prior to the determination to close the store, and

(i) the store is projected to continue returning less than a 10% profit under any mode of operation after the current lease for the premises has expired or the current agency agreement has terminated, or

(ii) the store's closure is necessary for liquor division expenditures to stay within the limit appropriated by the legislature; and

(b) the department has informed the revenue oversight committee by mail in advance of one of its meetings of plans to close the store; and

(c) the lease for the store premises has expired, or the agency agreement has terminated.

(2) A temporary closure of a state liquor store may occur when the department has attempted to convert a store operated by state employees to an agency store under RULE II or to contract for an agent to succeed an agency agreement that has terminated, but was unable to select an agent who met the requirements under RULE III.

(a) Should a temporary closure occur, the department will continue to solicit for an agent to operate the store until an agent is selected, or it becomes clear that there is insufficient interest in operating the store under the terms the department can offer, in which case the department will inform the revenue oversight committee at one of its meetings of plans to make no further solicitations for an agent. AUTH 16-2-101, MCA, Auth. Ext. Sec. 2, Ch. 648, L. 1987, Eff. 5/11/87, IMP Sec. 1, Ch. 648, L. 1987.

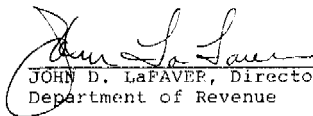
4. The Department is proposing rules I through IV because Sec. 1, Ch. 648, L. 1987 changed the requirements of the law. Without these rules actions taken by the department based on the law alone could be subject to litigation since the law allows considerable latitude in interpreting the requirements.

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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than August 28, 1987.

6. Eric J. Fehlig, Tax Counsel, Department of Revenue has been designated to preside over and conduct the hearing.

  
JOHN D. LaFAVE, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rule I relating to the )	the PROPOSED ADOPTION of Rule I
Exempt Retirement Limitation.)	relating to the Exempt Retirement
)	Limitation.

TO: All Interested Persons:

1. On August 26, 1987, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I, relating to exempt retirement limitations.

2. The proposed rule I does not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I EXEMPT RETIREMENT LIMITATION (1) For a person who is receiving more than one retirement benefit the following limitations apply:

(a) When one retirement benefit is 100% excludable and is greater than \$3,600, no other exclusion is allowed. For example, for a person who receives a Montana public retirement benefit of \$5,000 and also receives a civil service benefit of \$3,000, the exclusion is limited to \$5,000.

(b) When one retirement benefit is 100% excludable and is less than \$3,600, the maximum exclusion for all benefits is \$3,600. For example, for a person who receives a Montana public retirement benefit of \$3,000, and also receives a private benefit of \$4,000, the exclusion is limited to \$3,600.

(c) When the retirement benefits received are from federal, private or non-Montana public retirement plans the exclusion is the lesser of \$3,600 or the total benefits received.

(2) The limitations apply separately to individuals filing a joint return.

3. The Department proposes to adopt rule I because the 1987 Legislature enacted legislation providing for limitations on certain retirement income. AUTH 15-30-305, MCA, and Sec. 3, Ch. 657, L. 1987, IMP, Sec. 1, Ch. 657, L. 1987.

Rule I is necessary to provide a simplified explanation of how limits on retirement exclusion work in practice and to clarify that a choice of filing methods (joint or separate) does not affect the limits on the exclusion.


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:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building

Helena, Montana 59620

no later than August 28, 1987.

6. R. Bruce McGinnis, Tax Counsel, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF PROPOSED ADOPTION
of RULE I relating to the )	of RULE I relating to the
Income Tax Deduction for )	Income Tax Deduction for
Household and Dependent Care )	Household and Dependent Care
Expenses. )	Expenses.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 31, 1987, the Department of Revenue proposes to adopt Rule I relating to the Income Tax Deduction for Household and Dependent Care Expenses.

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

RULE I DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES

(1) For a married couple to claim a deduction for qualified employment related household and dependent care expenses, both spouses must be gainfully employed. For the purpose of this deduction gainful employment means:

(a) Full-time, part-time or temporary employment where both of the spouses are employed at the same time.

(b) Full-time, part-time or temporary employment where one of the spouses is employed and the other is unable to care for himself/herself because of physical or mental illness.

(2) Household and dependent care expenses are employment related expenses for the periods of time in a day a taxpayer is gainfully employed. AUTH 15-30-305, MCA, Auth. Ext. Sec. 2, Ch. 501, L. 1987, Eff. 10/1/87, IMP, 15-30-121, MCA, Sec. 1, Ch. 409, L. 1987.

3. The Department proposes to adopt rule I because the 1987 Legislature enacted legislation providing for clarification of gainful employment.

Rule I is necessary because the Legislature allowed as a deduction, household and dependent care expenses related to "gainful employment", but did not define "gainful employment". The rule also clarifies the requirement of the law that expenses must be the direct result of gainful employment.

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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, MT 59620  
no later than August 28, 1987.

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 Cleo Anderson at the above address no later than August 28, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed adoption is based on § MCA, and the rule implements §§ MCA.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION	)	NOTICE OF PUBLIC HEARING on
of RULE I relating to the	)	the proposed adoption of
Capital Gain Exclusion	)	RULE I relating to
	)	Capital Gain Exclusion.

TO: All Interested Persons:

1. On August 20, 1987 at 10:00 a.m., a public hearing will be held in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I relating to the Capital Gains Exclusion.

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

RULE I CAPITAL GAIN EXCLUSION (1) Adjusted gross income for tax years beginning after December 31, 1986 does not include 40% of the deferred capital gain on assets sold or exchanged before December 31, 1986.

(2) The capital gain exclusion applies only to the deferred gain on installment sales of items considered capital assets under Subchapter P, Parts I, II, III and IV of Chapter I of the Internal Revenue Code as it read on December 31, 1986.

(3) The capital gain from the sale or exchange of a capital asset is the sales price or fair market value less the taxpayers adjusted basis in the asset as determined for federal purposes prior to December 31, 1986.

(4) The deferred capital gain exclusion applies only after the capital gain is netted against capital losses as put forth in Subchapter P of Chapter I of the Internal Revenue Code as of December 31, 1986.

(5) When the taxpayer has both pre-1987 deferred and other gains, the prorated share of net capital gain that is eligible for the exclusion is the installment sale deferred capital gain divided by the total capital gain times the net capital gain. For example, when there is \$30,000 of deferred capital gain, \$70,000 of other capital gain and \$40,000 of capital losses the prorated share of the net capital gain is \$18,000 (\$30,000 divided by \$100,000 times \$60,000).

(6) The deferred capital gain is the total amount of principal payments received in one year times the gross profit percentage. The gross profit percentage is the sales price less the seller's adjusted basis of the capital asset divided by the contract price of the installment sale.

(7) The contract price is equal to the selling price minus that portion of indebtedness assumed, or taken subject to, by the buyer that is not in excess of the seller's adjusted basis in the property. The seller's basis having been reduced by commission and selling expenses.

(8) When married filing separate returns, the deferred capital gain exclusion may be divided equally when there is jointly owned property involved. Otherwise, the exclusion must be taken by the person who owns the property. AUTH 15-30-305 MCA, Auth Ext, Sec. 10, Ch. 666, L. 1987, Eff. 10/16/87, IMP, 15-30-111 and 15-30-131, MCA, Sec. 7, Ch. 666, L. 1987.

3. The Department proposes to adopt rule I because the 1987 Legislature enacted legislation providing for a capital gain exclusion on items sold prior to 12-31-86.

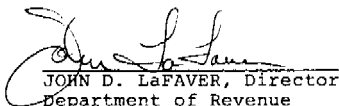
Rule I is necessary to explain what capital assets are eligible for the exclusion and to identify the amount of gain from a sale that is eligible for the exclusion after considering capital losses. Circumstances where the taxpayer has a combination losses and gains, some eligible for exclusion and others not eligible for exclusion, also need clarification. Also, a method of allocation is needed for married individuals who file separate returns. In general, the rule conforms to the calculation of capital gains under federal law prior to December 31, 1986 as required by Ch. 666, L. 1987.

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:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, MT 59620

no later than August 23, 1987.

5. R. Bruce McGinnis been designated to preside over and conduct the hearing.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION ) NOTICE OF PUBLIC HEARING on  
of Rule I relating to the ) the PROPOSED ADOPTION of Rule  
10% Income Tax Surtax. ) I relating to the 10% Income  
 ) Tax Surtax.

TO: All Interested Persons:

1. On August 24, 1987, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, at Helena, Montana, to consider the adoption of Rule I, relating to the 10% Income Tax Surtax.

2. The proposed rule I does not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I 10% INCOME TAX SURCHARGE (1) For tax years 1987 and 1988, individuals, estates, and trusts must add to their computed income tax a 10% surtax.

(2) The surtax is added before the tax on lump sum distributions is calculated and before any credits against the tax are claimed.

(3) When an amended tax return is filed for the tax years 1987 and 1988, the surtax shall be applied in the same manner as provided in (2). AUTH 15-30-305, MCA, Auth. Ext. Sec. 10, Ch. 666, L. 1987, Eff. 5/22/87, IMP, Sec. 6, Ch. 666, L. 1987.

4. The department proposes to adopt rule I because the 1987 Legislature enacted legislation providing for a 10% income tax surcharge in Chapter 666, L. 1987.

Rule I is necessary to identify how the surcharge is applied to tax returns for individuals, trusts and estates and how income tax credits are applied after computing the surtax. The rule is also necessary to clarify the years to which the surcharge applies. The termination date for the section of law establishing the surcharge is December 31, 1989. That termination date is interpreted to end the surcharge with the 1988 tax year. Returns are filed and taxes calculated for tax year 1989 after December 31, 1989. After that date, there is no provision for a surtax to be applied to the basic tax.

Chapter 666, L. 1987, requires the surtax to be applied to the taxpayers calculating their tax under 15-30-103, which includes the income tax rate structure. The taxpayers subject to that section include individuals, estates, and trusts. Persons with lump-sum distributions calculate their tax according to a separate rate provided for in 15-30-106, and the surtax does not apply to that tax. Credits against the income tax are applied after the calculation of the tax under 15-30-103, and the same procedure is appropriate for any surtax calculated on that tax.

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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than August 28, 1987.

6. R. Bruce McGinnis, Tax Counsel, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION ) NOTICE OF PUBLIC HEARING on  
of Rules I through III relating) the PROPOSED ADOPTION of Rules  
to the Withholding Tax-Lien- ) I through III relating to the  
Affidavit. ) Withholding Tax-Lien-Affidavit.

TO: All Interested Persons:

1. On August 24, 1987, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, at Helena, Montana, to consider the adoption of Rules I through III, relating to the Withholding Tax-Lien-Affidavit.

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

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

RULE I - AFFIDAVIT - FORM AND CONTENT (1) The form and content of the affidavit exempting property from withholding tax liens shall be approved by the department and shall contain as much as available of the following information:

(a) The name, address, telephone number and signature of the grantor. The signature of the grantor must be dated and properly witnessed or notarized.

(b) The name and address of the third party acquiring an interest in the real or personal property identified.

(c) The complete identity of the property to be affected by the affidavit, to include as applicable:

- (i) make;
- (ii) model;
- (iii) serial or identification number; and
- (iv) legal description.

(d) A statement or certification that all taxes, assessments, penalties and interest due from the grantor under 15-30-201 through 15-30-209, MCA, have been paid. AUTH, 15-30-305, MCA, Auth. Ext. Sec. 2, Ch. 489, L. 1987, Eff 4/15/87, IMP, Sec. 1, Ch. 489, L. 1987.

RULE II AFFIDAVIT - TIME PERIOD FOR EXECUTION (1) The affidavit of exemption from the grantor must be executed and notarized prior to the filing date of the warrant for distraint to exempt affected property from withholding tax liens under the provisions of 15-30-208, MCA. AUTH, 15-30-305, MCA, Auth. Ext. Sec. 2, Ch. 489, L. 1987, Eff. 4/15/87, IMP, Sec. 1, Ch. 489, L. 1987.

RULE III RECORD OF AFFIDAVIT - NOTICE (1) Any person or firm claiming an exemption from withholding tax liens based upon an affidavit provided by this act shall be required to provide a copy of such affidavit to the department within 30 days of

written request from the department. If said affidavit or a reasonable explanation for failure to provide the affidavit is not received within the 30 day period the department may assume the lien against the property is valid and commence to enforce the line. AUTH, 15-30-305, MCA, Auth. Ext. Sec. 2, Ch. 489, L. 1987, Eff. 4/15/87, IMP, Sec. 1, Ch. 489, L. 1987.

4. The Department proposes to adopt rules I through III because the 1987 Legislature enacted legislation providing for Withholding Tax-Lien-Affidavit.

Rule I is required because the act does not provide for information or format required by the department to administer this act. The rule will set forth the information required by the department.

Rule II is required to address situations where an affidavit of exemption has been obtained or executed on affected property after the department lien has been filed.

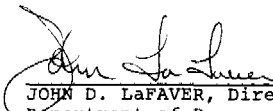
Rule III is required to provide a means of notification to verify claimed property exemptions.

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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than August 28, 1987.

6. R. Bruce McGinnis, Tax Counsel, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rule I relating to Motor )	the PROPOSED ADOPTION of Rule
Fuel Tax Bonds - Problem )	I relating to Motor Fuel Tax
Accounts. )	Bonds - Problem Accounts.

TO: All Interested Persons:

1. On August 27, 1987, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I, relating to Motor Fuel Tax Bonds - Problem Accounts.
2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.
3. The rule as proposed to be adopted provides as follows:

RULE I SPECIAL FUEL USER TAX BONDS - PROBLEM ACCOUNTS (1) Whenever a special fuel user, who is not otherwise required to furnish a bond, is late in filing a quarterly return and/or paying the special fuel tax, a first notice will be sent to the special fuel user stating that if the report and/or payment is not made within the next 30 days a bond will be required.

(2) If after 30 days the return or payment is still delinquent, a notice will be sent stating that both a bond and payment or filing must be submitted within the next 30 days or the user's license will be revoked and referred to the Department of Highways for confiscation.

(3) Unless both the bond and the delinquent payment or filing are submitted within the required 30 days, the license shall be revoked and referred for confiscation.

(4) The department may extend for definite periods, the time limits provided in subsection (1), (2) & (3) upon written application of the special fuel user which states reasonable cause for the extension. For the purposes of this rule, the department will use as a standard of "reasonable cause" the circumstances or conditions stated in ARM 42.3.105.

(5) The department shall require a bond to be posted by a special fuel user who fails to file timely reports and make tax payments due. The special fuel user shall be required to maintain timely filings and payments for two calendar years before making application for the bond requirement to be removed.

(6) If an agreement is required to have a bond a second or subsequent time, the special fuel user shall be required to maintain timely filings and payments for three calendar years before making application for the bond requirement to be removed. AUTH, 15-70-104, MCA, Auth. Ext. Sec. 2, Ch. 262, L. 1987, Eff. 10/1/87, IMP, 15-70-304, MCA, and Sec. 1, Ch. 262, L. 1987.

3. The department proposes to adopt this rule because Ch. 262, L. 1987 states in general terms that a bond is required for


"failing to file timely and remit tax due". This rule is necessary to define more precisely the terms and conditions under which a bond will be required and the circumstances under which a bond requirement can be removed. The consequences of failing to provide a bond when required also need to be specified.

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:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than August 28, 1987.

6. Paul Van Tricht, Tax Counsel, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rule I relating to )	PROPOSED ADOPTION of Rule I
Severance Tax - Stripper )	relating to Severance Tax -
Exemptions. )	Stripper Exemptions.

TO: All Interested Persons:

1. On August 25, 1987, at 10:00 a.m. in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana a public hearing will be held regarding the Department of Revenue's proposal to adopt rule I relating to severance tax - stripper exemptions.

2. The proposed rule I is not presently found in the Administrative Rules of Montana. However, it is being proposed under the temporary rulemaking process. That rule is identical to this rule but will expire on October 1, 1987.

3. The proposed rule is as follows:

RULE I STRIPPER EXEMPTION IN EXCESS OF ACTUAL PRODUCTION

(1) If the average daily crude oil production for a qualifying stripper well is less than 5 barrels per day during the current quarter, the difference between the total production for that well during the quarter and the stripper exemption (5 barrels per day times 90 days):

(a) cannot be offset against production during that quarter outside the geographic area (lease or unitized area) that was used to determine the stripper well status and production; and

(b) cannot be carried forward to a subsequent quarter or back to a previous quarter as either a credit or as negative production.

(2) If a natural gas well that had an average daily production of 60,000 cubic feet or less of natural gas for the previous calendar year produces an average of less than 30,000 cubic feet of natural gas daily during the current quarter, the difference between the total production from that well during the quarter and the exemption provided in 15-36-131(3) (30,000 cubic feet times 90 days):

(a) cannot be offset against production during that quarter from outside the geographic area (lease or unitized area) that was used to determine the "less than 60,000 cubic feet" status of the well and the production from that well; and

(b) cannot be carried forward to a subsequent quarter or back to a previous quarter as either a credit or as negative production. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 4, Ch. 656, L. 1987.

Rule I is necessary because Ch. 656, L. 1987 needs to be clarified with respect to situations where the stripper


exemption is greater than actual production for a quarter. Stripper well production is determined on a lease or unitized area basis. Hence, it is improper to transfer any unused tax exemptions outside of the lease or unitized area. Moreover, the oil and gas severance tax is determined and calculated entirely on a quarterly basis, with no provision for the carryover of any aspect of the tax whatsoever between quarters. Chapter 656, L. 1987, contains no language providing for carryovers between quarters. Hence, it is improper to transfer any unused tax exemptions from one quarter to another.

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:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than August 28, 1987.

5. Paul Van Tricht, Tax Counsel, Department of Revenue, has been designated to preside over and conduct the hearing.

  
\_\_\_\_\_  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PROPOSED ADOPTION
of Rule I relating to )	of Rule I relating to
Severance Tax. The rule )	Severance Tax. The rule is
is implemented through the )	implemented through the
TEMPORARY RULEMAKING PROCESS.)	TEMPORARY RULEMAKING PROCESS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 31, 1987, the Department of Revenue proposes to adopt rule I relating to severance tax - stripper exemptions.
2. The proposed rule is not currently found in the Administrative Rules of Montana and provides as follows:

RULE I STRIPPER EXEMPTION IN EXCESS OF ACTUAL PRODUCTION

(1) If the average daily crude oil production for a qualifying stripper well is less than 5 barrels per day during the current quarter, the difference between the total production for that well during the quarter and the stripper exemption (5 barrels per day times 90 days):

(a) cannot be offset against production during that quarter from outside the geographic area (lease or unitized area) that was used to determine the stripper well status and production; and

(b) cannot be carried forward to a subsequent quarter or back to a previous quarter as either a credit or as negative production.

(2) If a natural gas well that had an average daily production of 60,000 cubic feet or less of natural gas for the previous calendar year produces an average of less than 30,000 cubic feet of natural gas daily during the current quarter, the difference between the total production from that well during the quarter and the exemption provided in 15-36-131(3) (30,000 cubic feet times 90 days):

(a) cannot be offset against production during that quarter from outside the geographic area (lease or unitized area) that was used to determine the "less than 60,000 cubic feet" status of the well and the production from that well; and

(b) cannot be carried forward to a subsequent quarter or back to a previous quarter as either a credit or as negative production.

AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 4, Ch. 656, L. 1987.

Rule I is necessary because Ch. 656, L. 1987 needs to be clarified with respect to situations where the stripper exemption is greater than actual production for a quarter.

Stripper well production is determined on a lease or unitized area basis. Hence, it is improper to transfer any unused tax exemptions outside of the lease or unitized area. Moreover, the oil and gas severance tax is determined and calculated entirely on a quarterly basis, with no provision for the carryover of any aspect of the tax whatsoever between quarters. Chapter 656, L. 1987, contains no language providing for carryovers between quarters. Hence, it is improper to transfer any unused tax exemptions from one quarter to another.

A temporary rule is necessary because Ch. 656, L. 1987 was applicable to production beginning on or after April 1, 1987. Taxpayers need guidance on the treatment of these issues before October 1, 1987.


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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than August 28, 1987.

4. 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 Cleo Anderson at the above address no later than August 28, 1987.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published by the department by the means considered most effective and practicable. Ten percent of those persons directly affected has been determined to be 25.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 07/20/87.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF THE AMENDMENT OF
of ARM 2.21.804, 2.21.812,	) ARM 2.21.804, 2.21.812,
2.21.814, 2.21.821, and	) 2.21.814, 2.21.821 AND
2.21.822, relating to the	) 2.21.822 RELATING TO THE
Sick Leave Fund	) SICK LEAVE FUND

TO: All Interested Persons.

1. On June 11, 1987, the department of administration published notice of the proposed amendment of ARM 2.21.804, 2.21.812, 2.21.814, 2.21.821, and 2.21.822 relating to the sick leave fund at page 733 of the 1987 Montana Administrative Register, issue number 11.

2. The rules have been amended with the following changes:

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS (1)-(2)  
Same as proposed rule.

(3) ~~The employee shall meet all applicable eligibility requirements in ARM 2.21.814(6). The employee does not have to be a member of the sick leave fund to give or receive direct grants.~~ To be eligible to receive a direct grant of sick leave, an employee must:

(a) have met the 90-day qualifying period to take sick leave provided for in 2-18-618(1), MCA;

(b) suffer an extensive illness or accident which results in absence from work of no less than 10 consecutive working days;

(c) exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time. Participation in the fund or agreeing to receive direct grants constitutes an employee's agreement required in 2-18-615, MCA, to exhaust all accrued annual vacation leave in order to become eligible to receive the additional sick leave;

(d) take 5 days of leave of absence without pay following exhaustion of all accrued leave and compensatory time;

(e) receive approval from the supervisor for leave of absence;

(f) receive approval from the agency head or designee to receive a grant or a direct grant of sick leave;

(g) provide to the employing agency a physician's certification of extensive illness or accident, in accordance with ARM 2.21.137, in the sick leave policy.

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

3. A public hearing was conducted on July 8, 1987, to receive comments on these proposed rule amendments. The following comments were received during the comment period.

The Sick Leave Fund Advisory Council reviewed the comments and concurs with the responses from the department.

COMMENT: In ARM 2.21.814 (6)(c), the rule should be amended to require more specific documentation that the employee has agreed to exhaust annual leave.

RESPONSE: Nothing in this rule prohibits an agency from obtaining specific documentation that the employee agrees to use annual leave for purposes of becoming eligible to receive grants of sick leave from the fund or direct grants. The regular agency procedure for requesting to take annual leave may serve the purpose. The department also is revising the vouchers used in making sick leave fund grants and direct grants to specifically inform employees that their participation constitutes their agreement to exhaust annual leave. The department believes an additional documentation step is unnecessary.

COMMENT: In ARM 2.21.814(6)(d), the rule should be amended to remove the 5 day leave of absence without pay eligibility requirement to receive direct grant. A second comment requested that the requirement be eliminated altogether.

RESPONSE: The department and the advisory council continue to believe that the 5 days of leave of absence without pay is a critical indicator that the employee's illness or injury is extensive and the employee should be eligible for benefits. The department and council will examine how the 5 days is calculated and may in the future propose amendments to this rule.

COMMENT: ARM 2.21.814(9), which deals with receiving grants to care for family members, should be amended to provide that the employee must meet all the rule's eligibility requirements and that the employee must show that other attendance for the family member cannot be obtained. A second comment suggests that the language allowing granted leave's use "until other attendance can reasonably be obtained" is too open-ended and does not provide enough guidance.

RESPONSE: This is a new section of ARM 2.21.814. It sets the same standard for use of granted sick leave to care for a family member which now exists in the sick leave rules for the use of an employee's personal sick leave. The department believes the standard should be consistent with that used in the Sick Leave Rules.

COMMENT: ARM 2.21.821(3) should be amended to allow retiring employees to donate leave to another employee, even though the recipient is not eligible to take the leave at the time the employee retires.

RESPONSE: This is a new section of ARM 2.21.821 and was added at the request of state agencies who are administering direct grants. It requires that the recipient must be eligible for

granted leave in the same pay period in which the donor terminates. The comment is the result of a situation where the intended recipient was suffering a serious illness and would eventually become eligible for grants, but had not done so at the time the donor retired. However, the department is concerned that this practice would open the door for any retiring employee to donate leave to another employee, whether or not the employee was a potential recipient. Agencies have the obligation to cash out the retiring employee's leave on termination. The department recommends that the retiring employee could donate a comparable amount of sick leave to the fund on termination, if the direct grant cannot be made.

COMMENT: ARM 2.21.822 should be amended to list the eligibility requirements to receive direct grants, which are now referenced.

RESPONSE: The department has received a number of questions about which referenced eligibility requirements for grants from the sick leave fund apply to direct grants. The department agrees with this comment to clarify the rules.

COMMENT: An agency has asked that exceptions to the 160-hour maximum benefit be allowed in cases where more than 160 hours in direct grants of sick leave are offered and the agency agrees to accept additional hours.

RESPONSE: The department believes this suggestion would lead to different treatment of employees both within agencies and across agency lines. Agencies or programs with the ability to pay for the additional absence could grant a far greater benefit to some employees. Those on tighter budgets could not. In addition, the department has no additional staff or resources to establish standards for exceptions or to review them.

BY: David R. Ashby for  
Ellen Feaver, Director  
Department of Administration

Certified to the Secretary of State July 20, 1987

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF BARBERS

In the matter of the amendment    ) NOTICE OF AMENDMENT OF 8.  
of 8.10.1006 concerning pro-        ) 10.1006 PROCEDURE UPON  
cedures                                ) COMPLETION

TO: All Interested Persons:

1. On May 28, 1987, the Board of Barbers published a notice of proposed amendment of the above-stated rule at page 627, 1987 Montana Administrative Register, issue number 10.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF BARBERS  
LARRY SANDRETTO, PRESIDENT

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

Certified to the Secretary of State, July 20, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the amendments	)	NOTICE OF AMENDMENTS OF 8.
of 8.34.403 concerning board	)	34.403 BOARD MEETINGS, 8.
meetings, 8.34.407 concerning	)	34.407 PUBLIC INFORMATION,
public information, 8.34.414	)	8.34.414 EXAMINATIONS, 8.
concerning examinations, 8.34.	)	34.416 CONTINUING EDUCA-
416 concerning continuing edu-	)	TION, 8.34.418 FEE
cation, 8.34.418 concerning	)	SCHEDULE, 8.34.419 REIN-
fees, 8.34.419 concerning rein-	)	STATEMENT
statement	)	

TO: All Interested Persons:

1. On March 2, 1987, the Board of Nursing Home Administrators published a notice of proposed amendments of the above-stated rules at page 223, 1987 Montana Administrative Register, issue No. 5.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF NURSING HOME  
ADMINISTRATORS  
VERA GERKE, CHAIRMAN

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

Certified to the Secretary of State, July 20, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the adoption	)	NOTICE OF ADOPTION OF 8.94.
by reference of new rules for	)	3703 INCORPORATION BY
the administration of the	)	REFERENCE OF RULES FOR
1987 federal community	)	ADMINISTERING THE 1987 CDBG
development block grant	)	PROGRAM
program	)	

TO: All Interested Persons:

1. On April 16, 1987, the Department of Commerce published notice of a public hearing on the proposed adoption of the above-stated rule at page 357, 1987 Montana Administrative Register, issue number 7.

2. The hearing was held on May 6, 1987, at 1:30 p.m., in Room C-209 of the Cogswell Building in Helena, Montana.

3. The Department has adopted rule 8.94.3703 exactly as proposed.

4. Four people presented oral testimony at the hearing. In addition the Department received eight written comments during the comment period following the hearing. Summaries of the principal negative comments regarding the 1987 Application Guidelines, and Grant Administration Manual, and the Department's responses thereto follows: A more detailed statement of these comments and responses is contained in a memorandum dated May 22, 1987, which is available from the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620.

COMMENT: The Department should not eliminate the multipurpose category of CDBG grants because these grants provide a higher percentage of benefit to low and moderate income persons than do single purpose grants. Also, multipurpose grants provide more cost effectiveness, continuity, consistency, and flexibility to communities in dealing with local problems than do single purpose grants.

COMMENT: Because single-purpose grants sometimes provide only piecemeal solutions to a community's problems, multipurpose grants, which allow a more comprehensive approach, should remain an option.

RESPONSE: The Department does not question the worth of the multipurpose grant concept. However, because the level of funding available to Montana's CDBG program has been reduced significantly (13 percent for 1987 and probably another 10 percent for 1988), and because the demand and competition for multipurpose grants has been minimal in recent years (only one application in 1986), the Department believes that this category of grants must yield to the need to assist as many communities as possible with limited CDBG funds.

COMMENT: The Department should not implement its proposal to (1) allocate the funds available for the fall competition among the three grant categories (economic development, housing, and public facilities) in proportion to the demand for each type of grant and (2) reserve for economic development proposals competing in February and June, 1988, 10 percent of the amount available for all grants during the year.

COMMENT: Economic development projects should not receive preferential treatment in the CDBG program at the expense of the other grant categories.

RESPONSE: For the past three years the amount available for economic development grants has been limited to 10 percent of the total amount available for grants while funds have been allocated to housing and public facilities projects according to demand. This system has resulted in the economic development category receiving less funding than it would have based on the demand for this type of project. If the allocation of funds in the fall competition is to be truly driven by demand and operate fairly, the same criterion must be applied in establishing grant ceilings for all categories of grants.

For an economic development grant program to succeed, it must be able to respond quickly to business development opportunities. To do this the program must, among other things, make grant funds available at more frequent intervals than would be appropriate for housing or public facilities projects. The reservation of a 10 percent set-aside for economic development competitions in February and June responds to this special requirement.

COMMENT: The Department should establish a discretionary fund from which it could award economic development grants during the period between scheduled competitions.

RESPONSE: The Department believes that the current system of providing economic development grant competitions three times annually offers the best compromise between the need to respond to proposals in a timely manner and the need to coordinate the application and ranking process with the various other activities which must be carried out by the Department during the CDBG annual cycle.

COMMENT: Communities which apply jointly for CDBG grants should not be precluded from applying individually for grants in the same competitions.

RESPONSE: Since the beginning of the State's administration of the CDBG program, applicants have been limited to submitting one application per grant competition. Given the limited amount of CDBG funding available and the extent of the demand for these funds, the Department believes that the present requirement should be retained.

5. No other comments or testimony were received.
6. The reason for and against adopting the rule is embodied in the comments and responses contained in item 4, above.

DEPARTMENT OF COMMERCE

BY:

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

Certified to the Secretary of State, July 20, 1987.

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

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of 8.97.406 concerning linked ) 97.406 ECONOMIC DEVELOPMENT  
deposit program ) LINKED DEPOSIT PROGRAM

TO: All Interested Persons:

1. On April 30, 1987, the Montana Economic Development Board published a notice of amendment of the above-stated rule at page 405, Montana Administrative Register, issue no. 8.

2. The Board has amended the rule exactly as proposed, but took the following comments under consideration.

COMMENT: The Administrative Code Committee stated that the notice of amendment did not contain a statement of reasonable necessity.

RESPONSE: The Board concurred and the statement of reasonable necessity is that "The Board has received requests from several lenders asking that the lenders be allowed to use the Federally Guaranteed Loan Program in combination with the Economic Development Linked Deposit Program to fund fixed rate loans to eligible borrowers. The Economic Development Linked Deposit Program provides a source of funding for lenders who desire to accept the entire risk on a loan. When the Board approves a loan under this program the lender receives funding from the Board at a fixed interest rate and in turn loans funds at a fixed rate plus the spread approved by the Board to its borrower. By allowing a lender to combine both the Board's Federally Guaranteed Loan Program and the Economic Development Linked Deposit Program a lender will be able to offer loans to borrowers which are totally on a fixed rate basis."

COMMENT: The Administrative Code Committee also pointed out that the authority section was not correct.

RESPONSE: The Board concurred and that section has been changed from 17-6-315(1) to 17-6-308, MCA.

3. No other comments or testimony were received.

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, July 20, 1987.

Montana Administrative Register

14-7/30/87

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT OF ARM 10.57.601-  
adoption of Suspension ) 10.57.604, SUSPENSION OR REVOCATION  
or Revocation of ) OF TEACHER OR SPECIALIST CERTIFICATES  
Teacher or Specialist ) AND NOTICE OF ADOPTION OF ARM  
Certificates and ) 10.57.701 (RULE I), 10.57.702 (RULE  
Appeal From Denial ) II) and ARM 10.57.703 (RULE III),  
of A Teacher Or ) APPEAL FROM DENIAL OF A TEACHER OR  
Specialist Certificate ) SPECIALIST CERTIFICATE

TO: All Interested Persons

1. On May 14, 1987, the Board of Public Education published notice of a proposed amendment of ARM 10.57.601-10.57.604, Suspension or Revocation of Teacher or Specialist Certificates and proposed adoption of ARM 10.57.701 (RULE I), 10.57.702 (RULE II) and 10.57.703 (RULE III), Appeal from Denial of a Teacher or Specialist Certificate, on page 515 of the 1987 Montana Administrative Register, issue number 9.

2. The Board has adopted and amended the rules as proposed with the following addition and change:

(a) The Board was contacted by the Administrative Code Committee staff with comment that the authority of ARM 10.57.601 is extended to Sec. 20-4-102 MCA and Sec. 3, SB232 L. 1987. The Board agrees with this comment.

(b) The Board also made the following editorial change to 10.57.601 (4)(b)(iv): (iv) Section 45-5-505, MCA, (deviate sexual conduct), if the conduct either was non-consensual or involved a person the teacher or specialist ~~knew~~ knows or reasonably should know is a student at a public or private elementary or secondary school;.

3. At the public hearing which was held June 11, 1987, no persons testified and no written comments were received prior to June 10, 1987, the date on which the Board closed the hearing record.

*Alan Nicholson*  
ALAN NICHOLSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Claudette Norton*

Certified to the Secretary of State July 20, 1987.

14-7/30/87

Montana Administrative Register

BEFORE THE WORKERS' COMPENSATION DIVISION  
OF THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF RULE
Adoption of a Rule	)	24.29.215
regarding time limits for	)	
administrative review and	)	
contested case hearings	)	

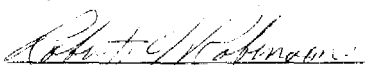
TO ALL INTERESTED PERSONS:

1. On May 28, 1987, the Workers' Compensation Division published a notice of proposed rule setting time limits for requests for administrative review or contested case hearings on agency actions at page 668 of 1987 Montana Administrative Register Issue No. 10.

2. The notice advised all interested persons that they could make written comments or request a hearing by June 29, 1987. No comments or requests for hearing were received.

3. The Division of Workers' Compensation adopts the rule as proposed effective July 31, 1987.

4. The rationale for adopting this rule is to set a reasonable time limit on requests for administrative review or contested case hearings in order to establish some finality in the hearing process. This rule is authorized by Section 39-71-203, MCA, and implements Sections 2-4-601 through 2-4-631, and 2-4-702, MCA.

  
ROBERT J. ROBINSON  
Administrator  
Workers' Compensation Division

CERTIFIED TO SECRETARY OF STATE: July 20, 1987

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA


IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.13.222 and )	ARM 42.13.222 and 42.13.105
42.13.105 relating to Liquor )	relating to Liquor Rules
Rules. )	

TO: All Interested Persons:

1. On June 11, 1987, the Department of Revenue published notice of the proposed amendment of ARM 42.13.222 and 42.13.105 relating to liquor rules at page 754 and page 756 of the 1987 Montana Administrative Register, issue no. 11.

2. The Department has amended these rules as proposed.

3. Comments were received on ARM 42.13.222 from the Montana Beer & Wine Wholesalers Association and Zip Beverage, Inc. Both groups were supportive and encouraged the amendment to the rule.

  
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JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/20/87

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

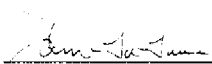
IN THE MATTER OF THE TRANSFER )	NOTICE OF THE TRANSFER of
of ARM 42.21.201 through )	ARM 42.21.201 through
42.21.211 pertaining to )	42.21.211 pertaining to
Classification of Nonproduc- )	Classification of Nonproductive
tive Patented Mining Claims )	Patented Mining Claims
and Non Real Property to )	and Nonproductive Real Property
42.20.301 through 42.20.311 )	to 42.20.301 through 42.20.211

TO: All Interested Persons:

1. On June 11, 1987, the Department published notice of the proposed transfer of the above-referenced rules at page 758 of the 1987 Montana Administrative Register, issue no. 11.

2. The Department has transferred these rules as proposed.

3. No public comments were received regarding these rules being transferred.

  
\_\_\_\_\_  
JOHN D. LaFAVER, Director  
Department of Revenue

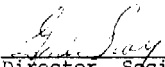
Certified to Secretary of State 07/20/87.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.10.403 per-	)	RULE 46.10.403 PERTAINING
taining to the AFDC table of	)	TO THE AFDC TABLE OF
assistance standards	)	ASSISTANCE STANDARDS

TO: All Interested Persons

1. On June 11, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.403 pertaining to the AFDC table of assistance standards at page 760 of the 1987 Montana Administrative Register, issue number 11.
2. The Department has amended Rule 46.10.403 as proposed.
3. No written comments or testimony were received.

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

Certified to the Secretary of State July 26, 1987.

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 the 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 statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject<br>Matter          | 1. Consult 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<br>Number and<br>Department | 2. Go to cross reference table at end of each title which list 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, 1987. This table includes those rules adopted during the period March 31, 1987 through June 30, 1987 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, 1987, 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 1987 Montana Administrative Register.

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