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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON
of Student Transportation) PROPOSED ADOPTION OF RULE I,
) STUDENT TRANSPORTATION

TO: All Interested Persons

1. On September 16, 1987, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 So. Last Chance Gulch, Helena, Montana, in the matter of the proposed adoption of Rule I, Student Transportation.

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

RULE I STUDENT TRANSPORTATION (1) The board establishes as policy that the administration of the Montana school for the deaf and blind shall provide for each residential student the most cost-effective and convenient method of transportation to and from home each scheduled travel weekend during the time when school is in session.

(2) The superintendent of the school for the deaf and blind shall determine the appropriate means of transportation applying the following criteria:

(a) Preference shall be given to scheduled commercial air or ground carriers where such transportation will not unduly inconvenience the student or his family and where student supervisors will not be required.

(i) In assessing inconvenience to the student and his family, the superintendent shall consider the amount of time the student is enroute and the distance the family must travel to meet the student at the termination of commercial carrier service.

(ii) The superintendent may provide scheduled ground transportation service only through a carrier certified by the public service commission.

(b) When transportation by scheduled commercial air or ground carrier is not available, or is unduly inconvenient to the student or his family, or is inappropriate, preference shall be given to the use of chartered commercial aircraft.

(i) In chartering aircraft, the superintendent may contract only with F.A.A. approved Part 135 operators who hold a commercial operation certificate of issuance with the Montana board of aeronautics.

(ii) The superintendent may charter single-engine aircraft, weather and time-of-day permitting. Twin-engine aircraft shall be used where weather or time-of-day require.

(iii) The superintendent shall assign supervisors from the school for the deaf and blind to accompany students on charter flights when deemed appropriate and when number of passengers and size of aircraft permit.

(c) When the superintendent is unable to arrange suitable transportation by scheduled commercial air or ground

carrier or chartered aircraft, he may enter into individual transportation contracts with the parents or guardians of a student following the guidelines for special education transportation established by the State of Montana. The contract shall provide reimbursement at the current rate set for special education transportation individual contracts.


AUTH: Sec. 20-2-114 & 20-8-103 MCA

IMP: Sec. 20-8-103 MCA

3. The Board is proposing this rule to establish rules and clarify policy for safely transporting students at the School for the Deaf and Blind and in accordance with the rule-making authority granted the Board by Sec. 20-8-121.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Alan Nicholson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 25, 1987.

5. Alan Nicholson, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.


ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State August 17, 1987.

BEFORE THE DEPARTMENT OF FAMILY SERVICES
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED ADOPTION
adoption of rules pertaining	)	OF RULES PERTAINING TO
to the procedures for rule	)	PROCEDURES FOR RULE MAKING,
making, declaratory rulings	)	DECLARATORY RULINGS AND
and contested case hearings.	)	CONTESTED CASE HEARINGS
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On October 16, 1987, the Department of Family Services proposes to adopt rules pertaining to procedures for rule making, declaratory rulings and contested case hearings.

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

RULE I PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING RULES (1) The department of family services hereby adopts and incorporates by reference attorney general's model procedural rules 1 through 7 found in ARM 1.3.102 through ARM 1.3.211 which set forth the rule-making procedures for the department. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Building, Helena, Montana 59601. Phone 444-2026.

AUTH: Sec. 2-4-201(2), MCA

IMP: Sec. 2-4-201(2), MCA

RULE II PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The department of family services hereby adopts and incorporates by reference attorney general's model procedural rules 22 through 24 and 28 found in ARM 1.3.227 through ARM 1.3.230 which set forth the procedures for the issuance of declaratory rulings. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Building, Helena, Montana 59601. Phone 444-2026.

AUTH: Sec. 2-4-201(2), MCA

IMP: Sec. 2-4-201(2), MCA and 2-4-501, MCA

RULE III DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adverse Action" means:

(a) a failure of the department to provide a claimant an opportunity to make application or reapplication for benefits;

(b) a failure of the department to act promptly on a claimant's application for benefits;

(c) an action by the department denying, suspending, reducing or terminating benefits of a claimant;

(d) an action by the department denying, suspending, reducing, revoking or failing to renew the license or the registration certificate of a provider.

(2) "Authorized representative" means legal counsel, relative, friend or other spokesman authorized by the claimant in writing or by law to represent the claimant in matters pertaining to the receipt of benefits from the department, but it does not include an employee of the department.

(3) "Benefit" means any form of assistance provided by the department to an eligible recipient under the administrative rules of Montana, Title 11.

(4) "Claimant" means an applicant for or recipient of benefits from the department.

(5) "Department" means the department of family services provided for in section 2-15-2201 MCA.

(6) "He" and other words used in the masculine gender include the feminine and the neuter.

(7) "Hearing officer" means an individual hired or appointed by the department to conduct a hearing under the authority of the Montana Administrative Procedure Act and this chapter.

(8) "Provider" means an individual or organization licensed or registered by the department.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE IV. OPPORTUNITY FOR HEARING (1) A claimant or provider who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) A request for a hearing is any clear written expression by the claimant, provider or an authorized representative to contest an adverse action.

(b) The freedom to request a hearing shall not be interfered with in any way by department employees. Department employees shall assist a claimant who seeks help in requesting a hearing.

(c) Cases in which the sole issue is one of state or federal policy may be consolidated for a single group hearing. Each claimant shall be permitted to present his own case.

(d) A request for a hearing must be submitted in writing within thirty (30) days of the date of notice of the department's adverse action, except that day care providers must submit a request for fair hearing within ten (10) days of the date of notice of the department's adverse action.

(2) There is no opportunity for hearing on departmental activities not defined as an adverse action in [Rule I]. A dispute regarding a contract between the department and a provider is not an adverse action and there is no opportunity for fair hearing concerning such disputes.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE V NOTICE UPON ADVERSE ACTION (1) The department shall provide the claimant or provider with adequate and timely notice.

- (2) Notice is adequate if it includes:
- (a) a statement of the proposed adverse action;
 - (b) the date the proposed adverse action shall become effective;
 - (c) the reason for the proposed adverse action;
 - (d) the specific regulations supporting the proposed adverse action;
 - (e) an explanation of the claimant's right to a hearing;
 - (f) how to obtain a hearing;
 - (g) a telephone number to call for additional information; and
 - (h) the right to be represented by legal counsel, friend, relative or other spokesman;

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE VI DENIAL OR DISMISSAL OF HEARING (1) A hearing need not be granted or may be dismissed when:

- (a) the request for a hearing is withdrawn by the claimant, provider or authorized representative;
- (b) the claimant, provider or authorized representative without good cause fails to appear at the hearing;
- (c) the request is not received within the time specified in [Rule IV(d)];
- (d) either federal or state law requires automatic benefit changes for a class of claimants unless the issue is incorrect benefit adjustments; or
- (e) the department does not have jurisdiction over the subject matter or the appeal procedure.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE VII HEARING OFFICER, POWERS AND DUTIES (1) A hearing shall be conducted by an impartial individual appointed or hired by the department as hearing officer who has had no direct involvement in the initial determination of the adverse action.

(2) The hearing officer may:

(a) require the furnishing of such information, the attendance of witnesses, depositions upon oral examination or written questions, written interrogatories, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for purposes of the hearing. For this purpose, the hearing officer may, and upon request of any party to a hearing, shall issue subpoenas for witnesses or subpoenas duces tecum;

(b) disqualify himself at any time on the filing of a timely and sufficient affidavit of personal bias or other disqualification;

(c) direct the parties to appear and confer in a pre-hearing conference to consider definition and simplification of the issues by consent of the parties;

(d) grant a continuance not to exceed thirty (30) days at the request of a claimant, provider or authorized representative, or at the request of the department or another party for good cause shown; and

(e) take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public.

(3) A hearing officer shall:

(a) administer oaths and affirmations;

(b) ensure that all relevant issues are considered;

(c) request, receive and make part of the record all evidence determined necessary to decide the relevant issues;

(d) regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;

(e) prepare a proposal for the department's decision consisting of proposed findings of fact, conclusions of law and a recommended order deciding the case based on the evidence and the testimony contained in the hearing record.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE VIII ADMINISTRATIVE REVIEW (1) Upon the request for a hearing by a claimant, provider or authorized representative, the department shall conduct an administrative review with the purpose of resolving the case and avoiding an unnecessary hearing. This review may be conducted in person or by telephone.

(2) An administrative review includes:

(a) at the claimant or provider's discretion, an informal conference with the department; and

(b) a review of relevant facts, regulations and circumstances involved in the adverse action by the department; and

(c) the preparation of an administrative review report for submission to the hearing officer within twenty (20) days

from the date the request for administrative review is mailed to the person responsible for conducting the review.

(3) An adverse action may be reversed or modified by the department's local supervisor or the appropriate division administrator or his designee at any time during the administrative review, in which case a hearing will not be held unless the claimant or provider is aggrieved by the modified adverse action and requests that the hearing be held.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE IX HEARING PROCEDURE (1) The hearing shall be conducted:

(a) by telephone conference, unless a party to the hearing requests an in-person hearing in writing; and

(b) at a reasonable time and date.

(2) The hearing shall be held in the county seat of the county of the claimant's residence or provider's place of business, unless the parties to the hearing agree to a different location.

(3) The department shall notify the claimant, provider or authorized representative by registered mail at least ten (10) days in advance of the time and place of the hearing. The claimant, provider or authorized representative may waive in writing the right to ten (10) days notice.

(a) The notice of hearing shall include:

(i) the name, address and telephone number of the person to notify in the event that it is not possible for claimant or provider to attend the hearing;

(ii) notification that the hearing request will be dismissed if the claimant, provider or authorized representative fails to appear at the hearing without good cause;

(iii) the department's hearing procedures and any other information that would contribute to claimant's or provider's understanding of the proceedings and effective presentation at the hearing; and

(iv) an explanation of claimant's or provider's rights as enumerated in subsection (4) of this rule; and

(v) notification of the claimant's or provider's right to request an in-person hearing.

(4) The claimant or provider shall have adequate opportunity:

(a) to examine the contents of his case file, except for those portions which the claimant is precluded from examining by federal regulation or state law; and all documents and records to be used by the department at the hearing at a reasonable time prior to the hearing as well as during the hearing. Portions of the case file, documents and records that the claimant is not allowed to examine are not admissible as evidence at the hearing;

(b) to present his case himself or with the aid of an authorized representative;
(c) to bring witnesses;
(d) to establish all pertinent facts and circumstances;
(e) to advance arguments without undue interference; and
(f) to question or refute any testimony or evidence, including opportunities to confront and cross-examine adverse witnesses.

(5) Discovery shall be available to the parties. The department of family services hereby adopts and incorporates by reference attorney general's model rule 13 found in ARM 1.3.217 which sets forth the procedures for discovery in contested cases. A copy of the model rule may be obtained by contacting the Attorney General's Office, Justice Building, Helena, Montana 59601.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE X PROPOSAL FOR DECISION BY HEARING OFFICER (1) The hearing officer shall make a proposal for decision within sixty (60) days of the request for hearing, unless a continuance of the hearing has been granted under [Rule VII(2)(a)].

(2) The proposal for decision shall:

(a) be based on the facts and evidence produced at the hearing as applied to pertinent state and federal law, regulations and written policy; and

(b) consist of proposed findings of fact, proposed conclusions of law and a recommended order.

(3) The proposal for decision, the verbatim transcript, if requested by a party, together with all exhibits, papers and requests filed in the proceeding shall constitute the exclusive record. The record shall be available to the claimant or provider for inspection and copying at a place accessible to him at a reasonable time.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE XI NOTICE OF PROPOSAL FOR DECISION, FILING AND SERVICE OF BRIEFS, AND DIRECTOR REVIEW OF PROPOSAL FOR DECISION (1) A copy of the proposal for decision shall be mailed to the claimant or provider and to all other parties.

(2) If a party disagrees with the proposal for decision, a request for review by the director may be made in writing to the Director, Department of Family Services, P.O. Box 8005, Helena, Montana 59604. The request must be received by the director within fifteen (15) days of the mailing of the proposal for decision.

(a) Parties may file exceptions and present briefs no later than thirty (30) days after the mailing of the proposal

for decision. Copies of all briefs shall be served upon all parties.

(b) Oral arguments are permitted if so requested by any of the parties. The request for oral argument must be made within thirty (30) days from the mailing of the hearing officer's proposal for decision. Notice of this request shall be served upon all parties.

(3) The proposal for decision prepared by the hearing officer becomes the final agency decision, without further action by the department, unless a request for review is received within fifteen (15) days of the date of mailing of the proposal for decision. The fifteen (15) day time limit may be extended if a party can show good cause but in no event shall the period of time be extended beyond thirty (30) days.

(4) If a request is received within the specified time period, the director shall consider the proposal for decision, the exceptions filed, briefs or oral argument presented and the record of the hearing, and shall:

(a) notify the claimant and any other party in writing of the director's decision; and

(b) notify the claimant and or other party of his right to judicial review.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE XII JUDICIAL REVIEW (1) A party who is aggrieved by a final decision of the director may seek judicial review of that decision by filing a petition in district court within 30 days after receipt of notice of the final decision as provided in section 2-4-702, MCA.

(2) A final decision is binding on the department and its units and the department or a subunit of the department may not seek judicial review of a final decision.

AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

RULE XIII AVAILABILITY OF HEARING RECORDS (1) All hearing decisions and records shall be available to the public for inspection and copying, except that the names and addresses and any other identifying information of claimants shall be kept confidential.

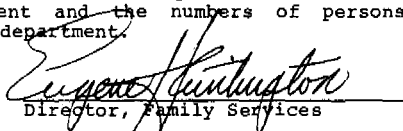
AUTH: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987
IMP: Sec. 2-4-201(2), MCA; Sec. 5(17), Ch. 609, L. 1987

3. Rationale: These rules are proposed to establish procedures which will be followed by the department concerning declaratory judgments, rule making, and contested case proceedings under the Montana Administrative Procedures Act.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than September 25, 1987.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and argument orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Leslie Taylor, Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604 no later than September 25, 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; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 400 persons based upon the number of persons licensed or registered by the department and the numbers of persons receiving benefits from the department.


Director, Family Services

Certified to the Secretary of State August 17, 1987.

BEFORE THE DEPARTMENT OF FAMILY SERVICES
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of rules pertaining	)	THE PROPOSED ADOPTION OF
to the designation of local	)	RULES PERTAINING TO THE
service areas and local	)	DESIGNATION OF LOCAL
youth services advisory	)	SERVICES AREAS AND LOCAL
councils	)	YOUTH SERVICES ADVISORY
	)	COUNCILS

TO: All Interested Persons

1. On September 16, 1987, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of rules pertaining to the designation of local service areas and local youth services advisory councils.

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

RULE I DESIGNATION OF LOCAL SERVICE AREAS (1) For youth services planning purposes, there shall be ten local service areas in the state.

(2) The following are the designated local services areas:

(i) Malta, Valley, Daniels, Sheridan and Roosevelt Counties.

(ii) Garfield, McCone, Prairie, Dawson, Richland, and Wibaux Counties.

(iii) Treasure, Rosebud, Custer, Fallon, Powder River and Carter Counties.

(iv) Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Carbon and Big Horn Counties.

(v) Glacier, Toole, Liberty, Hill, Pondera, Choteau, Teton and Cascade Counties.

(vi) Meagher, Gallatin and Park Counties.

(vii) Lewis and Clark, Jefferson and Broadwater Counties.

(viii) Granite, Powell, Deer Lodge, Silver Bow, Beaverhead and Madison Counties.

(ix) Mineral, Missoula and Ravalli Counties.

(x) Sanders, Lake, Lincoln and Flathead Counties.

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

IMP: Section 6, Ch. 609, L. 1987

RULE II LOCAL YOUTH SERVICES ADVISORY COUNCILS

(1) There shall be one local youth services advisory council for each designated local service area.

(2) The council shall consist of seven members appointed by the director as provided in [section 8, Ch. 609, L. 1987].

(3) The members shall serve a term of two years. Any member may be reappointed to additional terms.

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

IMP: Section 8, Ch. 609, L. 1987

RULE III COUNCIL MEETINGS (1) The local youth services advisory councils shall meet at least four times per year.

(2) At the first annual meeting, the council shall select a member to act as chairman of the council. The chairman shall be responsible for conducting the meeting of the committee.

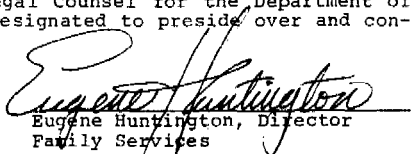
AUTH: Section 5(17), Ch. 609, L. 1987

IMP: Section 8, Ch. 609, L. 1987

3. The Department is proposing these rules to implement sections 6 and 8 of Ch. 609, L. 1987. The designation of local service areas is necessary to accomplish the appointment of a local youth services advisory council for each service area. In designating the local service areas, the department considered the geographic boundaries used by local governments, judicial districts, and service agencies. The Department chose to designate local service areas whose boundaries were consistent with the multi-county districts used by the Montana Association of Counties and the five planning regions designated by the governor. The rules pertaining to the youth services advisory councils provide for general guidelines for the councils to follow in conducting the activities required by section 8(2) of Ch. 609, 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 the Legal Unit, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than September 25, 1987.

5. Leslie Taylor, Legal Counsel for the Department of Family Services, has been designated to preside over and conduct the hearing.


Eugene Huntington, Director
Family Services

Certified to the Secretary of State August 17, 1987.

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

In the matter of NEW RULE 1) NOTICE OF HEARING
concerning hospital protocols) ON PROPOSED RULE
for organ procurement)
) (Licensing & Certification
of Hospitals)

TO: All Interested Persons

1. On September 22, 1987, a hearing will be held at 1:30 p.m. in Room C209, Cogswell Building, 1400 Broadway, Helena, Montana, to consider a proposed rule requiring licensed hospitals to make organ donation requests in cases where a hospital patient is a suitable donor.

2 The rule as proposed is as follows:

NEW RULE 1 MINIMUM STANDARDS FOR A HOSPITAL -- ORGAN DONATION REQUESTS AND PROTOCOLS (1) When, according to generally accepted medical standards, a patient is a suitable candidate for organ or tissue donation, the hospital administrator or his/her designated representative shall communicate to the next-of-kin (as defined in this rule) the option of donating all or any part of the patient's body as defined in section 72-17-102(8), MCA, and of their option to decline. A request to consent to the gift of all or any part of the decedent's body as an anatomical gift must also be made of the next of kin unless the hospital administrator or his/her designated representative:

(a) has actual notice of opposition to the gift by the decedent or a person in the class authorized to make an anatomical gift under section 71-17-201, MCA; or

(b) has reason to believe that an anatomical gift is contrary to the decedent's religious beliefs; or

(c) is aware of medical or emotional conditions under which the request would contribute to severe emotional distress.

(2) "Next-of-kin" means one of the following persons in order of priority listed:

(a) the spouse;

(b) an adult son or daughter;

(c) either parent;

(d) an adult brother or sister; and

(e) a guardian of the person of the decedent at the time of death.

(3) The medical record of each patient who dies in a hospital must contain an entry setting forth the following:

(a) the name and affiliation of the individual who communicated the option to donate to the next-of-kin and who made the request for anatomical gift under section (1) above;

(b) the name, relationship to the patient, and response of the individual to whom the option to donate was communicated and of whom the request for anatomical gift was made; and

(c) if no request for anatomical gift was made, the reason why no such request was made.

(4) An anatomical gift by a next-of-kin or authorized person may be made in writing or by telegraphic, recorded telephonic, or other recorded message.

(5) By November 1, 1987, every hospital shall establish and have on file a written protocol that:

(a) assures identification of potential organ and tissue donors;

(b) assures that families of potential organ donors are made aware of the option of organ or tissue donation and of their option to decline;

(c) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(d) requires that a federally approved organ procurement organization be notified of potential organ donors.

(6) Upon request, every hospital must make its adopted written protocol available to department personnel for their review.

(7) The protocol must, at a minimum, address and provide for the following aspects of an organ donation notification/request/referral program:

(a) method(s) by which the public is notified that the hospital has an organ procurement program;

(b) determination of medical suitability of potential organ and tissue donors, including consideration of factors such as donor age, previous disease history, and presence of infection; and documentation of non-suitability of patients;

(c) training and educational programs conducted on a yearly basis in conjunction with a procurement organization to instruct appropriate hospital staff or others to convey organ donation information to families and to make requests from families, which program consists of formal training, seminars, in-service workshops, or other training (or a combination thereof) leading to a knowledge of and familiarity with the following:

(i) general historical, medical, legal and social concepts involved in organ donation and transplantation;

(ii) psychological and emotional considerations when dealing with bereaved families; and

(iii) religious, cultural, and ethical considerations associated with organ donation;

(iv) procedures for approaching donors and/or donors' next-of-kin, including physician notification, timing and location of contact, content(s) of communication concerning donor cards, consent forms, donation costs (if any), and actual requests for donation;

(d) education and training on a yearly basis in conjunction with a procurement organization in the respective disciplines of hospital staff and/or other personnel who will or may be participating in the hospital's organ procurement program, such as chief of staff, attending physicians, nursing staff, social workers, clergy, or a team combining any of such persons;

(e) procedures for notification of a federally approved organ procurement organization of potential donors, including a designation of at least one specific organization to be contacted; and

(f) the following forms to be used by the hospital to document that donors and/or next-of-kin of medically suitable patients have been notified of the option of organ or tissue donation and have been requested to authorize such donation(s) as required in section (1) above (and, if any such request has not been made, the reason(s) why not):

- (i) patient authorization;
- (ii) consent of next-of-kin;
- (iii) notification of organ procurement agency(ies); and
- (iv) follow-up report of disposition of organs.

(8) The hospital administrator shall designate a person or persons to represent him/her for the purpose of communicating to the next-of-kin the option of an anatomical gift and to make requests for anatomical gifts, in cases where the administrator is unable or will not be making such requests personally. Such persons shall receive the training specified in section (7) above, and a list of such person(s) must be made available upon request to department personnel and to the public in general.

(9) A person who acts in good faith in accordance with the terms of section (1) of this rule is not liable for damages in any civil proceeding or subject to prosecution in any criminal proceeding that might result from this action.

AUTHORITY: 50-5-103, 50-5-404, MCA; Ch. 219, Sec. 3, Laws of 1987

IMPLEMENTING: 50-5-103, 50-5-204, 50-5-404, MCA

3. The rules are proposed to implement Chapter 219, Laws of 1987, which requires, as a condition of state licensure, that hospital administrators (or their designees) communicate the option of anatomical gifts and request organ donations from the next-of-kin of hospital patients who are suitable donors. This state requirement is in keeping with recent amendments to federal law which require hospital protocols for organ procurement as a condition to participation in federal Medicare and Medicaid programs.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 25, 1987.

5. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 17, 1987.

16-8/27/87

MAR Notice No. 16-2-328

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

In the matter of the amendment	)	NOTICE OF HEARING ON
of ARM 16.35.102, application	)	PROPOSED AMENDMENT
procedures; 16.35.103, benefit	)	OF RULES
periods; 16.35.105, non-financial)	
eligibility requirements;)	
16.35.108, eligible services and)	
supplies; 16.35.109, non-eligible)	
services; and 16.35.111, condi-)	
tions on paying claims	)	(End-stage Renal Disease)

1. On September 23, 1987, at 1:30 p.m., the department will hold a hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments would impose certain substantive and procedural limitations on eligibility to participate in the end-stage renal disease program.

3. The rules, as proposed to be amended, appear as follows (new material is underlined, matter to be deleted is interlined):

16.35.102. APPLICATION PROCEDURES (1) An A new applicant must:

(a) submit an application to the department in writing on the form and in the manner prescribed by the department and within 4 weeks after initial contact with the department (e.g. by phone or mail); and

(b) same as existing rule.

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

(5) The claimant must make provide the department with a new written application for the continuation of program benefits at the end of the period during which he is entitled to benefits, as determined in 16.35.103. If the department receives the application within 4 weeks after the end of the benefit entitlement period, benefits will continue without a break.

(6) Same as existing rule.

16.35.103. TIME PERIOD FOR BENEFITS An approved application entitles the claimant to ESRD benefits, to the extent the ESRD appropriation allows, for the following periods:

(1) for one year from the date ~~the claimant first con-~~
tacts the department is first contacted (by phone, mail, or
otherwise) to commence application and informed of a claimant's
intent to apply for ESRD benefits, ~~if the claimant is applying~~
for ESRD benefits; if the claimant is applying for ESRD benef-
its for the first time or after a period during which he was
ineligible for or otherwise not receiving ESRD benefits and the
department receives a completed written application within 4

weeks after the initial contact.

(2) for one year after the date the department receives a written application, if the claimant previously received benefits but either:

(a) for a period of time was ineligible for or otherwise not receiving ESRD benefits; or

(b) failed to submit a written application to the department within 4 weeks after the end of the last period in which s/he was entitled to benefits;

(2)(3) for one year from the end of the prior one-year period, if the claimant has been receiving ESRD benefits for that year and is applying for continuing benefits submits (and the department receives) a new written application within 4 weeks after the end of the prior benefit period.

16.35.105 NON-FINANCIAL ELIGIBILITY REQUIREMENTS In order to participate in ESRD, the claimant applying for benefits must:

(1) have medical verification of end-stage renal disease from a licensed physician who is board eligible or certified in nephrology or a related specialty;

(2) be on dialysis or have received a kidney transplant; and

(3) be a resident of the state of Montana; and

(4) be eligible for Medicare Part A and Part B or have written documentation from the social security administration that s/he is not eligible for social security benefits.

16.35.108 ELIGIBLE SERVICES AND SUPPLIES ESRD will pay for the cost exceeding \$20 of each of the following services and supplies which remains after all available third-party benefits have been utilized to pay for them:

(1) For home or center dialysis:

(a) insertion and maintenance of access site;

(b) physician and hospital service for maintenance of home dialysis;

(c) the following medications, not exceeding a 30-day supply:

(i) hepatitis vaccine;

(ii) gamma globulin;

(iii) whole blood;

(iv) hyperphosphatemia (phosphate binders) drugs;

(v) hypocalcemia drugs;

(vi) vitamins with iron and/or folic acid;

(vii) vitamin D preparations;

(viii) hypertensive drugs;

(ix) diuretics;

(x) antibiotics for peritonitis associated with peritoneal dialysis

(2) Same as existing rule.

(3) For a renal transplant patient:

(a) preliminary medical work-up for donor/donee match for a dialysis patient who is otherwise program-eligible;

(b) in the case of a cadaveric transplant, +f if ESRD is

notified within 72 hours after the patient is admitted to a hospital for the transplant, transportation of the patient to and from the site where the transplant takes place, in at the least expensive manner-medically-appropriate-taking-into-account-necessary-time-constraints-in-each-individual-case-e.g.-emergency-transport-may-be-necessary-in-place-of-commercial-carrier-if-the-transplant-deadline-is-imminent} commercial rate available for the trip on the day of transplant; the above notification must be by the physician or social worker at either the transplant center or the dialysis facility;

(c) physician and hospital care related to transplant surgery during the 36 months after the surgery was performed;

(d) the following medications, if they were prescribed during the 36 months after the date the transplant surgery was performed:

- (i) immunosuppressants;
- (ii) steroids;
- (iii) hypertensives;
- (iv) diuretics.

(e) medical follow-up services which are directly related to maintenance or monitoring of the transplanted kidney and which were provided during the 36 months following the transplant surgery.

16.35.109 NON-ELIGIBLE SERVICES The cost of the following services and supplies is not eligible for payment from ESRD:

- (1) attendant or "back-up" person;
- (2) drugs not specifically listed in 16.35.108 as eligible medications;
- (3) transportation for anyone other than a cadaveric transplant patient;
- (4) out-of-state dialysis care unless the care is directly related to a kidney transplant or a medical referral has been made by the patient's managing Montana nephrologist;
- (5) any transportation for living related donor;
- ~~43~~(6) services provided which are not related to kidney condition, e.g., epistaxis, otitis media, diabetes, eye examinations, and heart evaluations;
- ~~45~~(7) medicare premiums;
- ~~46~~(8) hospital in-patient care of over 60 days unless specifically justified as ESRD-related (e.g., not due to chronic debilitating disease other than renal disease).

16.35.111 CONDITIONS OF CLAIM PAYMENT (1) Payment of a claim will be made only:

~~43~~(a) to the provider of the service or supply for which a claim is made;

~~42~~(b) after all other reasonably available sources of payment for that service or supply, such as Medicare or private insurance, have either paid in part or denied payment for the service or supply in question;

~~43~~(c) for the portion of the cost of an ESRD-eligible service or supply which does not exceed either the amount al-

lowed by Medicare for that service or supply or the actual cost of that service or supply, whichever is less; and

(d) in the case of a charge for a drug, to the extent it does not exceed the list price specified in the Drug Topics Redbook for that drug.

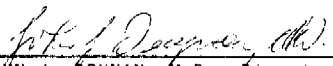
(2) The department hereby adopts and incorporates by reference the Annual Pharmacists' Reference, referred to as the Drug Topics Redbook, which contains the list prices for most commercially available drugs. A copy of the Drug Topics Redbook may be obtained from Drug Topics Redbook Publications, Medical Economics Co., Inc., Oradell, New York 07649.

4. The department is proposing these amendments to the rules in order to maximize the benefits of the state ESRD general fund grant monies among the increasing number of eligible patients.

5. The authority of the department to make the proposed amendments is based on section 53-6-202, MCA, and the rules implement section 53-6-202, MCA.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 25, 1987.

7. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.


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

Certified to the Secretary of State August 17, 1987.

In the Matter of the Adoption) NOTICE OF PROPOSED ADOPTION
of Rules for Implementation of) OF RULES FOR IMPLEMENTATION
the Crime Victims Compensation) OF THE VICTIMS COMPENSATION
Act by the Crime Victims Unit) ACT BY THE CRIME VICTIMS
and Division of Crime Control.) UNIT AND DIVISION OF CRIME
CONTROL.

) NO PUBLIC HEARING
) CONTEMPLATED.

1. On October 15, 1987, the Division of Crime Control proposes to adopt rules for the Crime Victims Unit and Division of Crime Control.

RULE I. FUNCTION OF THE DIVISION (1) The division of crime control administers the Crime Victims Compensation Act, Title 53, chapter 9, sections 101 to 133, MCA, through the crime victims unit.

IMP: 53-9-103, MCA

(2) "Unit" is the crime victims unit.

(3) "Dependent" includes a minor step-child who resides with the victim, whether adopted or not, and a child who receives court-ordered child support from the victim.

(4) "Person who has been charged or convicted" includes minors treated under the Youth Court Act, Title 41, chapter 5, MCA.

IMP: 53-9-103(4), (5),

53-9-127(2), 53-9-128(9)(b), MCA

RULE III GOOD CAUSE (1) Factors considered when determining whether "good cause" exists for extending the one-year time limit for filing a claim, or for failing to report criminally injurious conduct to a law enforcement officer within 72 hours after its occurrence, include but are not limited to the following:

(a) age of the victim when the crime occurred;

(b) whether the delay in filing or reporting was reasonable, considering the circumstances of the crime and the resulting injuries to the victim.

(2) "Good cause" may not be based upon the following factors:

(a) the victim's lack of knowledge of the Crime Victims Compensation Act;

(b) the victim's lack of knowledge of injuries received in the crime:

- (c) the victim's lack of knowledge that a criminally injurious conduct occurred;
- (d) the victim's inability to identify the offender;
- (e) the failure of collateral sources to provide compensation to the victim.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-125(1)(3), MCA

RULE IV INTERESTS OF JUSTICE (1) Unless the division determines that the "interests of justice" require otherwise, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

(2) Factors considered when determining the "interests of justice" include, but are not limited to:

- (a) the living arrangements of the victim before the crime;
- (b) the living arrangements of the victim after the crime;
- (c) the age of the victim;
- (d) protective actions taken by the claimant;
- (e) divorce or separation actions filed;
- (f) past history of criminal incidents between the victim and the offender.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-125(2), MCA

RULE V CLAIM AND INITIAL DETERMINATION (1) To initiate a claim, a claimant must complete the appropriate form provided by the unit.

(2) The claimant must provide complete information and, upon request, supporting documents.

(3) A claimant who fails to respond to a request from the unit for information or supporting documents within a reasonable time may be denied his or her claim without prejudice. If the claimant submits the required evidence or supporting documents and reasons for not responding within a reasonable time, a reconsideration may be made on the merits of the claim.

(4) The division will issue its initial determination accepting, denying, or reconsidering claims for compensation benefits.

AUTH: 53-9-104(1)(a), MCA
53-9-127

IMP: 53-9-121, 53-9-124,

RULE VI REQUEST FOR HEARING (1) The claimant has the right to request an informal hearing within 30 days of any written determination regarding compensability of a claim. The unit may hold an informal hearing on its own initiative. The right to proceed further is waived unless the request for an

informal hearing is received by the unit within 30 days after the initial determination is mailed.

(2) The claimant's request must be in writing and state the action the claimant wishes the division to take and the reasons the division should take such action.

(3) The unit's administrative officer will review the request and all relevant evidence provided by the claimant, and determine if a hearing should be held or a revised order issued.

AUTH: 53-9-104(1)(a), MCA
53-9-131, MCA

IMP: 53-9-122, 53-9-130,

RULE VII HEARING (1) If the administrative officer determines a hearing will be held, the division administrator will act as the hearing examiner. If the division administrator is unavailable or otherwise unable to act as hearing examiner, the administrator will appoint a hearing examiner.

(2) The hearing examiner will issue notice of the time and place for hearing, and the issues to be resolved at the hearing.

(3) The hearing is not a contested case hearing under the Montana Administrative Procedure Act. The claimant and the unit may each submit evidence. Parties will have an opportunity to examine and cross-examine witnesses who may have relevant testimony concerning the claim. The statutory and common-law rules of evidence do not apply to hearings held under this rule. The hearing examiner will make a record of the hearing.

(4) The hearing examiner will issue proposed findings of fact, conclusions of law and order.

(5) Within 20 days of issuance of the proposed order, either party may file written exceptions to the order and request a review by the division administrator.

(6) The division will issue a final order which is a final determination by the division as set forth in 53-9-131. This order is final for purposes of judicial review only if a review under subsection (4) has been held.

AUTH: 53-9-104(1)(a), MCA
53-9-131, MCA.

IMP: 53-9-122, 53-9-130,

RULE VIII NOTIFICATION OF DISPOSITION (1) The unit will notify the appropriate law enforcement agencies and prosecuting attorneys of the disposition of the claim if restitution is ordered by a court. Upon request, the unit will provide a copy of the determination or order and any necessary supporting documents to the appropriate criminal justice agency or court.

(2) The unit will notify the service providers of a denial or reduction of compensation benefits.

AUTH: 53-9-104(1)(a), MCA
MAR Notice No. 23-3-26

IMP: 53-9-127, MCA

16-8/27/87

RULE IX ATTORNEY FEES (1) The time, effort, involvement and complexity of a claim are considered in determining whether or not attorney fees will be granted for attorneys representing claimants before the unit or division.

(2) Fees will not be awarded for filling out and mailing a claim form.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-106, MCA

RULE X PAYMENT OF CLAIMS (1) Wage compensation is paid directly to the claimant every fourteen (14) days unless otherwise directed by the unit or unless there is an assignment for medical expenses, maintenance, or child support. The first payment is processed to coincide with the biweekly payment periods adopted by the unit.

(2) Medical and/or burial expenses are paid to the service providers, unless the claimant has paid the expenses, in which case payment is made to the claimant. The amount of the payment is based on the usual and customary rates established by the insurance compliance bureau, division of workers' compensation. Charges for private rooms and special nurses are paid only if ordered by the attending physician. The claimant is responsible for charges for treatment of conditions or injuries that are not a direct result of the criminally injurious conduct.

(a) Benefits are not payable for replacement costs of eyeglasses unless the injuries require a change in prescription or require the wearing of eyeglasses when the victim did not formerly wear eyeglasses.

(b) Reasonable burial expenses include a marker for the grave.

(3) Children and retired persons are considered employable but unemployed for the purpose of computing their benefits under 53-9-128(7)(a).

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-128, MCA

RULE XI CRIMINAL INFORMATION (1) Law enforcement agencies will upon request of the division or the claimant, submit officers' reports, copies of statements, and any other information in their possession to the unit.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-104(2)(a), MCA

RULE XII EMPLOYMENT INFORMATION (1) Employers of victims may, upon request of the unit or the claimant, submit verifications of employment and salary, detailing loss of wages and benefit entitlements from the employers.

(2) Self-employed persons may receive wage loss benefits. The amount of their benefits will be based on the net profit plus noncash business expenses.

AUTH: 53-9-104(1)(a), MCA
53-9-104(2)(b), 53-9-128, MCA.

IMP: 53-9-104(1)(c),

RULE XIII MEDICAL INFORMATION (1) Physicians who have rendered medical services to a victim may submit to the unit the physician's first report and bill for initial treatment or any other appropriate report which details information regarding injuries, treatment, costs and the physician's opinion concerning the victim's ability to work.

(2) The unit must be advised by the claimant or the treating or examining physician of the results of all examinations. The claimant may not claim a physician-client privilege.

(3) Whenever the unit requires a claimant to submit to an examination by a physician of the unit's choice, in addition to paying for such examination, the unit will reimburse the claimant for necessary and reasonable subsistence and travel costs but not in amounts more than those allowed to state employees for travel expenses.

(4) If the claimant is requesting compensation benefits to pay for costs of medical treatment, the claimant may initially select the physician to provide treatment, but the claimant must obtain prior approval from the unit before receiving treatment from another physician, except in an emergency. Unless the claimant obtains such prior approval, benefits to pay the cost of treatment may be disallowed. The attending physician is responsible for the type, duration, and frequency of treatment. If the attending physician refers the claimant to another physician the claimant must obtain prior approval from the unit for the referral visits and treatment.

(5) Except under subsection (3), initial liability for expenses is the responsibility of the claimant.

AUTH: 53-9-104(1)(a), MCA
53-9-123, 53-9-127, MCA.

IMP: 53-9-104(1)(c),

RULE XIV CHIROPRACTIC SERVICES (1) The rules governing physicians apply to chiropractors.

(2) Treatment by a licensed chiropractor is permitted without specific prior approval for a period not to exceed 30 days, provided the patient is not under the care of another physician.

(3) No payments are allowed for more than one treatment and modality daily. Payments may be made for the following modalities: diathermy, ultra sound, electro therapy, and intermittent motorized traction.

(4) If, at any time, special services such as body supports, casts, splints, and strapping, are required for treatment, prior approval must be obtained from the unit.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-128(2), MCA

RULE XV MENTAL HEALTH COUNSELORS The rules governing physicians apply to mental health counselors.

(1) A mental health counselor must be one of the following to receive payment from the crime victims fund:

- (a) medical doctor;
- (b) licensed clinical psychologist;
- (c) licensed social worker;
- (d) licensed professional counselor;
- (e) mental health center.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-128(2), (9), MCA

RULE XVI COMPENSATION BENEFITS (1) Compensation benefits payable to a claimant or on his behalf are computed by subtracting payments from the offender or another collateral source from the expenses. The unpaid expense is subject to the statutory maximums and percentage of victim contribution.

(2) Payments from a collateral source for one type of expense may be used to offset other types of expenses once the initial expense has been paid.

(3) Payment to a claimant or a service provider by a collateral source made after payment has been made by the crime victims fund creates an immediate debt to the crime victims fund, regardless of the length of time between the payments. The claimant is responsible for repayment of the debt. The source of the benefit may pay directly to the fund rather than to the claimant or service provider.

AUTH: 53-9-104(1)(a), MCA
53-9-125(5), 53-9-128, MCA.

IMP: 53-9-103(2),

RULE XVII CONTRIBUTION (1) Contribution results in denial or reduction of benefits. A victim contributed to the infliction of death or injury with respect to which a claim is made if the victim's actions brought about to any degree the resulting injuries and such injuries were reasonably foreseeable by the victim at the time of his or her contributing actions.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-125(7), MCA

RULE XVIII SICK LEAVE (1) Sick leave payments are not considered wages for the purpose of determining if a victim qualifies for wage loss compensation, but sick leave payments received during the actual loss of wages are used to offset wage compensation benefits.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-128(1), MCA

RULE XIX SUBROGATION AND ATTORNEY FEES (1) The claimant must advise the unit when a civil action is initiated by the claimant against the offender or another collateral source.

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MAR Notice No. 23-3-26

The claimant must provide the name and address of his or her attorney to the unit.

(2) The claimant or his or her attorney must provide a copy of the fee agreement between the claimant and attorney to the unit. The unit will provide a copy of the division's determination or order awarding or denying compensation benefits and any necessary documents to the attorney.

(3) At the conclusion of the civil action, if the division recovers under its subrogation interest and the claimant wishes to recover a proportional share of costs and attorney fees from the division, the claimant or his or her attorney must provide an itemized list of the litigation costs and attorney fees to the division.

(a) After receiving its subrogation interest, the division will authorize payment of its share of costs and attorney fees to the claimant as reimbursement if the claimant has properly paid all fees and costs, or to the attorney if the claimant has not paid such fees and costs.

AUTH: 53-9-104(1)(a), MCA

IMP: 53-9-132, MCA

3. The proposed rules are in accordance with 1987 Mont. Laws, ch. 496, which transfers the administration of the Crime Victims Compensation Act to the Division of Crime Control of the Department of Justice. This legislation empowers the Division of Crime Control to adopt rules to administer the Act.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Dorothy McCarter, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620-1401, no later than October 1, 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 Dorothy McCarter, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620-1401, no later than October 1, 1987.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of crime victims in the State of Montana.

By: Michael A. Lavin
MICHAEL A. LAVIN, Administrator
Crime Control Division

Certified to the Secretary of State August 12, 1987.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Repeal	)	NOTICE OF PUBLIC HEARING
of Rule 23.3.133 on	)	ON THE PROPOSED REPEAL OF
Chauffeur's Licenses and	)	RULE 23.3.133 AND ADOPTION
the Adoption of New Rules	)	OF NEW RULES ON LICENSING
Concerning Licensing of	)	OF COMMERCIAL MOTOR
Commercial Motor Vehicle	)	VEHICLE OPERATORS
Operators.)	

TO: All Interested Persons.

1. On Wednesday, October 7, 1987, at 10 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana, to consider the repeal of Rule 23.3.133, concerning chauffeur's licenses and the adoption of new rules for licensing commercial motor vehicle operators.

2. The proposed rules establish new procedures and requirements for licensing commercial motor vehicle operators and replace rule 23.3.133, which will be repealed.

3. The proposed rules provide as follows:

RULE I SCOPE OF SUBCHAPTER; DUTIES OF OWNER-OPERATORS

(1) The rules in this subchapter establish minimum qualifications for commercial motor vehicle operators, and provide for methods of testing those qualifications.

(2) These rules do not prohibit a motor carrier from imposing more stringent or additional qualifications, requirements, examinations, or certificates.

(3) A motor carrier who employs himself as a commercial motor vehicle operator must comply with these rules.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 20-10-103, 61-5-102, 61-5-104 to 108, 61-5-110 to 201, 61-5-203 to 302, 61-5-305, 61-5-306, 61-11-101, MCA.

RULE II DEFINITIONS Unless the context indicates otherwise, the words and phrases in this subchapter have the definitions set forth in this rule.

(1) "Department" means the Montana department of justice, unless otherwise specifically stated.

(2) "Division" means the division of motor vehicles, unless otherwise specifically stated.

(3) "Bureau" means the driver services bureau, unless otherwise specifically stated.

(4) "Examiner" means an employee of the bureau, assigned to perform the duties of examining drivers.

(5) "Commercial motor vehicle" means a vehicle with a GVWR of 26,001 lbs. or more, a bus capable of hauling more than 15 passengers including the driver, or a vehicle used to transport hazardous materials if the vehicle transports such materials in a quantity requiring the display of hazardous materials placards under federal hazardous materials regulations, i.e., the vehicle has a GVWR of 10,001 lbs. or

more. Any vehicle registered as a "farm vehicle" and paying the 16% gross vehicle weight fee is not considered a commercial motor vehicle. A recreational vehicle or R.V. is not considered a commercial motor vehicle unless it is used for commercial purposes.

(6) "Driver's license" means a license to operate normal passenger cars, light trucks, and other vehicles which are not commercial motor vehicles.

(7) "Endorsement" means an endorsement on a driver's license indicating that the driver meets the qualifications required to operate a vehicle other than a normal passenger car or light truck.

(a) "Commercial vehicle operator's endorsements" are issued in two types as follows:

(i) a "type 1 endorsement" authorizes operation of a commercial motor vehicle in interstate commerce;

(ii) a "type 2 endorsement" authorizes operation of a commercial motor vehicle within the State of Montana.

(b) "Hazardous materials endorsement" is a separate endorsement required of all hazardous materials haulers and may be made to a regular driver's license, or accompanying a type 1 or type 2 endorsement.

(c) "Tank endorsement" is a separate endorsement required of all drivers who transport bulk liquid materials. The tank endorsement may accompany a type 1 or type 2 endorsement.

(8) "Classifications." Each type 1 or type 2 endorsement is classified as to the type of vehicle authorized to be driven, as follows:

(a) "Class A" authorizes driving any combination of two or more vehicles, including all vehicles authorized to be driven under Class B and with a regular driver's license;

(b) "Class B" authorizes driving any single vehicle in excess of 26,001 lbs. GVWR, or any such vehicle towing a vehicle not in excess of 10,000 lbs. GVWR, any bus capable of carrying more than 15 passengers including the driver, and all vehicles authorized to be driven with a regular driver's license.

(9) "Gross Vehicle Weight Rating" (abbreviated GVWR) means the manufacturer's rated capacity for the vehicle in question, or the current registered gross vehicle weight, whichever is greater.

(10) "Hazardous material" means any material listed in the federal Hazardous Materials Tables, 49 C.F.R., part 172.

(11) "Placards, or hazardous materials placards" are defined and required as provided in the federal Hazardous Materials Communications Regulations, 49 C.F.R., part 172.

(12) "Medical certificate" means the medical certificate described in federal regulations, 49 C.F.R. 391.43.

(13) "Medical statement" means a statement prepared by the driver/applicant regarding his medical condition.

(14) "Certificate of employment/experience" means a certificate completed by the applicant's employer, or the

applicant in the case of an owner/operator, stating the applicant's length of employment, the type(s) of vehicles operated, and the amount of experience in each type of vehicle if there is more than one.

(15) "One license affidavit" means an affidavit completed by the applicant certifying that the applicant is not licensed in any other jurisdiction.

(16) "Federal waiver or exemption" means the waiver or exemption described in federal regulations, 49 C.F.R. 391.49, 391.61.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 20-10-103, 61-5-102, 61-5-104 to 108, 61-5-110 to 201, 61-5-203 to 302, 61-5-305, 61-5-306, 61-11-101, MCA.

RULE III ELIGIBILITY FOR TYPE 1 ENDORSEMENT (1) A

person is eligible to receive a type 1 endorsement if the person:

(a) is at least 21 years old;
(b) can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(c) can safely operate the type of commercial motor vehicle driven;

(d) can determine whether the cargo transported (including baggage in a passenger carrying vehicle) has been properly placed, distributed, and secured in or on the commercial motor vehicle driven;

(e) is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle driven;

(f) is physically qualified in accordance with (New Rule IV);

(g) has been issued a currently valid Montana driver's license;

(h) is not ineligible to drive a commercial motor vehicle under (2) of this rule.

(2) A person is ineligible to receive a type 1 endorsement if:

(a) the person has less than 12 months experience operating a commercial motor vehicle;

(b) the person is disqualified or has committed violations which would disqualify him or her under federal regulations, 49 C.F.R. 391.15;

(c) the person's endorsement is cancelled, suspended, or revoked under the laws of Montana;

(d) the person's driver's license is cancelled, suspended, or revoked by any state;

(e) the person's driver's license has been placed on a probationary status by the department for conviction(s) resulting from violation(s) occurring while the driver was operating a commercial motor vehicle;

(f) the person has had in his/her possession while operating a commercial motor vehicle more than one valid driver's license.

(3) The type 1 endorsement of a person who becomes ineligible under these rules or federal regulations is invalid for the period of ineligibility, and the person must submit his/her driver's license to the department for removal of the endorsement. Failure of the driver to submit the license for removal of the endorsement is grounds for cancellation of the endorsement under the provisions of section 61-5-201, MCA.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-104, 61-5-105, 61-5-110 to 112, 61-5-201, MCA.

RULE IV. PHYSICAL QUALIFICATIONS FOR TYPE 1 ENDORSEMENTS

(1) A person may not be issued, nor may he/she retain a type 1 endorsement, unless he/she is physically qualified to have the endorsement and has on his/her person the original or a photographic copy of a medical certificate certifying he/she is physically qualified to operate a commercial motor vehicle as required in federal regulations, 49 C.F.R. 391.43.

(2) A person is physically qualified to hold a type 1 endorsement if he/she:

(a) has no loss of a foot, a leg, a hand, or an arm; no impairment of a hand or finger which interferes with prehension or power grasping; no arm, foot, leg, or limb impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or has been granted a federal waiver or exemption;

(b) has no established medical history or clinical diagnosis of diabetes mellitus currently requiring the use of insulin for control;

(c) has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(d) has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a motor vehicle safely;

(e) has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely;

(f) has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely;

(g) has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(h) has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a motor vehicle safely;

(i) has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses, or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors on traffic signals and devices showing standard red, green, and amber;

(j) first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951;

(k) does not use an amphetamine, narcotic, or any habit-forming drug; and

(l) has no current clinical diagnosis of alcoholism.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-104, 61-5-105, 61-5-110 to 112, MCA.

RULE V ELIGIBILITY FOR TYPE 2 ENDORSEMENT (1) A person is eligible to receive a type 2 endorsement if the person:

(a) is at least 18 years of age, except that a person who is at least 16 years of age and has a minimum of 12 months driving experience may be issued a type 2 endorsement with a "B" classification, restricted to operating within a 200 mile radius of his/her home or place of employment;

(i) A person who possesses the above "underage" endorsement may have the restrictions imposed due to age removed on or after his/her 18th birthday by completing a driving examination for the type and class of endorsement desired.

(b) can safely operate the type of commercial motor vehicle driven;

(c) can determine whether the cargo he/she transports (including baggage in a passenger carrying vehicle) has been properly placed, distributed, and secured in or on the commercial motor vehicle driven;

(d) is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle driven;

(e) is physically qualified and has submitted a medical statement as outlined in (New Rule XVII);

(f) has been issued a currently valid Montana driver's license;

(g) is not otherwise ineligible to operate a motor vehicle;

(h) has successfully completed the required driving examination (or presented a certificate of employment/experience in the case of an exchange or conversion);

(i) has, in the case of a new applicant, successfully completed a written examination appropriate to the class or type of endorsement applied for.

(2) A person is ineligible to receive a type 2 endorsement if:

(a) the person has less than 12 months licensed driving experience;

(b) the person is disqualified or has committed violations which would disqualify him or her under federal regulation, 49 C.F.R. 391.15;

(c) the person's endorsement is cancelled, suspended, or revoked under the laws of Montana;

(d) the person's driver's license is cancelled, suspended, or revoked by any state;

(e) the person's driver's license has been placed on a probationary status by the department for conviction(s) resulting from violation(s) occurring while the driver was operating a commercial motor vehicle;

(f) the person has had in his/her possession while operating a commercial motor vehicle more than one valid driver's license.

(3) The type 2 endorsement of a person who is disqualified under these rules or federal regulations is invalid for the period of ineligibility, and the driver must submit his/her driver's license to the department for removal of the endorsement. Failure of the driver to submit the license for removal of the endorsement is grounds for cancellation of the endorsement under the provisions of section 61-5-201, MCA.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-104, 61-5-105, 61-5-110 to 112, 61-5-201, MCA.

RULE VI PHYSICAL QUALIFICATIONS FOR TYPE 2 ENDORSEMENTS

(1) A person may not be issued, nor may he/she retain a type 2 endorsement, unless he/she:

(a) has no loss of a foot, a leg, a hand, or an arm; no impairment of a hand or finger which interferes with prehension or power grasping; no arm, foot, leg, or limb impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or he/she has been granted a federal waiver or exemption or has demonstrated through a road test that the loss or impairment of a limb or extremity does not significantly affect his/her driving ability as determined by the examiner who conducts the test;

(b) has no established medical history or clinical diagnosis of diabetes mellitus currently requiring the use of insulin for control, unless he/she supplies a statement from his/her physician which indicates that he/she has not suffered from any loss of consciousness or control from the condition

for the preceding 3 years, and that the condition is currently controlled;

(c) has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure, with any episode within the last 12 months;

(d) has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a motor vehicle safely;

(e) has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely;

(f) has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely;

(g) has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(h) has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a motor vehicle safely;

(i) has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses, or visual acuity separately corrected in one or both eyes to 20/40 (Snellen) or better with corrective lenses. Applicants with binocular vision shall have a field vision of at least 70° in the horizontal meridian in each eye, and monocular applicants shall have a field vision of at least 70° temporal and 30° nasal;

(j) first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951;

(k) does not use an amphetamine, narcotic, or any habit-forming drug; and

(l) has no current clinical diagnosis of alcoholism.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-104, 61-5-105, 61-5-110 to 112, MCA.

RULE VII MEDICAL STATEMENT REQUIRED FOR TYPE 2

ENDORSEMENT (1) An applicant for a type 2 endorsement must complete a medical statement on a form supplied by the department. The statement includes:

(a) the applicant's full name as it appears on the Montana driver's license or application;

- (b) the applicant's date of birth;
 - (c) the applicant's social security number;
 - (d) whether or not the applicant has a current federal waiver or exemption, and, if so, for what condition;
 - (e) whether or not the applicant has a loss of a foot, a leg, a hand, or an arm;
 - (f) whether or not the applicant has an impairment of any limb or extremity;
 - (g) whether or not the applicant has an established medical history or clinical diagnosis of diabetes mellitus, currently requiring insulin for control, and, if so, the date of the last episode or treatment;
 - (h) whether or not the applicant has a current clinical diagnosis of heart disease or cardiovascular disease of a variety known to be accompanied by fainting, dizziness, shortness of breath, collapse, or congestive cardiac failure, and, if so, the name of the condition and the date of the last episode or treatment;
 - (i) whether or not the applicant has an established medical history or clinical diagnosis of a respiratory disease;
 - (j) whether or not the applicant has an established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, or vascular disease which could interfere with his ability to perform the normal tasks associated with the operation of a motor vehicle;
 - (k) whether or not the applicant has an established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of muscular or motor control, and if so, the name of the condition and the date of the last episode;
 - (l) whether or not the applicant has a mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely;
 - (m) whether or not the applicant wears corrective lenses for correction of distant vision;
 - (n) whether or not the applicant uses amphetamines, narcotics, or any habit forming drugs;
 - (o) whether or not the applicant has a current clinical diagnosis of alcoholism;
 - (p) the signature of the applicant swearing or affirming that the items in the medical statement are true and correct to the best of his/her knowledge and belief.
- (2) If the applicant has any condition set forth in items (f) through (o), the applicant may be required to submit a statement from his physician which includes, but is not limited to:
- (a) the current clinical diagnosis of the condition in question;
 - (b) the date(s), within the last 3 years, of any episode of the conditions which resulted in a loss of consciousness or control, or which prevented the driver from operating a motor vehicle;

(c) the medication(s), if any, currently prescribed for the condition; and

(i) known side effects of each medication(s) which could tend to affect the driver's state of consciousness, vision, or muscular control;

(ii) whether or not the side effects noted have been exhibited or reported by the driver;

(iii) a statement indicating whether the condition is chronic or temporary and, if chronic; whether controlled or advancing.

(3) If it is determined from the information contained in the physician's statement that the driver is subject to loss of consciousness, motor control, mental alertness, or skeletomuscular freedom of movement to a degree which affects his ability to operate a motor vehicle, either from his condition or from medication, the application must be denied.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-101 to 406, MCA.

RULE VIII. APPLICATION FOR ENDORSEMENT (1) An applicant for any type or class endorsement must successfully complete a vision examination, and new applicants must successfully complete a written and driving examination as designated for the type(s) and class(es) of endorsement(s) applied for.

(2) An applicant for either type commercial motor vehicle endorsement must pay the fee for the type of endorsement applied for as a portion of his application. No examination will be conducted nor will any endorsement be issued until the required fee is paid. There is no fee for a hazardous material endorsement to a driver's license.

(a) Payment of the required fee entitles the applicant to 3 attempts of the examination within 6 months from the date of application. If the applicant has not successfully completed the application within the 6-month period, the fee is forfeit, and any receipts or permits issued as a result of payment of the fee are void and must be returned to the department. A failure of an eye test is not an attempt at the examination.

(3) Each application for a new or renewal commercial motor vehicle endorsement must include:

(a) the applicant's full name as it appears on his/her Montana driver's license or application for a Montana driver's license;

(b) a description of the applicant's physical characteristics, including height, weight, hair and eye color;

(c) the applicant's date of birth;

(d) the applicant's social security number which, in the case of all commercial motor vehicle endorsements, becomes the driver's license number;

(e) an acknowledgement by the examiner of his observation of a current medical certificate (required for type 1 endorsements) or his approval of a medical statement

(required for type 2 endorsements) in the name of the applicant. All medical statements will be attached to and become a part of the application;

(i) In the event a medical statement cannot be approved by the examiner, that fact will be noted and the medical statement sent to headquarters for review.

(f) whether or not the applicant is currently licensed in, or has an active record in, any other state(s), a list of the state(s), if any, and the license numbers assigned to him/her;

(i) No commercial motor vehicle endorsement may be issued to an applicant who is licensed or has an active record in any other state, unless the applicant surrenders the license(s) or, in the case of active record(s), provides a statement that the license(s) in question have been lost or returned to the state(s) of issuance. The surrendered license(s) or statement(s) must be attached to the application, and will be returned to the state(s) of issuance by the department.

(ii) An applicant who denies licensure, or having an active record(s) in any other state(s), and is later found to have been licensed or to have an active license record(s) at the time of application is ineligible for a commercial motor vehicle endorsement, and the endorsement(s) will be cancelled as provided in section 61-5-201, MCA.

(g) whether or not the applicant has ever had a driver's license, permit, endorsement, or privilege to drive cancelled, suspended, revoked, or denied by this state or any other state(s). If the answer is yes, the applicant must identify all action(s) taken, the date(s) of the action(s), the state(s) where the action(s) were taken, and the ending dates of the action(s);

(i) No commercial vehicle endorsement may be issued to an applicant who is currently suspended or revoked by this or any other state.

(ii) An applicant who denies an action by this or any other state against his/her driver's license or driving privilege who is later found to have had such an action taken, and to have had a clear opportunity to have knowledge of the action, is ineligible for a commercial motor vehicle endorsement, and the endorsement(s) will be cancelled as provided in section 61-5-201, MCA.

(h) whether or not the applicant has knowledge and understanding of the state and federal regulations governing the operation of commercial motor vehicles. If the answer is no, the applicant is ineligible to receive a commercial motor vehicle endorsement.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-111, 61-5-112, MCA.

RULE IX CERTIFICATE OF EMPLOYMENT (1) The certificate of employment/experience, which may be issued singly or as part

of an application for a commercial motor vehicle operator's endorsement, is on a form furnished by the department, and includes:

- (a) the full name of the applicant as it appears on his/her Montana driver's license or application;
- (b) the applicant's date of birth;
- (c) the applicant's social security number;
- (d) the name and title of the person making the certification;
- (e) in the case of an owner/operator, the license number of at least one commercial vehicle registered to him/her;
- (f) the length of employment for this employer, or in the case of a new hire or currently unemployed individual, the name and length of service as a commercial motor vehicle operator for the most recent employer as shown on the application for employment;
- (g) a list of the type(s) of vehicles driven, each followed by the cumulative length of experience in that type;
- (h) in the case of a new hire or person with less than 3 months employment, a brief statement outlining any driver training conducted by the employer;
- (i) the notarized signature of the certifier swearing or affirming that the items in the certification are true and correct to the best of his/her knowledge or belief;
- (j) the signature of the applicant swearing or affirming that the information provided to the employer and used to complete the certification is true and correct to the best of the applicant's knowledge and belief.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-101 to 406, MCA.

RULE X ONE LICENSE AFFIDAVIT (1) The one license affidavit, which may be issued singly or as part of an application for a commercial motor vehicle operator's endorsement, is completed on a form furnished by the department and contains:

- (a) the full name of the applicant as it appears on his/her Montana driver's license or application;
- (b) the applicant's date of birth;
- (c) the applicant's social security number;
- (d) whether or not the applicant is currently licensed to drive a motor vehicle in any other jurisdiction(s) and, if so, which jurisdiction(s), the license number(s) assigned, and the expiration date(s) of the license(s);
- (e) whether or not the applicant is currently licensed or endorsed to drive a commercial motor vehicle by any other jurisdiction(s) and, if so, which jurisdiction(s), the license number(s) assigned, and the expiration date(s) of the license(s);

(f) whether or not the applicant has an active license record in any other jurisdiction(s) and, if so, which jurisdiction(s);

(g) the signature of the applicant swearing or affirming that the information given in the one license affidavit is true and correct to the best of his/her knowledge and belief.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-101 to 406, MCA.

RULE XI SCHEDULING EXAMINATIONS (1) An applicant for a commercial motor vehicle endorsement may make application, present medical certificates or medical statements, certificates of employment/experience, and one license affidavits, and take the vision and written examination at any driver services examination station during normal business hours.

(2) The driving examination for a class A endorsement is given on an appointment basis. Upon successful completion of all other requirements for a class A endorsement, the examiner will schedule an appointment at a class A examination station closest or most convenient to the applicant. At the request of the applicant, an examination will be scheduled in the applicant's home county within 90 days from the date of application.

(a) It is the applicant's responsibility to appear at the appointed time and place, and to provide a vehicle in good working order suitable to the class A endorsement applied for.

(b) If the applicant does not appear, or appears more than 15 minutes late for the scheduled appointment, or provides a vehicle that does not meet the requirements for the classification applied for, or that is unsafe or not in good working order, his appointment will be cancelled, or reset to the next available time.

(c) If an applicant does not accept the appointment offered, it is the applicant's responsibility to obtain his/her own appointment by contacting the examiner in the area in which an appointment is desired.

(3) The driving examination for a class B endorsement is given at the examination station on a first-come first-serve basis, unless city ordinance or restriction or congestion of the test route limits its use. In that event, the examination is given as in (1) of this rule. It is the applicant's responsibility to provide a truck or bus in good working order suitable for the class B endorsement.

AUTH 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-111, 61-5-112, MCA.

RULE XII WRITTEN TESTS FOR ENDORSEMENTS (1) Separate written tests will be given for each type or class of endorsement.

(2) Written tests for type 1 endorsements consist of 50 questions relating to the operating characteristics of articulated vehicles, multi-unit vehicles, and vehicles with a GVWR of 26,001 lbs. or more; applicable federal regulations; Montana laws relating to driver responsibilities, movement of traffic, vehicle size and weight, vehicle equipment, road signs, and safety practices. The maximum score for the type 1 endorsement written test is 100. Two points are deducted for each incorrectly marked answer or unanswered question. The minimum passing score is 80.

(3) Written tests for type 2 endorsements consist of 40 questions relating to the operating characteristics of articulated vehicles, multi-unit vehicles, and vehicles with a GVWR of 26,001 lbs. or more; Montana laws relating to driver responsibilities, movement of traffic, vehicle size and weight, vehicle equipment, road signs, and safety practices. The maximum score for the type 2 written test is 100. Two and one-half points are deducted for each incorrectly marked answer or unanswered question. The minimum passing score is 80.

(4) Written tests for hazardous materials and tank endorsements consist of 20 questions relating to the handling, storage, driver responsibilities, and reporting requirements relating to hazardous materials, and the operating characteristics, driver responsibilities, and load shift characteristics of tank vehicles. The maximum score for hazardous material or tank endorsement written tests is 100. Five points are deducted for each incorrectly marked answer or unanswered question. The minimum passing score is 80.

(5) Illiterates are:

(a) ineligible to receive a type 1 endorsement;

(b) eligible to receive a type 2 endorsement if they are examined orally by the examiner and pass the oral test.

(6) Applicants observed cheating on the written test are immediately failed.

AUTH: 61-5-122, 61-5-117, 61-5-125, MCA. IMP: 61-5-110, 61-5-112, MCA.

RULE XIII DISQUALIFICATION OF VEHICLES FOR EXAMINATIONS

(1) A vehicle used for the driving portion of a commercial motor vehicle operator's endorsement examination must be in safe operating condition, properly registered, insured, and, if loaded, have the load properly secured.

(2) An examination will be denied if:

(a) the vehicle is loaded with any hazardous material;

(b) the vehicle is improperly or illegally loaded;

(c) the vehicle has defective brakes, determined as follows:

(i) absence of braking action upon application of the service brakes;

(ii) observably missing, loose, or broken mechanical components;

- (iii) audible air leak at brake chamber;
- (iv) unbalanced steering axle braking, observable during operation when the vehicle or a component of the vehicle swerves noticeably upon application of the service brake;
- (v) no brakes on the vehicle or combination of vehicles are applied upon activation of the parking brake system;
- (vi) damage to brake hose, including damage extending through the outer ply, a bulge or swelling when under pressure, an audible leak at other than a proper connection, improper joins, or hoses that are cracked, broken, or crimped;
- (vii) damage to brake tubing including audible leaks at other than proper connections or tubing that is cracked, damaged by heat, broken, or crimped;
- (viii) a low pressure warning device that is missing or inoperative at 55 PSI and below;
- (ix) any hydraulic brake system which has:
 - (A) no pedal reserve with engine running, except by pumping pedal;
 - (B) seeping or swelling of brake hose(s) under application of pressure;
 - (C) any observably leaking hydraulic fluid;
 - (D) hydraulic hose(s) abraded or chafed through outer cover-to-fabric layer, or fluid lines with leaking connections, or restricted, crimped, cracked, or broken areas;
 - (E) a brake failure or low fluid warning light on;
 - (d) the vehicle has any frame member that is:
 - (i) cracked, loose, or broken so as to adversely affect support of functional components such as steering gear, fifth wheel, engine, transmission, suspension, or body parts;
 - (ii) cracked, loose, sagging, or broken, permitting shifting of the body onto moving parts or other condition indicating imminent collapse of the frame;
 - (iii) cracked to the degree of 1/8 inches in the web, extending toward the bottom flange, extending from the web, around the radius and into the bottom flange, or 1 inch or longer in the bottom flange;
 - (e) the vehicle exhibits any condition, including loading, that causes the body, frame, or load to be in contact with a tire or any part of a wheel assembly;
 - (f) the vehicle's tires are:
 - (i) worn to the point that any part of the breaker strip or casing ply is showing in the tread area;
 - (ii) cut on the sidewall to the extent that ply cord is showing;
 - (iii) labeled "not for highway use";
 - (iv) both bias and radial types on the same axle;
 - (v) exhibiting a visually observable bump, bulge, or knot related to tread or sidewall separation;
 - (vi) flat, or noticeably leaking;
 - (g) the vehicle's wheels and rims:
 - (i) are bent, broken, cracked, improperly seated, or sprung, or have mismatched lock or side rings;

- (ii) have any circumferential rim crack except at the valve hole;
- (iii) have any crack between hand, stud, or other hole (disc wheels);
- (iv) have two or more cracks, more than 1 inch long across spoke or hub section (spoke wheels);
- (v) have cracks at three or more spokes (tubeless demountable adapter);
- (vi) have ineffective fasteners (both spoke and disc wheels) as follows: for 10 fastener positions, 3 anywhere, 2 adjacent; for 8 fastener positions or less (including spoke wheels), 2 anywhere;
- (vii) have cracks in welds, or welded repairs to aluminum wheels on a steering axle, or other than disc to rim attachment welds in steel disc wheel(s) mounted on the power unit steering axle;
- (h) the vehicle is not currently registered;
- (i) the vehicle is not currently insured, or does not have a valid insurance certificate;
- (j) the vehicle is not in running condition sufficient to complete the driving test.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-110, 61-5-112, MCA.

RULE XIV GENERAL RULES FOR DRIVING EXAMINATIONS FOR CLASS A AND B ENDORSEMENTS The following rules apply to both class A and class B endorsement driving examinations:

(1) Unless an exception is appropriate, only the examiner and the applicant may be in the vehicle during the examination. No exception may be granted unless the vehicle has appropriate seating for at least 3 occupants, and an excepted passenger will not interfere with the applicant's operation of the vehicle or the examiner's ability to observe the applicant. An example of a situation where an exception is appropriate is a case in which the applicant requires the services of an interpreter or a translator.

(2) The examiner will determine, based on the road conditions, the test route, the weather, and the vehicle to be driven, whether or not to proceed with a drive test. If completion of a drive test is questionable due to the above factors, and the applicant has been so advised by the examiner, the test shall be counted as a failure if the applicant insists that the test be given but is unable to complete it due to those conditions.

(3) If the applicant's vehicle comes into physical contact with another vehicle, a pedestrian, or a fixed object, except slight bumper contact in a parking or backing maneuver or contact with a pedestrian by the pedestrian's intent, the test will be immediately discontinued and counted as a failure.

(4) If an accident involving another vehicle or a pedestrian occurs during a drive test the applicant must report

the accident to the appropriate law enforcement agency if there is any visible damage, injury, or complaint of injury.

(5) If any of the following events occur, the applicant is failed and the test will be discontinued.

(a) dangerous action that would cause another driver or pedestrian to take defensive action, such as stalling the vehicle within a busy intersection, or driving one or more wheels over the curb or onto a sidewalk;

(b) clear violation of any traffic law;

(c) lack of cooperation, refusal to perform, an offer of a bribe or gratuity, or willful disobedience of a direction from the examiner;

(d) various or repeated minor mistakes, causing the deduction of more than the permitted number of points from the driving test score.

(6) Whenever an applicant is failed and a test discontinued, the examiner decides whether the vehicle may be returned to the starting point of the examination by the applicant or parked in a safe place for later pick-up by another driver or a tow car.

(7) Test routes for class A endorsements will be established in each county. Each test route will be mapped and approved by the commercial vehicle operator program supervisor, who will maintain a current file of approved class A routes. Driving test routes for class B endorsements will be as described in 23.3.122 of this chapter, unless city ordinances or congestion interfere, in which case the route shall be the same as, or a portion of, the class A route.

(8) The applicant for a class A or B endorsement, as a portion of the examination, will demonstrate to the examiner a "pre-trip" inspection of his vehicle and will be graded on the conduct of the inspection. The inspection includes:

(a) service brakes, including trailer brake connections, if any;

(b) parking (hand brake);

(c) steering mechanism;

(d) lighting devices and reflectors;

(e) tires and wheels;

(f) horn;

(g) windshield wiper(s);

(h) rear vision mirror(s);

(i) coupling devices, if any;

(j) security of load, if any;

(k) emergency equipment required for the type of vehicle used;

(l) a visual check of the vehicle and load, if any, for loose equipment or cargo that could become detached during operation and cause a traffic hazard.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-110, 61-5-112, MCA.

RULE XV DRIVING EXAMINATION FOR CLASS A ENDORSEMENT

(1) The driving examination for a class A endorsement is given over a test route divided into scoring sections. Up to 6 behaviors are scored at each scoring section. The accumulation of 25 errors constitutes failure of the test.

(2) "Stopping" occurs when the driver begins deceleration to a stop and ends when he has pulled away after the stop. Stopping is scored at the first 5 places along the test route where the driver must come to a complete stop. Scoring ceases after 5 scoreable stops. The following elements of stopping are scored:

(a) Downshifting. When downshifting is properly done the transmission is shifted to the gear appropriate to the vehicle speed, the applicant shifts without hesitation (does not coast in neutral), the vehicle does not lurch or jerk noticeably when the clutch is released, lugging the engine or excessive revving is avoided, gears are shifted smoothly without missing or clashing gears. The applicant generally must downshift through the gear pattern when reducing speed. A downshifting error is not recorded if traffic prevents the applicant from successfully shifting down through the gears to decelerate, or is moving too slow for the applicant's vehicle to reach an initial speed sufficient to require downshifting.

(b) Braking. Assessment begins when the brake is first applied and ends when the vehicle comes to a complete stop. The applicant must regulate brake pressure to bring the vehicle to a complete stop without excessive deceleration.

(c) Stopping point. The applicant must bring the vehicle to a complete stop at a designated point. Assessment of this performance takes place after the vehicle has come to a complete stop. The vehicle's front bumper must be within 3 feet of a delineated pedestrian crosswalk or stop line, but not beyond it.

(d) Pulling away. The applicant must accelerate his vehicle smoothly from a stopped position. Assessment of this performance takes place at the initial point of movement. The applicant must not accelerate excessively, and the engine must remain running.

(3) "Turning" occurs as the applicant begins a turning maneuver from one street to another, and ends after he has upshifted through four gears after completing the turn. The following elements of turning are scored:

(a) Speed. The applicant must adjust speed to safely negotiate a turn at an intersection. Assessment begins as the vehicle reaches the intersection and ends when it enters the new travel lane. The turn must be completed without excessive outward force, no braking may occur during the turn, and speed may not fall more than 4 m.p.h. below normal for the turn;

(b) Mirror checks. The applicant must check the appropriate mirror during a right or left turn to observe for clearance from other vehicles or roadside objects. Assessment of this maneuver occurs when the rear of the vehicle reaches the apex of the turn, or is nearest to any obstruction;

(c) Single turn lane. The applicant must position the vehicle close enough to the right side of the road to prevent being passed on the right when preparing for a tight right turn. Assessment of this performance begins upon approaching the intersection and ends when the vehicle has reached the apex of the turn. The vehicle must remain within 6 feet of the roadside (curb, shoulder, or parked vehicles) until the front of the vehicle has entered the new street.

(d) Multiple turn lanes. The applicant must use the proper lane when turning where multiple turn lanes are available. For a right turn the applicant must position the vehicle within the far left lane. For a left turn, the applicant must position the vehicle within the far right lane.

(e) Lanekeeping. The applicant must keep the vehicle within a single lane while turning. Assessment begins when the vehicle starts the turn and ends when trailer wheels clear the curb area. The applicant must negotiate the turn without the rear wheels touching or crossing the road edge, a lane delineator, or the curb.

(f) Cancel signal. The applicant must cancel the directional signal after completing a turn or merge. Assessment of this performance begins after the turn, and ends 3 seconds after the vehicle has straightened out following the turn;

(g) Upshifting. The applicant must upshift properly through at least the first four gears after completing the turn. Assessment of this performance begins when the first shift is made, and ends when the vehicle has been shifted into fourth gear. The transmission must be shifted through four gears, the applicant must shift without hesitation, the gears must be shifted in the proper sequence, the shifts must be completed smoothly without noticeable jerking or clashing of gears, and no gear may be missed. Skipping a gear does not count as a miss, and is not penalized if it results in a smooth shift without lugging.

(4) "Merging" begins when the vehicle has entered the merge ramp and ends 3 seconds after the vehicle has completely entered the new road. The following elements of merging are scored:

(a) Signaling. The applicant must signal intent to merge onto an adjacent roadway. Assessment begins after the vehicle enters the merge ramp and ends when any part of the vehicle enters the main roadway.

(b) Mirror check. Assessment begins as the vehicle enters the acceleration lane and ends when it starts movement to the new lane. The vehicle must be aligned parallel to the adjacent roadway before the mirror check is made. The applicant must look into the left outside mirror after the vehicle is aligned, and before any movement into the new lane.

(c) Speed. The applicant must accelerate to a speed sufficient to permit safe entry onto the adjacent roadway (as close to highway speed as possible). Assessment begins as the vehicle enters the acceleration lane and ends when it enters

the new travel lane on the adjacent roadway. The vehicle must be accelerated throughout the acceleration lane and the vehicle should not slow or stop prior to entering highway.

(5) "Straight driving" is scored over one city block or some other easily identifiable straight section approximately one-tenth of a mile long. The following elements of straight driving are scored:

(a) Speed. The applicant must operate the vehicle within 10 m.p.h. of the posted speed limit without exceeding the limit when driving on a straight road. Speed is not scored if the vehicle cannot be driven within 10 m.p.h. of the limit due to traffic.

(b) Mirror checks. The applicant must check following traffic in the rearview mirrors on each side at least once in every 10 seconds of straight driving. Errors will not be recorded if the examiner is unable to observe the applicant's eye movement or any occurrence distracts the examiner long enough for the applicant to make the correct response undetected.

(c) Lanekeeping. The applicant must keep the vehicle within the bounds of existing travel lanes on a straight road. Normal lane changes are not scored in this section.

(6) "Lane change" begins just before the applicant initiates a lane change and ends 3 seconds after the vehicle has completed the lane change. The examiner scores lane changing at the first 3 scoreable instances. The following elements of lane changes are scored:

(a) Mirror checks. The applicant must check the appropriate mirror to detect traffic before initiating a lane change. The examiner will observe whether the applicant's eyes are directed toward the appropriate outside mirror prior to initiating a lane change.

(b) Gradual change. Assessment begins when the applicant starts to change lane and ends when the lane change is completed. After initiating the turn signal, the applicant must begin the lane change and then pause at least 3 seconds before crossing the delineator into the next lane in order to allow any unseen traffic to get out of the way. No error occurs if traffic causes an abrupt lane change.

(7) "Curves" assessment begins as the vehicle enters a curve and ends when the vehicle has completely straightened out after the curve. The following elements of curves are scored:

(a) Speed. The applicant must adjust speed to safely negotiate a curve. The vehicle must be driven through the curve without excessive force, the vehicle should not be braked while turning, gears should not be shifted up or down while the vehicle is turning, and the speed must not drop below a normal safe speed by more than 20%.

(b) Lanekeeping. The applicant must keep his vehicle within the bounds of existing travel lanes.

(8) "Hills." The following performances are scored at hills:

(a) Starting on hill. The applicant must accelerate his vehicle smoothly from a complete stop using additional power to compensate for the vehicle's tendency to roll backwards. The applicant must not accelerate the vehicle excessively, the engine must remain running, and the vehicle must not roll backwards (parking or service brakes may be used to prevent rollback).

(b) Shifting up hill. The applicant must keep the vehicle engine speed within normal operating range, avoiding lugging or overspeeding the engine. Assessment begins when the vehicle starts its upward path and ends when it reaches the top of the grade. The applicant must operate the vehicle within the specified operating range (the normal operating r.p.m. level). The engine must not lug noticeably before a shift is made, and the applicant must not miss the downshift and have to shift to an even lower gear or stop and start the vehicle in first gear.

(c) Speed downhill. The applicant must maintain a safe speed on downgrades. Assessment begins as the vehicle starts its descent and ends when the entire vehicle has leveled off at the bottom of the grade. The applicant must achieve an acceptable speed not exceeding the posted limit or more than 9 m.p.h. below the posted limit. The applicant must not fan or pump the brakes.

(9) "Traffic restrictions." Assessment begins at the point where a sign, signal, or roadway marking designates the start of a travel restriction and ends when the travel restriction is passed. The applicant must comply with travel restrictions imposed by signs, signals, and roadway markings.

(10) "Blind intersections." Assessment begins prior to the vehicle entering the intersection and ends when the vehicle has entered the intersection. The following elements are scored:

(a) Speed. The applicant must release the accelerator prior to entering a blind intersection.

(b) Observation. The applicant must check to the sides by turning his head approximately 45° in each direction, making a visual check at the point where an intersecting vehicle would first become visible.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-110, 61-5-112, MCA.

RULE XVI DRIVING EXAMINATION FOR CLASS B ENDORSEMENT

(1) The driving examination for a class B endorsement is conducted and scored pursuant to 23.3.123 of this chapter, with the exception of the parallel parking maneuver described in 23.3.123(10) which is not conducted.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-110, 61-5-112, MCA.

RULE XVII INSTRUCTION PERMITS (1) An applicant for a commercial motor vehicle endorsement issued an instruction permit under the provisions of section 61-5-106, MCA, may not operate a commercial motor vehicle unless accompanied by a driver possessing a commercial motor vehicle endorsement allowing him to operate the type of vehicle the applicant is operating.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-105, MCA.

RULE XVIII TEMPORARY LICENSES (1) Applicants for a new or renewal type 1 endorsement, or conversion of an existing chauffeur's license to a type 1 endorsement, will, upon fulfillment of all requirements for a type 1 endorsement, be issued a temporary license valid for 3 months from the date of issuance on a form furnished by the department. The temporary license identifies the applicant, any restrictions imposed on him, the class of endorsement issued, the driver's license number assigned, and the date of issue. The temporary license must be signed by the applicant and the issuing examiner. The temporary license may be used while the department investigates the facts relative to the applicant's right to receive a type 1 commercial motor vehicle endorsement. The temporary license must be in the driver's immediate possession while operating any motor vehicle, and is invalid when the applicant's driver's license has been issued, or for good cause refused.

(2) Applicants for type 2 endorsements will be issued temporary licenses as provided in 23.3.139 of this chapter.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-106, MCA.

RULE XIX EXCHANGING OR CONVERTING A CHAUFFEUR'S LICENSE TO AN ENDORSEMENT (1) Any person wishing to exchange or convert a chauffeur's license to a type 1 or type 2 commercial motor vehicle operator's endorsement or a hazardous materials endorsement must:

(a) be qualified to do so under the provisions of (New Rule III) or (New Rule V) and meet the requirements for the endorsement applied for;

(b) pay the required fee;

(i) renewal applicants pay the full 4-year fee;

(ii) conversion applicants pay a fee based on the number of years and/or portions of years remaining before expiration of their current driver's license.

(2) If a chauffeur's license is in a probationary status due to convictions resulting from violations of traffic laws occurring while operating a commercial motor vehicle, the person is ineligible for a type 1, type 2, or hazardous material endorsement until the probationary status has ended and the chauffeur's license has been restored. The license may be renewed as a driver's license only.

(3) If the status of the applicant's chauffeur's license cannot be determined by the examiner the application

will be processed completely, but the applicant will not be issued any type of license or permit. All application materials will be sent to driver services headquarters for a final determination of status, and the endorsed license issued or for good cause denied. If the denial relates only to the endorsement, any fee paid for the endorsement will be refunded.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-101 50 406, MCA.

RULE XX REPORTING VIOLATIONS OF COMMERCIAL VEHICLE OPERATORS (1) In addition to the reports of driving records required by section 61-6-107, MCA, the department will report all notices of conviction received by it to other states, employers, and agencies of the federal government when required to do so by federal regulations, if the conviction(s) result from violation(s) occurring while the driver is operating a commercial motor vehicle.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-107, MCA.

RULE XXI EMERGENCY OPERATION OF COMMERCIAL MOTOR VEHICLES (1) Supervisory or administrative personnel not ordinarily assigned to duties involving the operation of commercial motor vehicles may operate commercial motor vehicles without an endorsement on an emergency basis for the duration of an emergency such as a natural disaster, riot, civil disorder, or major power outage.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-125, MCA.

RULE XXII APPLICABILITY OF EXISTING RULES Only the following rules in Title 23, part 3, subchapter 1, A.R.M., apply to the handling of applications for commercial motor vehicle endorsements:

- (1) 23.3.101 COUNTY TREASURER AS FEE CONNECTING
- AGENTS;
 - (2) 23.3.112 ORDER OF STEPS IN EXAMINING;
 - (3) 23.3.114 SIGNATURE OF APPLICANT;
 - (4) 23.3.115 CONSENT OF PARENTS OR GUARDIANS;
 - (5) 23.3.118 VISION TESTS;
 - (6) 23.3.125 INCOMPLETE EXAMINATION;
 - (7) 23.3.126 TIME LIMIT ON SECOND OR SUBSEQUENT
- EXAMINATIONS;
 - (8) 23.3.131 PROOF OF NAME, DATE OF BIRTH, AND SOCIAL SECURITY NUMBER FOR DRIVER'S LICENSE AND DUPLICATE DRIVER'S LICENSE APPLICATIONS;
 - (9) 23.3.135 GRACE PERIOD FOR RENEWALS;
 - (10) 23.3.136 TIME PERIOD FOR RENEWALS AND
- EXAMINATIONS;
 - (11) 23.3.137 RENEWALS TO TAKE TEST IF EXPIRED;
 - (12) 23.3.138 APPLICATIONS FOR MINORS;


- (13) 23.3.142 DISHONORED CHECKS;
(14) 23.3.143 NATIONAL DRIVER REGISTRATION;
(15) 23.3.148 RELEASE OF DRIVER RECORD FOR CONSUMER
REPORTS;
(16) 23.3.149 DUPLICATE LICENSES.

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA. IMP: 61-5-101 to 106, MCA.

4. The department is proposing the new rules to comply with state and federal statutory changes mandating stricter requirements for licensing of commercial motor vehicle operators. The statutes and these rules are designed to improve highway safety by ensuring that only qualified operators are licensed as commercial motor vehicle operators.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Kathy Seeley, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana, 59620-1401, not later than September 30, 1987.

6. Larry Majerus, Administrator of the Motor Vehicle Division, has been designated to preside over and conduct the hearing.

By: 
PATRICK M. DRISCOLL
Chief Assistant
Attorney General

Certified to the Secretary of State August 17th, 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 X)	the PROPOSED ADOPTION of Rule
relating to Tertiary Produc-)	I through X relating to
tion for Natural Resource &)	Tertiary Production for Natural
Corporations Tax.)	Resource & Corporations Tax.

TO: All Interested Persons:

1. On September 29, 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 rules I through X, relating to tertiary production for the Natural Resource & Corporations Tax Division.

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

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

RULE I TERTIARY PROJECT - APPROVAL (1) To obtain a tertiary classification for an oil project, an operator must submit a request for a hearing with the Department of Revenue. Such request should be submitted after receiving tertiary status approval from the Oil and Gas Board. Included with the request, should be the following information:

(a) A project area map showing boundaries of the project with location and status of all wells which have produced at any time from 3 years prior to the onset of the tertiary project up to the date of the request to the department.

(b) A legal description of the area covered by the proposed tertiary project.

(c) The type of tertiary process proposed or employed.

(d) The proposed or actual project start date.

(e) Data on the oil reserves estimates covering the project area with and without the tertiary recovery process proposed or employed.

(f) Quarterly production history for the area encompassed by the proposed project from 3 years prior to the onset of the tertiary project up to the date of the request to the department. Additional production information must be provided by lease or unit, whichever was the basis of reporting for severance tax purposes for the period from 3 years prior to the onset of the tertiary project up to the date of the request to the department.

(g) Estimates of future annual production for the life of the project.

(h) A copy of the Oil and Gas Board approval of the project. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-36-101.

RULE II QUALIFICATION HEARING (1) Upon receipt of the request for a hearing and the information described above, the department will conduct a hearing at a mutually agreeable time. If the operator does not provide the information listed above with the request for hearing, or if the information submitted is not adequate to evaluate the request, the department may require that additional data be submitted prior to scheduling the hearing. AUTH 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP 15-36-101.

RULE III DEPARTMENT PROCEDURES FOLLOWING THE HEARING (1) The department will determine whether the project meets the criteria of a tertiary project as set forth in 15-36-101 MCA, based on information presented at the hearing. The department will send notification of its determination to the project operator. If the project is approved, the department will designate the project area and provide the project operator a schedule of base level projections for future reporting periods. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP 15-36-101.

RULE IV APPROVAL REQUIRED FOR CHANGES IN TERTIARY PROJECT (1) Any changes in the delineated project area must be approved through the same process required for initial approval. If the changes are not submitted for approval, the project will lose its status as a tertiary project for tax purposes. If the changes are submitted, but are disapproved, the original tertiary project approval remains valid and in effect. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-36-101.

RULE V ELIGIBILITY OF PRIOR TERTIARY PROJECTS (1) Tertiary projects which commence prior to July 1, 1985, are eligible for the tertiary tax reduction. The tax reduction applies only to incremental production on or after July 1, 1985. Such projects are subject to the same requirements and procedures as those projects commencing after July 1, 1985. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-36-101.

RULE VI TERTIARY PROJECT - BYPASS SECONDARY RECOVERY (1) If an operator elects to go directly from a primary recovery method to a tertiary recovery method, preferential tax treatment will not be granted unless the operator is able to establish that:

(a) The characteristics of the formation and the oil within the property indicate that secondary recovery methods would not generate additional oil recoveries.

(b) Sound engineering principles were used in electing to go directly for primary recovery to tertiary recovery. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-31-101.

RULE VII OIL PRODUCTION - TAX COMPUTATION (1) If a project has been granted tertiary status by the department, all crude oil produced beyond what would have been produced under both primary and secondary recovery methods shall be taxed at 2½% of the gross value of crude oil produced. An operator must report all crude oil production as non-tertiary production subject to the 5% tax rate until tertiary status has been granted. Once tertiary status has been granted, all incremental production related to the tertiary process will be eligible for the 2½% rate beginning July 1, 1985 or the date the project began tertiary oil recovery, whichever is later. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-36-101.

RULE VIII DEFINITIONS (1) "Primary recovery method" - The production of oil utilizing natural reservoir energies such as gas - cap drive, dissolved gas drive or water drive. Gas lift operations or mechanical lifting devices may be employed.

(2) "Secondary recovery method" - The production of oil utilizing artificially created reservoir energies such as waterfloods, gas injections, or enriched gas drive. Gas lift operations or mechanical lifting devices may be employed.

(3) "Acidizing of well" - If an operator injects acid into a well to enlarge and reopen pores in oil bearing limestone formations, such a process is not considered to be tertiary recovery.

(4) "Sandfracing" - Injecting a mixture of crude oil and sand under pressure into a producing formation designed to loosen or breakup a tight formation and thus causing the formation to have more permeability and greater production is not a tertiary recovery process. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-36-101.

RULE IX TERTIARY PROJECT - INCREMENTAL PRODUCTION DETERMINATION (1) In determining the incremental production related to a tertiary project, a base level of production, above which is considered incremental tertiary production, must be determined. Production in excess of the base level will then be eligible for the 2½% crude oil severance tax rate.

(2) The base production level will be determined using linear regression analysis. The mathematical formula and its components are described below:

- Regression data: Quarterly production data from the three years immediately prior to the onset of a tertiary project.
- t : A sequential ordering of the quarters in the regression data such that for the first quarter t is 1, for the second quarter t is 2, etc.
- e : Natural logarithm base.

y_t : Quarterly production for quarter t .

$\ln(y_t)$: The natural logarithm of y_t .

The predicted quarterly oil production for quarter $t(y_t)$ is determined by the equation

$$y_t = e^{(a+bt)}$$

Where a and b are the least square estimates for the parameters a and b in the linear regression equation $\ln(y_t) = a+bt$ with $\ln(y_t)$ being the dependent variable and t being the independent variable.

The future base level production amounts will be computed using the quarterly production history for the 3 year period immediately preceding the quarter in which tertiary production commenced. In calculating estimated future base level production, the department may exclude data for any production that does not represent normal operation and prudent management of the field, or the department may adjust such data to reflect normal operations or prudent management. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-33-101.

RULE X ABSENCE OF ADEQUATE DATA IS BASIS FOR DISAPPROVAL

(1) The department will not approve projects which have been in production for less than three years or that otherwise do not have reliable production data, reflecting normal operations and prudent management, sufficient to estimate future base level production. AUTH, 15-1-201, Auth Ext. Sec. 3, Ch. 724, L. 1985, Eff. 7/1/85; IMP, 15-36-101.

4. The department is proposing the rules for the following reasons:

Rule I is necessary because Ch. 724, L. 1985 provides that before a project can be granted a tertiary status for severance tax purposes, a hearing must be held with the department. This rule sets forth what information must be submitted with the request for hearing. The information required to be submitted is necessary in order for the department to properly evaluate the request for tertiary classification.

Rule II sets forth the manner in which a date for a hearings on a tertiary classification will be established. The statute is silent on when such a hearing will be conducted. This rule provides that in order to insure a fair and orderly handling of such hearings, a date will be set for each hearing that is mutually agreeable to both the taxpayer and the department. The rule also sets forth the fact that before a hearing will be conducted, all information requested by the department, prior to the hearing, must be submitted. This requirement is necessary

to insure that the hearing will be productive and that the department will have sufficient information to make a determination following the hearing.

Rule III clarifies what the department's actions will be following the tertiary classification hearing. The rule sets forth the department's responsibility to notify the operator as to whether the project has been granted tertiary status. In addition, if tertiary status has been granted, the department will provide future base levels to be used for future reporting. These two requirements will provide for an orderly and understandable process for the public.

Rule IV deals with the situation where a taxpayer that has a project which is currently classified as a tertiary project requests to change the project area. Because the tertiary incentive is established on a project by project basis, it is reasonable to require a hearing prior to any change in the project area.

Rule V is necessary because Ch. 724 L. 1985 is unclear on the treatment of tertiary projects which began before the effective date of that act. The proposed rule resolves the ambiguity in favor of eligibility for pre-existing projects because the department believes that on appeal the judiciary would determine such projects eligible.

Rule VI addresses the situation where the taxpayer elects to bypass the secondary recovery process and go directly from primary recovery to tertiary recovery. The decision by an operator to go from primary recovery to either secondary recovery or tertiary recovery should be based solely upon the characteristics of the oil formation and various engineering principles and not based upon tax considerations. Otherwise, the tax policy of the state would conflict with the state's laws and policies that are established to conserve oil and gas resources. This rule will remove the tax issue from this decision.

Rule VII is necessary because it clarifies how the severance tax shall be computed on incremental tertiary production. The rule also states that all oil must be reported as non-tertiary production until tertiary status has been granted.

Rule VIII is necessary because it defines terms that are used in Ch. 724, L. 1985 and also defines other terms that may be confused with tertiary recovery.

Rule IX sets forth the method of determining base level production, above which is tertiary production subject to a lower tax rate. CH. 724, L. 1985 provides that this base level must be determined by the department, but does not set forth the method to be used in making that determination. The method proposed in this rule is to use a form of regression analysis and use 3 years of historical production data to predict future production.

The department consulted with petroleum experts to determine how to calculate base oil production. Base oil production is the production that would have occurred under prior recovery methods after tertiary production has begun. The conclusion of the department from the advice it received was that it is impossible to calculate precisely the oil production that would have occurred under a given recovery method after that recovery method has been abandoned in favor of another method. The reason for this conclusion is that once tertiary recovery is substituted for prior recovery methods, the characteristics of an oil reservoir are modified in a manner that it becomes unknown what would have been produced under the prior method.

Given that it is impossible to calculate base oil production precisely, the department must rely on a reasonable method of estimating the base oil production. In proposing the method in the rule, the department used these criteria:

Is the method reasonably reliable?

Is the method feasible for taxpayers and the department to implement?

Does the method treat different taxpayers in a uniform and equal manner?

Does the method reasonably take account of different geological and other production conditions confronted by taxpayers?

Is the method definite and unambiguous so that both the taxpayer and the department can rely on it?

As explained below, the answer for each of these questions was "yes" for the method proposed in the rule.

The department's proposal for estimating base oil production is a specific application of a common practice in the oil industry of using historical production data to predict future production.

The department developed the formula in the rule by testing data from 6 major oil fields that had a long-term history of production under secondary recovery methods and that had established a pattern of declining production before the cutoff points used in the analysis. The history of production up through certain years (1976, 1978, and 1980) was used to predict production after those years up through 1984. Using the data from the early periods, the department compared estimates of subsequent production using 3, 4, 5, and 10 years of production history in regression equations. The 10-year test was done only for the period ending in 1980. The estimates of subsequent production were then compared to the production that actually occurred. The conclusion was that the estimates of future

production using 3 years of historical data were as reliable, and often superior, to those using longer periods of production history. For the three different time periods tested, the calculation using 3 years of data predicted subsequent production within a narrow range of 94% to 111% of what actually was produced from those fields. Further, the variance of the estimates from the actual production were low for the 3-year equation and lower than for the other equations in a large majority of the cases. Hence, based on data from actual, long-term secondary recovery oil fields in Montana, the 3-year regression equation proposed in Rule IX is a reasonably reliable method of predicting base oil production.

The use of 3 years of production history as opposed to longer periods of production lessens the record-keeping burden on the taxpayer and shortens the period of time an oil field must produce before it is eligible for favorable tertiary tax treatment. It is quite feasible to use this method as opposed to others.

The equation used in the rule also meets the standard of uniform and equal treatment of taxpayers. The methodology for predicting base oil production will not vary from taxpayer to taxpayer.

The method is also appropriate because the unique characteristics of each oil field will be taken into account by using the actual production history from each field.

Finally, the equation results in a definite prediction of base oil production through a definite method using actual and known data. By eliminating ambiguities, the rule minimizes, in an even-handed manner, the potential for protracted conflicts and controversy, for abuse of the tax incentive by the taxpayer, and for arbitrary decisions by the department.


Rule X states that the department will not grant a tertiary status to a project that does not have sufficient historical data to allow the department to establish a base level. If the proposed project area has production for less than 3 years, the department would not have sufficient data to determine a valid base level production.

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 September 24, 1987.

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



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/17/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PUBLIC HEARING on
MENT of ARM 42.15.311 and	)	PROPOSED AMENDMENT OF ARM
42.17.103 relating to With-	)	42.15.311 and 42.17.103
holding from Retirement Plan	)	relating to Withholding from
Benefits.	)	Retirement Plan Benefits.

TO: All Interested Persons:

1. On September 24, 1987, at 9:30 a.m., a public hearing will be held in Room 212 of the Department of Justice Building, Corner of Sanders and Sixth Avenue, at Helena, Montana, to consider the amendments of ARM 42.15.311 and 42.17.103 relating to withholding from retirement plan benefits.

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

42.15.311 INFORMATION RETURN (1) Information returns are to be made on either Federal Form 1099, W-2P or Form 1-A, which may be secured by directing a request to the Department of Revenue, Helena, Montana, 59620. Upon approval from the department, computer generated tapes may be substituted for the forms.

(2) Information returns are due on or before the 15th day of April following the close of the calendar year with respect to which payments made are being reported. The returns are to be filed with the Department of Revenue, Helena, Montana 59620. The information returns are to be accompanied by State Form 1, which summarizes the information reported by the information agent.

(3) Distributions to recipients with a Montana address from pension, profit sharing, stock bonus, or annuity plans, deferred compensation plans, an IRA or commercial annuity program must be reported to the department on a federal form 1099, W-2P or Form 1-A. AUTH, 15-30-305, MCA; IMP, 15-30-301, MCA.

42.17.103 WAGES (1) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer, including the fair value of all remuneration paid in any medium or form other than money. Thus, salaries, wages, bonuses, fees, commissions, and other payments are wages subject to withholding if paid as compensation for services rendered by an employee for his employer. Wages do not lose their identity even though payment may be deferred.

(2) The name by which compensation is designated is immaterial.

(3)(a) Employee contributions to pension, profit sharing, stock bonus, or annuity plans, deferred compensation plans where the payments are not otherwise considered wages, an IRA, or a commercial annuity contract (whether or not the contract was purchased under an employer's plan for employees) are exempt

from withholding to the extent that the contributions are not includable in the employee's adjusted gross income for federal income tax purposes.

(b) The recipient of any distribution made up in whole or in part of contributions made pursuant to subsection (a) may elect to have the payor withhold.

(c)(i) If the recipient elects withholding the payor shall withhold and remit to the department as provided in 42.17.111 through 42.17.116.

(ii) The recipient shall notify the payor of the election to have withholding by using the federal W4P form noted as filed for state purposes.

(4) Tip income received by an employee for services rendered within the premises of a licensed food, beverage, or lodging establishment is exempt from Montana withholding after December 31, 1982. However, the exemption is subject to change on the date the president approves legislation passed by Congress that removes the tip requirements of section 6053(c)(3) of the Internal Revenue Code of 1954. Tips received from other services, e.g., hairdressing, driving taxis, delivering goods, etc., remain subject to withholding.

(5) Withholding is required on designated distributions to the employee from contributions under subsection (3) as if distribution were wages and must be reported to the department as provided in ARM 42.16.116.

(a) The payor of distributions made up in whole or in part of contributions made pursuant to section 3(a) shall notify the recipients of the availability of state withholding, and the requirements for the payment of state income tax on the taxable portion of a distribution.

(b) Payors shall notify payees of the state requirements at the same time payees are notified of the federal election requirements under 3405(d)(10)(B) IRC. AUTH, 15-30-305, MCA; IMP, 15-30-201(4), MCA.

3. These amendments are being proposed for the following reasons:

42.15.311 is amended to include the W-2P as an information return and to specify reporting requirements for deferred-type plans. Because the amendment to 42.17.103 eliminates mandatory withholding for the income, information reporting is necessary as an alternative method of securing compliance with the taxation of this income.


42.17.103 is being amended because the present rule requiring mandatory withholding is not feasible for trustees of retirement and deferred compensation plans to implement. As a substitute we propose rules providing for voluntary withholding, requiring payors to notify recipients of (1) availability of state withholding and (2) the requirement to pay Montana state income tax on the taxable portion of a distribution.

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 September 28, 1987.

5. 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 08/17/87.

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 X relating)	the proposed adoption of
to the Dangerous Drug Tax Act.)	RULES I through X relating to
)	Dangerous Drug Tax Act.

TO: All Interested Persons:

1. On September 22, 1987 at 9:30 a.m., a public hearing will be held in 4th Floor Conference Room, Mitchell Building, at Helena, Montana, to consider the adoption of rules I through X relating to the Dangerous Tax Act.

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

RULE I DEFINITIONS As used in this rule, unless context requires otherwise, the following definitions apply:

- (1) "Criminal Justice Agency" as defined in 44-5-103, MCA.
- (2) "Market Value", is the value of the substance at the time of confiscation or report and may vary substantially throughout the state contingent upon consumer demand.
- (3) "Public Criminal Justice Information" as defined in 44-5-103, MCA. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Secs. 3(2)(a) and 5(1), Ch. 563, L. 1987.

RULE II FILING OF RETURNS - DANGEROUS DRUG INFORMATION REPORT (1) Every person possessing or storing dangerous drugs, and not authorized to do so by law, shall file a return with the department. This return shall contain the type, quantity, and market value of such dangerous drugs in their possession or being stored by them. This return shall be filed within 72 hours of their arrest.

(2) The department shall review such return and notify the taxpayer of the tax assessment within 30 days.

(3) At the time of arrest law enforcement personnel shall complete the dangerous drug information report as required by the department and afford the taxpayer an opportunity to sign it. Should the taxpayer refuse to sign the form, the refusal shall be noted on the form, and the law enforcement officer shall certify and submit the form to the department within 72 hours of the arrest.

(4) A copy of the completed form may be retained in the file of the criminal justice agency for proof of compliance, and a copy shall be provided to the taxpayer.

(5) The form and content of the dangerous drug information report shall include: taxpayer name, address, social security number, arrest or booking number and the type and quantity of the dangerous drugs possessed or stored. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Secs. 3 and 5(1), Ch. 563, L. 1987.

RULE III NOTICE OF ASSESSMENT - HEARING - LIEN (1) A notice of assessment is immediately due and payable.

(2) The taxpayer has the right to request a hearing on the matter of the tax. Such request must be submitted in writing within 30 days from the date of the assessment and shall specify the specific issues being contested. The hearing if requested, shall be conducted in accordance with the provisions and requirements of section 15-1-705, MCA. In most cases, one hearing will be held to consider both the assessment and the warrant of distraint.

(3) The associated criminal nature of assessments under this act is considered to be cause for emergency issuance of the warrant for distraint under the provisions of 15-1-703(1)(a), MCA. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 5(2), Ch. 563, L. 1987.

RULE IV CREDITS AND REFUNDS - PROCEDURES (1) If the department discovers that the amount of the tax collected is in excess of the amount due or that any portion of the penalty or interest was erroneously or illegally collected or upon claim duly filed by the taxpayer or upon final judgment of a court, the amount of any overpayment shall be credited against any other tax, penalty or interest due the department from the taxpayer and the balance of any excess shall be refunded to such taxpayer.

(2) Within 6 months after a claim is filed, the department shall examine a claim for refund and if such claim is approved shall issue a credit or refund to the taxpayer within 60 days of the approval; if the claim is disallowed, the department shall notify the taxpayer and grant a hearing thereon upon proper application from the taxpayer.

(3) Except as herein provided, interest shall be allowed on overpayments at the same rate as charged on delinquent taxes from either the due date of the tax or the date of the overpayment (whichever is later) to the date of the department approval of the refund or credit of the overpayment, unless:

(a) the overpayment is refunded within 6 months of the date due, or

(b) the overpayment or refund is less than \$1.

(4) An overpayment not made incident to a bonafide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this rule shall not be considered subject to interest refund. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP 15-1-503 and Sec. 3, Ch. 563, L. 1987.

RULE V ASSESSMENT NOT CONTINGENT UPON CONVICTION (1) A criminal conviction for drug related charges or other charges is not a prerequisite for the tax. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 3, Ch. 563, L. 1987.

RULE VI RESIDENCY NOT CONSIDERED FACTOR (1) Any person possessing or storing dangerous drugs within or transporting them through the jurisdictional boundaries of Montana is subject

to the provisions of this act, whether resident or nonresident. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 3, Ch. 563, L. 1987.

RULE VII CONFIDENTIALITY OF TAX RECORDS (1) The department will restrict the release of any information required to administer this act when the law requires confidentiality by the originating criminal justice agency. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 5(1), Ch. 563, L. 1987.

RULE VIII INVESTIGATION (1) The department may examine or inspect the public criminal justice information files of any criminal justice agency, or taxpayer records to administer this tax. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 5(1), Ch. 563, L. 1987.

RULE IX ASSISTANCE OF COURTS - COUNTY ATTORNEY (1) Upon their concurrence the department may seek the assistance of any court of competent jurisdiction, officer of the court or county attorney in collection of any assessment under the provisions of this act by:

(a) requesting a report for each taxpayer or person subject to drug related charges within the court's jurisdiction, which shall include the amount of any fines assessed, paid, waived or abated and the terms stipulated for payment of such fines. Such report may be submitted to the department monthly.

(b) requesting notification from the court of the conviction or sentencing of an individual subject to an assessment under the provisions of this act.

(c) requesting that upon notification of any assessment the court add the assessment to the amount of fines or forfeitures levied against the taxpayer and collected in like manner as such fines and forfeitures.

(d) requesting that upon notification of any assessment from the department the county attorney include payment of such assessment as an integral and contingent portion of any plea bargain agreement with the taxpayer. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 5, Ch. 563, L. 1987.

RULE X CLOSING AGREEMENTS (1) The director of revenue or any person authorized in writing by him may enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this act for any taxable period. Any such agreement shall constitute the department's final and conclusive determination of the tax due under the Dangerous Drug Tax Act. AUTH Sec. 5, Ch. 563, L. 1987, EFF. 10/1/87. IMP Sec. 5(2), Ch. 563, L. 1987.

3. The Department proposes to adopt rules (I through X) because the 1987 Legislature enacted legislation providing for a dangerous drug tax.

Rule I is required under the provisions of section 5(2) of the act because terms used in Rules I through X are not clarified or specifically addressed in the act. The rationale for each definition is as follows:

(1) The act mandated reporting by law enforcement personnel and peace officers to the department. These individuals collectively work in criminal justice agencies and the information required is obtained through their duties with such agencies. To implement the act the department must look to agency files and records not the files and records of individual law enforcement personnel or peace officers.

(2) The act provides for assessment at 10% of the market value of the drugs. The market value varies based upon supply and demand from city to city, or regionally throughout Montana and fluctuates frequently, and the definition reflects these factors.

(3) The act mandates reporting compliance of law enforcement personnel and peace officers, but does not specify the type of information. The definition clearly states what type of information will be expected.

Rule II is necessary to clarify the requirement that any person possessing or storing illegal substances is required to file a return with the department. It also sets forth the information the department requires to be included in the dangerous drug information report.

Rule III is necessary to establish the date the assessment is due and provide for a hearing on the tax due. It also provides for an emergency issuance of a warrant of distraint.

Rule IV is required to establish a credit and refund policy for this tax and establish time limits. The rule sets forth specific procedure and policy and provides for hearing when a refund is denied. In terms of interest on refunds, the rule incorporates the policy established in 15-30-149 for individual incomes taxes.

Rule V is required to clarify that assessment of a tax under the provisions of this act is not contingent upon conviction. The tax is levied by law simply on possession and storage of drugs. Conviction is not a necessary condition for the tax to be levied.

Rule VI is required to clarify anticipated residency and jurisdictional issues. The law levies the tax on any person with dangerous drugs and is not restricted to Montana residents only.

Rule VII is required to implement section 5(1) of this act to conform to information obtained in administering this tax with the confidentiality of criminal justice information.

Rule VIII is required to implement section 5(1) of this act to facilitate reporting and information compliance of criminal justice agencies. Rule VIII provides for examination of files and records.

Rule IX is required under the provisions of Section 5(2) of this act to administer collection and enforcement of assessments under this act. The rule provides for alternative methods of collection and enforcement beyond normal civil procedures and will reinforce and support assessments of this type by actively involving law enforcement agencies and officials in the assessment and collection processes. The rule will indicate and clarify the active team participation of the department and the law enforcement community in the administration of this tax.

Rule X is required to facilitate resolution of disputes, compromises and other issuers. Taxpayers assessed under the provisions of the act may face heavy criminal sentences and fines and are likely to dissipate existing assets in efforts to defend themselves. The department must have the means to accept reasonable offers in compromise rather than await collection in full after lengthy periods of incarceration. Further, there may be significant disputes over value. Hence, the department retains the ability to modify initial assessments in closing agreements to facilitate the administration of the tax.

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 September 24, 1987.

5. Eric J. Fehlig, 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 08/17/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.31.2141)	of ARM 42.31.2141 relating to
relating to Personal Property))	Personal Property Tax and Over-
and Overpayment Refunds for)	payment Refunds for Public
Public Contractors.)	Contractors.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 28, 1987, the Department of Revenue proposes to amend ARM 42.31.2141 relating to personal property and overpayment refunds for public contractors.

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

42.31.2141 PERSONAL PROPERTY TAX CREDIT (1) Public contractors, who have had the 1% of the gross amount due to them under their respective contracts contractors gross receipts tax withheld by the respective contracting governmental agencies from them by any governmental agency or prime contractor s, shall be allowed, as a refund from his gross receipts tax account; those of any personal property taxes and motor vehicle license fees paid incurred between January 1 and December 31, on any personal property of the contractor which is used in the business of the contractor of the year the withholding occurred. The refund applies only to personal property taxes on equipment used in the construction business of the contractor.

(2) These refunds shall only be allowed, upon delivery to the department of revenue of after all necessary reports are filed and copies of the applicable paid personal property tax paid and motor vehicle fee receipts, provided such application is mailed or delivered on or before July 1 of the year following the year in which the personal property tax liability is incurred and paid are submitted to the department of revenue.

(3) All overpayment refunds and personal property tax and motor vehicle fee refund requests are due July 1 of the calendar year following the year the tax liability or overpayment occurred. For any given year in which a tax liability or overpayment occurred, refund requests will be accepted annually up to five years after the original July 1 due date for that year.
AUTH. 15-1-201, 15-50-301 MCA, and Sec. 3, Ch. 437 L. 1985, IMP. 15-50-207, 15-50-301 and 15-50-304, MCA.

3. The department proposes the amendment to ARM 42.31.2141 because in 1985, the legislature added a provision to the Public Contractor Tax which allows a taxpayer to apply for refunds up to five years from the date the return was due or one year from the date of the overpayment whichever date expires later (Ch. 437, L. 1985). Therefore this rule must be amended to reflect this change in the law.

In the proposed (3) which has been added to the rule the date for filing the return/refund request is six months after the end of the calendar/report year. This rule is in agreement with other taxes. Generally, taxes which are paid quarterly are due one month after the end of the quarter. Taxes paid yearly are due about three to five months after the end of the tax year. Authority for this rule is found in Sec. 15-50-301 MCA, which gives the department authority to set the date for filing the contractor's return. New subsection (3) is necessary to notify contractors of the filing date.

The rule also is proposed to be amended to clarify the administration of the tax. For example, the word "credit" has been stricken. The division refunds personal property taxes directly to the taxpayer. The amended rule also would cover refunds of overpayment of the gross receipts tax. ARM 42.31.2141(1) has been amended to specify that the personal property tax which may be refunded must be on personal property used in the construction business. This proposed amendment codifies a long standing administrative interpretation of the department. The amendment is necessary to notify contractors of this policy.

ARM 42.31.2141(1) is also proposed to be amended to reflect a change in the department's interpretation of the gross receipts tax as a consequence of the enactment of Ch. 437, L. 1985, which provides a five year statute of limitations for the tax. Under prior law and interpretation property taxes and vehicle fees had to be both incurred and paid during the calendar year in which the tax was withheld. Under the amended rule to be eligible for a refund, the personal property tax and motor vehicle license fee need only be incurred during the year of the withholding and payment of these taxes may occur anytime during the five year statute of limitations for the gross receipts tax. After payment of the taxes occurs, a refund may be claimed. The amendment is necessary to notify contractors of this change.

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, Montana 59620

no later than September 24, 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 Cleo Anderson at the above address no later than September 24, 1987.

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

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.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/17/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.11.201 through)		on ARM 42.11.201 through
42.11.252 relating to Montana)		42.11.252 relating to Montana
Liquor Vendors and Representa-	)	Liquor Vendors and Representa-
tives.	)	tives

TO: All Interested Persons:

1. On September 21, 1987, at 9:00 a.m. , a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider amendments of ARM 42.11.201 through 42.11.252 relating to Montana Liquor Vendors and Representatives.

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

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

(a) "Broker" means a person, partnership, association, or corporation who acts on behalf of employed by a vendor to promote the sale of liquor within Montana arrange for the employment and registration of the vendor's representatives as provided by these rules and/or to supervise those representatives.

~~(b) "Broker's Permit" means a permit issued to a broker entitling it to act on behalf of a vendor to promote the sale of liquor in Montana and to register representatives in accordance with these rules.~~

(b) "Employ" means to engage the services of a person either through direct supervision and control of the person or through a contract for services with the person.

(c) "Licensee" means a person, partnership, association, or corporation holding a Montana retail liquor license and retail liquor operations located on U. S. military installations within Montana.

(d) "Promote" means to solicit the listing and maintenance of products in accordance with liquor division listing and delisting procedures; arrange for special orders of products not regularly listed by the liquor division; advertise products regularly listed by the liquor division in accordance with ARM 42.11.245 and ARM 42.13.212; call on licensees, state liquor store managers, state liquor store agents, and liquor division personnel to develop product identification and to provide product information; and distribute product samples in accordance with ARM 42.11.243.

~~##~~(e) "Representative" means a person employed and registered, as provided by these rules, by a ~~broker or~~ vendor to promote the sale of ~~liquor~~ the vendor's products in Montana.

(f) "Resident" means a person who dwells within the state of Montana except for occasional trips out of state.

(e)(g) "Vendor" means a person, partnership, association, or corporation selling liquor to the department and to whom the department makes payment for liquor received.

(f)(h) "Vendor's Permit" means a permit issued to a vendor entitling it to register promote the sale of its products in Montana through representatives registered in accordance with these rules.

(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, 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.205 VENDORS EMPLOYMENT OF REPRESENTATIVES AND BROKERS

(1) Vendors who desire to have their products promoted within in Montana may+ shall employ and register at least one person and may employ and register one additional person to promote the sale of the vendor's products in Montana. A broker may arrange for the employment and registration of a representative. A person who is a broker may be registered as a representative as provided in these rules.

(a)--employ individuals under the direct supervision and control of the vendor to represent and promote the vendor's product; or

(b)--engage the service of a broker to act on behalf of the vendor to promote the vendor's products.

(2)--A vendor who chooses (1)(a) must apply to the liquor division for a vendor's permit which will authorize the vendor to register representatives with the department to call upon retail licensees and other persons, and to promote the sale of the vendor's brand of liquor.

(3)--A vendor who chooses (1)(b) must submit a letter to the liquor division authorizing the broker to act on the vendor's behalf in the promotion of the vendor's products within Montana.

(a)--A broker engaged by a vendor to promote its products must apply to the liquor division for a broker's permit which will authorize the broker to register representatives with the department who may call upon retail licensees and other persons and to promote the sale of the vendor's brand of liquor.

(2) A vendor, a vendor's employee, or a vendor's broker may only promote the sale of its products in Montana when accompanied by the vendor's representative, except as provided in (3).

(3) A vendor shall have 60 days to register a replacement for a representative who has resigned and who is the vendor's only representative. The vendor may only continue to promote the sale of its products in Montana without a registered representative during this period if the vendor provides to the liquor division advance written notice identifying the unregistered representative.

AUTH, 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.211 REGISTRATION OF REPRESENTATIVES (1) Any person acting as a representative of a vendor ~~or broker~~ must be registered with the department by the vendor in accordance with the provisions of ARM 42.11.212 through 42.11.215 and have been issued an identification card as provided for in ARM 42.11.232.

(2) No person may be registered as a representative who is:

(a) an alcoholic beverage retail licensee, licensed beer wholesaler, table wine distributor, or brewer;

(b) an officer, director, agent, or employee of an alcoholic beverage retail licensee, licensed beer wholesaler, table wine distributor, or brewer; ~~or~~

(c) not at least 18 years of age and of good repute, ~~or~~

(d) not a resident of Montana within 30 days of application for registration.

(3) In considering an application for registration of a representative, the department shall consider all matters pertaining to the residency, qualifications, experience, and character (including criminal record, if any) of the representative to be registered.

(4) An ~~request~~ application to register a representative must be accompanied by two recent unmounted photographs 1½ inches square, of the representative to be registered.

(5) An application to register a representative must be signed by the vendor or an official of the vendor.

(6) Registration of a representative is not effective until 30 days after the liquor division receives a properly completed application and has approved the application.

(7) Evidence of residency includes:

(a) qualification to vote in a Montana election, or

(b) filing a Montana income tax return. AUTH, 16-1-303, Auth. Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.212 RESTRICTION ON NUMBER OF REPRESENTATIVES (1) No vendor ~~or broker~~ may ~~employ~~ have less than one or more than two representatives registered to promote the sale of its products in Montana.

(2) An identification card shall neither be issued to an applicant representative nor shall the application for a representative be approved if two identification cards have previously been issued for the vendor and are still outstanding. One of the previously issued identification cards must be returned to the liquor division before a new identification card may be issued unless the vendor has provided the liquor division with an acceptable explanation in writing showing why it is impossible or impractical to return the card. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.213 APPLICATION FOR VENDOR OR BROKER PERMIT (1) A vendor ~~or broker~~ who desires to ~~employ representatives to call upon retail licensees and other persons~~ to promote the sale of his brands of liquor through a representative registered in accordance with these rules must be the holder of a Montana vendor ~~or broker~~ permit. Such vendor ~~or broker~~ is then eligible

to must register at least one representative s in accordance with ARM 42.11.211 through 42.11.215 to hold a permit. The vendor or broker shall apply for the registration of a representative s on forms provided by the liquor division.

(2) In considering an application for a vendor or broker permit, the department shall consider all matters pertaining to the general reputation of the vendor or broker. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.214 PERMIT AND REGISTRATION FEES (1) An applicant for a vendor or broker permit must file a written application on the form provided by the liquor division accompanied by a \$25 annual permit fee.

(2) A vendor or broker seeking to register a representative must file a registration form provided by the liquor division accompanied by a \$25 annual registration fee. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.215 EXPIRATION AND RENEWAL OF REGISTRATION (1) A vendor is or broker's permit shall be issued for the ~~first~~ year beginning July October 1 and ending June September 30. All permits expire June September 30. A vendor or broker permit may be renewed annually by filing an application for renewal on a form s provided by the liquor division accompanied by the \$25 filing fee.

(2) A vendor or broker may register a representative s for the ~~first~~ year beginning July October 1 and ending June September 30. A registration expires on September 30. Registration may be renewed by filing an application for renewal of registration on a form s provided by the liquor division and paying accompanied by a \$25 filing fee for each representative. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.217 CANCELLATION OF REGISTRATION (1) The department shall cancel the registration of a vendor's representative if requested in writing by the vendor or broker.

(2)--A vendor who terminates its agreement with a broker must notify the department in writing that the broker and any representatives registered by the broker are no longer authorized to promote the vendor's products.

(3)--Whenever a broker acts on behalf of only one vendor and they terminate their agreement, the registration of any representatives employed by the broker must be cancelled by the broker as provided in subsection (1) above. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.232 REPRESENTATIVE IDENTIFICATION CARDS (1) Whenever the liquor division approves a vendor's or broker's registration of a representative s, the division shall issue an identification card to the representative containing the name, address, and physical description of the representative. A recent photograph of the representative must be attached to the identification card. The card must be countersigned by the

administrator or assistant administrator of the liquor division. The representative must return the identification card to the vendor ~~or broker~~ when requested. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.242 INFORMATION ON STATE LIQUOR STORE INVENTORIES

(1) A ~~R~~representative ~~s~~ may call on state liquor stores or liquor division personnel for information as to a stores' merchandise and inventories. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.243 SAMPLES (1) A vendor may use no more than 24 cases of liquor as samples during any calendar year. This allotment includes all brands of liquor produced or sold by a vendor. A ~~R~~representatives may distribute samples.

(2) For the purposes of this section and ARM 42.11.244, a sample is defined as a container of liquor presented by a representative for inspection or a demonstration of the quality of the product.

(3) A sample may not exceed 1 pint or its metric equivalent, 500 milliliters.

(4) A sample of no more than 1 pint or its metric equivalent of any liquor and ~~no more than 1 gallon or its metric equivalent of any wine~~, may be furnished or given to a licensed retailer who has not previously purchased that product.

(5) A ~~S~~sample ~~sof~~ liquor may only be purchased ~~only~~through state liquor stores at retail price. A separate order for a sample ~~smust~~ be placed by each registered representative whose name and identification number must appear on the order. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.244 RECORDS RELATED TO SAMPLES -- DEPARTMENT EXAMINATIONS (1) Each ~~authorized~~registered representative shall maintain a permanent sample log which must contain a listing of all sample purchases, the name and location of each recipient, and the date the sample was received.

(2) A ~~S~~sample ~~s~~distributed to ~~anya~~ licensee must be reported to the department of revenue investigation program on a monthly basis on the form ~~s~~supplied by the investigation program.

(3) The department may, at any reasonable time and place, examine the records of ~~thea~~ registered representative. For the purposes of this rule, reasonable time and place means normal business hours at the representative's place of business. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.245 ADVERTISING SPECIALTIES (1) Regulations number 6-27 6.85 and ~~6-28~~ 6.87 of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury as set forth in 27 C.F.R., and subsequent amendments and supplements, are hereby adopted as though fully set forth herein as the regulations for consumer advertising specialties and retailer advertising specialties.

(2) Vendors and agents representatives may distribute such advertising specialties to the extent allowed by regulations 6-27 6.85 and 6-28 6.87 of 27 C.F.R. AUTH 16-1-303, Auth Ext. Sec. 2, CH. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.251 UNLAWFUL ACTS (1) Sections 16-1-304, 16-2-105, 16-3-101, through 16-3-103, 16-6-104(1), and 16-6-301, MCA, of the Montana Alcoholic Beverage Code provide that certain practices in connection with the sale of alcoholic beverages shall be unlawful. All vendors, and their brokers, and representatives shall be familiar with and abide by these statutes.

(2) Although not limiting the scope of the statutory provisions and with the exception of the advertising specialties of ARM 42.11.245, the following practices are in violation of one or more of these sections:

(a) to grant, allow, pay, or rebate merchandise or any other thing of value to any licensee or his servants, agents, or employees, including the purchase of merchandise at retail for delivery to a licensee;

(b) to grant, allow, or pay anything of value to a licensee or his servants, agents, or employees for the privilege of advertising display;

(c) to purchase drinks "for the house" to induce the purchase of particular brands;

(d) to induce liquor division personnel to promote the sale of particular brands. This prohibition does not apply to discussions between vendors, brokers, or representatives and liquor division employees with regard to the department's purchase of liquor and wines.

(e) to grant, allow, or pay money or anything of substantial value to licensees or their agents or employees in order to induce the sale of particular brands;

(f) to represent, expressly or by implication, that thea vendor, broker, or representative is affiliated with or has any influence withover any department of the state government;

(g) to repurchase, replace, or exchange any liquors purchased by licensees or other persons from state liquor stores. AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, L. 1987, Eff. 10/1/87; IMP, 16-3-103.

42.11.252 REVOCATION OR SUSPENSION OF PERMITS OR REGISTRATIONS (1) The department may, after notice and opportunity for hearing in conformity with the provisions of the Montana administrative procedure act, deny, suspend, or revoke, or cancel a vendor's, broker's, permit or representative's permit or registration if it determines that the vendor, broker, or representative has violated any provision of the Montana alcoholic beverage code or administrative rule of Montana relating to alcoholic beverages, or upon any other reasonable cause shown.

(2) A vendor, broker, or representative whose permit or registration has been denied, suspended, or revoked, or cancelled is ineligible to hold any permit or registration under this chapter, any other rule of the department or any law of Montana relating to liquor for a period up to 3 years from the

date the permit or registration was denied, suspended, or revoked , or cancelled . AUTH 16-1-303, Auth Ext. Sec. 2, Ch. 293, I. 1987, Eff. 10/1/87; IMP, 16-3-103.

3. The above-referenced amendments are necessary for the following reasons:

42.11.201 through 42.11.252 are being proposed for amendment because the current rules concerning liquor vendors and their representatives, which these rules involve, are not consistent with the law as amended by HB 574. Some rule amendments are being proposed to overcome past problems.

42.11.201 defines terms used in the rest of the sub-chapter. The terms "employ", "promote", "representative", "resident", and "vendor" are used in the law, but are not defined there. The term "broker" is defined to recognize that vendors may employ brokers to arrange for and manage registered representatives. The term "employ" needs to be defined to clarify the relationship that can exist between a vendor and a representative. The term "representative" needs to have the definition amended to make the language concerning what a vendor sells conform with the language used in the law and to delete reference to a representative being employed by a broker since the law only indicates representatives being employed by a vendor. The term "resident" needs to be defined to indicate the degree to which a person must be located in Montana to qualify as a resident. The term "vendor" needs to have the definition amended to make clear that a vendor's relationship with the department is not limited to the promotion of liquor but includes the eventual completion of a sales transaction ending in the department's payment for liquor received.

The term "vendor's permit" needs to have the definition amended to make the language concerning what a vendor is permitted to do conform with the language used in the law. The term "broker" needs to have the definition amended to eliminate reference to a broker performing promotional activities independent of a registered representative. A person who is a broker may promote the sale of a vendor's product after becoming registered as a representative or when accompanied by the vendor's representative; otherwise, a broker functions as a vendor's facilitator of proper representation. The term "broker's permit" no longer needs to be defined since the only regulation required by the law concerns vendors and representatives; a broker does not need a permit to perform the brokerage services defined in the rule.

Amendment to 42.11.205 is being proposed to eliminate confusion that has existed in the past about the roles of vendors and brokers in the hiring and registration of representatives, to eliminate reference to a broker performing promotional activities independent of a registered representative, and to eliminate reference to a broker's permit requirement. The rule

also needs to be amended to define the method of promoting products during the 60-day vacancy of a representative position allowed in the law.

Amendment to 42.11.211 is being proposed to include Montana residency as an additional requirement of the registration since residency is now a requirement of the law. The amendment requires the vendor to register a representative directly and sign the registration application since the law specifies that the representative shall be employed by the vendor. The amendment also clears up an inconsistency in the current rule concerning the prohibition of a representative being or working for an alcoholic beverage retail licensee and provides for a 30-day administrative period to process an application to prevent problems experienced in the past with last minute registrations. Since the law requires representatives to be Montana residents, evidence of being a resident is needed to carry out the law.

Amendment to 42.11.212 is being proposed to specify the method by which the department will control the number of representatives allowed a vendor in order to reasonably assure maintenance of the limitations specified in the law.

Amendment to 42.11.213 and 42.11.214 are being proposed to eliminate application and fees for broker permits since a broker does not need a permit to perform the brokerage services defined in the rules.

Amendment to 42.11.215 is being proposed to eliminate reference to broker permits which are not required and to change the vendor permit and representative registration cycle to an October 1 to September 30 year to aid the liquor division's work flow.

Amendment to 42.11.217 is being proposed to eliminate the requirement that a vendor must notify the department of termination of its agreement with a broker since there is no need to regulate a vendor/broker relationship. The requirements in the law are adequately satisfied by regulating registration of vendors and their representatives.

Amendment to 42.11.232 is being proposed to eliminate the reference to a broker's registration of representatives and the return of identification cards to a broker since registration is to be formally made by the vendor.

Amendment to 42.11.243 is being proposed to eliminate the reference to a broker's registration of representatives and the return of identification cards to a broker since registration is to be formally made by the vendor.

Amendment to 42.11.244 is being proposed to substitute the term "registered" for "authorized" in order to prevent confusion about the use of different terminology.

Amendment to 42.11.245 is being proposed to provide the correct references to the federal register and to substitute the term "representatives" for "agents" in order to prevent confusion about the use of different terminology.

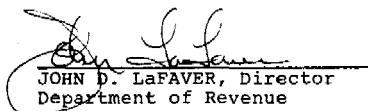
Amendment to 42.11.251 and 42.11.252 are being proposed, 1) to eliminate reference to table wine and to brokers representing products to the liquor division (which they are no longer authorized to do unless they are also registered representatives) and 2) to make a distinction between suspension and cancellation of permits or registration that is not clear in the current rule.

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 September 24, 1987.

5. Michael G. Garrity, 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 08/17/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rule I through V relating)	the PROPOSED ADOPTION of Rule
to Corporation License Tax)	I through V relating to
Exemption for Research and)	Corporation License Tax
Development Firms.)	Exemption for Research and
)	Development Firms.

TO: All Interested Persons:

1. On September 17, 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 rule I through V, relating to corporation license tax exemption for research and development firms.
2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.
3. The new rules as proposed to be adopted provides as follows:

RULE I RESEARCH AND DEVELOPMENT - APPLICATION AND ELIGIBILITY (1) The department, through its natural resource and corporation tax division, will certify the eligibility of firms for both the five-year corporation tax exemption and the class five research and development property classification.

(2) A firm may apply for either or both the corporation tax or property tax benefit. Claiming one of the benefits is not a prerequisite to claiming the other.

(3) To qualify for the class five property classification, a firm must apply annually to the department on or before January 1 of the year for which the classification is desired.

(4) To obtain the corporate license tax exemption, the firm must file an annual application with the department before the end of the first calendar quarter during which the firm does business in Montana.

(5) Taxpayers will be required to submit information determined to be necessary by the department for evaluating the eligibility of firms for the research and development tax benefits. AUTH 15-31-501, 15-1-201, Auth Ext. Sec. 7, Ch. 659, L. 1987, Eff. 7/1/87; IMP Secs. 1 and 3, Ch. 659, L. 1987.

RULE II RESEARCH AND DEVELOPMENT FIRM - EXEMPTION PERIOD

(1) An entity that qualifies as a research and development firm as defined in 15-1-101(1)(c) and is incorporated or qualified to do business in Montana on or after July 1, 1987 is exempt from the corporation license tax on the net income earned from research and development activities for its first five tax periods.

(2) A corporation which qualifies as a research and development firm under 15-1-101(1)(c) and began operating in

Montana prior to July 1, 1987, will be allowed an exemption from the Montana Corporation License Tax on research and development net income earned on or after July 1, 1987 for the balance of its first five tax periods of activity in Montana. AUTH 15-31-501, MCA, Auth. Ext. Sec. 7, Ch. 659, L. 1987, Eff. 7/1/87, IMP, Sec. 1, Ch. 659, L. 1987.

RULE III REORGANIZATIONS (1) A corporation which is created through the reorganization of a corporation currently operating in Montana, is not eligible for the research and development tax benefits if the newly created research and development subsidiary is essentially continuing current and past activities of the parent in Montana. If the newly created corporation is carrying on new research and development activities separate and distinct from the operations of the parent, the corporation will be eligible for tax benefits. AUTH 15-31-501, MCA, Auth. Ext. Sec. 7, Ch. 659, L. 1987, Eff. 7/1/87, IMP, Sec. 1, Ch. 659, L. 1987.

RULE IV "PRINCIPAL PURPOSE" DEFINED (1) In order for a firm to qualify as a research and development firm, over 50% of the real and tangible personal property located in Montana and 50% of its Montana payroll must be directly related to research and development activities. AUTH 15-31-501, MCA, Auth. Ext. Sec. 7, Ch. 659, L. 1987, Eff. 7/1/87, IMP, Sec. 2, Ch. 659, L. 1987.

RULE V UNRELATED INCOME (1) Income earned by a research and development firm which is unrelated to research and development activities is not eligible for the five year exemption from the Montana Corporation License Tax. In making the determination of whether income earned is related to research and development activities, the department will review the facts presented in each case. However, the following examples demonstrate how the department would decide under certain situations.

(a) If a research and development firm derives income from a contract to perform research and development activities only, all of that income will be eligible for the exemption.

(b) If a research and development firm develops a patent from which it either sells or receives royalties, such income shall be deemed to be research and development income eligible for the exemption.

(c) If a research and development firm is in two distinct businesses, only the income related to the research and development activity shall be exempt.

(d) If a research and development firm develops a product which it then begins to manufacture and sell, a portion of the income from selling the product shall be deemed to be related to the research and development activities. The portion of the total Montana net income deemed to be research and development income activities shall be based upon the average percentage of Montana real and tangible personal property and Montana payroll related to the research and development activities as presented below:

<u>R&D Montana Payroll</u>	+	<u>R&D Montana Real & Tangible</u>
<u>Total Montana Payroll</u>		<u>Personal Property</u>
		<u>Total Montana Real & Tangible</u>
		<u>Personal Property</u>

Divided by 2

AUTH 15-31-501, MCA, Auth. Ext. Sec. 7, Ch. 659, L. 1987, Eff. 7/1/87, IMP, Sec. 1, Ch. 659, L. 1987.

4. The department proposes these rules for the following reasons:

Rule I sets forth the filing requirements necessary to obtain the class 5 property classification and the corporate license tax exemption. The rule states that the application must be submitted on an annual basis. This requirement is necessary to insure that those taxpayers receiving both property tax and corporate income tax relief are in fact research and development companies.

Rule II is necessary because it addresses the question of how to treat entities that would qualify as research and development firms, but were operating in Montana prior to July 1, 1987. In an attempt to treat all taxpayers equally, the rule provides that those research and development entities that were in existence prior to July 1, 1987, will be eligible for a corporate license tax exemption on the balance of their first five tax period.

Rule III addresses the situation where a research and development firm is created through the reorganization of a currently existing firm. The rule attempts to deal with situations by looking at the substance of the action rather than the form. If the final result of the reorganization is the creation of a research and development activity which is new to the State, the newly created entity will be eligible for the 5 year exemption.

Rule IV defines "principal purpose" as required by Ch. 659, L. 1987. In order for a firm to qualify as a research and development corporation, its "principal purpose" must be that of research and development. This rule basically provides that over 50% of the firm's activities must be related to research and development in order to qualify as a research and development firm.

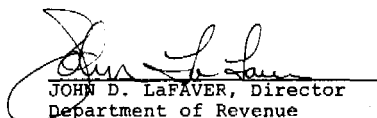
Rule V is necessary since CH. 650, L. 1987, states that only income from research and development activities is exempt from the corporation license tax. This rule clarifies how income related to research and development shall be computed.

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 September 24, 1987.

6. Eric Fehlig, 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 08/17/87.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.13.302,	)	THE PROPOSED AMENDMENT OF
46.13.303, 46.13.304,	)	RULES 46.13.302, 46.13.303,
46.13.401, 46.13.403 and	)	46.13.304, 46.13.401,
46.13.502 pertaining to the	)	46.13.403 AND 46.13.502
Low Income Energy Assistance	)	PERTAINING TO THE LOW INCOME
Program	)	ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On September 16, 1987, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.13.302, 46.13.303, 46.13.304, 46.13.401, 46.13.403 and 46.13.502 pertaining to the Low Income Energy Assistance Program.

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

46.13.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS Subsections (1) through (4) (a) remain the same.

(5) Households in Ravalli county, selected for the pilot percentage of income project, will be eligible according to the rules specific to that project.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87
IMP: Sec. 53-2-201 MCA

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS

(1) The income standards in the table in subsection (2) below are the 1986 1987 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the 1986 1987 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the 1986 1987 poverty level are ineligible for low income energy assistance.

(2) Income standards for all households:

Family Size	Poverty	50		125		150	
	Guideline	Percent		Percent		Percent	
	\$ 5,500	\$ 2,750		\$ 6,875		\$ 8,250	
1	\$--5,360	\$--2,680		\$--6,700		\$--8,040	
	7,400	3,700		9,250		11,100	
2	2,240	3,620		9,050		10,860	
	9,300	4,650		11,625		13,950	
3	9,120	4,560		11,400		13,680	
	11,200	5,600		14,000		16,800	
4	11,000	5,500		13,750		16,500	
	13,100	6,550		16,375		19,650	
5	12,880	6,440		16,100		19,320	
	15,000	7,500		18,750		22,500	
6	14,760	7,380		18,450		22,140	
	16,900	8,450		21,125		25,350	
7	16,640	8,320		20,800		24,960	
	18,800	9,400		23,500		28,200	
8	18,520	9,260		23,150		27,780	
	1,900	950		2,375		2,850	
Additional member add	1,880	940		2,350		2,820	

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87
IMP: Sec. 53-2-201 MCA

46.13.304 INCOME (1) Definitions:

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

(c) Medical and dental deductions mean all medical and dental payments for allowable costs, as described in (4), made by members of the household in the twelve months immediately preceding the month of application. Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party. Medical deductions can only be subtracted from annual gross income that is between 125% and 150% of the ~~1986~~ 1987 U.S. government office of management and budget poverty level for the particular household size. Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for benefits.

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

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87
IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES Subsection (1) remains the same.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if at or below

100% of OMB poverty, 75% if between 101% - 125% of OMB poverty level) type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. Applicants may claim no more bedrooms than household members, except that elderly and handicapped households who can demonstrate unmet need are entitled to a minimum of two bedrooms if the home contains more than one bedroom. The maximum benefit also varies by local contractor districts to account for climatic differences across the state.

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LC-DISTRICTS-IY-II-6-III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield,
McGone, Richland, Dawson, Prairie, Wibaux, Rosebud,
Treasure, Gustaf, Fallon, Powder River and Carter Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	373	325	347	456	397	424
Fuel-Oil	439	382	409	536	466	498
Propane	503	438	468	614	535	571
Electricity						
R-E-Ar	599	521	557	732	637	681
Electricity						
M-B-Ur	916	797	852	1120	974	1041
Coal	238	207	221	297	259	276
Wood	257	224	239	322	280	299

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	516	449	488	581	505	540
Fuel-Oil	609	538	567	683	594	635
Propane	698	607	649	782	688	727
Electricity						
R-E-Ar	892	724	774	932	811	867
Electricity						
M-B-Ur	1273	1107	1183	1425	1240	1326
Coal	356	310	331	416	362	387
Wood	386	336	359	450	392	419

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LC-DISTRICT-IV

Liberty, Hill and Blaine Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	288	251	268	353	308	329
Fuel-Oil	413	359	384	503	438	468
Propane	543	472	505	663	577	616
Electricity	635	553	591	777	676	722
Coal	252	219	234	315	274	293
Wood	273	238	254	341	297	317

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	401	349	373	452	393	428
Fuel-Oil	572	498	532	641	558	596
Propane	753	655	701	844	734	785
Electricity	883	768	821	988	860	919
Coal	378	329	352	441	384	410
Wood	410	356	381	478	416	444

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LC-DISTRICT-V

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

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single	Multi-	Mobile	Single	Multi-	Mobile
	Family	Family		Family	Family	
	Unit	Unit	Home	Unit	Unit	Home
Natural-Gas						
G-F-G	295	257	274	360	314	335
Natural-Gas						
M-F-G	247	215	230	303	264	282
Fuel-Oil	331	288	308	404	351	375
Propane	552	480	513	674	586	627
Electricity	545	474	507	666	579	619
Coal	216	180	201	270	235	251
Wood	234	204	218	293	254	272

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single	Multi-	Mobile	Single	Multi-	Mobile
	Family	Family		Family	Family	
	Unit	Unit	Home	Unit	Unit	Home
Natural-Gas						
G-F-G	408	355	379	459	399	427
Natural-Gas						
M-F-G	343	299	319	387	337	360
Fuel-Oil	459	399	427	514	447	478
Propane	766	666	712	858	747	798
Electricity	756	658	703	847	737	788
Coal	324	282	301	378	329	352
Wood	351	305	326	410	356	381

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LE-DISTRICT-VI

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

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	280	243	260	343	299	319
Fuel-Oil	427	371	397	520	453	484
Propane	501	505	540	709	617	660
Electricity	617	537	574	754	656	702
Coal	245	213	220	306	266	285
Wood	265	231	247	332	288	308

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	389	339	362	439	382	400
Fuel-Oil	592	515	550	663	577	617
Propane	806	701	750	903	786	840
Electricity	857	746	797	960	835	893
Coal	367	319	341	428	373	390
Wood	398	346	370	464	404	432

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LE-DISTRICT-VII

Sweetgrass-Stillwater-Carbon
Yellowstone-and-Big-Horn-Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas						
M-Dr-Ur	320	279	298	392	341	360
Natural-Gas						
M-Pr-Cr	233	203	217	286	249	263
Fuel-Oil	366	319	341	447	389	411
Propane	402	350	374	491	427	452
Electricity	514	440	478	629	547	578
Coal	204	177	190	255	222	235
Wood	221	192	206	276	240	254

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas						
M-Dr-Ur	443	386	412	499	434	459
Natural-Gas						
M-Pr-Cr	324	282	302	366	318	336
Fuel-Oil	508	442	472	569	495	524
Propane	558	486	519	625	544	575
Electricity	714	622	664	800	696	736
Coal	306	266	285	357	311	328
Wood	332	288	308	387	336	356

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LC-DISTRICT-VIII

Lewis-&-Clark-Jefferson-and
Broadwater-Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	272	236	253	333	290	310
Fuel-Oil	303	333	356	467	406	434
Propane	633	551	509	773	673	719
Electricity	599	521	557	732	637	681
Coal	230	207	221	297	258	276
Wood	257	224	239	322	280	299

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	370	329	351	426	370	396
Fuel-Oil	531	462	494	595	510	553
Propane	879	765	817	984	856	915
Electricity	832	724	774	932	811	867
Coal	356	310	331	416	362	387
Wood	386	336	359	450	392	419

MAXIMUM BENEFIT AWARD MATRIX FOR
LC-DISTRICT-IX

Meagher, Gallatin and Park Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	272	236	253	333	290	310
Fuel-Oil	383	333	356	467	406	434
Propane	607	520	565	742	645	690
Electricity	599	521	557	732	637	681
Coal	230	207	221	297	258	276
Wood	257	224	239	322	280	299

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	370	329	351	426	370	396
Fuel-Oil	531	462	494	595	510	553
Propane	843	733	784	944	821	870
Electricity	832	724	774	932	811	867
Coal	356	310	331	416	362	387
Wood	386	336	359	450	392	419

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LE-DISTRICT-X

Lincoln, Flathead, Lake
and Sanders Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	288	251	268	353	308	329
Fuel-Oil	466	405	433	568	494	528
Propane	625	544	582	764	665	711
Electricity	635	553	591	777	676	722
MrP-G-	635	553	591	777	676	722
Electricity	671	584	624	820	713	763
PrPrLr	671	584	624	820	713	763
Coal	252	219	234	315	274	293
Wood	273	238	254	341	297	317

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	401	349	373	452	393	428
Fuel-Oil	646	562	601	724	630	673
Propane	868	755	807	972	846	904
Electricity	883	768	821	988	860	919
MrP-G-	883	768	821	988	860	919
Electricity	932	811	867	1044	908	971
PrPrLr	932	811	867	1044	908	971
Coal	378	329	352	441	384	410
Wood	410	356	381	478	416	444

MAXIMUM-BENEFIT-AWARD-MATRIX-FOR
LC-DISTRICT-XI

Mineral, Missoula and Ravalli Counties

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural-Gas	274	239	255	337	293	313
Fuel-Oil	463	403	430	564	491	525
Propane	648	564	603	792	689	736
Electricity	605	527	563	740	643	688
Coal	200	174	186	250	210	233
Wood	260	226	242	325	283	302

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi-Family Unit	Mobile Home	Single Family Unit	Multi-Family Unit	Mobile Home
Natural-Gas	382	332	355	430	374	400
Fuel-Oil	642	558	597	719	626	669
Propane	900	783	837	1008	877	937
Electricity	841	731	782	941	819	875
Coal	300	261	279	350	305	326
Wood	390	339	363	455	396	423

MAXIMUM BENEFIT-AWARD-MATRIX-FOR
LC-DISTRICT-III

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

Type-Fuel	1-Bedroom-Home			2-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	318	277	296	390	349	363
Fuel-Oil	478	416	445	583	567	542
Propane	661	575	614	807	702	750
Electricity	702	611	653	858	746	798
Coal	278	242	259	348	303	324
Wood	302	262	280	377	328	351

Type-Fuel	3-Bedroom-Home			4+-Bedroom-Home		
	Single Family Unit	Multi- Family Unit	Mobile Home	Single Family Unit	Multi- Family Unit	Mobile Home
Natural-Gas	443	385	412	499	434	464
Fuel-Oil	663	577	616	743	646	691
Propane	917	798	853	1027	893	955
Electricity	975	848	907	1092	950	1016
Coal	418	363	388	487	424	453
Wood	452	394	421	528	459	491

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield,
McCone, Richland, Dawson, Prairie, Wibaux, Rosebud,
Treasure, Custer, Fallon, Powder River and Carter Counties

Single Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	\$270	\$608	\$347	\$297	\$180	\$166	\$416
two	\$330	\$744	\$423	\$363	\$225	\$208	\$508
three	\$374	\$845	\$481	\$413	\$270	\$249	\$577
four	\$420	\$946	\$539	\$462	\$315	\$291	\$646

Multi Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	\$235	\$529	\$302	\$259	\$157	\$145	\$362
two	\$287	\$647	\$368	\$316	\$196	\$181	\$442
three	\$325	\$735	\$419	\$359	\$235	\$217	\$502
four	\$366	\$823	\$469	\$402	\$274	\$253	\$562

Mobile Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	\$251	\$566	\$323	\$277	\$168	\$155	\$387
two	\$307	\$691	\$394	\$338	\$209	\$193	\$472
three	\$347	\$786	\$448	\$384	\$251	\$232	\$537
four	\$391	\$880	\$502	\$430	\$293	\$271	\$601

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Elaine Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$224	\$441	\$368	\$438	\$191	\$176
two	\$274	\$539	\$449	\$535	\$239	\$221
three	\$310	\$612	\$510	\$608	\$287	\$265
four	\$348	\$686	\$572	\$681	\$334	\$309

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$195	\$383	\$320	\$381	\$166	\$153
two	\$236	\$469	\$390	\$465	\$208	\$192
three	\$269	\$533	\$444	\$529	\$249	\$230
four	\$303	\$596	\$498	\$592	\$291	\$269

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$208	\$410	\$342	\$407	\$178	\$164
two	\$254	\$501	\$417	\$497	\$222	\$205
three	\$288	\$569	\$475	\$565	\$267	\$246
four	\$324	\$638	\$532	\$633	\$311	\$287

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

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

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	\$192	\$378	\$296	\$378	\$164	\$151	\$209
two	\$234	\$462	\$360	\$455	\$205	\$189	\$255
three	\$265	\$525	\$410	\$517	\$246	\$227	\$289
four	\$298	\$588	\$459	\$579	\$287	\$265	\$325

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	\$167	\$329	\$257	\$324	\$143	\$132	\$182
two	\$204	\$402	\$314	\$396	\$178	\$164	\$222
three	\$231	\$456	\$357	\$450	\$214	\$197	\$251
four	\$260	\$511	\$400	\$504	\$249	\$230	\$283

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	\$178	\$351	\$275	\$346	\$152	\$141	\$194
two	\$218	\$429	\$335	\$423	\$190	\$176	\$237
three	\$247	\$488	\$381	\$481	\$229	\$211	\$269
four	\$278	\$547	\$427	\$539	\$267	\$246	\$302

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

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

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$217	\$428	\$367	\$344	\$186	\$171
two	\$266	\$523	\$447	\$420	\$232	\$214
three	\$301	\$595	\$508	\$478	\$278	\$257
four	\$338	\$666	\$570	\$535	\$325	\$300

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$189	\$373	\$319	\$299	\$162	\$149
two	\$231	\$455	\$389	\$366	\$202	\$186
three	\$262	\$517	\$442	\$415	\$242	\$224
four	\$294	\$579	\$496	\$465	\$283	\$261

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$202	\$398	\$341	\$320	\$173	\$159
two	\$247	\$487	\$416	\$391	\$216	\$199
three	\$280	\$553	\$473	\$444	\$259	\$239
four	\$315	\$619	\$530	\$497	\$302	\$279

MAXIMUM BENEFIT AWARD MATRIX FOR
J.C. DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

Single Family Units

bedrooms	M.D.U. natural gas	electricity	fuel oil	propane	wood	coal	M.P.C. natural gas
one	\$181	\$357	\$294	\$261	\$155	\$143	\$232
two	\$221	\$436	\$359	\$318	\$193	\$179	\$284
three	\$251	\$496	\$408	\$362	\$232	\$214	\$321
four	\$282	\$555	\$457	\$405	\$271	\$250	\$361

Multi Family Units

bedrooms	M.D.U. natural gas	electricity	fuel oil	propane	wood	coal	M.P.C. natural gas
one	\$158	\$310	\$256	\$227	\$135	\$124	\$202
two	\$193	\$379	\$312	\$277	\$168	\$155	\$247
three	\$218	\$431	\$355	\$315	\$202	\$186	\$279
four	\$245	\$483	\$398	\$353	\$236	\$217	\$314

Mobile Family Units

bedrooms	M.D.U. natural gas	electricity	fuel oil	propane	wood	coal	M.P.C. natural gas
one	\$169	\$332	\$274	\$242	\$144	\$133	\$216
two	\$206	\$406	\$334	\$296	\$180	\$166	\$264
three	\$233	\$461	\$379	\$336	\$216	\$199	\$298
four	\$262	\$516	\$425	\$377	\$252	\$232	\$336

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$211	\$416	\$347	\$431	\$180	\$166
two	\$258	\$508	\$423	\$526	\$225	\$208
three	\$292	\$577	\$481	\$598	\$270	\$249
four	\$328	\$646	\$539	\$670	\$315	\$291

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$184	\$362	\$302	\$375	\$157	\$145
two	\$224	\$442	\$368	\$458	\$196	\$181
three	\$254	\$502	\$419	\$521	\$235	\$217
four	\$286	\$562	\$469	\$583	\$274	\$253

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$196	\$387	\$323	\$401	\$168	\$155
two	\$240	\$472	\$394	\$490	\$209	\$193
three	\$271	\$537	\$448	\$556	\$251	\$232
four	\$305	\$601	\$502	\$623	\$293	\$271

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$211	\$416	\$365	\$455	\$180	\$166
two	\$258	\$508	\$445	\$556	\$225	\$208
three	\$292	\$577	\$506	\$632	\$270	\$249
four	\$328	\$646	\$567	\$708	\$315	\$291

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$184	\$362	\$317	\$396	\$157	\$145
two	\$224	\$442	\$387	\$484	\$196	\$181
three	\$254	\$502	\$440	\$550	\$235	\$217
four	\$286	\$562	\$493	\$616	\$274	\$253

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$196	\$387	\$339	\$423	\$168	\$155
two	\$240	\$472	\$413	\$517	\$209	\$193
three	\$271	\$537	\$470	\$588	\$251	\$232
four	\$305	\$601	\$527	\$658	\$293	\$271

MAXIMUM BENEFIT AWARD MATRIX FOR

LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Single Family Units

		M.P.C.					P.P.L.
bedrooms	natural gas	electricity	fuel	propane	wood	coal	electricity
one	\$224	\$441	\$349	\$444	\$191	\$176	\$457
two	\$274	\$539	\$426	\$543	\$239	\$221	\$559
three	\$310	\$612	\$485	\$617	\$287	\$265	\$635
four	\$348	\$686	\$543	\$691	\$334	\$309	\$711

Multi Family Units

		M.P.C.					P.P.L.
bedrooms	natural gas	electricity	fuel	propane	wood	coal	electricity
one	\$195	\$383	\$304	\$387	\$166	\$153	\$398
two	\$238	\$469	\$371	\$472	\$208	\$192	\$486
three	\$269	\$533	\$422	\$537	\$249	\$230	\$552
four	\$303	\$596	\$472	\$601	\$291	\$269	\$618

Mobile Family Units

		M.P.C.					P.P.L.
bedrooms	natural gas	electricity	fuel	propane	wood	coal	electricity
one	\$208	\$410	\$325	\$413	\$178	\$164	\$425
two	\$254	\$501	\$396	\$505	\$222	\$205	\$519
three	\$288	\$569	\$451	\$574	\$267	\$246	\$590
four	\$324	\$638	\$505	\$642	\$311	\$287	\$661

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MAXIMUM BENEFIT AWARD MATRIX FOR

LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$213	\$420	\$333	\$374	\$182	\$168
two	\$261	\$513	\$406	\$457	\$227	\$210
three	\$295	\$583	\$461	\$519	\$273	\$252
four	\$332	\$653	\$517	\$582	\$319	\$294

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$185	\$365	\$290	\$325	\$158	\$146
two	\$227	\$446	\$353	\$397	\$198	\$187
three	\$256	\$507	\$401	\$452	\$238	\$219
four	\$289	\$568	\$450	\$506	\$277	\$256

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$198	\$390	\$310	\$348	\$169	\$156
two	\$242	\$477	\$377	\$425	\$212	\$195
three	\$274	\$542	\$429	\$483	\$254	\$234
four	\$308	\$607	\$481	\$541	\$296	\$273

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

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

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$247	\$487	\$396	\$512	\$211	\$195
two	\$302	\$595	\$483	\$626	\$264	\$244
three	\$342	\$676	\$550	\$711	\$317	\$292
four	\$385	\$757	\$616	\$796	\$369	\$341

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$215	\$424	\$345	\$446	\$184	\$170
two	\$263	\$518	\$420	\$544	\$230	\$212
three	\$297	\$588	\$478	\$619	\$276	\$254
four	\$335	\$659	\$536	\$693	\$321	\$297

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	\$230	\$453	\$369	\$476	\$196	\$181
two	\$281	\$553	\$449	\$582	\$245	\$227
three	\$318	\$629	\$511	\$661	\$295	\$272
four	\$358	\$704	\$573	\$741	\$344	\$317

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87
IMP: Sec. 53-2-201 MCA

46.13.403 METHOD OF PAYMENT Subsections (1) through (2) (a) remain the same.

(b) The amount of the benefit or adjusted award remaining after the application of (2)(a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance in excess of ~~\$100~~ \$50 attributable to the benefit or adjusted award after ~~June~~ April 30 must be returned to the department.

(c) Application for new benefits will not be processed until benefits attributable to previous years' program awards total less than ~~\$100~~ \$50.

(d) All credit balances are presumed to be from previous program awards unless the applicant provides proof to the contrary.

(3) For eligible households that have their energy costs included in their rental payments:

(a) Reimbursement at the rate of 1/7 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. Paid eligible energy costs claimed by the household must be supported by rent receipts. Payments will not exceed 50 percent of the amount of paid rent evidenced by the rent receipt.

(4) Households using wood to heat their home may be reimbursed for wood purchased between July 1 and October 1, if supporting receipts are available.

(a) Households heating with wood may, at the discretion of the local agency, receive their benefit directly. Such households must disclaim any right to additional program benefits for the current heating season regardless of change of address or any other circumstances except emergencies as defined in ARM 46.13.501.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87
IMP: Sec. 53-2-201 MCA

46.13.502 SUPPLEMENTAL ASSISTANCE (1) To the extent funds are available, one-time supplemental assistance for the amount of the outstanding heat bill not to exceed \$250.00 \$150.00 is available to LIEAP clients households at or below 50% of Office of Management and Budget (OMB) poverty standards, as listed in ARM 46.13.303, who have paid at least 5% of their income, as defined in ARM 46.13.304, toward their

home heating costs for the October 1 through April 30 heating season.

(a) Application for supplemental assistance is voluntary. All documentation necessary to process the request for supplemental assistance, including proof of client payment and amount requested, of the outstanding heat bill, is the responsibility of the client.

(b) If they have not already done so, applicants for supplemental assistance must apply for the low income home weatherization assistance program at the time of application for supplemental assistance.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87
IMP: Sec. 53-2-201 MCA

3. These proposed amendments implement a number of changes designed to respond to recommendations made by local program operators and to ensure that benefit levels are set at a point that will not exceed appropriated funds. Benefit levels have been also adjusted for changes in fuel prices.

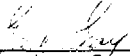
Other specific rule changes would allow households heating with wood to receive direct reimbursement to minimize problems which have occurred with some wood vendors and to allow the elderly and handicapped to receive, in some cases, greater benefits.

The proposed amendment in ARM 46.13.302(5) addresses the 50th Montana Legislature's mandate in House Bill 2 that the Department initiate a LIEAP pilot project during the upcoming LIEAP heating season. The project is to study a Percentage of Income Payment method of providing LIEAP.

After competitive bids, a contractor has been selected to design, monitor and analyze such a project. Rules unique to the system will be promulgated. The pilot project is tentatively proposed to take place in Ravalli County over the same time period as the normal LIEAP program.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 25, 1987.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1/, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

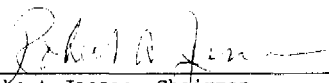
In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules relating	)	RULE 12.6.901
to prohibitions of motorboats on)	
portions of the Bighorn River)	

TO: All Interested Persons:

1. On March 2, 1987 the Fish and Game Commission gave notice of proposed adoption of Rule 12.6.901 to prohibit motorboats on portions of the Bighorn River, on page 244 of the Montana Administrative Register, issue number 5.

2. No public hearing was held nor was one requested. The department has received no written or oral comments concerning those rules.

3. Based on the foregoing, the department hereby adopts the rule as proposed.



Robert Jensen, Chairman
Fish and Game Commission

Certified to the Secretary of State, August 17, 1987.

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

In the matter of the	)	NOTICE OF
amendment of ARM 16.6.301,	)	AMENDMENT
16.6.601, 16.6.901, and	)	OF RULES
16.6.902, concerning birth)	
certificates, marriage appli-)	
cation, death and fetal death)	
certificates	)	(Records and Statistics)

To: All Interested Persons

1. On July 16, 1987, at page 997 of the 1987 Montana Administrative Register, issue number 13, the department published notice of the above-captioned rules.

2. On August 12, 1987, the department conducted a public hearing on the proposed amendments.

3. The department has amended the rules as proposed, with the exception of the following two changes to 16.6.901, which merely clarify language (new matter is capitalized, matter to be stricken is interlined):

16.6.901 DEATH CERTIFICATE (1) Every death certificate must include the following information:

(a) decedent's name, sex, age, date of birth, race and ancestry, city and state or (IF NOT THE UNITED STATES) country of birth, citizenship, marital status, social security number, usual occupation, education, history of military service, residence, date and location of death, and hospital or other institution in which death occurred;

(b)-(d) Same as proposed.

(e) certifications by attending physician and or coroner indicating hour of death and date and time of pronouncement of death, whether an autopsy was performed, and ~~IF~~ WHETHER the AUTOPSY findings were available prior to completion of the cause-of-death item on the certificate;

(f) Same as proposed.

(2)-(3) Same as proposed.

4. Only two written comments were received, both in favor of the proposed amendments concerning birth certificates. No oral comments were received.


JOHN J. BRYNAN, M.D., Director

Certified to the Secretary of State August 17, 1987.

16-8/27/87

Montana Administrative Register

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

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 16.8.820 concerning ambient	)	OF RULE
air quality standards for sulfur)	
dioxide	)	(Air Quality)

To: All Interested Persons

1. On June 11, 1987, the board published notice of proposed amendment of board rule 16.8.820 concerning the state's ambient air quality standards for sulfur dioxide, at page 742 of the 1987 Montana Administrative Register, issue number 11.

2. On June 25, 1987, the board published notice of revised hearing date and place, at page 815 of the 1987 Montana Administrative Register, issue number 12.

3. The board conducted a public hearing at Billings, Montana, on July 31, 1987, and has amended the rule as proposed.

4. Several comments were received at the hearing suggesting that the rule as amended would not provide adequate protection for public health and welfare. Other testimony supported the amendment. The board proceeded with the amendment because of the precise legislative directive to amend the rule as proposed.

HOWARD TOOLE, CHAIRMAN, BOARD OF
HEALTH AND ENVIRONMENTAL SCIENCES

By *John J. Drynan*
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 17, 1987.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of a rule requiring	)	RULE 18.8.429, DISPLAY OF
the display of monthly or	)	MONTHLY OR QUARTERLY G.V.W.
quarterly G.V.W. fee receipts)		FEE RECEIPTS

TO: All Interested Persons:

1. On July 16, 1987, the Department of Highways published notice of a proposed adoption of a rule concerning display of monthly or quarterly G.V.W. fee receipts at pages 1000 and 1001 of the 1987 Montana Administrative Register, issue number 13.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is Section 61-10-209, MCA, and the rule implements Section 61-10-209, MCA.

Gary J. Wicks
Director of Highways

By: *G. J. Wicks*

Certified to the Secretary of State August 17, 1987.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF THE ADOPTION OF
of a rule regulating special)	RULE 18.8.517, REGULATING
vehicle combinations)	SPECIAL VEHICLE
)	COMBINATIONS

TO: All Interested Persons:

1. On June 11, 1987, the Department of Highways published notice of a proposed adoption of a rule concerning special vehicle combinations at pages 747 through 752 of the 1987 Montana Administrative Register, issue number 11.

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

18.8.517 SPECIAL VEHICLE COMBINATIONS

(1) and (2) - same as proposed rule.

(3) Special overlength permits shall be issued to a specific truck or truck tractor and are non-transferrable, and may not be used for any other combination other than a "special vehicle combination" as defined in this rule.

(4) and (5) - same as proposed rule.

(6) The department of highways may restrict or prohibit travel of special vehicle combinations to specific routes, hours of operation, specific days, or seasonal periods, when adverse conditions, traffic, weather or other safety considerations make such operation unsafe or inadvisable. Special vehicle combinations shall not be dispatched during adverse weather conditions, as defined in section 392.14 of the Federal Motor Carrier Safety Regulations. If adverse weather or road conditions are encountered or if the road surface is icy or snowpacked, the driver of the special vehicle combination shall proceed to the next available exit or turnout and drop a trailer or wait for conditions to improve. If road or weather conditions are deemed sufficiently hazardous by the Montana department of highways or the Montana highway patrol, they may instruct the special vehicle combinations to cease operations immediately until such hazardous conditions no longer exist.

(7)(a) through (7)(f) - same as proposed rule.

(7)(g) All hitch connections shall be of a no-slack type, preferably air actuated ram. Air actuated hitches which are, when used, must be isolated from the primary air transmission system are required.

(7)(h) through (7)(j) - same as proposed rule.

(7)(k) Anti-sail mud flaps ~~and anti-spray splash guards~~ are required. If anti-sail mud flaps are not used, mud flaps and anti-spray and splash suppressant device systems are required.

(8) through (20) - same as proposed rule.

3. During the public hearing held on July 6, 1987, no opposition testimony was given. However, two letters were received opposing the operation of triples. These letters were actually opposing the enactment of the law allowing special vehicle combinations, rather than the proposed rules.

4. The authority for the rule is Section 5, Chapter 474, Session Laws of 1987, MCA, and the rule implements Section 61-10-124, MCA.

Gary J. Wicks
Director of Highways

By:

Certified to the Secretary of State August 17, 1987.

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

In the matter of the	)	NOTICE OF THE ADOPTION
promulgation of rules	)	OF RULES ARM 24.12.201
for the New Horizons	)	THROUGH 24.12.208
Program.)	

TO: All Interested Persons

1. On August 6, 1987, at 9:30 a.m., a public hearing was held to consider the adoption of rules pertaining to the New Horizons Program.

2. On July 16, 1987, the Department published notice of proposed rules for the New Horizons Program, pages 1005 through 1007, the Montana Administrative Register, issue number 13.

3. The Department has adopted the following rules as proposed:

24.12.201 DEFINITIONS (1) "Act" means the New Horizons Act, Ch. 579, Laws of Montana, 1987.

(2) "Program operator" means a displaced homemaker subgrantee with the department.

(3) "Client" means a displaced homemakers program participant who is eligible for the daycare and incentives programs.

(4) "Daycare provider" means the person and/or place providing supplemental parental care as defined in 53-4-501, MCA.

(Auth. 39-7-601, MCA, Imp. 39-7-604 through 606, MCA)

24.12.202 NEW HORIZONS PROGRAM, ADMINISTRATIVE ENTITY

(1) The Department is the administrative entity for this program.

(2) The administrative entity provides funds to the displaced homemakers centers for incentives and daycare programs.

(3) The administrative entity shall conduct a monitoring report by verifying information and eligibility documentation and outlining program evaluation following the end of the fiscal year.

(Auth. 39-7-603, MCA, Imp. 39-7-606, MCA)

24.12.205 INCENTIVES (1) Incentives must be used for program, staff, and/or client enhancement.

(Auth. 39-7-603, MCA, Imp. 30-7-604, MCA)

24.12.208 GAINFUL AND CONSECUTIVE EMPLOYMENT (1) For the purposes of this act, gainful employment is a minimum of 120 hours per month with a goal of optimum placement but no less than minimum wage.

(2) For the purposes of this act, 6 consecutive months will afford a break of no more than two weeks to allow for job upgrading.

(Auth. 39-7-603, MCA, Imp. 39-7-604 and 605, MCA)

4. The Department has adopted the remaining proposed rules, Rules III, IV, VI, and VII, with the following changes:

24.12.203 DISPLACED HOMEMAKERS PROGRAM OPERATORS

(1) Program operators shall carryout the daycare and incentives programs.

(2) Program operators shall perform the following activities:

(a) provide additional counseling and/or services as available;

(b) collect verifying information needed for the payment of daycare ~~information~~, services and incentive bonuses;

(c) conduct eligibility assessment of clients and collect eligibility documentation;

(d) collect and verify information regarding clients' employment for the purposes of the incentives program; and,

~~{3} (e) provide information and reports on activities as requested by the administrative entity.~~

~~{4} (3) Followup activities may be charged as administrative costs and will include subsequent control of clients for the provisions of service and/or collection of information about the client's circumstances.~~

(Auth. 39-7-603, MCA, Imp. 39-7-602 through 606, MCA)

24.12.204 DAYCARE PROVIDERS (1) The client is responsible for selecting the daycare provider.

(2) Any daycare facility or daycare center as defined in 53-4-501, MCA which is selected must be licensed or in the process of application for license.

(3) Any family daycare home or group daycare home as defined in 53-4-501, MCA must be registered or in the process to be registered.

~~(4) A relative who only takes care of his or her own children and the client's children may be a provider without a license or registration. A client may select a daycare provider who is not required by law either to be registered or licensed.~~

(5) Payment must be made direct to the daycare provider by the displaced homemaker program.

(Auth. 39-7-603, MCA, Imp. 39-7-605, MCA)

24.12.206 ELIGIBILITY FOR THE DAYCARE PROGRAM

(1) There is no residency requirement for this program.

(2) Program operators shall determine which clients have the demonstrated need for daycare assistance.

(3) Daycare assistance shall be provided for children 12 years of age and younger and for handicapped children requiring aid and attendance up to 21 years of age.

(4) Applicants Clients who apply for daycare assistance shall provide the following documentation:

- (a) AFDC enrollment for at least 9 months;
- (b) verification of employment to include wages and hours; and,
- (c) birth certificates for children 12 years of age and younger or certification of handicap requiring aid and attendance by a physician for children 13 to 21 years of age.

(Auth. 39-7-603, MCA, Imp. 30-7-605, MCA)

24.12.207 ELIGIBILITY FOR THE INCENTIVES PROGRAM

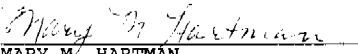
(1) Application Program operators who apply for incentive payment shall provide the following documentation:

- (a) AFDC enrollment for at least 9 months; and,
- (b) certification of gainful employment by the employer(s) for 6 or 12 months for incentive verification.

(Auth. 39-7-603, MCA, Imp. 39-7-604, MCA)

5. At the public hearing, Donna Porter of Career Training Institute, Helena, recommended adopting a rule outlining a grievance procedure patterned after the grievance procedure in the Job Training Partnership Act and currently used by the program operators. The department believes the recommendation has merit. However, because of the possible complexity, length, and importance of the proposed grievance procedure, the department believes that it should be adopted in accordance with rulemaking procedures and the attendant public comment. Further, in order not to jeopardize the effective date of the newly adopted rules, the department intends to adopt a grievance procedure at a later date.

6. The authority for the adopted rules is section 39-7-603, MCA, and the rules implement sections 39-7-601 through 39-7-606, MCA.


MARY M. HARTMAN
Commissioner
Department of Labor & Industry

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE ADOPTION of
of Rules I through VI and the)	Rules I through VI and the
AMENDMENT to 42.25.1005 re-)	AMENDMENT to 42.25.1005 re-
lating to Severance Tax.)	lating to Severance Tax.
TEMPORARY RULES.)	TEMPORARY RULES.

TO: All Interested Persons:

1. On July 16, 1987, the Department published notice of the proposed adoption of Rules I through VI and amendment to 42.25.1005 relating to severance tax, at pages 1010 through 1013 of the 1987 Montana Administrative Register, issue no. 13.

2. The Department has adopted these rules as proposed.

3. A comment was received from Senator Delwyn Gage concerning these rules and is addressed as follows:

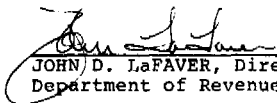
COMMENT: "The only comment I have would have to do with the termination of the provisions when the price of oil reaches \$25.00 per barrel. Your (2) of rule IV indicates that both oil and gas will be affected by this price. You cannot find any place in the bill that indicates that gas will also be affected. In fact we were aware that the provisions of the bill only referred to oil and we did not amend the bill to include gas. There is no relationship between the price of oil and gas. In fact it is conceivable that when the price of oil gets to \$25.00 the price of gas could be lower than it was when the bill was passed. I strongly objected to this provision for it is certainly not in conformity with the bill nor with the intent of the bill as far as my understanding is concerned.

I do not see anything on it in the proposed rules but I was told the Dept. was planning to use a rolling year to determine stripper status of wells. If that is so I would also object to that as it was the intent that the previous calendar year would be used and if a well qualified as a stripper well the previous calendar year it would continue to be a stripper well during the following calendar year."

RESPONSE: Section 7, subsection 2 of HB 776 states that the tax exemption for all new production as defined in 15-36-121(2) terminates when the price of oil reaches \$25 per barrel. Gas production is included in the definition of new production under 15-36-121(2). Thus, the law clearly provides for the termination of the tax exemption for gas as well as oil. The Department's rules follow the exact letter of the law. With regard to stripper production, the department agrees that the \$30 per barrel price limit only applies to oil production and that gas production will always receive the preferential tax treatment if production averages less than 60,000 cubic feet per day per well.

In response to the second concern, the department does not plan on using a rolling year to determine stripper status of wells. The department agrees with Senator Gage that the stripper classification should be based upon the previous calendar year.

4. The authority for the rules is 15-1-201, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, and the rules implement 15-36-121, and Sec. 2, Ch. 656, L. 1987.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/17/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE AMENDMENT OF
of ARM 42.12.128 and 42.12.323)	APM 42.12.128 and 42.12.323
relating to Selling Beer.)	relating to Selling Beer.

TO: All Interested Persons:

1. On June 25, 1987, the Department published notice of the proposed amendment to ARM 42.12.128 and 42.12.323 relating to selling beer, at page 876 of the 1987 Montana Administrative Register, issue no. 12.

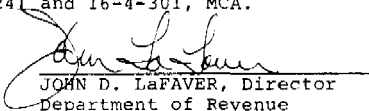
2. The Department has adopted the rule with the proposed amendments and these amendments will become effective on October 1, 1987, which is the effective date of Ch. 180, L. 1987.

3. One comment was received and it is as follows:

COMMENT: Jim Leer, attorney for the Administrative Code Committee commented that the final adoption notice for these rules should include a notation that they are effective on October 1, 1987.

RESPONSE: The department agrees with this observation, and this notice adds the requested information on the effective date.

4. The authority for the department to amend these rules is found at 16-1-303, MCA, Ext. Auth. Sec. 4, Ch. 180, L. 1987, IMP, 16-4-204, 16-3-103, 16-3-241 and 16-4-301, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 08/17/87

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

In the matter of the trans-	)	NOTICE OF THE TRANSFER OF
fer of rules from the Com-	)	RULES FROM THE COMMUNITY
munity Services Division of	)	SERVICES DIVISION OF THE
the Department of Social and	)	DEPARTMENT OF SOCIAL AND
Rehabilitation Services	)	REHABILITATION SERVICES
(SRS) to the Department of	)	(SRS) TO THE DEPARTMENT OF
Family Services (DFS)	)	FAMILY SERVICES (DFS)

TO: All Interested Persons

1. The 1987 Montana Legislature passed House Bill (HB) 325 which created the Department of Family Services (DFS) and transferred the functions of the Community Services Division of SRS to DFS effective July 1, 1987.

2. The office of the Secretary of State has requested that a public notice of the transfer of rules from Title 46 (SRS) to Title 11 (DFS) be published.

3. The SRS administrative rules effected by the requirements of HB 325 will be transferred in the following order. These transfers will be reflected in the Administrative Rules of Montana (ARM) replacement pages dated 9/30/87:

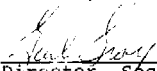
<u>SRS</u>	<u>DFS</u>	<u>SRS</u>	<u>DFS</u>
46.4.101 to 11.4.101		46.4.302 to 11.4.302	
46.4.102 to 11.4.102		46.4.303 to 11.4.303	
46.4.105 to 11.4.105		46.4.304 to 11.4.304	
46.4.106 to 11.4.106		46.4.305 to 11.4.305	
46.4.107 to 11.4.107		46.5.306 to 11.4.306	
46.4.108 to 11.4.108		46.5.101 to 11.5.101	
46.4.111 to 11.4.111		46.5.102 to 11.5.102	
46.4.112 to 11.4.112		46.5.103 to 11.5.104	
46.4.115 to 11.4.115		46.5.104 to 11.5.106	
46.4.116 to 11.4.116		46.5.105 to 11.5.109	
46.4.119 to 11.4.119		46.5.106 to 11.5.201	
46.4.120 to 11.4.120		46.5.107 to 11.5.203	
46.4.121 to 11.4.121		46.5.108 to 11.5.205	
46.4.123 to 11.4.123		46.5.109 to 11.5.206	
46.4.125 to 11.4.125		46.5.110 to 11.5.209	
46.4.127 to 11.4.127		46.5.111 to 11.5.210	
46.4.128 to 11.4.128		46.5.114 to 11.5.501	
46.4.129 to 11.4.995		46.5.115 to 11.5.508	
46.4.201 to 11.4.996		46.5.116 to 11.5.515	
46.4.202 to 11.4.997		46.5.117 to 11.5.520	
46.4.203 to 11.4.998		46.5.118 to 11.5.522	
46.4.204 to 11.4.999		46.5.119 to 11.5.998	
46.4.301 to 11.4.301		46.5.120 to 11.5.999	

<u>SRS</u>	<u>DFS</u>	<u>SRS</u>	<u>DFS</u>
46.5.121	to 11.5.901	46.5.531	to 11.7.501
46.5.122	to 11.5.903	46.5.532	to 11.7.502
46.5.123	to 11.5.905	46.5.533	to 11.7.504
46.5.124	to 11.5.910	46.5.534	to 11.7.508
46.5.201	to 11.6.101	46.5.535	to 11.7.509
46.5.202	to 11.6.104	46.5.536	to 11.7.511
46.5.203	to 11.6.110	46.5.537	to 11.7.515
46.5.204	to 11.6.115	46.5.538	to 11.7.516
46.5.205	to 11.6.120	46.5.539	to 11.7.517
46.5.206	to 11.6.125	46.5.550	to 11.9.101
46.5.301	to 11.6.201	46.5.551	to 11.9.102
46.5.303	to 11.6.203	46.5.553	to 11.9.105
46.5.304	to 11.6.204	46.5.554	to 11.9.106
46.5.305	to 11.6.205	46.5.555	to 11.9.107
46.5.307	to 11.6.208	46.5.556	to 11.9.108
46.5.308	to 11.6.211	46.5.558	to 11.9.110
46.5.309	to 11.6.215	46.5.560	to 11.9.113
46.5.401	to 11.11.997	46.5.562	to 11.9.115
46.5.402	to 11.11.998	46.5.601	to 11.12.101
46.5.403	to 11.11.999	46.5.602	to 11.12.102
46.5.405	to 11.11.101	46.5.603	to 11.12.103
46.5.408	to 11.11.104	46.5.604	to 11.12.104
46.5.410	to 11.11.106	46.5.605	to 11.12.106
46.5.412	to 11.11.108	46.5.606	to 11.12.108
46.5.416	to 11.11.113	46.5.607	to 11.12.110
46.5.419	to 11.11.116	46.5.608	to 11.12.999
46.5.423	to 11.11.121	46.5.609	to 11.12.113
46.5.426	to 11.11.124	46.5.610	to 11.12.114
46.5.429	to 11.11.127	46.5.611	to 11.12.202
46.5.432	to 11.11.130	46.5.612	to 11.12.201
46.5.434	to 11.11.132	46.5.613	to 11.12.998
46.5.436	to 11.11.134	46.5.614	to 11.12.204
46.5.438	to 11.11.136	46.5.615	to 11.12.205
46.5.440	to 11.11.138	46.5.616	to 11.12.208
46.5.443	to 11.11.141	46.5.617	to 11.12.997
46.5.445	to 11.11.143	46.5.618	to 11.12.211
46.5.449	to 11.11.147	46.5.619	to 11.12.996
46.5.501	to 11.7.101	46.5.620	to 11.12.212
46.5.502	to 11.7.102	46.5.621	to 11.12.995
46.5.503	to 11.7.104	46.5.622	to 11.12.260
46.5.505	to 11.7.997	46.5.623	to 11.12.215
46.5.506	to 11.7.998	46.5.627	to 11.12.219
46.5.507	to 11.7.999	46.5.628	to 11.12.220
46.5.508	to 11.7.501	46.5.630	to 11.12.222
46.5.509	to 11.7.502	46.5.632	to 11.12.224
46.5.510	to 11.7.504	46.5.635	to 11.12.227
46.5.511	to 11.7.510	46.5.636	to 11.12.228
46.5.513	to 11.7.301	46.5.640	to 11.12.236
46.5.517	to 11.7.306	46.5.641	to 11.12.238

<u>SRS</u>	<u>DFS</u>	<u>SRS</u>	<u>DFS</u>
46.5.642	to 11.12.239	46.5.801	to 11.18.997
46.5.646	to 11.12.246	46.5.802	to 11.18.998
46.5.647	to 11.12.247	46.5.803	to 11.18.999
46.5.648	to 11.12.248	46.5.804	to 11.18.101
46.5.650	to 11.12.301	46.5.805	to 11.18.102
46.5.651	to 11.12.302	46.5.809	to 11.18.107
46.5.652	to 11.12.304	46.5.813	to 11.18.1103
46.5.653	to 11.12.305	46.5.817	to 11.18.117
46.5.654	to 11.12.307	46.5.821	to 11.18.121
46.5.655	to 11.12.309	46.5.825	to 11.18.125
46.5.656	to 11.12.310	46.5.829	to 11.18.129
46.5.657	to 11.12.313	46.5.831	to 11.18.131
46.5.658	to 11.12.315	46.5.834	to 11.18.134
46.5.659	to 11.12.316	46.5.837	to 11.18.137
46.5.660	to 11.12.320	46.5.840	to 11.18.140
46.5.669	to 11.12.601	46.5.842	to 11.18.142
46.5.670	to 11.12.602	46.5.844	to 11.18.144
46.5.671	to 11.12.606	46.5.901	to 11.14.101
46.5.672	to 11.12.607	46.5.902	to 11.14.102
46.5.673	to 11.12.609	46.5.903	to 11.14.999
46.5.674	to 11.12.610	46.5.904	to 11.5.1001
46.5.675	to 11.12.611	46.5.905	to 11.5.1002
46.5.676	to 11.12.613	46.5.906	to 11.5.1003
46.5.677	to 11.12.614	46.5.907	to 11.5.1004
46.5.690	to 11.7.109	46.5.908	to 11.14.103
46.5.691	to 11.7.110	46.5.909	to 11.14.105
46.5.692	to 11.7.111	46.5.910	to 11.14.109
46.5.701	to 11.16.101	46.5.911	to 11.14.999
46.5.702	to 11.16.102	46.5.911A	to 11.14.110
46.5.703	to 11.16.103	46.5.912	to 11.14.998
46.5.720	to 11.16.120	46.5.913	to 11.14.201
46.5.723	to 11.16.123	46.5.914	to 11.14.202
46.5.726	to 11.16.126	46.5.914A	to 11.14.205
46.5.728	to 11.16.128	46.5.915	to 11.14.208
46.5.730	to 11.16.130	46.5.916	to 11.14.209
46.5.733	to 11.16.133	46.5.917	to 11.14.211
46.5.739	to 11.16.138	46.5.918	to 11.14.212
46.5.741	to 11.16.141	46.5.918A	to 11.14.217
46.5.743	to 11.16.143	46.5.919	to 11.14.218
46.5.745	to 11.16.145	46.5.920	to 11.14.221
46.5.747	to 11.16.147	46.5.921	to 11.14.222
46.5.749	to 11.16.149	46.5.922	to 11.14.226
46.5.751	to 11.16.151	46.5.923	to 11.14.228
46.5.753	to 11.16.153	46.5.923A	to 11.14.229
46.5.757	to 11.16.157	46.5.924	to 11.14.301
46.5.760	to 11.16.160	46.5.925	to 11.14.305
46.5.763	to 11.16.163	46.5.926	to 11.14.306
46.5.767	to 11.16.167	46.5.927	to 11.14.307
46.5.770	to 11.16.170	46.5.928	to 11.14.310

<u>SES</u>	<u>DFS</u>	<u>SRS</u>	<u>DFS</u>
46.5.929	to 11.14.311	46.5.1004	to 11.22.105
46.5.930	to 11.14.312	46.5.1005	to 11.22.106
46.5.931	to 11.14.316	46.5.1006	to 11.22.107
46.5.932	to 11.14.318	46.5.1007	to 11.22.108
46.5.933	to 11.14.319	46.5.1008	to 11.22.109
46.5.934	to 11.14.320	46.5.1009	to 11.22.110
46.5.935	to 11.14.324	46.5.1101	to 11.22.201
46.5.936	to 11.14.327	46.5.1102	to 11.22.202
46.5.937	to 11.14.340	46.5.1103	to 11.22.204
46.5.938	to 11.14.401	46.5.1104	to 11.22.205
46.5.939	to 11.14.403	46.5.1105	to 11.22.210
46.5.940	to 11.14.404	46.5.1106	to 11.22.211
46.5.941	to 11.14.405	46.5.1201	to 11.5.401
46.5.942	to 11.14.407	46.5.1202	to 11.5.402
46.5.943	to 11.14.412	46.5.1203	to 11.5.407
46.5.944	to 11.14.414	46.5.1204	to 11.5.410
46.5.945	to 11.14.415	46.5.1301	to 11.7.901
46.5.946	to 11.14.418	46.5.1701	to 11.19.101
46.5.947	to 11.14.501	46.5.1702	to 11.19.102
46.5.948	to 11.14.502	46.5.1703	to 11.19.103
46.5.949	to 11.14.503	46.5.1704	to 11.19.107
46.5.950	to 11.14.506	46.5.1705	to 11.19.108
46.5.951	to 11.14.507	46.5.1706	to 11.19.109
46.5.952	to 11.14.508	46.5.1707	to 11.19.114
46.5.953	to 11.14.511	46.5.1708	to 11.19.115
46.5.954	to 11.14.512	46.5.1709	to 11.19.116
46.5.955	to 11.14.513	46.5.1710	to 11.19.119
46.5.956	to 11.14.515	46.5.1711	to 11.19.120
46.5.957	to 11.14.516	46.5.1712	to 11.19.122
46.5.958	to 11.14.519	46.5.1713	to 11.19.125
46.5.1001	to 11.22.101	46.5.1714	to 11.19.126
46.5.1002	to 11.22.103	46.5.1715	to 11.19.127
46.5.1003	to 11.22.104		

AUTH: Sec. 113, Ch. 609 (HB 325), L. 1987, Eff. 7/1/87
IMP: Sec. 11, Ch. 609 (HB 325), L. 1987, Eff. 7/1/87



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 17, 1987.

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

In the matter of the amend-	)	NOTICE OF THE AMEND-
ment of Rules 46.12.2003,	)	MENT OF RULES 46.12.2003,
46.12.2004, 46.12.2006,	)	46.12.2004, 46.12.2006,
46.12.2007 and 46.12.2008	)	46.12.2007 AND 46.12.2008
pertaining to reimbursement	)	PERTAINING TO REIMBURSEMENT
for physician services	)	FOR PHYSICIAN SERVICES

TO: All Interested Persons

1. On July 16, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.2003, 46.12.2004, 46.12.2006, 46.12.2007 and 46.12.2008 pertaining to reimbursement for physician services at page 1035 of the 1987 Montana Administrative Register, issue number 13.

2. The Department has amended Rules 46.12.2003, 46.12.2004 and 46.12.2008 as proposed.

46.12.2006 PHYSICIAN SERVICES REIMBURSEMENT/SURGERY PROCEDURES

"(1) INTEGUMENTARY SYSTEM" through "69979" remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-113 and 53-6-141 MCA

46.12.2007 PHYSICIAN SERVICES REIMBURSEMENT/RADIOLOGY, NUCLEAR MEDICINE AND DIAGNOSTIC ULTRASOUND

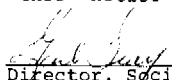
"(1) DIAGNOSTIC RADIOLOGY" through "79999" remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-113 and 53-6-141 MCA

4. The Department received a comment from the Secretary of State's office concerning grammar. The suggested changes will be made on replacement pages for the Administrative Rules.

Additionally, it was noted in preparation of this notice that the catchphrase for ARM 46.12.2007 was omitted in the first notice. The catchphrases of that rule and ARM 46.12.2006 are included in this notice to simplify the replacement page process.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1/, 1987.

16-8/27/87

Montana Administrative Register

VOLUME NO. 42

OPINION NO. 21

EDUCATION, HIGHER - Effect of Initiative No. 105 and 1987 Montana Laws, chapter 654 on community college funding mechanisms;

INITIATIVE AND REFERENDUM - Authority of Legislature to enact amendments to voter-initiated statute;

MOTOR VEHICLES - Applicability of Initiative No. 105 and 1987 Montana Laws, chapter 654 to taxation of;

SPECIAL IMPROVEMENT DISTRICTS - Applicability of Initiative No. 105 and 1987 Montana Laws, chapter 654 to assessments or tax levies by;

STATUTES - Authority of Legislature to enact amendments to voter-initiated statute;

STATUTES - Whether Initiative No. 105 and 1987 Montana Laws, chapter 654 impliedly repealed statutory mill levy limitations or modified various statutory obligations;

TAXATION AND REVENUE - Applicability of Initiative No. 105 and 1987 Montana Laws, chapter 654 to assessments or tax levies imposed by irrigation districts or other special improvement districts;

TAXATION AND REVENUE - Effect of Initiative No. 105 and 1987 Montana Laws, chapter 654 on taxing unit's authority to increase individual taxpayers' property tax liability even if statutorily-prescribed or voter-approved mill levy limits are not exceeded;

MONTANA CODE ANNOTATED - Title 7, chapter 12, parts 21, 41; Title 15, chapter 6, part 1; sections 7-1-114, 7-6-2501, 7-6-2531, 7-6-4431, 7-6-4452, 7-12-1133, 7-12-4611, 7-13-2406, 7-14-232, 7-22-2222, 15-6-138, 15-6-140, 15-7-122, 20-15-311, 20-15-312, 61-1-105, 61-1-129 to 61-1-131, 61-1-133, 61-3-531, 85-7-2103, 85-7-2104;

MONTANA CONSTITUTION - Article III, section 4; article XI, section 4;

MONTANA LAWS OF 1987 - Chapters 211, 291, 654;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 14 (1987), 42 Op. Att'y Gen. No. 16 (1987).

HELD: 1. SB 71 is a valid amendment to I-105 and controls in cases of conflict.

2. I-105 and SB 71 do not limit the ability of irrigation districts to raise their water assessment rates.

3. I-105 and SB 71 do not prohibit the implementation of 1987 Montana Laws, chapter 211.
4. Section 2(7) of SB 71 does not repeal the statutory mill levy limitations or amend by implication statutes mandating taxing units to perform various duties.
5. Community college trustees and the Board of Regents may not budget an amount for the colleges' total unrestricted budgets which will increase an individual taxpayer's property tax liability over his 1986 tax year amount unless otherwise permitted to do so by SB 71.
6. I-105 and SB 71 supersede tax levies approved by local governments or by local voters to the extent the levies increase an individual taxpayer's property tax liability to a particular taxing unit over his 1986 tax year amount unless otherwise permitted to do so by SB 71.
7. Taxing units which levied lower than normal or than authorized taxes in 1986 may not increase the actual property tax liability of a taxpayer unless otherwise permitted to do so by SB 71.
8. Applicability of the exception contained in section 2(7) of SB 71 must be determined anew each year with reference to the taxable valuation of the previous year.
9. I-105 and SB 71 do not alter local government budget- or election-procedure laws.

5 August 1987

Thomas J. Sheehy
Chouteau County Attorney
Chouteau County Courthouse
Fort Benton MT 59442

Richard A. Simonton
Dawson County Attorney
Dawson County Courthouse
Glendive MT 59330

Daniel L. Schwarz
Powder River County Attorney
Powder River County Courthouse
Broadus MT 59317

John W. Robinson
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

William A. Schreiber
Belgrade City Attorney
P.O. Box 268
Belgrade MT 59714

Douglas D. Howard
Town Attorney
Town of Columbus
Columbus MT 59019

Gentlemen:

You have requested my opinion on various aspects of Initiative No. 105 (I-105) and 1987 Montana Laws, chapter 654 (SB 71). I have taken the liberty of rephrasing and grouping your questions as follows:

1. Whether SB 71 is a valid amendment to I-105 and controls in cases of conflict.
2. Whether an irrigation district may raise its water assessment rate under the provisions of SB 71.
3. Whether I-105 and SB 71 prohibit the implementation of 1987 Montana Laws, chapter 611, which replaces fees in lieu

of tax on various items of property with a property tax.

4. Whether section 2(7) of SB 71 amends or repeals by implication statutory mill levy limitations.
5. Whether I-105 and SB 71 amend by implication statutes that require taxing units to perform various duties.
6. Whether I-105 and SB 71 amend by implication the statutory mechanisms established for funding community colleges.
7. Whether I-105 and SB 71 supersede special tax levies approved by local voters.
8. Whether a taxing unit may increase a taxpayer's property tax liability over the amount actually paid in the 1986 tax year if the increase is based upon a mill levy approved by voters for the 1986 tax year.
9. Whether a taxing jurisdiction which raises its mill levy pursuant to section 2(7) of SB 71 can consider that higher mill levy as a base for future years.
10. Whether I-105 and SB 71 are intended to modify general local government budget- and election-procedure laws.

I will address your questions in the order in which they are listed above.

I.

The first question deals with the validity of any amendments to I-105 effected by SB 71. In 1920 the Montana Supreme Court, construing the 1889 Montana Constitution, unequivocally upheld the Legislature's authority to modify voter-initiated acts:

The attorney general suggests that a law initiated by the people cannot be withdrawn from its peculiar position by an amendment by the legislature, no matter what the circumstances, but that in the case of all initiated Acts the people have the right to the ultimate determination of whether or not the amendments shall be adopted. This suggestion is without merit.

Prior to the adoption of the initiative and referendum amendment to our Constitution, the people of the state, in whom, originally, all power is vested, had delegated to their representatives, the legislative body, the exclusive authority to make laws for the government of the state, subject only to such restrictions as were found in the Constitution and the exercise of the executive veto. By the adoption of the amendment the people did no more than recall that exclusive authority, and reserve to themselves the power to propose laws, and to accept or reject them at the polls, on any subject, save those subjects enumerated in the excepting clauses contained in the amendment. Thereafter, on those subjects not excepted, either the people or the legislature may act at will--their power is coextensive; when an Act is passed by either method, it becomes the law of the state, no more and no less. "Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as are other statutes, and may be amended or repealed by the legislature at will."

State ex rel. Goodman v. Stewart, 57 Mont. 144, 150-51, 187 P. 641, 643 (1920). See also Cottingham v. State Board of Examiners, 134 Mont. 1, 12-13, 328 P.2d 907, 913 (1958). I find nothing in either the language or the convention transcripts of the 1972 Montana Constitution that indicates any intent to adopt a new constitutional standard in this area. Mont. Const. art. III, § 4; VII Montana Constitutional Convention 2695-2717 (1981); 1A N. Singer, Sutherland Statutory Construction § 22.06 (4th ed. 1985).

In enacting SB 71, the Montana Legislature showed every awareness of its ability to amend I-105 and used that ability. An example of this, relevant to several of the present questions, concerns the situation in which a taxing unit's assessed valuation has dropped 5 percent or more from the previous tax year. Section 2(7) of SB 71 allows governing officials of a taxing unit confronted with such a reduction to increase the amount of taxes levied on a particular piece of property above those paid in 1986. To the extent of any conflict with I-105, section 2(7) of SB 71 controls. The Legislature's awareness of its authority is also implicitly reflected in the statement of legislative intent prefacing SB 71. In the second section of that statement, the Legislature recognized that it must provide many details consistent with the general intent of I-105, while, in the statement's final section, the Legislature emphasized its duty to reconcile the property tax limitation purpose of SB 71 with the need "to enable the Department of Revenue and local government units to function smoothly under such limits."

II.

I have been asked several questions about the applicability of I-105 and SB 71 to such things as irrigation districts and motor vehicles (1987 Mont. Laws, ch. 611). These questions must be resolved by determining (1) whether a property tax rather than a special assessment is involved and (2) whether, if a property tax, it is levied against property described in Title 15, chapter 6, part 1, MCA. See 1987 Mont. Laws, ch. 654, § 2(1).

Section 2(2) of I-105 specifically excludes from its scope levies by rural and special improvement districts established under Title 7, chapter 12, parts 21 and 41, MCA. Section 2(8) of SB 71 expands these exclusions to, inter alia, city street maintenance districts. The difficult issue is whether the exclusions are intended to constitute the only exceptions from I-105 and SB 71 coverage for taxing units whose levies are properly classified as assessments or fees and not property taxes. Application of the statutes to such taxing units appears anomalous because the amount of their assessments or tax levies is not predicated on a

specific mill levy amount or, typically, on the assessed valuation of the property within their jurisdictions. Moreover, the assessments are not even properly characterized as property taxes but, rather, closely approximate user fees. Because the overall structure of I-105 and SB 71 manifests a general intent to regulate only increases in the amount of an individual's property tax derived from application of mill levy and assessed valuation factors, I conclude, as more fully explained below, that irrigation districts and like special districts, whose assessments and tax levies are based on the value of services actually rendered to a particular piece of property, are taxing units excluded from coverage under I-105 and SB 71.

The distinction between a property tax and a special assessment was explained in Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957):

A tax is levied for the general public good. It creates a lien. An assessment is imposed against specific property to defray the cost of a specific benefit to the property, the benefit to be commensurate with the assessment. ...

See generally Commonwealth Edison Co. v. Montana, 453 U.S. 609, 622-23 (1981) ("A tax is not an assessment of benefits. It is ... a means of distributing the burden of the cost of government"); 70A Am. Jur. 2d Special or Local Assessments § 2 (1987) ("a special assessment is ordinarily levied wholly on benefits"). To the extent a particular charge is predicated on the benefit actually received by a particular taxpayer within a special district, therefore, it is not a property tax and not subject to I-105 and SB 71. This distinction is consistent with those statutes' purposes since any other result would serve only to confer a focused benefit on a given taxpayer's property without a corresponding obligation to pay for that benefit. I-105 and SB 71, however, are clearly aimed at limiting the use of property taxes as a means for subsidizing general government services whose costs are apportioned not on the basis of the value of services actually received but solely on the basis of the taxpayer's property assessment valuation.

The distinction between taxes and assessments is particularly germane to irrigation districts which have long been recognized as public corporations. See 42 Op. Att'y Gen. No. 14 (1987). Revenue necessary for an irrigation district's operations is raised through, inter alia, special assessments and annual tax levies whose amount as to a specific taxpayer is predicated not on the value of his property but either on the proportion of a particular tract's irrigable acreage to the district's total irrigable acreage or, in some situations, on a basis intended to more directly relate the charge to the actual benefit received. See §§ 85-7-2103, 85-7-2104, MCA. Under no circumstances, though, is the levy predicated simply on the value of the involved property. Unquestionably, irrigation district special assessments or annual tax levies are not property taxes and are unrestricted by I-105 and SB 71.

Other special district levies may similarly be classified as assessments and not property taxes, e.g., § 7-13-2406, MCA (garbage and ash collection districts). In each instance whether a special district's levy is appropriately characterized as a property tax or an assessment must be decided in accordance with the general principle stated in Vail. The central inquiry will thus normally be whether the purpose of the levy or assessment is to compensate the district for benefits directly conferred upon a particular piece of property within its jurisdiction in direct proportion to the cost of those benefits; i.e., whether the levy is in the nature of a user fee. Ordinarily this determination should not be complex. Compare § 7-14-232, MCA (urban transportation districts), and § 7-22-2222, MCA (rodent control districts), with § 7-12-1133, MCA (business improvement districts), and § 7-12-4611, MCA (fire hydrant maintenance districts).

1987 Montana Laws, chapter 211, replaced the fee in lieu of tax on light vehicles with a property tax. As developed above, though, I-105 and SB 71 apply only to property described in Title 15, chapter 6, part 1 of the Montana Code Annotated. 1987 Mont. Laws, ch. 654, § 2(1). The vehicles subject to 1987 Montana Laws, chapter 211, are described in section 61-3-531, MCA (light vehicles), section 61-1-105, MCA (motorcycles), section 61-1-133, MCA (quadricycles), section 61-1-130, MCA (motor homes), section 61-1-131, MCA (travel

trailers), and section 61-1-129, MCA (campers), and are mentioned in Title 15, chapter 6, part 1, MCA, only as exceptions. §§ 15-6-138(d), 15-6-140(e), MCA. Consequently, the provisions of I-105 and SB 71 are inapplicable to such items of personal property.

III.

The third set of questions concerns the amendment or repeal by implication of other statutes by either I-105 or SB 71. Amendment or repeal by implication is not favored in Montana. Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981). State ex rel. Mallott v. Board of Commissioners, 89 Mont. 37, 76, 296 P. 1, 11 (1930). The Montana Supreme Court has set the following standards for implied repeals:

We have said of implied repeals, in Box v. Duncan, 98 Mont. 216, 38 P.2d 986, 987: "To make tenable the claim that an earlier statute was repealed by a later one, the two acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject; and must have the same object in view."

Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Bennett, 145 Mont. 191, 195, 399 P.2d 986, 988 (1965). Thus, this and other cases establish a three-part test for repeal by implication: (1) The two acts must relate to the same subject; (2) the two acts must have the same object in view; and (3) the two acts must be plainly and irreconcilably in conflict. All three parts of the test must be met.

Several questions inquire about the relationship of I-105 and SB 71 to various statutes governing local mill levies. Specifically, they ask whether the new laws amend or repeal by implication the various mill levy limitations contained in such statutes as sections 7-6-2501 and 7-6-4452, MCA. I-105, SB 71, and these groups of statutes relate to the same subject--taxation. However, the objects of I-105 and SB 71 are not the same as those of the mill levy limit provisions. I-105 and SB 71 create a statutory structure whose object is, with certain exceptions, "that no further property tax increases be imposed." Statutory mill levy limitations,

in contrast, have as their sole purpose restricting the amount of millage a taxing unit may ever levy. See Minutes of the Montana House Local Government Committee, March 6, 1987, at 7-10; Minutes of the Montana Senate Local Government Committee, January 22, 1987, at 3-5. Moreover, because mill levies are only one of the two components used to determine a taxpayer's property tax liability, those levies may theoretically increase without violation of I-105 and SB 71 if the second component, assessed value, decreases; millage may nonetheless never rise above statutorily-prescribed limits irrespective of the degree to which assessed value is diminished, and it is possible for such limits to restrict property tax revenues more than I-105 and SB 71 do.

Applying the third part of the implied repeal test, I believe these statutes can be reconciled. The exception in section 2(7) of SB 71 allows the governing body of a taxing unit to increase the amount of taxes levied on an individual taxpayer to compensate for a reduction of 5 percent or more in the unit's total assessed valuation from the previous tax year. This may be done without a public vote. SB 71 shows no clear intent, however, to permit statutory mill levy limitations to be exceeded. When the amount of taxes levied pursuant to section 2(7) will exceed the statutory mill levy limitations, some further authority to exceed these mill levy limitations--such as, for example, sections 7-6-2531, 7-6-4431, or 15-7-122, MCA--must be present. I conclude that I-105 and SB 71 do not amend or repeal by implication statutes limiting the total amount of mill levies.

A similar result is reached when the implied repeal test is applied to statutes which mandate performance of certain duties by a taxing unit. The only difference is that, in the case of a taxing unit's statutorily mandated duties, neither the subject of nor the objects sought by the two sets of acts is the same. Local officials may necessarily have to reduce discretionary projects in order to perform duties that are statutorily required, but that was the case before I-105 or SB 71 and it remains so now.

A final question on implied repeal concerns the funding of community colleges. During the 1987 legislative session, the State's share of community college funding

was reduced from 51 percent of the total audit cost to 49 percent. This calls for a commensurate increase in the local contribution. Under the community college funding formula, an estimate of revenues is made from the moneys generated by student tuition, student fees, other income or credit balances and the state general fund appropriation. This estimate of revenues is subtracted from the community college's total unrestricted budget, and the difference is obtained from a mandatory levy on the community college district. §§ 20-15-311, 20-15-312, MCA.

Aside from the implied repeal test, the Supreme Court's injunction that "statutes which are not inconsistent with one another, and which relate to the same subject matter, are in pari materia and should be construed together, and effect given to both if it is possible to do so" must be considered in reconciling the requirements of I-105 and SB 71 with those controlling community college funding. State ex rel. Riley v. District Court, 103 Mont. 576, 583, 64 P.2d 115, 118 (1937). Thus, (1) I-105 and SB 71 generally limit the amount of property taxes capable of assessment upon an individual taxpayer to the 1986 tax year level; (2) the board of trustees of a community college and the board of regents must adopt a budget which, under section 20-15-312, MCA, will not result in an increase in the mandatory levy as to a particular taxpayer over 1986 amounts; and (3) the frozen mandatory levy must now account for 51 percent of the community college's total unrestricted budget. The regents and the community college trustees must consequently either reduce the community college budgets or find alternative sources for funds beyond those generated by the mandatory levy.

IV.

I have received several questions concerning the relationship of I-105 and SB 71 to items such as local ordinances or ballot measures. Before directly responding to these questions, I must emphasize the unique nature of local governments with self-government powers. D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 80, 713 P.2d 977, 981 (1986); Billings Firefighters Local 521 v. City of Billings, 42 St. Rptr. 112, 694 P.2d 1335 (1985); 42 Op. Att'y Gen. No. 16 (1987). Those governments are generally subject to

I-105 and SB 71, but they are specifically exempted from mill levy limitations. § 7-1-114(1)(g), MCA.

Neither local governments with self-government charters nor local governments with general government powers, however, have the power to act so as to modify I-105 and SB 71's application to them. In the case of local governments with self-government powers, section 7-1-114(1)(g), MCA, prevents them from acting to amend I-105 and SB 71. In the case of local governments retaining general government powers, they have only those powers provided or implied by law, and the power to act so as to amend initiatives or statutes has not been provided. Mont. Const. art. XI, § 4; D & F Sanitation Service v. City of Billings, 43 St. Rptr. at 79, 713 P.2d at 982. I accordingly conclude that where a taxing unit purports to increase the amount of an individual taxpayer's property tax for tax years commencing after December 31, 1986, other than as specifically allowed under SB 71, such action is void. This prohibition applies even if the increase was sanctioned by voter approval.

v.

A somewhat similar situation exists where the taxing unit was established before 1986, and, because the unit carried a budget surplus into 1986, it levied an amount of taxes significantly lower than normal. Is the taxing unit limited to the reduced levy assessed in 1986, even if that levy is significantly lower than that approved by the voters in 1986? SB 71 clearly answers this question: "[A] taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year" except under specified and highly restricted circumstances. The Legislature has nevertheless provided in section 2(9) of SB 71 a procedure for increasing the amount of taxes levied for those taxing units which, because of an abnormally low tax levy in 1986, are now faced with a financial emergency. Without compliance with that procedure, the property tax amount--even though abnormally low in 1986--may not be increased. For the same reason, a taxing unit, like a school district, may not increase a taxpayer's property tax liability even though the taxes actually levied for the 1986 tax year were less than permissible under voter-approved mill levy amounts.

VI.

The ninth question requires analysis of section 2(7) of SB 71. That section provides an exception to the general prohibition against increasing an individual taxpayer's liability to a particular taxing unit over that of the 1986 tax year if "the taxing unit's taxable valuation decreases by 5% or more from the previous tax year." Should such a decrease occur, additional mills may, within otherwise applicable millage limitations, be levied and the individual taxpayer's liability increased over the 1986 tax year amount; under no circumstances, however, may the total revenue to the taxing unit from property taxes exceed that for the 1986 tax year. Importantly, the exception in section 2(7) is not continuing in nature; i.e., if in the next tax year assessed valuation does not decrease by 5 percent or more, the individual taxpayer's liability to a taxing unit may not exceed the 1986 tax year amount irrespective of the number of mills levied. I recognize that this interpretation of section 2(7) may cause hardship to taxing units which have, for example, suffered a significant reduction in assessed valuation between the 1986 and 1987 tax years and then experience a modest increase or slight decrease between the 1987 and 1988 tax years. Nonetheless, it is not my prerogative to alter the meaning of an otherwise clear statutory provision; any modification required to ameliorate the effect of a long-term diminution of assessed valuation must be legislatively made.

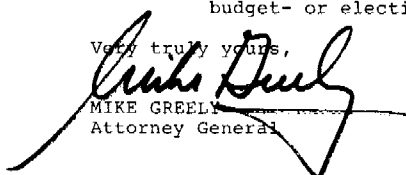
VII.

A final group of questions concerns the effect of I-105 and SB 71 on local government budget- and election-procedure laws. First, I find nothing in the language or legislative history of I-105 and SB 71 to indicate any intent to alter the existing legal authority and duties of taxing jurisdiction officials to administer the finances of those jurisdictions. The legislative history of the recently-adopted, all-purpose levy for counties is most persuasive in this regard. See 1987 Mont. Laws, ch. 291. Second, I find nothing in section 2(9) of SB 71 reflecting an intent to establish any standards for the special elections described therein other than those established by existing state law.

THEREFORE, IT IS MY OPINION:

1. SB 71 is a valid amendment to I-105 and controls in cases of conflict.
2. I-105 and SB 71 do not limit the ability of irrigation districts to raise their water assessment rates.
3. I-105 and SB 71 do not prohibit the implementation of 1987 Montana Laws, chapter 211.
4. Section 2(7) of SB 71 does not repeal the statutory mill levy limitations or amend by implication statutes mandating taxing units to perform various duties.
5. Community college trustees and the Board of Regents may not budget an amount for the colleges' total unrestricted budgets which will increase an individual taxpayer's property tax liability over his 1986 tax year amount unless otherwise permitted to do so by SB 71.
6. I-105 and SB 71 supersede tax levies approved by local governments or by local voters to the extent the levies increase an individual taxpayer's property tax liability to a particular taxing unit over his 1986 tax year amount unless otherwise permitted to do so by SB 71.
7. Taxing units which levied lower than normal or than authorized taxes in 1986 may not increase the actual property tax liability of a taxpayer unless otherwise permitted to do so by SB 71.
8. Applicability of the exception contained in section 2(7) of SB 71 must be determined anew each year with reference to the taxable valuation of the previous year.
9. I-105 and SB 71 do not alter local government budget- or election-procedure laws.

Very truly yours,



MIKE GREELY
Attorney General

16-8/27/87

Montana Administrative Register

VOLUME NO. 43

OPINION NO. 22

CITIES AND TOWNS - Scheduling Heritage Day;
HOLIDAYS - Heritage Day;
LOCAL GOVERNMENT - Scheduling Heritage Day;
MUNICIPAL CORPORATIONS - Scheduling Heritage Day;
MONTANA CODE ANNOTATED - Sections 1-1-216, 2-16-117,
2-18-063, 7-4-102;
MONTANA LAWS OF 1987 - Chapter 431, sections 1, 3.

HELD: The governing body of a political subdivision must schedule the Heritage Day legal holiday on a single calendar day per year.

7 August 1987

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

Must the City of Missoula schedule the Heritage Day legal holiday on a single calendar day or may the City allow the scheduling of different "Heritage Days" by city departments or even by individual city employees?

You have informed me that Missoula city employees are interested in having individual or departmental holidays. You note that individual holidays would allow general city government to continue regular operations without a day off for Heritage Day and avoid the confusion of the public which may result if the state, the county, and the city each select a different date for Heritage Day.

Section 1-1-216, MCA, setting forth the legal holidays in the state, was amended in 1987 to combine Lincoln's Birthday and Washington's Birthday into one legal

holiday and to establish Heritage Day as a legal holiday. 1987 Mont. Laws, ch. 431, § 1.

This amendment will be effective January 1, 1988. 1987 Mont. Laws, ch. 431, § 3. At that time, section 1-1-216, MCA, will provide in part that the Heritage Day legal holiday is:

[T]o be observed annually on a date determined by the governing body of each political subdivision for the purposes of that political subdivision and by the governor for the executive, legislative, and judicial branches of state government, including the Montana university system. [Emphasis added.]

§ 1-1-216(1)(1), MCA.

The intention of the Legislature must first be determined from the plain meaning of the words used in the statute. Missoula County v. American Asphalt, 42 St. Rptr. 920, 922, 701 P.2d 990, 992 (1985). In my opinion, the new subsection clearly provides for Heritage Day to be observed on a single date determined by the governing body of each political subdivision. Thus, the City of Missoula would only have authority to set a date for Heritage Day, not to allow departmental or individual holidays.

My opinion is reinforced by the legislative history of the amendment. Representative Richard Nelson, the sponsor of House Bill 708, the bill establishing Heritage Day, testified before the Senate State Administration Committee that Heritage Day "would be a floating holiday which local governments could use at their discretion for a specific purpose such as for a fair or a special celebration that is unique to their own area." Minutes, Senate State Administration Committee, March 20, 1987, p. 1. When Senator Vaughn asked if Heritage Day could be a different day each year, he was told that it would be up to the local government. Id., p. 2. The testimony indicates the legislators anticipated a single Heritage Day in each political subdivision.

Section 1-1-216, MCA, lists Montana's legal holidays. City, county, and state offices must remain open on all days "except Saturdays and legal holidays."

§§ 2-16-117, 7-4-102, MCA. Section 2-18-603, MCA, provides for an alternate day off when a legal holiday falls on an employee's day off. The statutes treat "legal holidays" as nonbusiness days off for all employees. When read in conjunction with the new subsection which will establish Heritage Day in 1988, they indicate the Legislature intended a single date per political subdivision to be observed as Heritage Day.

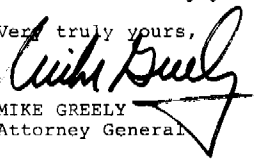
The concept of a legal holiday is also better served by a single Heritage Day in each political subdivision. A "holiday" is a day set aside for worship, for reverence to the memory of a great leader and benefactor, to rejoice over a national or historical event, or to rekindle the flame of an ideal; a "legal holiday" is a day designated and set apart by legislative enactment for one or more such purposes. Vidal v. Backs, 21 P.2d 952 (Cal. 1933); 73 Am. Jur. 2d Sundays and Holidays § 2, at 783. A Heritage Day which amounted to nothing more than a personal day off with pay would have no meaning as a legal holiday.

The plain language of the statute, the legislative history, the statutory scheme, and the nature of a legal holiday all lead me to conclude that the City of Missoula must schedule the Heritage Day legal holiday on a single calendar date per year.

THEREFORE, IT IS MY OPINION:

The governing body of a political subdivision must schedule the Heritage Day legal holiday on a single calendar day per year.

Very truly yours,


MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with 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
Subject
Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which 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 June 30, 1987. This table includes those rules adopted during the period June 30, 1987 through September 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 June 30, 1987, this table and the table of contents of this issue of the MAR.

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