MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS

In the matter of the proposed amendment of rules pertaining to definitions, applications for limited permit, pass-fail criteria, fees, reciprocity, and limited permits	)))))))	NOTICE OF PROPOSED AMENDMENT OF 8.35.402 DEFINTIONS, 8.35.405 APPLICATIONS FOR LIMITED PERMIT, 8.35.406 PASS-FAIL CRITERIA, 8.35.407 FEES, 8.35.410 RECIPROCITY, AND 8.35.413 LIMITED PERMITS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1988, the Board of Occupational Therapists proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules are located at page 8-1055, Administrative Rules of Montana.)

8.35.402 DEFINITIONS (1) will remain the same.

(2) "Reciprocity licensee" means a person licensed under the law of another state that had licensure requirements at least as stringent as the requirements of Chapter 24, Title 37, MCA, at the time of original licensure, or the person who meets the requirements for certification as an occupational therapists registered (OTR) or a certified occupational therapist assistant (COTA) established by the ~~American Occupational Therapy Association~~ American Occupational Therapy Certification Board (AOTCB).

~~(3) "Occupational Therapist Student" means a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program.~~

Auth: 37-1-131, 37-24-201, 37-24-202, MCA
Imp: 37-24-304, MCA

REASON: The proposed amendment recognizes the fact that The American Occupational Therapy Certification Board now administers the national exam.

The rule definition of "Occupational Therapy Student" is being repealed because there is no such professional category recognized in the practice act.

8.35.405 EXAMINATIONS (1) For the purpose of section 37-24-304(2), MCA, the board adopts as its examination the examinations in existence on 5/30/86, offered through the ~~American Occupational Therapists Association~~ American Occupational Therapy Certification Board (AOTCB).

(2) Arrangements and fees for examinations are the responsibility of the applicant and shall be made with the ~~AOTA~~ AOTCB.

(3) It shall be the responsibility of the applicant to assure that his or her examination score is forwarded by the ~~AOTA~~ AOTCB to the board.

(4) will remain the same.

(5) Applicants who fail an examination may be reexamined upon payment of another examination fee to the ~~AOTA~~ AOTCB.

(6) Examinations will be given two times a year as set by the ~~AOTCB~~ AOTCB.

Auth: 37-1-131, 37-24-201, 37-24-202, MCA
Imp: 37-24-304, MCA

REASON: This amendment is intended to reflect the fact that the American Occupational Therapy Certification Board now administers the national exam.

8.35.406 PASS-FAIL CRITERIA (1) The board will utilize the pass/fail criteria ~~in existence on 5/30/86 of the American Occupational Therapists Association~~ applied by the American Occupational Therapy Certification Board (AOTCB).

Auth: 37-1-131, 37-24-201, 37-24-202, MCA
Imp: 37-24-304, MCA

REASON: This amendment is intended to reflect the fact that the American Occupational Therapy Certification Board now administers the national exam.

8.35.407 FEES Fees adopted by the board under Section 37-24-310, MCA are as follows:

(a) through (g) will remain the same.

(h) All fees are refundable.

(i) If a new applicant for licensure successfully applies on or after March 15, his license will be valid for the remainder of the licensure year and for the following license year. An inactive license renewal granted on or after March 15 will apply for the remainder of the license year and for the following license year. Any new therapist in Montana who wishes to practice as a registered occupational therapist, or an occupational therapist student, or under a limited permit must apply for licensure within 10 working days after arrival in this state.

(j) The application fee of $80 for the limited permit holder will be applied toward the fee for a permanent license issued within 6 months of permit issuance.

Auth: 37-1-131, 37-24-201, 37-24-202, MCA
Imp: 37-24-310, MCA

REASON: This amendment is being proposed to make clear that the application fee will be applied both to the balance of the licensure year in which it is paid and to the next entire license year.

8.35.410 RECIPROCITY Any person licensed under the laws of another state that has licensed requirements at least as stringent as the requirements of Chapter 24, Title 37, MCA, or who meets the requirements for certification as an Occupational Therapist registered (OTR) or a certified Occupational Therapist Assistant (COTA) established by the ~~American Occupational Therapists Association~~ American Occupational Therapy Certification Board (AOTCB) may apply for licensure using the same application and procedures as an instate licensee.

Auth: 37-1-131, 37-24-201, 37-24-202, MCA
Imp: 37-24-305, MCA

REASON: This amendment is intended to reflect the fact that the American Occupational Therapy Certification Board now administers the national exam.

8.35.413 LIMITED PERMIT ~~Limited permit~~ Examinations will be given by the ~~American Occupational Therapists Association~~ American Occupational Therapy Certification Board (AOTCB) twice a year. Limited permits ~~can~~ may be issued for a one year period. If renewal ~~time comes~~ falls before the ~~year is up~~ end of the year, the limited ~~period~~ permit ~~can~~ may be renewed one time to allow the graduate or student to pass the examination.

Auth: 37-1-131, 37-24-201, 37-24-202, MCA
Imp: 37-24-307, MCA

REASON: This amendment is intended to reflect the fact that the American Occupational Therapy Certification Board now administers the national exam.

It is also intended to clarify the status of temporary permits pending the examination.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to the Board of Occupational Therapists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 8, 1988.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Occupational Therapists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 8, 1988.

5. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or

subdivision or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 based on the licensees in Montana.

BOARD OF OCCUPATIONAL THERAPISTS
DEBRA J. AMMONDSON, OTR/L
CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 1, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF INVESTMENTS

In the matter of the proposed adoption of new rules and repeal of rules pertaining to investments by the Montana Board of Investments	))))	NOTICE OF PUBLIC HEARING ON PROPOSED NEW RULES AND REPEAL OF RULES PERTAINING TO INVESTMENTS BY THE MONTANA BOARD OF INVESTMENTS

TO: All Interested Persons:

1. On September 7, 1988, at 10:00 a.m., a public hearing will be held at the office of the Board of Investments, 555 Fuller Avenue, Helena, Montana, in the conference room, to consider the proposed adoption and repeal of rules pertaining to investments by the Montana Board of Investments.

2. Citations to the rules proposed to be repealed and the pages in ARM where they can be found are set forth below:

ARM 2.42.101, 2.42.201, 2.42.301, 2.42.302, 2.42.303, and 2.42.304 appear on pages 2-3077, 2-3081, 2-3087 and 2-3088.

ARM 8.97.101, 8.97.201, and 8.97.202 appear on pages 8-3465 and 8-3466.

ARM 8.97.301 through and including 8.97.309 appear on pages 8-3469 through and including 8-3478.

ARM 8.97.401 through and including 8.97.415 appear on pages 8-3487 through and including 8-3496.1.

3. The proposed new rules will read as follows:

Sub-Chapter 1

Organizational Rule

"I. ORGANIZATIONAL RULE (1) The Montana board of investments and economic development board were merged in 1987 by chapter 581 to form a new board of investments.

(2) The board consists of nine members appointed by the governor in the manner prescribed by 2-15-124, MCA. The members consist of one member from the public employee's retirement board provided for in 2-15-1009, MCA, one member from the teachers' retirement board provided in 2-15-1010, MCA, and seven members who provide

a balance of professional expertise, public interest, and public accountability, and who are informed and experienced in the subject of investment and who are representative of the financial community, agriculture, and labor. The names and addresses of the members of the board are as follows:

Robert L. Batista, 415 Third Street, NW, Great Falls, Montana 59401
G. Steven Brown, 1520 Highland, Helena, Montana 59601
J. William Kearns, Jr., 210 North Walnut, Townsend, Montana 59644
Patrice B. LaTourelle, 427 Lupfer Avenue, Whitefish, Montana 59937
Joel T. Long, 5430 Gene Sarazen Drive, Billings, Montana 59106
Joseph B. Reber, 801 Floweree, Helena, Montana 59601
W.E. Schreiber, 488 Barkley Lane, Whitefish, Montana 59937
Wilbur E. Scott, 3021 Eighth Avenue South, Great Falls, Montana 59401
Frederick B. Tossberg, Box 210 Grantsdale, Hamilton, Montana 59840

(3) The board is allocated to the department of commerce for administrative purposes as prescribed in 2-15-121, MCA. The board has authority to employ an investment officer, an assistant investment officer, and an executive director who have general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The investment officer, assistant investment officer and executive director serve at the pleasure of the board. The board prescribes the duties and annual salaries of the investment officer, assistant investment officer, executive director and three professional staff positions. A chart of the organization of the department can be found in ARM 8.1.101(5), and the board hereby adopts and incorporates the chart by reference into its organizational rule.

(4) Inquiries and applications regarding the board may be addressed to the chairman of the Montana Board of Investments, Capitol Station, Helena, Montana 59620."

Auth: 2-4-201, 17-6-324, MCA
Imp: 2-4-201, 17-6-324, MCA.

Sub-Chapter 2

Procedural Rules and Citizen Participation Rules

"II. PROCEDURAL RULES (1) The board hereby adopts and incorporates by reference rules 1 through 28 of the Attorney General's Model Procedural Rules. A copy of these rules may be obtained from the chairman of the Montana Board of Investments, Capitol Station, Helena, Montana 59620. Hearings on applications shall not be considered contested cases."

Auth: 2-4-201, 17-6-324, MCA
Imp: 2-4-201, 17-6-324, MCA

"III. CITIZEN PARTICIPATION RULES (1) The board hereby adopts and incorporates by reference the citizen participation rules of the department of commerce as set forth in ARM 8.2.201 through 8.2.207. A copy of these rules may be obtained from the chairman of the Montana Board of Investments, Capitol Station, Helena, Montana 59620."

Auth: 2-4-201, 17-6-324, MCA
Imp: 2-4-201, 17-6-324, MCA

Sub-Chapter 3

General Requirements for All Investments in Mortgages and Loans

"IV. DEFINITIONS In addition to the definitions set forth in 17-5-1503, and 17-6-302, MCA, the following definitions apply in all sub-chapters contained in Title 8, Chapter 97, of these rules:

(1) "ALTA" means American Land Title Association.

(2) "Appraisal" means an opinion of an appraiser on the nature, quality, value, or utility of specific interests in or aspects of identified real estate.

(3) "Board" or "Board of Investments" means the Board of Investments created in 2-15-1808, MCA.

(4) "Classified loan" means a loan which has been reviewed by a state or federal supervisory agency and determined to be an undue and unwarranted credit risk and classified as substandard, doubtful, a loss, or in some other equivalent category.

(5) "Commercial bank" means any bank authorized by law to receive deposits of money, deal in commercial paper or make loans thereon, lend money on real or personal property, discount bills, notes, or other commercial papers, and buy and sell securities, gold and silver bullion, foreign coins or bills of exchange.

(6) "Commercial loan" means a loan to a business, excluding a loan for operating farms or ranches, with location(s) in Montana or based in Montana, secured

by real property, and which may be secured by personal property if funded with coal tax funds.

(7) "Commitment" means a letter from the board agreeing to reserve a stated amount of its funds for a particular financing and setting forth the interest rates and other terms and conditions therefor.

(8) "Construction take-out loan" means a loan secured by a recently constructed dwelling or a recently remodeled dwelling which is finished and ready for occupancy.

(9) "Conventional" offering means loans secured by one to four family dwellings.

(10) "Day" means a business working day and excludes weekends and recognized state holidays.

(11) "FHA" means Federal Housing Administration.

(12) "FHLMC" (Freddie Mac) means Federal Home Loan Mortgage Corporation.

(13) "Financial institution" means an institution that:

(a) is a state or federally-chartered bank, savings and loan association, credit union, mortgage company, mortgage servicing company, development credit corporation, investment company, trust company, savings institution, small business investment company, or qualified Montana capital company;

(b) maintains an office in Montana; and

(c) is approved by the board as provided in Rule V. A financial institution that does not maintain an office in Montana may be approved, however, to sell or service federally guaranteed loans under these rules.

(14) "FmHA" means Farmers Home Administration.

(15) "FNMA" (Fannie Mae) means Federal National Mortgage Association.

(16) "Investment company" means an investment company as defined in 32-1-108, MCA.

(17) "Investment officer" means the person employed in such capacity by the board, pursuant to 2-15-1808, MCA.

(18) "Job credit" means the credit allocated for the creation of any job which pays at least 100 percent of the average wage as determined by the quarterly statistical report published by the Montana Department of Labor.

(19) "Lender" means the approved financial institution that will originate the application for a financial transaction.

(20) "Loan loss reserve fund for the in-state investment fund" means the fund established in 17-6-315, MCA.

(21) "Loan value" means an amount of the loan as a percent of the lower of cost or appraisal.

(22) "MAR" means Monthly Activity Report.

(23) "Mobile home" means any factory produced home which has metal I-beam on centerline of floor or "C" channel perimeter type floor support which has the wheel

and axle and/or towing tongue attached.

(24) "Multi-family" means a dwelling which contains five or more housing units.

(25) "Person" means any individual, sole proprietorship, partnership, corporation, or other entity which is authorized by law to transact business in Montana.

(26) "Pooled IDB program" means the program established in ARM 8.97.503(4)(a).

(27) "Primary residence" means a one to four single family owner-occupied home including land which is the principal residence of one of the mortgagor(s).

(28) "Prime rate" means the base rate on corporate loans quoted at large U.S. money center commercial banks as published by the Wall Street Journal.

(29) "Residential" means a home mortgage secured on a structure or structures designed principally for residential use by not more than four families which includes conventional, FHA and VA mortgage loans.

(30) "Savings and Loan" means a corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security under the supervision of the Department of Commerce.

(31) "Savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may exercise the powers set forth in 32-1-106, MCA.

(32) "SBA" means Small Business Administration.

(33) "Seasoned loan" means any mortgage loan which has been closed and carried on the seller/servicer's books for more than one year.

(34) "Seller/servicer" means the same as financial institution for the purposes of these rules.

(35) "Small- and medium-sized business" means a business that has a net worth less than $6 million; has an average net income, after federal income taxes, for the preceding two years of less than $2 million (average net income to be computed without benefit of any carryover loss); and has less than 200 employees employed in Montana.

(36) "Stand alone program" means the program established in ARM 8.97.503(4)(b).

(37) "Sweat equity" means work performed or materials provided by the borrower as part of a down payment in lieu of cash.

(38) "VA" means Veterans Administration."

Auth: 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-5-1503, 17-6-201, 17-6-302, MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be correct interpretation of this section.

"V. SELLER/SERVICER APPROVAL PROCEDURES - GENERAL REQUIREMENTS (1) Any financial institution may request approval as a seller/servicer for purposes of these rules, where loans are sold on a whole or participation basis and serviced for the life of the loan.

(2) An institution interested in becoming a seller/servicer must submit a written request for such approval. In addition, a copy of the last three years consolidated report of condition and income or audited financial statements, including both the balance sheet and income statement must also be submitted. If approved as a seller/servicer, the institution must sign a sale and servicing agreement and show proof of financial responsibility which may include errors and omissions insurance coverage.

(3) Participation agreements must be signed to sell loans on a participation basis and a participation certificate must be signed for each participation commitment delivered.

(4) Annually, and within 90 days after the seller/servicer's year end, the seller/servicer if a commercial bank, must submit to the board a complete copy of the consolidated report of condition and income. Other financial institutions must submit audited financial statements, including both a balance sheet and income statement. Proof of financial responsibility which may include errors and omissions insurance coverage may also be required. Failure to provide such proof, if requested, will result in termination of the sale and servicing agreement.

(5) The board may suspend approval of a seller/servicer and discontinue purchasing loans or otherwise participating with the seller/servicer in purchasing and servicing loans if any of the following situations occur:

(a) any fees due the board by the seller/servicer remain unpaid for more than 30 calendar days;

(b) the board determines that more than seven percent of loan payments have been delinquent for more than 90 calendar days; and

(c) the board determines that the seller/servicer has violated the servicing or participation agreement, or rules adopted by the board."

Auth: 17-5-1521, 17-6-324, MCA
Imp: 17-5-1521, 17-6-211(2), MCA

"VI. FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS (1) The following requirements apply to all loan programs:

(a) no offering will be considered without a forward commitment fee. Only checks or drafts drawn on seller/servicer controlled accounts will be accepted as a forward commitment fee and personal checks will not be

accepted;

(b) a forward commitment fee will be refunded only if the application is rejected or the counter offer made by the board is not accepted within 10 days by the seller/servicer. A minimum of $500 will be withheld from the forward commitment fee on commercial and multi-family loans to compensate the board for loan analysis; and $100 will be withheld on economic development linked deposit loans;

(c) during the forward commitment period, a loan must be offered, underwritten, accepted, and closed by the seller/servicer. All applicable checklist requirements, as set forth in these rules, must be received within 60 days after expiration of the commitment;

(d) extensions of the commitment period will be considered for reasonable purposes and only in consideration of additional commitment fees (as set forth in subsection (2)(a) and (3)(c) below) and net yield adjustments;

(e) forward commitment rates, on a net yield basis, will be posted every Thursday for a one week period. To obtain a forward commitment for any loan offering at the rate set last, a written request and fee must be submitted or postmarked within the commitment rate period. The basis for residential rates will be the FHLMC index and for all types of commercial and multi-family loans the Treasury Bond rates of similar maturity will be used. The seller/servicer is not required to deliver the loan documents or designate the borrower(s) name when reserving a forward commitment rate. In establishing those interest rates, the board will consider:

(i) interest rates available in Montana for other types of financing for similar purposes;

(ii) interest rates available in the national money market;

(iii) the effect of interest rates on the programs and objectives of the board; and

(iv) the type of loan program being financed by the board.

(f) the maximum servicing fee that the seller/servicer can retain is subject for approval by the board.

(2) The following requirements apply only to conventional, FHA and VA loans:

(a) the forward commitment fees charged, exclusive of the net yield requirement, based on dollar amount offered are:

When Purchased In Separate 60 Day Increments

1/2 of 1% for each 60 day increment, not to exceed 240 days

When Purchased For Terms Exceeding 60 Days

1 to 60 calendar days	1/2 of 1%
1 to 120 calendar days	3/4 of 1%
1 to 240 calendar days	1%

(b) the net yield requirements on property that is not the primary residence of one of the borrowers will be one-quarter of one percent (25 basis points) above the residential rates;

(3) The following requirements apply only to commercial, multi-family, economic development linked deposit, and federally guaranteed loans excluding FHA and VA:

(a) the net yield requirements will be based on monthly payments. Loans with payments other than monthly will require net yield adjustments to convert to monthly quoted yields;

(b) a request for forward commitment on each commercial or multi-family offering must be purchased separately and is subject to counter offers by the board;

(c) the forward commitment fees charged, exclusive of the net yield requirement, are:

Forward Commitment Period	Fee
1 to 90 calendar days	1/4% of the amount committed
1 to 180 calendar days	1/2% of the amount committed
181 to 270 calendar days	an additional 1/2% of the amount committed
271 to 360 calendar days	an additional 1/2% of the amount committed

(d) a borrower has a one-time option during the life of the loan to convert a fixed interest rate to an adjustable interest rate of two percent over prime net yield. If the rate is capped, the ceiling will be four percent over the initial rate and the floor will be two percent below the initial rate. The conversion fee is one percent based on the remaining loan balance;

(e) a borrower has a one-time option to convert from an adjustable interest rate to the board's currently quoted fixed interest rate during the life of the loan. The conversion fee is one percent based on the remaining balance."

Auth: 17-5-1504, 17-5-1521, 17-6-315, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-211(2), 17-6-315, 17-6-324, MCA

"VII. CONFIDENTIALITY OF INFORMATION (1) Unless otherwise required by law, information submitted by a financial institution and borrower will be treated as confidential, except the following:

(a) name and address of financial institution;
(b) name and address of borrower;
(c) short description of proposed project, including location of project;
(d) amount of proposed loan;
(e) the program(s) under which the financial institution or borrower is applying;
(f) any other information in which the demand of individual privacy does not clearly exceed the merits of public disclosure; and
(g) any information in which the demand of individual privacy clearly exceeds the merits of public disclosure when the borrower has expressly waived his right to privacy.

(2) The board shall maintain public files on each completed application received containing the following information:
(a) items (1)(a) through (g) of this rule;
(b) all written documents received or prepared concerning items (1)(a) through (g) of this rule;
(c) the investment officer's or his designee's recommendation to the board regarding items (1)(a) through (g) and his recommendation for approval or denial of the application; and
(d) a summary of board action regarding the application including the board's approval or disapproval of the application, the terms and interest rate of the financing, and the loan repayment record.

(3) This rule is based on the board's finding that except for the information described in items (1)(a) through (g), the demands of individual privacy clearly exceed the merits of public disclosure of the personal, financial and business information that is contained in applications to the board."

Auth: 17-5-1504, 17-5-1521, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-324, MCA

"VIII. APPLICATION PROCEDURE (1) Information on board programs and applications can be obtained from the board's staff.

(2) An application for commercial, multi-family, federally guaranteed loan, or an economic development linked deposit shall be submitted on the application form provided by the board, shall be properly signed and certified by the borrower and the financial institution, and shall be accompanied by the appropriate payment or fee as designated in these rules. The application signed by the financial institution shall constitute a commitment to originate the loan or enter into the credit arrangement on the terms specified in the application, subject to the board's participation.

(3) An application for a conventional, FHA, or VA loan must be completed and signed by the applicant and the

financial institution on the appropriate FHLMC/FNMA form, or FHA or VA form.

(4) An application for the purchase of debentures of qualified Montana capital companies shall be submitted on the application form provided by the board, shall be signed and certified by the Montana capital company and shall be accompanied by the appropriate fee as designated in these rules.

(5) An application and all its attachments, including all information submitted to the board subsequent to the submission of the original application for purposes of assisting the board in its evaluation of the application, shall become property of the board, once submitted, and shall be retained by the board in its loan file.

(6) No loan shall be offered to the board for financing if the borrower on whose behalf the loan would be submitted as a signator to a loan, including the loan being contemplated for financing, appears in the most recent examination report of the financial institution as a classified asset or loan. At the time application for financing is submitted the financial institution submitting the application shall certify that the loan for which financing is sought has not been classified and that it does not have a loan currently outstanding for the same borrower that is a classified loan."

Auth: 17-5-1504, 17-5-1521, MCA Implied 17-6-201, 17-6-324, MCA

Imp: 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"IX. FALSE OR MISLEADING STATEMENTS (1) Any person who purposely or knowingly makes a false or deceptive statement in an application or purposely or knowingly omits information necessary to prevent the statements in an application from being misleading may be prosecuted under 45-6-317, 45-7-203, MCA, or other applicable provisions of law.

(2) The submissions of false, misleading, or deceptive information in an application shall be grounds for rejection of the application and denial of further consideration."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"X. REVIEW OF APPLICATION AND APPEAL PROCEDURES (1) The investment officer shall review in a

timely manner each application to determine whether it is complete, in compliance with the applicable rules and criteria, and whether the borrower, financial institution and project are eligible for board investment. The investment officer shall notify the financial institution of any deficiencies in the application.

(2) If the investment officer determines that the application and other required documentation does not comply with the applicable rules and criteria, the financial institution will be notified in writing and in a timely manner of the noncompliance and the reasons therefor. Upon receipt of the notification and within 30 days thereof, the financial institution may resubmit the application for reconsideration.

(3) If a financial institution resubmits the application for reconsideration, the investment officer and board staff will transmit the application, other supporting documentation together with a summary of issues and a recommendation for action to the board for its final decision on the application.

(4) The financial institution will be notified of the time and place of the board meeting at which the board will consider the application and whether to participate in the financing proposed in the application.

(5) The board shall timely notify the financial institution in writing of its decision. If the decision is adverse, the letter shall specify the reasons for which the board declined to participate. If the decision is favorable, the board shall issue its commitment, setting forth the terms and conditions of its participation in the financing.

(6) An application may be withdrawn from consideration by the financial institution or borrower at any time prior to the time the board makes its determination of whether to participate. Once an application is withdrawn, it may not be resubmitted without the payment of an additional application fee. If a previously withdrawn application is resubmitted, it will be processed as a new application.

(7) Upon receipt of an adverse decision by the board, and within 30 days thereof, unless additional time is requested by the financial institution and granted by the board, the financial institution may request the board to reconsider its decision and submit additional information relevant to the adverse decision.

(8) At a subsequent meeting of which notice shall be given, the board shall consider its previous decision in light of the additional information submitted. If the board declines the application a second time, it may be resubmitted only if an additional application fee is paid. The application will then be processed as a new application."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA.
The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

Sub-Chapter 4

Requirements for All Residential, Commercial, Multi-Family, Federally Guaranteed Loans and Economic Development Linked Deposit Programs

"XI. RESIDENTIAL LOAN PROGRAMS - GENERAL REQUIREMENTS (1) The following requirements apply to all residential loans purchased by the board:

(a) mortgages must be secured by property located within the state of Montana, but additional collateral may be located outside the state of Montana;

(b) only loans secured by real property and other acceptable collateral, first mortgages, and participation in first mortgages on real property will be considered for purchase;

(c) mortgage offerings will be purchased on a net yield basis, with consideration given to the amount of funds available for investment and the return available on other permissible investments at the time of offering;

(d) in computing the yield to maturity, 12 years average life estimate will be used for residential mortgages amortized for 16 years or more, and 8 years average life estimate for residential mortgages amortized for 15 years or less;

(e) upon receipt of an interest rate reduction fee calculated as set forth below, the investment rate may be lowered one time on the board's portion of an outstanding loan to the board's current buy rate in effect at the time the fee is received, if it is determined that such rate reduction is in the best interest of the board's programs. The applicable buy rate will be calculated based upon the remaining term of the loan rounded to the nearest year. Any rate reduction will take effect as of the next payment due date after the fee is received by the board;

(i) if a financial institution has charged a fixed rate on the financial institution's portion of the loan, the financial institution must also reduce the interest rate on the financial institution's portion of the loan in conjunction with any rate reduction made. The financial institution may also charge a fee to do so. The financial institution's fee may not exceed the fee charged by the board calculated as set forth below. The borrower's historical payment record on the loan must meet the satisfaction of the board before any rate reduction will

be considered;

(ii) the fee is calculated based upon the following applicable percentage multiplied by the outstanding principal balance of the board's portion of the loan at the time the fee is received by the board:

Remaining Term of Loan	Fee
60 months or less	1%
61 months through 120 months	1-1/2%
121 months or more	2%

(f) partial release of secured property will be considered with a reduction to principal balance and endorsement to title policy. The seller/servicer should furnish all necessary information and items in the form of a written request including the reasons for the partial release; anticipated use of the land; the legal description of the land to be released and survey, if required. Any and all costs must be borne by the borrower."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XII. APPRAISALS (1) Financial institutions must have all offerings appraised by an independent fee appraiser and by submitting the appraisal certifies as to the appraiser's competence, appraisal experience, and lack of conflict of interest as to the appraised property.

(2) If the appraisal is not acceptable, another appraisal may be requested of the seller/servicer.

(3) Financial institutions are responsible for the selection of appraisers and are solely accountable for the quality of the appraiser's work.

(4) Specific appraisal formats and requirements will be required for different classes of real or personal property.

(5) All conventional loan offerings must be supported by and include an acceptable appraisal prepared by an independent fee appraiser which confirms that the subject property conforms to HUD/VA property standards.

(6) All commercial and multi-family loan offerings must be supported by and include an acceptable appraisal prepared by a member of a commonly recognized professional appraisal organization.

(7) Commercial and multi-family appraisals must be a full narrative report prepared in a format consistent with standards established by the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers

to include at a minimum:

(a) a summary of important facts and conclusions;
(b) a listing of assumptions and limiting conditions;
(c) a statement of the purpose and function of the appraisal reflecting that the appraisal was prepared for use in obtaining financing;
(d) a statement of property ownership and the date of valuation;
(e) identification of the property including a legal description;
(f) pertinent general information concerning the geographical area in which the subject property is located and trends in that area;
(g) pertinent specific information concerning the subject site to include a discussion of soil conditions, neighborhood trends, existing zoning requirements and any anticipated changes in zoning requirements;
(h) an estimate of assessment and property taxes;
(i) a detailed description of improvements (existing "as is", existing as rehabilitated, or planned new construction);
(j) an analysis of the subject property's highest and best use;
(k) a determination of site value based upon comparison of subject site with recent sales of similar sites in the area;
(l) a determination of the cost approach to value using the site value estimated by market comparison and the depreciated replacement cost value of subject improvements. The method used to estimate replacement costs of improvements must be explained;
(m) a determination of the income approach to value based upon comparison of market rents for similar properties in the area and upon projected expenses. The method used to calculate capitalization rates must be explained;
(n) a determination of market approach to value based upon recent sales of comparable properties in the area;
(o) a correlation of the three approaches to value and a conclusion of value;
(p) a certification by the appraiser as to the appraisal and value estimate including:
    (i) certification that the appraiser's valuation of subject property is not influenced in any way to accommodate an anticipated loan amount;
    (ii) certification that the appraiser has no present or contemplated future interest in

the subject property;

(iii) certification that neither the request to make the appraisal, nor the compensation for the appraisal, is contingent upon the appraised value of the subject property;

(iv) certification that the appraiser has personally inspected the subject property;

(v) certification that all statements and information in the appraisal report are true and correct and that the appraiser has not knowingly withheld any information;

(vi) certification that all contingent and limiting conditions are included in the appraisal;

(vii) certification that the appraisal report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the appraisal organizations with which the appraiser is affiliated;

(viii) certification that all conclusions and opinions concerning the subject property as set forth in the appraisal report were prepared by the appraiser;

(q) schedules detailing information relating to comparable sales and leases used in determining appraised value of subject property;

(r) other addenda necessary to document statements made in the appraisal;

(s) photographs, site maps and floor plans of subject property; and,

(t) a listing of the appraiser's qualifications including experience, education, memberships in professional societies, and client references."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XIII. CONVENTIONAL LOAN PROGRAM - GENERAL REQUIREMENTS (1) Except as otherwise indicated, the following requirements apply to all conventional loans purchased by the board;

(a) FHLMC underwriting guidelines, with the exception of the maximum dollar limit, will be used in evaluating all conventional loans. The FHLMC underwriting guidelines contain those guidelines and criteria relied upon by the FHLMC when underwriting conventional loans. A copy of the FHLMC underwriting guidelines can be examined or a copy obtained by contacting the board in Helena, Montana. The board's maximum loan-to-value on an uninsured loan is:

Graduated Scale

$20,000 - FHLMC Max.	80%
FHLMX Max. - $2000,000	70%
$200,000 - $250,000	65%
$250,000 - $300,000	60%
$300,000 - $500,000*	50%

* $500,000 maximum limit

(b) a seller/servicer may submit an offering on a whole or participation basis. Minimum participation required is 20 percent of the loan balance;

(c) a loan secured by a mobile home will not be considered, even if the home is secured on a permanent foundation;

(d) a seasoned loan will be considered if it meets the applicable program loan requirements;

(e) by submitting the loan application, the financial institution warrants that the property is or will be in finished condition prior to the board's purchase of the loan;

(f) escrow impounds are required for taxes, hazard insurance, mortgage insurance, and flood insurance.

(g) a maximum 90 percent loan-to-value will be considered for a property that is the borrower's primary residence with private mortgage insurance in an amount not less than 20 percent issued by an insurer acceptable to the board;

(h) unique characteristics which affect the marketability of a particular property in a particular community will be considered in determining whether the board will require a lower loan-to-value ratio;

(i) letters of credit will be accepted by the board but the aggregate amount may not exceed 25 percent of the bank's capital surplus and undivided profits as determined from the bank's most recent call report. Letters with recourse will not be accepted.

Auth: Implied Sec. 17-6-201, 17-6-324, MCA
Imp: 17-6-201, 17-6-211(2)

The portion of this rule implementing Sec. 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XIV. CONVENTIONAL LOAN PROGRAM - PURPOSE AND LOAN RESTRICTIONS (1) The board will not purchase a loan for an amount less than $20,000 unless the loan is for board-owned property.

(2) The board will not purchase a loan with a term exceeding thirty years. Each loan will be amortized monthly over the loan term unless a different amortization schedule is accepted by the board.

(3) Interim interest, closing costs and other

related soft costs, fees or assessments will not be considered as part of the cost/purchase amount when calculating the loan-to-value ratio.

(4) Sweat equity will be considered in cases where the value of the work performed by the borrower is verified at the time of application by an estimate from an independent contractor experienced in the type of work performed who is not involved in the construction of the property. The borrower must verify his or her qualifications for satisfactorily completing the work. In no event will sweat equity be allowed to exceed the lesser of 50 percent of the total equity requirement, or 10 percent of the appraised value. A separate inspection of work performed by the borrower may be required.

(5) A mortgage offering for refinance purposes must be for the borrower's primary residence. The maximum loan-to-value ratio for uninsured loans will be 70 percent up to FHLMC maximum and then the graduated scale in XIII(1)(a) will be used.

(6) Condominium projects will be considered if 90 percent of the units have been sold, all phases or add-ons to the project have been completed, and the Homeowner's Association has been controlled by the unit owners, other than the developer, for at least two years.

(7) Condominium projects less than two years old will be considered if unit owners are in complete control of the Homeowner's Association, the project is 100 percent complete, including recreational facilities and common areas, and the project is not subject to further phasing or annexation. The project must also have FNMA or FHLMC approval.

(8) If private mortgage insurance is required, the board will not consider cancellation until the following requirements are met:

(a) the board must have held the loan for at least three years;

(b) a current appraisal on a FHLMC/FNMA form is provided and certified by the financial institution per Rule XII;

(c) the loan balance as a percent of the lower of original cost or current appraised value must not exceed original approved loan-to-value;

(d) the loan payment history for the past three years must be provided showing that the loan has not been past due for more than 30 days."

Auth: Implied Sec. 17-6-201, 17-6-324, MCA
Imp: 17-6-201, 17-6-211(2), MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XV. CONVENTIONAL LOAN PROGRAMS - OFFERING CHECKLIST

(1) If the offering contains residential

conventional mortgages, the seller/servicer is required to submit any number of the following for underwriting:

(a) the forward commitment fee along with written request;

(b) the complete loan offering sheet;

(c) a copy of a legible, signed loan application, dated within 90 days, including the most recent FNMA or FHLMC application form;

(d) verification whether the property will or will not be primary residence of the borrower;

(e) a copy of the formal written credit report(s) on all borrowers and co-borrowers from a credit reporting agency, dated within 90 days;

(f) a written verification of significant deposits and liabilities not listed on the credit reports, dated within 90 days;

(g) a written verification of employment, dated within 90 days;

(h) a copy of the borrower's complete federal tax return for the past two years along with a completed Cash Flow Analysis form, to be provided by the board, if the borrowers or co-borrowers are self-employed or have cash flow from other sources, including but not limited to: depreciation, interest, dividends, partnerships, corporations;

(i) a copy of the buy/sell agreement and/or a certified and dated breakdown of construction costs plus land costs signed by the contractor and borrower; where the borrower is the builder, the financial institution will certify the breakdown of construction costs;

(j) a copy of the appraisal report obtained by the seller/servicer, utilizing the FNMA or FHLMC most updated form for number of units, with at least two actual clear and current pictures of subject property, dated within 180 days;

(k) a copy of the homeowner's association by-laws, if applicable;

(l) other pertinent data.

(2) If the board accepts the offering, the following information must be submitted to the board prior to funding disbursement:

(a) the appraiser's verification that the subject property has been completed per plans and specifications;

(b) a copy of the settlement statement;

(c) a copy of the final ALTA title insurance policy with extended coverage for properties with recent construction or addition. The policy must be endorsed as required by the board and all exceptions to title approved including any S.I.D.(s);

(d) a copy of the note utilizing the most recent FNMA or FHLMC form;

(e) a copy of the recorded first deed of trust containing "due-on-sale" clause, utilizing the most recent

FNMA or FHLMC form, or if approved, a mortgage with a due-on-sale clause;

(f) a certified copy of the recorded assignment of mortgagee's interest by the clerk and recorder; the assignment must be assigned as required by the board, except for participation;

(g) a completed loan participation certificate, if applicable;

(h) a completed loan setup sheet in pencil (form to be provided by the board);

(i) a survey;

(j) the acknowledgment of non-exemption from execution as homestead pursuant to 70-32-202, MCA;

(k) a certification by the contractor or an independent qualified inspector that the subject property has been constructed in compliance with the construction standards established by the FHA;

(l) for newly constructed properties with individual water systems, a copy of the well log confirming that the well was drilled by a licensed water well contractor and that it meets FHA standards; or certification that the system provides 100 gallons per person per day for domestic use if the water supply system is not an individual well and is designed to serve more than one property;

(m) for existing properties with individual water systems, a copy of the well log, if available, and a flow test confirming that the well meets FHA standards;

(n) a copy of the water test confirming that the water produced by an individual water system is potable and suitable for drinking;

(o) for properties with individual sewage systems, confirmation that the septic system meets state and local requirements;

(p) road maintenance agreements as required by FHA;

(q) other pertinent information as required."

Auth: Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-6-201, 17-6-211(2)

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XVI. FHA AND VA LOAN PROGRAMS - GENERAL REQUIREMENTS (1) Approved seller/servicers may submit offerings on a whole basis. Participation is not allowed.

(2) The board will not purchase a loan for an amount less than $20,000 unless the loan is for board-owned property.

(3) The board will purchase a loan with a term not to exceed thirty years. Each loan will be amortized over the loan period.

(4) Only offerings covering property of one to four family dwellings will be considered.

(5) Each VA offering must include any combination of a down payment and VA guarantee which equals at least 35 percent of the lower of cost or appraisal. Maximum exposure to the board shall not exceed 65 percent of VA offerings.

(6) A seasoned loan will be considered for purchase by the board if it meets the applicable loan program requirements."

Auth: Implied Sec. 17-6-201, 17-6-324, MCA
Imp: 17-6-201, 17-6-211(2)

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XVII. FHA AND VA LOAN PROGRAMS - OFFERING CHECKLIST

(1) If the offering contains FHA or VA loans, the seller/servicer may be required to submit any of the following for underwriting:

(a) the forward commitment fee along with written request;

(b) the completed loan offering sheet, to be provided by the board;

(c) a copy of FHA/VA signed and typed loan application;

(d) a verification that the property will or will not be the primary residence of the borrower(s);

(e) a copy of the formal written credit report(s) on each borrower from the credit reporting agency, dated within 90 days;

(f) a verification of deposits and employment;

(g) a copy of the borrower's completed federal tax return for the past two years along with a completed Cash Flow Analysis, to be provided by the board, if the borrower or co-borrowers are self-employed or have cash flow from other sources, including but not limited to: depreciation, interest, dividends, partnerships, and corporations;

(h) a copy of the VA Certificate of Reasonable Value or HUD Conditional Commitment along with one actual clear and current picture of the subject property;

(i) the acknowledgment of non-exemption from execution as a homestead pursuant to 70-32-202, MCA;

(2) If the offering is accepted, the following information must be submitted prior to funding disbursement:

(a) a copy of the settlement statement;

(b) a copy of the final title insurance policy ALTA Extended Coverage endorsed as required by the board;

(c) a copy of the note;

(d) a copy of the recorded first trust indenture;

(e) a copy of the recorded assignment of the mortgagee's interest certified by the clerk and recorder. The assignment must be assigned as required;

(f) a copy of the FHA Mortgage Insurance

Certificate;

(g) a copy of the VA Loan Guaranty Certificate demonstrating that the maximum exposure of the board does not exceed 65 percent;

(h) a loan setup sheet completed in pencil (form to be provided by the board);

(i) the acknowledgment of non-exemption from execution as a homestead pursuant to 70-32-202, MCA;

(j) other pertinent information as required."

Auth: Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-6-201, 17-6-211(2), MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XVIII. FEDERALLY GUARANTEED LOAN PROGRAMS - GENERAL REQUIREMENTS (1) The board may purchase participation in fixed-rate loans that are guaranteed by the United States or an agency or instrumentality of the United States, including but not limited to the Small Business Administration, the Farmers Home Administration and the Federal Aviation Administration.

(2) The board will not purchase any offering at a premium."

Auth: Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-6-201, 17-6-211(2), MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XIX. FEDERALLY GUARANTEED LOAN PROGRAMS - OFFERING CHECKLIST (1) If the offering contains an SBA guaranteed loan, the seller/servicer may be required to submit any of the following for underwriting:

(a) an appropriate forward commitment as designated in Rule VI(3)(c);

(b) a completed application form, to be provided by the board;

(c) a completed copy of SBA Form #529B, Authorization and Loan Agreement.

(2) If the offering is accepted, the following information must be submitted prior to funding disbursement:

(a) a completed copy of SBA Form #1086 signed by the seller/servicer;

(b) a completed copy of SBA Form #147, Note, which:

(i) is certified by the financial institution's original signature to be a complete and true copy;

(ii) reflects the following endorsement on the original note: "The guaranteed portion of the Note has been transferred to a Registered Holder for value." The endorsement must be dated as signed by the financial institution;

(c) the participation certificate.

(3) If the offering contains a FmHA guaranteed loan, the seller/servicer must submit the following:

(a) an appropriate forward commitment as designated in Rule VI(3)(c);

(b) a completed application form, to be provided by the board;

(c) a copy of FmHA Form #449-14, Conditional Commitment for Guarantee, containing all conditions for the guarantee.

(4) If the offering is accepted, the following information must be submitted prior to funding disbursement:

(a) Guarantee Assignment Option:

(i) a completed copy of signed FmHA Form #449-34, Loan Note Guarantee;

(ii) a copy of the original Note;

(iii) a completed copy of FmHA Form #449-36, Assignment Guarantee Agreement, originally signed and attested by the seller/servicer and an authorized FmHA representative;

(iv) a copy of FmHA Form #449-35, Financial Institution's Agreement;

(v) the loan participation certificate.

(b) Multi-Note Option:

(i) a completed copy of FmHA Form #449-34, Loan Note Guarantee, originally signed by an authorized FmHA representative;

(ii) the original note for the amount of the guaranteed portion of the loan;

(iii) a copy of FmHA Form #449-35, Financial Institution's Agreement;

(iv) the loan participation certificate."

Auth: Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-6-201, 17-6-211(2), MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XX. COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - GENERAL REQUIREMENTS (1) The board may purchase from an approved financial institution a participation interest of up to 80 percent in a commercial loan or multi-family loan that meets the requirements of this rule.

(2) Only a loan in which the financial institution agrees to retain at least a 20 percent interest and which it will service in its entirety will be considered for participation.

(3) A complete offering must be submitted at least fifteen (15) working days prior to the next regularly scheduled board meeting.

(4) Multi-family loans must be secured by a first mortgage on unencumbered real property.

(5) Private mortgage insurance may be required as an additional credit guarantee.

(6) The loan term should coincide with the term of the lease agreement(s).

(7) Subordination of owners or stockholder(s) debt may be required.

(8) Escrow impounds may be required for taxes, hazard insurance, mortgage insurance, and flood insurance.

(9) By submitting the loan application, the financial institution warrants that the property is or will be in finished condition prior to the board's purchase of the loan.

(10) A loan for land development, tax shelter, or speculative ventures will not be considered.

(11) A loan for refinancing purposes will be considered in conjunction with, but not limited to, a physical expansion and rehabilitation. For purposes of this rule, physical expansion means at least 15 percent of the loan proceeds will be used for improvements to the property.

(12) The payment of loan principal and interest shall be secured by a mortgage(s) on the property being financed and, if necessary, additional collateral, including but not limited to personal property, and shall be subject to any other terms and covenants the board deems necessary to protect its investment.

(13) Working capital secured by contracts receivable may be financed at the discretion of the board.

(14) A prepayment penalty may be charged.

(15) Upon receipt of an interest rate reduction fee calculated as set forth below, the investment rate may be lowered one time on the board's portion of an outstanding loan to the board's current buy rate in effect at the time the fee is received, if it is determined that such rate reduction is in the best interest of the board's programs. The applicable buy rate will be calculated based upon the remaining term of the loan rounded to the nearest year. Any rate reduction will take effect as of the next payment due date after the fee is received by the board.

(a) If a financial institution has charged a fixed rate on the financial institution's portion of the loan, the financial institution must also reduce the interest rate on the financial institution's portion of the loan in conjunction with any rate reduction made. The financial institution may also charge a fee to do so. The financial institutions's fee may not exceed the fee charged by the board calculated as set forth below. The borrower's historical payment record on the loan must meet the satisfaction of the board before any rate reduction will be considered.

(b) The fee is calculated based upon the following applicable percentage multiplied by the outstanding principal balance of the board's portion of the loan at

the time the fee is received by the board:

Remaining Term of Loan	Fee
60 months or less	1%
61 months through 120 months	1-1/2%
121 months or more	2%

(16) Partial release of collateral will be considered with a reduction to the principal balance. The seller/servicer must furnish all necessary information and documentation in the form of a written request to justify the partial release of collateral. All expenses related to the requested release shall be borne by the borrower."

Auth: 17-5-1504, 17-5-1521, 17-6-315, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-211(2), 17-6-315, 17-6-324, MCA

"XXI. COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - TERMS AND LOAN LIMITS (1) The maximum amortization to be considered will be 20 years. The loan term will be tied to the life expectancy of the collateral.

(2) The maximum loan-to-value ratio to be established will be 75 percent using the lower of the appraised value or cost/purchase amount. Interim interest, closing costs and other soft costs will not be considered as part of the cost/purchase amount when calculating the loan-to-value ratio.

(3) A loan agreement must contain the following signed and recorded addendum: "The grantors shall be liable for and agree to pay any deficiency owing under the promissory note notwithstanding any provisions of Montana law which would excuse the grantors or any other obligor from liability of such deficiency."

Auth: 17-5-1503, 17-5-1521, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-211(2), 17-6-324, MCA

"XXII. COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - OFFERING CHECKLIST (1) If the offering contains multi-family or commercial loans, the seller/servicer may be required to submit any of the following for underwriting:

(a) the forward commitment fee;

(b) the loan request, purpose of the loan, and breakdown use of loan proceeds;

(c) the description and history of the business and borrower(s), including borrower(s)'s management skills in operating this type of business. Resumes of all officers and management personnel must be submitted;

(d) the number of employees including subsidiaries and affiliates at time of application;

(e) a copy of the business's assumed name

certificate(s), partnership agreement, or corporate charter, and bylaws, if applicable;

(f) a copy of the signed, dated and current (within 90 days) personal financial statement of each individual guaranteeing loan;

(g) copies of the signed, dated financial statements of the business guaranteeing loan for the past three years together with a current statement dated within 90 days;

(h) a copy of a formal written credit report(s) on each borrower and business from a credit reporting agency;

(i) a verification of significant deposits and liabilities not listed on credit report(s);

(j) a copy of a completed federal tax return with all schedules and attachments for the past three years for each individual guaranteeing the loan;

(k) a copy of a completed year end financial statement in audited or review format prepared by an independent CPA on the business for the past three years. If an audit or review format financial statement is not available then the business's federal tax returns for the past three years are required. An interim financial statement dated within 90 days of the application must be provided;

(l) earnings projections for three years and projected cash flow analysis for at least one year together with a list of assumptions used to compile projections.

(m) a copy of the buy/sell agreement on the land and/or improvements, if applicable;

(n) a copy of the construction contract with "turn key" firm cost quotation plus other hard as well as soft costs, if applicable;

(o) a copy of the signed lease agreements, along with description and history of each tenant, if applicable;

(p) a current balance sheet showing capital investment/equity if the business is a new business;

(q) a copy of the appraisal as required under Rule XII.

(r) other pertinent information as required.

(2) If the offering is accepted, the following information must be submitted prior to funding disbursement:

(a) a copy of the settlement statement;

(b) a copy of the final ALTA title insurance policy with extended coverage. All exceptions to the title must be approved by the board including any S.I.D.(s);

(c) copies of the security agreements, UCC financing statements and lien searches, if applicable;

(d) a copy of each personal guarantee;

(e) the assignment of "key man" insurance if applicable;

(f) a copy of the private mortgage insurance

coverage confirmation, if applicable;

(g) a copy of the note and loan agreement with terms, conditions, representations, warranties, condition, covenants, and events of default acceptable to the board including addendum under Rule XXI(3);

(h) copies of the assignment of leases;

(i) a copy of the recorded first deed of trust or mortgage, if approved, with due-on-sale clause; the FNMA/FHLMC most recent form required on multi-family loans including a properly completed multi-family due-on-transfer rider;

(j) the loan setup sheet completed in pencil, to be provided by the board;

(k) the signed Participation Agreement, if applicable;

(l) the signed and completed Participation Certificate;

(m) a copy of the report issued by building code authority with jurisdiction stating that the building complies with the applicable building code, is not dangerous and is approved for occupancy;

(n) other pertinent information as required."

Auth: 17-5-1504, 17-5-1521, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-324, MCA

"XXIII. ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM - GENERAL REQUIREMENTS (1) The board may place economic development linked deposits at an interest rate determined in accordance with Rule VI, with approved financial institutions that contract with the board to utilize the receipts to finance long-term fixed-rate loans to small- and medium-sized businesses. The amount of linked deposit shall be limited to 100 percent of the amount of the loan linked to the deposit. The financial institution retains all risk on any loans financed with the proceeds of an economic development linked deposit. This program may not be used to fund or support a loan that is guaranteed in whole or in part by an agency or instrumentality of the United States government.

(2) The terms and conditions for an economic development linked deposit shall be determined by the board, but in no case shall the maximum term exceed 20 years.

(3) Funds from economic development linked deposits may be used by financial institutions to make loans for working capital, interim construction, inventory, site development, acquisition of machinery, equipment, and buildings or other types of loans; or the financial institution may agree to issue a letter of credit or comparable instrument to secure a loan made for such purposes.

(4) Economic development linked deposits are subject to the collateral and pledging requirements provided in

17-6-101 through 17-6-105, MCA, or such other collateral and pledging requirements as may be necessary to secure the board's investment."

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

"XXIV. CONVENTIONAL, FHA, VA, COMMERCIAL, AND MULTI-FAMILY LOAN PROGRAMS - ASSUMPTIONS (1) The seller/servicer must notify the board of any transfer of ownership on a loan purchased by the board, including loan participations. Transfers include, but are not limited to, sales on contract and wraparounds.

(2) The servicer must enforce the "due-on-sale" clause where it exists for all transfers and sales. The acceleration of the due date upon underwriting and approval of purchaser's credit risk and upon written agreement on rate of interest payable on the remaining amount secured may be waived.

(3) The servicer may not change the interest rate or servicer fee rate without written approval.

(4) When a conventional loan is assumed, the servicer may charge a fee, in addition to the board fee, of an amount not to exceed the FHLMC limit of $900 where the transfer is subject to board consent.

(5) If an agreement is reached to assume the remaining balance, a one-half of one percent (1/2 of 1%) assumption/processing fee will be required on a conventional loan, and a three-fourths of one percent (3/4 of 1%) assumption/processing fee will be required on commercial and multi-family loans. A copy of the settlement statement and assumption agreement will be required for conventional, commercial and multi-family loans. An assumption/processing fee will not be required with an assumption of an FHA/VA loan.

(6) Prior approval of a purchaser's credit for a release of liability is required for an assumption of a FHA/VA loan.

(7) If the board approves an assumption of any loan, a written release of liability for the original debtor will be sent to the seller/servicer."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-315, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-201, 17-6-211(2), 17-6-315, 17-6-324, MCA

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XXV. SELLER/SERVICER - LOAN DELINQUENCY FOR RESIDENTIAL, COMMERCIAL AND MULTI-FAMILY (1) The seller/servicer must monitor the delinquent portfolio in a prompt and efficient manner.

(2) The seller/servicer must vary collections

efforts in order to accommodate hardship cases and should avoid establishment of fixed procedures which may be ineffective in counseling borrowers who are frequently delinquent. Modifications of repayment terms and conditions must be approved by the board.

(3) The seller/servicer must establish a definite commitment with the delinquent borrower to cure the delinquency.

(4) The seller/servicer must comply with the following timetable and procedures for all delinquent loans serviced by the board:

Days of Delinquency	Required Action
15	Seller/servicer mails late notice to borrower.
20	Seller/servicer contacts the borrower by telephone concerning the delinquency.
45	Seller/servicer has personal interview with borrower.
60	Seller/servicer must submit a Loan Service Report to be provided by the board, with MAR by the 25th of the month.
90	Seller/servicer must submit a Property Inspection Report, to be provided by the board, with MAR by the 25th of the month. Seller/servicer must establish a repayment plan with the borrower to cure the delinquency within the shortest period of time. Seller/servicer must determine which of the following actions it will follow and so inform the board: 1. establish a liquidation plan with the borrower providing for a minimum of 1-1/2 payments per month; 2. recommend that the borrower sell the property; 3. determine if the borrower is eligible for assignment or will offer deed in lieu of foreclosure; and, 4. recommend foreclosure.

(5) The seller/servicer must submit a Loan Service Report, to be provided by the board, for all loans in

arrears 60 days or more by the 25th of the month. The seller/servicer must also submit a Supplemental Loan Service Report by the 25th of each month until the loan is either current or liquidated.

(6) The seller/servicer must submit a Property Inspection Report, to be provided by the board, for all loans in arrears 90 days or more by the 25th of the month. The seller/servicer must also submit a Supplemental Property Inspection Report every 60 days until the loan is either current or liquidated.

(7) The seller/servicer must comply with all requirements imposed by federal agencies on private mortgage insurers guaranteeing or insuring the loan. Copies of all required notices must be furnished to the board."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-5-1501, 17-5-1521, 17-6-201, 17-6-324, MCA.

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"XXVI. SELLER/SERVICER - LOAN FORECLOSURE FOR RESIDENTIAL, COMMERCIAL AND MULTI-FAMILY (1) The seller/servicer shall, upon the request and under the direction of the board, assist in the foreclosure or other acquisition of the property securing the collection of any applicable mortgage insurance.

(2) The seller/servicer must manage and protect the mortgaged property from waste.

(3) As directed by the board, the seller/servicer shall manage, operate, improve, rent and sell such real estate.

(4) Upon the sale of such real estate, on terms as specified by the buyer, if payments are deferred and payable under contract or mortgage, the seller/servicer shall service the same until completely liquidated, upon the terms provided for the servicing of mortgages.

(5) The board will reimburse the seller/servicer for the board's portion of reasonable out-of-pocket expenses incurred during the liquidation of the mortgaged property provided that such items are made part of the claim, and upon receipt of the Cash Disbursement Request Form, to be provided by the board.

(6) If warranty violations or deficiencies exist, the seller/servicer may be required to repurchase the board's interest in the loan including accrued interest."

Auth: 17-5-1504, 17-5-1521, MCA Implied Sec. 17-6-201, 17-6-324, MCA

Imp: 17-5-1501, 17-5-1521, 17-6-201, 17-6-324, MCA.

The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

Sub-Chapter 5

Additional Requirements for Commercial, Multi-Family, Federally Guaranteed Loans and Economic Development Linked Deposits

"XXVII. INVESTMENT POLICY, CRITERIA, AND PREFERENCES

(1) If commercial, multi-family, federally guaranteed, or economic development linked deposit loans are funded from the permanent coal tax trust, this rule specifically applies in addition to Rules II through and including Rule X, Rules XII, and Rules XVIII through and including XXVI.

(2) As required by 17-6-304, MCA, objectives of the board for the investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

(3) The statement of intent of House Bill 100, Chapter 677, Montana Session Laws, 1983 states that the permissible investments of the board should "be based on the long-term benefit to the Montana economy." The board has determined that investments in loans to businesses that will strengthen the Montana economy have the potential to maintain and create jobs, increase per capita income, increase Montana tax revenues in the future, will all meet the objectives of 17-6-304, MCA.

(a) In considering whether an applicant will maintain and create jobs, the board will consider whether the applicant's proposed endeavor will displace existing jobs of competing Montana businesses.

(4) The board has determined that its programs are primarily designed to make available fixed rate loans and it will target its funds accordingly. Variable rate loans will be considered only in exceptional circumstances.

(5) The board will not fund loans to any governmental entity or non-profit corporation.

(6) The board will determine that an application is eligible for financing from in-state investment funds if it finds that:

(a) the financing will be made in the Montana economy with special emphasis on new or expanding locally-owned enterprises;

(b) the investment will further the objectives of 17-6-304, MCA, by diversifying, strengthening, and stabilizing the Montana economy; and

(c) the investment will increase employment in Montana and business opportunities while maintaining and improving a clean and healthful environment.

(7) In deciding which of several eligible investments of equal or comparable security and return are to be made when sufficient in-state investment funds are

not available to fund all possible investments, the board shall give preference to investments that:

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

(b) are for locally owned enterprises that are either expanding or establishing new operations;

(c) provide jobs that will be substantially filled by current Montana residents, as opposed to jobs that will be filled by non-residents coming into the state to fill such jobs;

(d) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(e) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(f) benefit small- and medium-sized businesses.

(8) As required by 2-4-305, MCA, notice is hereby given that (1), (2), and (7) above repeat in substantial part 17-6-304, 17-6-309, MCA, and the statement of intent of Ch. 677, Montana Session Laws (1983), and are included herein to provide full notification to the public concerning the scope of legislative policy under which the in-state investment rules are adopted."

Auth: 17-6-324, MCA
Imp: 17-6-304, 17-6-305, 17-6-314, 17-6-324, MCA

"XXVIII. INTEREST RATE REDUCTION FOR LOANS FUNDED FROM THE COAL TAX TRUST (1) The board will provide an interest rate reduction based on the number of jobs created over a two year period from the time the loan is delivered to the board. The interest rate reduction shall be calculated as follows:

(a) .05 percent reduction for each job created up to a maximum of 2.50 percent;

(b) If the job pays more than the average wage, job credit will be allowed for each 25 percent increment above the average wage to a maximum of two jobs; and

(c) If the job pays less than the average wage, job credit will be allowed for each 25 percent increment below the average wage.

(d) No partial job credit will be given unless one whole job is created.

(e) The business must make application in writing, through its financial institution, to the board providing satisfactory evidence of the creation of jobs.

(i) The business may make application at the time the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.

(f) The investment officer or his designee has 15 working days to notify the business through its financial

institution what action has been taken on its request to lower the interest rate on the board's portion of the note. Any reduction in the interest rate will be effective the next scheduled payment."

Auth: 17-6-324, MCA
Imp: 17-6-304, MCA

Sub-Chapter 6

Bonds and Notes of Board,
Loan Loss Reserve Account,
Purchase of Montana Capital Company Debentures

"XXIX. BONDS AND NOTES OF BOARD (1) The board may invest its funds in bonds, notes or other obligations of the board issued pursuant to Title 17, Chapter 5, Part 15, MCA, and to Title 17, Chapter 5, Part 16, MCA"

Auth: 17-5-1504, 17-5-1521, 17-6-324, MCA
Imp: 17-5-1504, 17-5-1521, 17-6-324, MCA

"XXX. LOAN LOSS RESERVE ACCOUNT FOR THE IN-STATE INVESTMENT FUND (1) All fees collected under Rule XXX and half of the fees collected under Rule VI shall be deposited to the loan loss reserve fund.

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

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

Auth: 17-6-324, MCA
Imp: 17-6-315, MCA

"XXXI. PURCHASE OF DEBENTURES OF QUALIFIED MONTANA CAPITAL COMPANIES (1) In order to facilitate the venture capital investments in Montana business and at the same time protect the in-state investment fund from loss, the board may provide leverage to any qualified Montana capital company through the purchase of debentures issued by the capital company.

(2) For the purpose of this section, a "debenture" is a bond, note or other evidence of indebtedness.

(3)(a) In no event shall the amount of debentures purchased by the board be in excess of 100 percent of the net worth of the capital company.

(b) Upon written notice by the board, the entire principal amount of the debentures may be declared immediately due and payable if the capital company fails to maintain the minimum ratio described in (3)(a) above, or is determined to be in violation of any provision

of Title 90, Chapter 9, MCA, by the annual examination provided for by 90-8-313, MCA.

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

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

(6) The maximum aggregate amount of debentures the board may purchase or guaranty shall not exceed 10 percent of all coal trust funds of the board.

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

(b) The capital company shall pay a non-refundable $200 application fee to the board at the time the application is made.

(c) The application shall certify that investments made with the board's funds are consistent with the terms and conditions of the Montana Capital Company Act.

(d) The provisions of Rules VIII, X and XX apply to review and approval of an application by the investment officer and the board.

(e) The capital company shall pay to the board at the time of purchase or guaranty of the debentures a one time fee of $10 per thousand on the par value (face amount) of the debentures.

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

(g) A capital company originating a loan or investment may charge the borrower a rate of interest or dividend no more than seven percentage points above the board's interest rate on the debentures guaranteed or purchased by the board. This limitation does not apply to additional income received by the capital company through revenues or income participations, appreciation in the value of equity, product or service royalties, or fees for services.

(h) The capital company shall file with the board an annual CPA prepared financial statement and may be required to submit more frequent reports at the request of the investment officer on the status of its investment portfolio or financial statement."

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

REASON: The board is proposing to adopt these new rules in order to update and more fully implement its existing powers and duties as pertaining to its residential and commercial mortgages, and economic development loans. The board is proposing to repeal the rules specified because the new rules proposed for adoption more comprehensively

address the applicable requirements, procedures, and policies.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Mr. Dave Lewis, Executive Director, Board of Investments, 555 Fuller Avenue, Helena, Montana, no later than September 14, 1988.

5. Mona Jamison has been designated to preside over and conduct the hearing.

MONTANA BOARD OF INVESTMENTS
Mr. W. E. Schreiber, Chairman

By: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.25.1021, 42.25.1022 and 42.25.1023 relating to New Production of Net Proceeds.	))))	NOTICE OF REPEAL of ARM 42.25.1021, 42.25.1022 and 42.25.1023 relating to New Production of Net Proceeds.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 3, 1988, the Department of Revenue proposes to repeal ARM 42.25.1021, 42.25.1022 and 42.25.1023 relating to New Production of Net Proceeds. (AUTH, 15-23-108 MCA; IMP, 15-23-602 and 15-23-603 MCA.)

2. The rules are proposed to be repealed because during the 1987 legislative session the term "new production" was redefined and the term "interim production" was introduced. As a result these rules are no longer applicable.

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

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

no later than September 9, 1988.

5. If a person who is directly affected by the proposed repeal 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 9, 1988.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.25.511 relating to Coal Gross Proceeds on Processing, Refining, Royalties for Contract Sales Price.	NOTICE OF PUBLIC HEARING ON the PROPOSED AMENDMENT OF ARM 42.25.511 relating to Coal Gross Proceeds on Processing, Refining, Royalties For Contract Sales Price.

TO: All Interested Persons:

The notice of proposed agency action published in the Montana Administrative Register on May 26, 1988, is amended as follows because the required number of persons have requested a public hearing.

1. On August 31, 1988 at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana to consider the amendment of the above referenced rule relating to Coal Gross Proceeds on Processing, Refining, Royalties for Contract Sales Price.

2. The language of the rule proposed to be amended can be found in the 1988 Montana Administrative Register Issue No. 10, page 943.

3. The purpose of the proposed amendment can be found in the 1988 Montana Administrative Register Issue No. 10, page 943.

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

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

no later than September 9, 1988.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.32.103 relating to Valuation of Minerals for RITT Purposes.	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of ARM 42.32.103 relating to Valuation of Minerals for RITT Purposes.

TO: All Interested Persons:

1. On August 31, 1988, at 10:30 am, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.32.103, relating to Valuation of Mineral for RITT.

2. The amendment as proposed provides as follows:

42.32.103 ~~COMPUTATION OF TAX (1) The resource indemnity trust tax is computed on the gross value of the mineral at the time of extraction from wither the surface or subsurface of the earth.~~

~~(2) Producers may not reduce gross value for any costs or expenses of bringing minerals to mine mouth.~~

COMPUTATION OF TAXABLE VALUE (1) Taxable value for purposes of the resource indemnity trust tax will be determined at the time of extraction from the ground. The time of extraction is after loading the raw mineral product and before any hauling or transportation occurs.

(2) Taxable value at the time of extraction will be determined using one of the following methods which are listed in the order they are to be considered.

(a) The producer's actual sales prices for mineral products sold at the time of extraction will be considered the best evidence of value provided the sales are arm's-length and represent approximately 30% of total mineral production. Sales of less than 30% of total production may be acceptable indicators of value if the sales price per unit is corroborated with other representative market data for minerals of like kind and grade. Documentation for this method must be provided by the producer to the department on request.

(b) If the producer does not have the sales information discussed in (a), a market survey of other producers' sales of like kind and grade mineral products may be done. If this method is used, the producer must obtain market data for 3 or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for minerals of comparable quality sold in quantities approximating the producers level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. All information obtained by the producer to support this method must be provided to the

department on request.

(c) If the information required by (a) or (b) is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is stated below.

Taxable value/unit = Direct costs through extraction X Sales price/unit

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Total direct costs

(i) Direct costs through extraction will include overburden removal, drilling, blasting, loading, mine reclamation, production taxes and royalties and any other direct costs incurred through the loading process.

(ii) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products which have not been manufactured or fabricated. These costs will typically include hauling, sorting, crushing, grinding, drying, smelting, refining, etc. Final reclamation costs related to dismantling facilities may also be included in total direct costs.

(iii) The sales price per unit will be the weighted average price of the first marketable product or group of substantially similar products sold in significant quantities by the producer. The first marketable product or group of products will not include manufactured products. For example, a cement producer must use the sales price of bulk cement not the price of concrete blocks he may manufacture from the cement.

(iv) Only direct costs may be used in computing the cost ratio for the formula. No costs that benefit the operation as a whole or are not directly related to a specific phase of the mining or processing of the mineral product will be included in the ratio.

(d) The department may use an alternative valuation method if warranted by an unusual situation. AUTH, 15-1-201, MCA; IMP, 15-38-104 and 15-38-105, MCA.

4. The Department is proposing the amendment because no guidelines for computing taxable value "at the time of extraction" have been adopted since the two district court cases regarding the resource indemnity trust tax were decided in 1984. A rule is needed to identify the point at which value is to be fixed for tax purposes and to establish guidelines for determining value at that point. This rule complies with the district court decisions and the computation method proposed for use when market data is unavailable. It has been sanctioned at the state (Wyoming) supreme court level.

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 9, 1988.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I and II relating to Metalliferous Mines Rules.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I and II relating to Metalliferous Mines Rules.

TO: All Interested Persons:

1. On August 31, 1988, at 9:30 am, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I and II, relating to Metalliferous Mines Tax.

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

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

RULE I MARKET VALUE (1) The market value for metals produced shall be the price quoted by an established authority or market report at the time the quantity of metals is determinable. No deductions from this price will be allowed. Market value for purposes of this tax is not dependent on the amount of actual cash payment received by the producer. AUTH, 15-1-201 MCA; IMP, 15-37-102 and 15-37-104 MCA.

RULE II TAXABLE QUANTITY (1) For purposes of the metalliferous mines license tax all merchantable metals produced during the calendar quarter are reportable and subject to tax. The taxable quantities will normally be determined by the settlement assay agreed to by both the producer and the purchaser. Whenever title to the end product from the smelter or refinery remains with the producer, the reportable quantity will be the actual amounts recovered. No deductions will be allowed from the gross quantity produced. The taxable quantity does not depend on whether the producer receives direct payment for the entire quantity of metals contained in the ore or concentrate or whether a portion of the production is exchanged for smelting and refining services.

(2) Whenever the information needed to determine taxable quantities is not available when the tax return is due, the quantities reported must be based on the best information available on the reporting date. An adjustment must be shown on the next quarterly report correcting any errors in the estimate. AUTH, 15-1-201 MCA; IMP, 15-37-102 and 15-37-104 MCA.

4. Rule I is needed to emphasize that the full market value of the metals extracted is subject to tax. Typically, smelting contracts provide that payment is to be based on a market quote less an arbitrary amount. For example, silver is often paid for at market price less 25 cents an ounce. The metalliferous mines license tax is based on the gross value of production. It is not a tax based on sales or receipts.

Rule II is needed to emphasize that all merchantable or

saleable metals are subject to tax and that the quantity deductions agreed to in most producer/smelter contracts have no bearing on the quantity of metals subject to the metalliferous mines license tax.

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

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

no later than September 9, 1988.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

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

In the matter of the amendment of Rules 46.13.301, 46.13.303, 46.13.304, and 46.13.401 pertaining to the Montana Low Income Energy Assistance Program (LIEAP)	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.13.301, 46.13.303, 46.13.304, AND 46.13.401 PERTAINING TO THE MONTANA LOW INCOME ENERGY ASSISTANCE PROGRAM (LIEAP)

TO: All Interested Persons

1. On August 31, 1988, at 10:00 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 46.13.301, 46.13.303, 46.13.304, and 46.13.401 pertaining to the Montana Low Income Energy Assistance Program (LIEAP).

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

46.13.301 DEFINITIONS Subsections (1) through (7) remain the same.

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

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

(10) Medical and dental deductions mean all medical and dental payments for allowable costs, as described in ARM 46.13.304(4), made by members of the household in the twelve months immediately preceding the month of application.

(a) Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party.

(11) Self-employment deductions means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.

(12) For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.

(13) Dependent care deductions means all dependent care payments made by a household member in the 12 months immediately preceding the month of application for purposes of maintaining or seeking employment or educational opportunities.

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 1987~~8~~ 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 1987~~8~~ poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the 1987~~8~~ poverty level are ineligible for low income energy assistance.

(2) Income standards for all households:

Family Size	Poverty Guideline	50 Percent	125 Percent	150 Percent
1	$ ~~5,500~~ 5,770	$ ~~2,750~~ 2,885	$ ~~6,875~~ 7,213	$ ~~8,250~~ 8,655
2	~~7,400~~ 7,730	~~3,700~~ 3,865	~~9,250~~ 9,663	~~11,100~~ 11,595
3	~~9,300~~ 9,690	~~4,650~~ 4,845	~~11,625~~ 12,113	~~13,950~~ 14,535
4	~~11,200~~ 11,650	~~5,600~~ 5,825	~~14,000~~ 14,563	~~16,800~~ 17,475
5	~~13,100~~ 13,610	~~6,550~~ 6,805	~~16,375~~ 17,013	~~19,650~~ 20,415
6	~~15,000~~ 15,570	~~7,500~~ 7,785	~~18,750~~ 19,463	~~22,500~~ 23,355
7	~~16,900~~ 17,530	~~8,450~~ 8,765	~~21,125~~ 21,913	~~25,350~~ 26,295
8	~~18,800~~ 19,490	~~9,400~~ 9,745	~~23,500~~ 24,363	~~28,200~~ 29,235
Additional member add	~~1,900~~ 1,960	~~950~~ 980	~~2,375~~ 2,450	~~2,850~~ 2,940

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 CALCULATING INCOME ~~(1)--Definitions:~~

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

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

~~(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 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.~~

~~(d) Self-employment deductions means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.~~

~~(e) For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions. See subsection (1)(e) of this rule for medical deduction.~~

(21) Excluded from income are the following types of unearned income and deductions:

Subsections (2)(a) through (2)(r) remain the same in text but will be recategorized as (1)(a) through (1)(r).

(32) ~~Also e~~Excluded from income are one-time insurance payments or compensation for injury not to exceed $10,000.

(3) Deducted from income are out-of-pocket nonreimbursable dependent care expenses as defined in Section 46.13.301 (13). All dependent care expenses must be verified by receipt of payment by a nonrelated individual.

(a) Dependent care deduction shall not include payments by the household which are reimbursable by a third party.

(b) Dependent care deductions shall be subtracted from annual gross income that is between 125% and 150% of the 1988 U.S. government office of management and budget poverty level for the particular household size.

(c) Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for 75% of the benefit award matrices as defined in ARM 46.13.401(2).

(4) Allowable medical and dental costs are deducted from income.

(a) Medical and dental deductions can only be subtracted from annual gross income that is between 125% and 150% of the 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.

Original subsections (4)(a) through (4)(j) remain the same in text but will be recategorized as (4)(a)(i) through (4)(a)(x).

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

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if 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 single elderly and handicapped households who can demonstrate unmet need are entitled to a maximum 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 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	~~$247~~ 240	~~$557~~ 543	~~$318~~ 344	~~$272~~ 261	$165	$152	~~$380~~ 460
two	~~$302~~ 293	~~$680~~ 664	~~$387~~ 419	~~$332~~ 319	$206	$190	~~$465~~ 562
three	~~$342~~ 332	~~$773~~ 754	~~$440~~ 477	~~$378~~ 362	$247	$228	~~$528~~ 639
four	~~$384~~ 373	~~$866~~ 845	~~$493~~ 534	~~$423~~ 406	$288	$266	~~$591~~ 716

Multi Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	~~$215~~ 209	~~$484~~ 473	~~$276~~ 299	~~$237~~ 227	$143	$132	~~$331~~ 400
two	~~$263~~ 255	~~$592~~ 578	~~$337~~ 365	~~$289~~ 277	$179	$165	~~$404~~ 489
three	~~$297~~ 288	~~$672~~ 656	~~$383~~ 415	~~$329~~ 315	$215	$199	~~$459~~ 556
four	~~$334~~ 325	~~$753~~ 735	~~$429~~ 465	~~$368~~ 353	$251	$232	~~$514~~ 623

Mobile Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	~~$230~~ 223	~~$518~~ 505	~~$295~~ 320	~~$253~~ 243	$153	$142	~~$354~~ 428
two	~~$281~~ 273	~~$633~~ 617	~~$360~~ 390	~~$309~~ 297	$192	$177	~~$432~~ 523
three	~~$318~~ 308	~~$719~~ 702	~~$409~~ 443	~~$351~~ 337	$230	$212	~~$491~~ 594
four	~~$358~~ 347	~~$805~~ 786	~~$459~~ 497	~~$394~~ 377	$268	$248	~~$550~~ 666

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$206~~ 177	~~$405~~ 424	~~$338~~ 321	~~$402~~ 426	~~$176~~ 203	$162
two	~~$251~~ 216	$495 518	~~$412~~ 391	~~$491~~ 520	~~$219~~ 253	$203
three	~~$284~~ 244	~~$562~~ 589	~~$469~~ 445	~~$558~~ 591	~~$263~~ 304	$243
four	~~$320~~ 275	~~$630~~ 659	~~$525~~ 499	~~$625~~ 662	~~$307~~ 354	$284

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$179~~ 154	~~$352~~ 369	~~$294~~ 279	~~$350~~ 370	~~$153~~ 176	$141
two	~~$219~~ 188	~~$430~~ 451	~~$359~~ 340	~~$427~~ 452	~~$191~~ 220	$176
three	~~$247~~ 213	~~$489~~ 512	~~$408~~ 387	~~$486~~ 514	~~$229~~ 264	$211
four	~~$278~~ 239	~~$548~~ 574	~~$457~~ 434	~~$544~~ 576	~~$267~~ 308	$247

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$191~~ 164	~~$376~~ 394	~~$314~~ 298	~~$374~~ 396	~~$163~~ 188	$151
two	~~$234~~ 201	~~$460~~ 482	~~$383~~ 364	~~$457~~ 484	~~$204~~ 235	$188
three	~~$264~~ 227	~~$523~~ 547	~~$436~~ 414	~~$519~~ 550	~~$245~~ 282	$226
four	~~$297~~ 256	~~$586~~ 613	~~$488~~ 464	~~$581~~ 616	~~$286~~ 330	$264

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	~~$175~~ 151	~~$345~~ 362	~~$270~~ 287	~~$341~~ 353	$150	$138	$191
two	~~$214~~ 184	~~$422~~ 442	~~$329~~ 350	~~$416~~ 431	$187	$173	$233
three	~~$243~~ 209	~~$480~~ 502	~~$375~~ 398	~~$473~~ 490	$225	$207	~~$264~~ 263
four	~~$273~~ 235	~~$537~~ 563	~~$420~~ 446	~~$530~~ 549	$262	$242	~~$297~~ 296

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	~~$153~~ 131	~~$301~~ 315	~~$235~~ 250	~~$296~~ 307	$130	$120	$166
two	~~$186~~ 160	~~$367~~ 385	~~$287~~ 304	~~$362~~ 375	$163	$150	$203
three	~~$211~~ 181	~~$417~~ 437	~~$326~~ 346	~~$411~~ 427	$195	$180	~~$230~~ 229
four	~~$237~~ 204	~~$467~~ 489	~~$365~~ 388	~~$461~~ 478	$228	$210	~~$259~~ 258

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	~~$163~~ 140	~~$321~~ 336	~~$251~~ 267	~~$317~~ 328	$139	$129	~~$178~~ 177
two	~~$199~~ 171	~~$393~~ 411	~~$306~~ 325	~~$387~~ 401	$174	$161	$217
three	~~$226~~ 194	~~$446~~ 467	~~$348~~ 370	~~$440~~ 456	$209	$193	~~$246~~ 245
four	~~$254~~ 218	~~$500~~ 523	~~$390~~ 415	~~$492~~ 511	$244	$225	$276

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	~~$200~~ 172	~~$394~~ 399	~~$337~~ 327	~~$317~~ 311	$171	$158
two	~~$245~~ 210	~~$482~~ 487	~~$411~~ 399	~~$387~~ 380	$214	$197
three	~~$277~~ 238	~~$547~~ 554	~~$468~~ 453	~~$439~~ 431	$256	$237
four	~~$311~~ 268	~~$613~~ 620	~~$524~~ 508	~~$492~~ 483	$299	$276

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$174~~ 150	~~$343~~ 347	~~$294~~ 284	~~$275~~ 270	$149	$137
two	~~$213~~ 183	~~$419~~ 424	~~$358~~ 347	~~$336~~ 330	$186	$171
three	~~$241~~ 207	~~$476~~ 482	~~$407~~ 394	~~$382~~ 375	$223	$206
four	~~$271~~ 233	~~$533~~ 539	~~$456~~ 442	~~$428~~ 420	$260	$240

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$186~~ 160	~~$366~~ 371	~~$314~~ 304	~~$294~~ 289	$159	$147
two	~~$227~~ 196	~~$448~~ 453	~~$383~~ 371	~~$360~~ 353	$199	$183
three	~~$257~~ 221	~~$589~~ 515	~~$435~~ 422	~~$489~~ 401	$238	$220
four	~~$289~~ 249	~~$570~~ 577	~~$487~~ 472	~~$458~~ 449	$278	$257

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

Single Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
one	~~$166~~ 143	~~$327~~ 331	~~$270~~ 280	~~$239~~ 245	$142	$131	~~$213~~ 204
two	~~$203~~ 175	~~$400~~ 405	~~$329~~ 341	~~$292~~ 300	$177	$164	~~$260~~ 249
three	~~$230~~ 198	~~$455~~ 460	~~$374~~ 388	~~$332~~ 340	$213	$197	~~$294~~ 281
four	~~$259~~ 222	~~$509~~ 516	~~$419~~ 435	~~$372~~ 381	$248	$229	~~$331~~ 317

Multi Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
one	~~$145~~ 124	~~$285~~ 288	~~$235~~ 243	~~$208~~ 213	$124	$114	~~$185~~ 177
two	~~$177~~ 152	~~$348~~ 352	~~$286~~ 297	~~$254~~ 261	$154	$143	~~$226~~ 216
three	~~$200~~ 172	~~$396~~ 400	~~$326~~ 337	~~$289~~ 296	$185	$171	~~$256~~ 245
four	~~$225~~ 194	~~$443~~ 449	~~$365~~ 378	~~$323~~ 332	$216	$200	~~$288~~ 276

Mobile Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
one	~~$155~~ 133	~~$305~~ 308	~~$251~~ 260	~~$222~~ 228	$132	$122	~~$198~~ 189
two	~~$189~~ 163	~~$372~~ 377	~~$306~~ 317	~~$272~~ 279	$165	$152	~~$242~~ 231
three	~~$214~~ 184	~~$423~~ 428	~~$348~~ 361	~~$309~~ 317	$198	$183	~~$274~~ 262
four	~~$241~~ 207	~~$474~~ 479	~~$390~~ 404	~~$346~~ 355	$231	$213	~~$308~~ 295

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	~~$192~~ 166	~~$379~~ 397	~~$317~~ 313	~~$393~~ 415	$164	$152
two	~~$235~~ 202	~~$463~~ 485	~~$386~~ 381	~~$480~~ 507	$205	$190
three	~~$266~~ 229	~~$526~~ 551	~~$439~~ 433	~~$546~~ 576	$246	$228
four	~~$299~~ 257	~~$590~~ 617	~~$492~~ 486	~~$611~~ 646	$288	$265

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$167~~ 144	~~$330~~ 345	~~$275~~ 272	~~$342~~ 361	$143	$132
two	~~$205~~ 176	~~$403~~ 422	~~$336~~ 332	~~$418~~ 441	$179	$165
three	~~$232~~ 199	~~$458~~ 480	~~$382~~ 377	~~$475~~ 501	$214	$198
four	~~$260~~ 224	~~$513~~ 537	~~$428~~ 422	~~$532~~ 562	$250	$231

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$179~~ 154	~~$352~~ 369	~~$294~~ 291	~~$366~~ 386	$153	$141
two	~~$219~~ 188	~~$431~~ 451	~~$359~~ 354	~~$447~~ 472	$191	$176
three	~~$248~~ 213	~~$489~~ 513	~~$408~~ 403	~~$507~~ 536	$229	$212
four	~~$278~~ 239	~~$548~~ 574	~~$457~~ 452	~~$568~~ 600	$267	$247

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	~~$193~~ 166	~~$380~~ 398	~~$334~~ 344	~~$417~~ 365	$165	$152
two	~~$236~~ 203	~~$465~~ 487	~~$407~~ 419	~~$509~~ 445	$206	$190
three	~~$267~~ 230	~~$528~~ 553	~~$463~~ 476	~~$578~~ 506	$247	$228
four	~~$300~~ 258	~~$591~~ 619	~~$518~~ 534	~~$648~~ 567	$288	$266

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$168~~ 144	~~$331~~ 346	~~$290~~ 299	~~$362~~ 317	$143	$132
two	~~$205~~ 177	~~$404~~ 423	~~$354~~ 365	~~$443~~ 388	$179	$165
three	~~$232~~ 200	~~$459~~ 481	~~$402~~ 415	~~$503~~ 440	$215	$199
four	~~$261~~ 225	~~$514~~ 539	~~$451~~ 465	~~$563~~ 493	$251	$232

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$180~~ 154	~~$354~~ 370	~~$310~~ 320	~~$387~~ 339	$153	$142
two	~~$219~~ 189	~~$432~~ 453	~~$378~~ 390	~~$473~~ 414	$192	$177
three	~~$248~~ 213	~~$491~~ 514	~~$430~~ 443	~~$538~~ 471	$230	$212
four	~~$279~~ 240	~~$550~~ 576	~~$482~~ 497	~~$602~~ 527	$268	$248

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Single Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
one	~~$204~~ 175	~~$402~~ 421	~~$319~~ 340	~~$405~~ 432	$174	$161	~~$417~~ 368
two	~~$249~~ 214	~~$491~~ 514	~~$388~~ 414	~~$495~~ 527	$218	$201	~~$509~~ 450
three	~~$282~~ 243	~~$558~~ 584	~~$442~~ 471	~~$562~~ 599	$261	$241	~~$579~~ 512
four	~~$317~~ 273	~~$625~~ 654	~~$495~~ 528	~~$630~~ 671	$305	$281	~~$648~~ 573

Multi Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
one	~~$178~~ 153	~~$350~~ 366	~~$277~~ 296	~~$352~~ 376	$152	$140	~~$362~~ 321
two	~~$217~~ 187	~~$427~~ 447	~~$338~~ 360	~~$430~~ 459	$189	$175	~~$443~~ 392
three	~~$245~~ 211	~~$485~~ 508	~~$384~~ 410	~~$489~~ 521	$227	$210	~~$503~~ 445
four	~~$276~~ 237	~~$544~~ 569	~~$431~~ 459	~~$548~~ 584	$265	$245	~~$564~~ 499

Mobile Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
one	~~$190~~ 163	~~$374~~ 391	~~$296~~ 316	~~$377~~ 402	$162	$150	~~$387~~ 343
two	~~$232~~ 199	~~$457~~ 478	~~$361~~ 385	~~$460~~ 491	$203	$187	~~$474~~ 419
three	~~$262~~ 226	~~$519~~ 543	~~$411~~ 438	~~$523~~ 557	$243	$224	~~$538~~ 476
four	~~$295~~ 254	~~$581~~ 609	~~$460~~ 491	~~$586~~ 624	$284	$262	~~$603~~ 533

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	~~$195~~ 167	~~$383~~ 401	~~$304~~ 316	~~$341~~ 388	$166	$153
two	~~$238~~ 205	~~$468~~ 490	~~$370~~ 385	~~$417~~ 474	$208	$192
three	~~$269~~ 231	~~$532~~ 557	~~$421~~ 438	~~$474~~ 538	$249	$230
four	~~$303~~ 260	~~$596~~ 624	~~$472~~ 490	~~$531~~ 603	$291	$268

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$169~~ 146	~~$333~~ 349	~~$264~~ 275	~~$297~~ 337	$145	$133
two	~~$207~~ 178	~~$407~~ 427	~~$322~~ 335	~~$363~~ 412	$181	$167
three	~~$234~~ 201	~~$469~~ 485	~~$366~~ 381	~~$412~~ 468	$217	$200
four	~~$263~~ 226	~~$519~~ 543	~~$411~~ 427	~~$462~~ 524	$253	$233

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$181~~ 156	~~$356~~ 373	~~$283~~ 294	~~$318~~ 361	$155	$143
two	~~$221~~ 190	~~$436~~ 456	~~$345~~ 358	~~$388~~ 440	$193	$178
three	~~$250~~ 215	~~$495~~ 518	~~$392~~ 407	~~$441~~ 501	$232	$214
four	~~$282~~ 242	~~$554~~ 580	~~$439~~ 456	~~$494~~ 561	$270	$250

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	~~$228~~ 196	~~$448~~ 464	~~$365~~ 353	~~$471~~ 504	$194	$179
two	~~$278~~ 239	~~$547~~ 567	~~$445~~ 430	~~$575~~ 615	$243	$224
three	~~$315~~ 270	~~$622~~ 644	~~$506~~ 489	~~$654~~ 699	$291	$269
four	~~$354~~ 304	~~$697~~ 721	~~$567~~ 548	~~$733~~ 783	$340	$314

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$198~~ 170	~~$390~~ 404	~~$317~~ 307	~~$410~~ 438	$169	$156
two	~~$242~~ 208	~~$476~~ 493	~~$387~~ 374	~~$501~~ 535	$211	$195
three	~~$274~~ 235	~~$541~~ 560	~~$440~~ 425	~~$569~~ 609	$253	$234
four	~~$308~~ 265	~~$606~~ 628	~~$493~~ 476	~~$637~~ 682	$296	$273

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$212~~ 182	~~$417~~ 431	~~$339~~ 328	~~$438~~ 469	$181	$167
two	~~$259~~ 222	~~$509~~ 527	~~$413~~ 400	~~$535~~ 572	$226	$208
three	~~$293~~ 252	~~$579~~ 599	~~$470~~ 455	~~$608~~ 650	$271	$250
four	~~$329~~ 283	~~$648~~ 671	~~$527~~ 509	~~$681~~ 729	$316	$292

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. In an effort to remove an obstacle facing low income families as they strive for self-sufficiency, the Department proposes to allow dependent income deductions for households who are employed, seeking employment or obtaining an education for the purpose of seeking employment.

A second proposed change involves shifting definitions for the income rule (ARM 46.13.304) into the definitions rule (ARM 46.13.301) for the Low Income Energy Assistance Program (LIEAP). This is necessary as an on-going process to reorganize this rule section in conformity with other sections of the administrative rules.

Finally, the changes in the benefit matrices will bring the program into conformity with federal requirements and current energy pricing.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 8, 1988.

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

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1988.

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

In the matter of the proposed amendment of ARM 6.10.101 through ARM 6.10.124 and the proposed adoption of rules on whole mortgages and certificates of deposit	)))))	NOTICE OF ADOPTION, AMENDMENT AND REPEAL OF ARM 6.10.101 THROUGH ARM 6.10.124 AND THE ADOPTION OF FOREIGN SAVINGS AND LOAN EXEMPTION

TO: All Interested Persons.

1. On May 26, 1988, the State Auditor published notice of the proposed amendment, adoption and repeal of the above rules at page 918 of the 1988 MAR, issue no. 10.

2. The rules proposed to be repealed have been repealed. Proposed rule I on Whole Mortgages is not being adopted at this time. ARM 6.10.101, ARM 6.10.104, ARM 6.10.105, ARM 6.10.108, ARM 6.10.110, ARM 6.10.121, and ARM 6.10.124 have been adopted as proposed. The commissioner has adopted the rest of the proposed amendments and proposed rules as follows:

6.10.102 DEFINITIONS As used in this sub-chapter, unless the context indicates otherwise:

(1) same as proposed rules.

(2) "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(3) through (5) same as proposed rules.

(6) "Sales material" means an advertisement, display, pamphlet, brochure, form letter, article, or communication published in a newspaper, magazine, or periodical; or script, or a recording, radio or television announcement, broadcast, or commercial to be used or circulated in connection with the offer or sale of a security to a person in this state.

6.10.103 SALES MATERIALS (1) Any Except as provided in subsections (3), and (4), AND (5) of this rule, sales material to be used in connection with the offer or sale of securities to persons in this state must first be approved by filed with the securities commissioner at least 10 days prior to being used in this state.

(2) and (3) same as proposed rules.

(4) THIS RULE DOES NOT APPLY TO SALES MATERIAL THAT IS USED EXCLUSIVELY BY A BROKER-DEALER REGISTERED PURSUANT TO 30-10-201, MCA, IF THE SALES MATERIAL CONFORMS TO THE PROVISIONS OF ARTICLE III, SECTION 35 OF THE RULES OF FAIR PRACTICE OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

(4) and (5) same as proposed rules except renumbered as (5) and (6) respectively.

6.10.104A DEFINITION OF PROMOTIONAL OR DEVELOPMENTAL STAGE (1) same as proposed rules.

(2) "Significant earnings" ~~shall be deemed to~~ exist if the corporation's earnings record over the last ~~five~~ 5 years (or shorter period of its existence) demonstrates that for such period the corporation's net earnings per share is 30% of the public offering price per share (as adjusted for stock splits and stock dividends) or the corporation has earnings per share of ~~10%~~ 5% or more of the public offering price per share for any ~~two~~ 2 consecutive years.

6.10.111 WARRANTS AND OPTIONS (1)(a) through (1)(c)(ii) same as proposed rules.

(iii) the ~~exercise of the~~ options or warrants ~~is~~ may not be exercised ~~according~~ for a period of one year from the completion of the public offering;

(1)(c)(iv) through (3) same as proposed rules.

6.10.120 MONTANA LIMITED OFFERING EXEMPTION (1) By the authority delegated to the ~~commissioner~~ commissioner in ~~section~~ 30-10-105~~(1)~~, MCA~~(1983)~~, ~~the following~~ ~~are~~ ~~exempt~~ ~~from~~ ~~the~~ ~~registration~~ ~~requirements~~ ~~of~~ ~~the~~ ~~Montana~~ ~~Securities~~ ~~Act~~:

~~(a)~~ Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501~~,~~ through 230.503 and 230.505 and/or 230.506 as made effective in Release No. 33-6389 and amended by Release No. 33-6437, Release No. 33-6663 and Release No. 33-6758 ~~which~~ ~~are~~ ~~filed~~ ~~with~~ ~~the~~ ~~following~~ ~~conditions~~ and ~~limitations~~ is exempt from the registration requirements of 30-10-202, MCA.

(2) through (5) same as proposed rules.

~~(iii)~~ (6) The issuer shall file with the ~~commissioner~~ commissioner

(a) a notice on an original, manually signed ~~Form~~ form D ~~as~~ ~~adopted~~ ~~by~~ ~~the~~ ~~National~~ ~~Association~~ ~~of~~ ~~Securities~~ ~~Dealers~~ ~~Administrators~~ ~~Association~~ ~~Corporation~~ ~~Finance~~ ~~Committee~~ (17CFR239.500)~~;~~

~~(A)~~ at least ~~ten~~ 10 days prior to ~~any~~ an offer or sale being made to a person in this state, annually until completion and upon completion of the offer or sale, and at all such other times and in the form required under Securities Act of 1933, Regulation D, Rule 230.503, to be filed with the Securities and Exchange Commission.

~~(B)~~ The notice ~~shall~~ must contain an undertaking by the issuer to furnish to the ~~commissioner~~ commissioner, upon written request, the information furnished by the issuer to offerees, ~~except~~ ~~where~~ unless the ~~commissioner~~ commissioner, by order, requires that the information be filed at the same time with the filing of the notice.

(6)(b) through (14) same as proposed rules.

6.10.122 BROKER-DEALER BOOKS AND RECORDS (1) through (2)(b) same as proposed rules.

(c) a correspondence file containing all correspondence OR COPIES THEREOF disseminated to or received from the public in connection with the business of the branch office;

(d) through (f) same as proposed rules.

(g) COPIES OR ORIGINALS OF NEW ACCOUNT RECORDS INDICATING the name and address of each customer or client, whether the customer or client is legally of age, the signature of the salesman introducing the account, and the signature of the officer or manager accepting the account for the broker-dealer. If a broker-dealer customer is associated with or employed by another broker-dealer, this fact must be recorded. In discretionary broker-dealer accounts, the broker-dealer shall also record:

(2)(g)(i) through (3) same as proposed rules.

(4) A BRANCH OFFICE MAY KEEP AND MAINTAIN THE RECORDS REQUIRED TO BE KEPT AND MAINTAINED BY SUBSECTION (2) OF THIS RULE ON A COMPUTER, MICROFORM, OR OTHER ELECTRONIC DATA STORAGE SYSTEM IF THE RECORDS CAN BE IMMEDIATELY PRODUCED IN DOCUMENT FORM.

(4) same as proposed rules except renumbered as subsection (5).

6.10.123 INVESTMENT ADVISER BOOKS AND RECORDS (1) through (3) same as proposed rules.

(4) AN INVESTMENT ADVISER MAY MAKE AND KEEP THE RECORDS REQUIRED TO BE MADE AND KEPT BY SUBSECTION (1) OF THIS RULE ON A COMPUTER, MICROFORM, OR OTHER ELECTRONIC DATA STORAGE SYSTEM IF THE RECORDS CAN BE IMMEDIATELY PRODUCED IN DOCUMENT FORM.

(4) same as proposed rules except renumbered as subsection (5).

6.10.125 ~~CERTIFICATES OF DEPOSIT~~ FOREIGN SAVINGS AND LOAN ASSOCIATION EXEMPTION (1) By authority delegated to the commissioner in 30-10-105, MCA, a transaction in a ~~certificate of deposit~~ SECURITY issued by and representing an interest in or a debt of or guaranteed by a savings and loan association or a building and loan or similar association, other than those described in 30-10-104(4), MCA, is exempt from the registration requirements of ~~30-10-201(1), MCA~~ 30-10-201(3), MCA, and 30-10-202, MCA, if:

(a) it is sold through a registered broker-dealer and registered salesman;

(b) the issuer ~~savings and loan association~~ is a member of the federal savings and loan insurance corporation; and

(c) the sums representing the certificate of deposit are fully insured by the federal savings and loan insurance corporation.

4. The commissioner received written and oral comments regarding the proposed changes to the rules. The comments and the commissioner's responses are as follows:

(a) Valencia Lane, Legislative Council, suggested that this notice include a statement of reasonable necessity for all but the proposed changes to ARM 6.10.124 and that a rationale and a statement of reasonable necessity be included for ARM 6.10.111.

The changes to the rules are reasonably necessary to make Montana requirements for the securities industry uniform with other states' requirements. The changes to ARM 6.10.111 clarify that, if certain circumstances exist, the commissioner may not use as grounds for denial of an application for

registration the granting of options or warrants to underwriters or other persons as compensation for the sale of securities. The changes to ARM 6.10.111 are reasonably necessary to make Montana law uniform.

(b) D.A. Davidson & Co. (DAD) asked that the example in the definition of "affiliate" in ARM 6.10.102(2) be deleted because it suggests "that a common owner or the largest shareholder position in two separate corporations[,] without any other indicia of control of those corporations[,] will result in the owner being deemed to be an affiliate and subject to other restrictions contained within the proposed regulations concerning promotional securities and other matters."

The commissioner deleted the example.

(c) Waddell & Reed Financial Services (WRFS) stated that the definition of "branch office" in ARM 6.10.102(3) is too broad (it encompasses a garage or basement office used by a salesman in his own home or an office of a part-time salesman shared with nonsecurities business) or too narrow (it encompasses only offices to which a broker-dealer has title). IDS Financial Services Inc. (IDS) stated that the definition of "branch office" is too broad because it covers every office in the state including those with only one person and suggested that "branch office" be defined as a branch office designated by a broker-dealer.

The definition of branch office is intended to be broad. Montana has many one-person offices. If one-person offices are not regulated in Montana, a large portion of the Montana securities industry is not regulated. The definition is not too narrow because it includes as a branch office an office controlled by a broker-dealer.

(d) DAD said that, in the definition of "sales material" in ARM 6.10.102(6), it is unclear whether pamphlet, brochure, letter, article, or communication modifies script or recording or whether script or recording relate to radio or television announcements or broadcasts. DAD suggested that the comma following "periodical" be replaced with a semi-colon.

The definition was modified to reflect the comment.

(e) IDS said the definition of "sales material" in ARM 6.10.102(6) should be amended to be consistent with the National Association of Securities Dealers, Inc.'s definition of "sales literature", which is restricted to "form letters". IDS suggested that, consistent with NASD requirements, sales material not be required to be filed with the commissioner until after their first use.

The commissioner restricted the definition of "sales material" to form letters but declined to allow filing after use. The filing requirement does not apply to sales material used in connection with registered securities (ARM 6.10.111(3)) or exempt securities (ARM 6.10.111(5). At the suggestion of Jimmy Weg (Weg), the commissioner added 6.10.111(4) to assure consistency with NASD requirements.

(f) Weg suggested adding a provision between subsections (3) and (4) of ARM 6.10.103 on sales material as follows: "This rule does not apply to sales material that is used exclusively by a broker-dealer registered pursuant to 30-10-201, MCA, if the sales material conforms to the provisions of Article III, section 35 of the Rules of Fair

Practice of the National Association of Securities Dealers, Inc."

The subsection was added.

(g) DAD stated that the earnings requirement of ARM 6.10.104A was too high.

The commissioner amended the rule accordingly.

(h) DAD asked why ARM 6.10.111(1)(c) excluded from grounds for denial of registration the granting of an option or warrant to an underwriter in connection with "more than one" public offering of its securities.

It does not. Issuance of an option or warrant to an underwriter in connection with more than one public offering is grounds for denial of registration pursuant to ARM 6.10.111(1)(c).

(i) DAD suggested that ARM 6.10.111(1)(c)(iii) be reworded.

The commissioner reworded the rule.

(j) DAD asked that all three amendatory SEC releases be incorporated in ARM 6.10.120.

The commissioner incorporated into ARM 6.10.120 Release No. 33-6437.

(k) Renee Erdmann noted that ARM 6.10.120(6)(a) be corrected to reflect that form D was not adopted by the North American Securities Administrators Association, Inc.

The rule was amended as suggested.

(l) IDS stated that ARM 6.10.121 should require for investment adviser representatives or salesmen a uniform examination like the NASD examination or the recently developed NASAA examination.

ARM 6.10.121 already requires the uniform NASD examination. NASAA has not yet developed the examination to which IDS refers.

(m) IDS suggested that broker-dealer and investment adviser record rules (ARM 6.10.122 and ARM 6.10.123) be amended to permit maintenance of records on a computer or microform storage system.

The commissioner added a new subsection (4) to both ARM 6.10.122 and ARM 6.10.123.

(n) WRFS commented that requiring maintenance of prescribed records at broker-dealer branch offices imposes a considerable burden on firms without serving a particularly useful purpose. Also, ARM 6.10.122 requires the maintenance of records expected to be found at a full service stock exchange member firm but not at a branch office of a firm that processes, accepts, records, and supervises its business through a home office. Further, the records required to be kept are not used in a firm's day-to-day supervisory oversight and are not frequently requested by the commissioner. Rather than require each broker-dealer branch office to maintain records, the commissioner should require each broker-dealer to maintain the records and make them available to the commissioner. IDS provided a similar comment.

Each broker-dealer is already required to make records available to the commissioner. The rule does not require a branch office to make new records but simply requires it to keep copies of existing records. Records should be kept at branch offices because there are many more branch offices than

home offices in Montana and because it is more time efficient to inspect records at an in-state office than to request and await records from an out-of-state office. The commissioner may relax the recordkeeping requirement pursuant to ARM 6.10.122(5).

(o) IDS stated that ARM 6.10.122(2)(c) could be interpreted to require a broker-dealer branch office to keep appointment confirmations or birthday and anniversary greetings and suggested that the correspondence required to be kept should be specified.

The rule requires a broker-dealer branch office to keep only business correspondence.

(p) IDS commented that ARM 6.10.122(2)(g) was unnecessarily broad.

The commissioner amended the rule to require a broker-dealer branch office to keep copies of already-existing records.

(q) IDS stated that it would be difficult to keep the records required to be kept by ARM 6.10.122(2)(e) through ARM 6.10.122(2)(g) because those records are generally computer generated.

Most branch offices already maintain those records as required by other states. The commissioner added new subsection (4) to allow maintenance of records on a computer.

(r) WRFS stated that, since an officer generally lives in another state, original records should be kept by the broker-dealer at the location where they are signed by the officer. Further ARM 6.10.122(2) should be deleted since most records required to be kept by that subsection are covered by rules under the Securities Exchange Act or of the NASD.

ARM 6.10.122(2)(g) was amended to permit maintenance of copies or originals. To clarify that the records specified in ARM 6.10.122(2) must be kept also for purposes of the Securities Act of Montana, the commissioner did not delete it.

(s) Mike Mulroney (Mulroney) commented that the availability of the exemption contained in ARM 6.10.124 should not be limited to corporations; it should be available to limited partnerships.

The commissioner declined to expand the availability of the ARM 6.10.124 exemption to limited partnerships because the fill-in-the-blank form required by the rule cannot readily be adapted to limited partnerships.

(t) Mulroney stated that the ARM 6.10.124 exemption should encompass more than one class of stock.

The limitation to one class of stock is necessary to prevent an insider from issuing himself stock with greater rights than attached to stock issued to other investors.

(u) Mulroney stated that the $15,000 maximum of ARM 6.10.124(15) is too low.

It is reasonable to limit the amount of the allowable investment in new ventures since new ventures often are speculative.

(v) Weg stated that proposed rule II on Certificates of Deposit Exemption should be amended by striking from it "30-10-201(1) through 30-10-201(3), MCA and". The registration requirements for broker-dealers, salesmen, investment advisers, and investment adviser representatives should apply to transactions involving certificates of deposit and out-of-state

savings and loan associations. Weg also noted that "certificate of deposit" should be replaced with "security" in the third line of the rule because the intent of the rule is to exempt transactions in any security, not just certificates of deposit, issued by an out-of-state savings and loan association.

The rule was amended as suggested.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State August 1, 1988.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a rule pertaining to examination fee for process servers.	))))	NOTICE OF ADOPTION OF NEW RULE 8.2.401

TO: All Interested Persons

1. On June 23, 1988, the Department of Commerce published notice of a proposed adoption of a rule pertaining to an examination fee for process servers at page 1234 of the 1988 Montana Administrative Register, issue number 12.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is section 25-1-1104, MCA, and the rule implements section 25-1-1104, MCA.

DEPARTMENT OF COMMERCE
KEITH COLBO, DIRECTOR

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State August 1, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the adoption of a rule pertaining to practice requirements	)))	NOTICE OF ADOPTION OF 8.36.406 GENERAL PRACTICE REQUIREMENTS

TO: All Interested Persons:

1. On March 24, 1988, the Board of Optometrists published a notice of proposed amendment of the above-stated rule at page 551, 1988 Montana Administrative Register, issue number 6.
2. The Board amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF OPTOMETRISTS
K.R. ZUROFF, O.D., PRESIDENT

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State August 1, 1988.

BEFORE THE
BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Teaching Assignments and Definitions	NOTICE OF AMENDMENT OF ARM 10.55.303, TEACHING ASSIGNMENTS AND ARM 10.57.102, DEFINITIONS

TO: All Interested Persons

1. On May 26, 1988, the Board of Public Education published notice of a proposed amendment concerning Teaching Assignments and Definitions on page 941 of the 1988 Montana Administrative Register, issue number 10.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held June 17, 1988, no persons testified and no written comments were received prior to June 23, 1988, the date on which the Board closed the hearing record.

Alan Nicholson
Alan Nicholson, Chairman
Board of Public Education

BY: Elizabeth Peterson

Certified to the Secretary of State July 19, 1988.

BEFORE THE STATEHOOD CENTENNIAL OFFICE

OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of Rules for Awarding of Centennial Grants	)))	NOTICE OF THE ADOPTION of ARM 30.2.201 THROUGH 30.2.208

TO: All Interested Persons

1. On June 23, 1988, the Statehood Centennial Office published notice of proposed adoption of rules for the awarding of centennial grants at page 1235, of the MAR, issue no. 12.

2. The agency has adopted the rules as proposed.

3. At the hearing, Ellen Nehring asked whether all expenses of one project could be covered in one grant application and whether the Office can, under the rules, act without review by the Centennial Commission if circumstances require expedient action. She requested that the rules be amended if the answer to either of these questions is negative. Because all expenses of a project can be included in one application and because the Office can act without approval of the Commission if the Lt. Governor determines that exceptional circumstances require it, no changes were made in the proposed rules.

4. The authority for the rules is 2-89-106, MCA, and the rules implement 2-89-107, MCA.

W. Gordon McOmber
Lieutenant Governor

Certified to the Secretary of State August 1, 1988

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.23.118), Rule II (42.23.119) and Rule III (42.23.120) relating to Corporation License Tax Nexus Standards.	NOTICE OF THE ADOPTION of Rule I (42.23.118), Rule II (42.23.119) and Rule III (42.23.120) relating to Corporation License Tax Nexus Standards.

TO: All Interested Persons:

1. On June 9, 1988, the Department of Revenue published notice of the proposed adoption of ARM 42.23.118, 42.23.119 and 42.23 120 relating to Corporation License Tax Nexus Standards at page 1175 of the 1988 Montana Administrative Register, issue no. 11.

2. A Public Hearing was held on June 30, 1988 to consider the proposed adoptions. No one appeared to testify and no written comments were received.

3. The Department has adopted ARM 42.23.118, 42.23.119 and 42.23 120 relating to Corporation License Tax Nexus Standards as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.25.102) relating to Metalliferous Mines Tax.	NOTICE OF THE ADOPTION of Rule I (42.25.102) relating to Metalliferous Mines Tax.

TO: All Interested Persons:

1. On May 26, 1988, the Department of Revenue published notice of the proposed adoption of ARM 42.25.102 relating to Metalliferous Mines Tax at page 971 of the 1988 Montana Administrative Register, issue no. 10.

2. No written comments were received.

3. The Department has adopted ARM 42.25.102, Metalliferous Mines Tax as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.26.263 relating to) Section 631, A, B, C Gains.)	NOTICE OF THE AMENDMENT of ARM 42.26.263 relating to Section 631, A, B, C Gains.

TO: All Interested Persons:

1. On June 23, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.26.263 relating to Section 631, A, B, C Gains at page 1243 of the 1988 Montana Administrative Register, issue no. 12.

2. No written comments were received.

3. The Department has amended ARM 42.26.263, Section 631, A, B, C Gains as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.26.270), Rule II (42.26.271), Rule III (42.26.272), Rule IV (42.26.273), Rule V (42.26.274), relating to Trucking Regulations, Corporation License Tax.	NOTICE OF ADOPTION OF Rule I (42.26.270), Rule II (42.26.271), Rule III (42.26.272), Rule IV (42.26.273), Rule V (42.26.274) relating to Trucking Regulations, Corporation License Tax.

TO: All Interested Persons:

1. On June 23, 1988, the Department of Revenue published notice of the proposed adoption of ARM 42.26.270, 42.26.271, 42.26.272, 42.26.273 and 42.26.274 relating to Trucking Regulations, Corporation License Tax at page 1245 of the 1988 Montana Administrative Register, issue no. 12.

2. A Public Hearing was held on July 18, 1988 to consider the proposed adoptions. No one appeared to testify and no written comments were received.

3. The Department has adopted ARM 42.26.270, 42.26.271, 42.26.272, 42.26.273 and 42.26.274 relating to Trucking Regulations, Corporation License Tax as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) Rule I (42.26.290)) Rule II (42.26.291),) Rule III (42.26.292),) Rule IV (42.26.293),) Rule V (42.26.294) relating to) Contractor Regulations,) Corporation License Tax.)	NOTICE OF THE ADOPTION OF Rule I (42.26.290), Rule II (42.26.291), Rule III (42.26.292), Rule IV (42.26.293), Rule V (42.26.294) relating to Contractor Regulations, Corporation License Tax.

TO: All Interested Persons:

1. On June 9, 1988, the Department of Revenue published notice of the proposed adoption of ARM 42.26.290, 42.26.291, 42.26.292, 42.26.293, and 42.26.294 relating to Contractor Regulations, Corporation License Tax at page 1180 of the 1988 Montana Administrative Register, issue no. 11.

2. A Public Hearing was held on June 30, 1988 to consider the proposed adoptions. No one appeared to testify and no written comments were received.

3. The Department has adopted ARM 42.26.290, 42.26.291, 42.26.292, 42.26.293, and 42.26.294 Contractor Regulations, Corporation License Tax as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/1/88.

VOLUME NO. 42 OPINION NO. 100

COURTS - Destruction of records following court-ordered expungement;
CRIMINAL INFORMATION DISSEMINATION - Records subject to expungement;
CRIMINAL LAW AND PROCEDURE - Expungement of criminal records following a deferred imposition of sentence;
SENTENCE - Requirements of expungement following a deferred imposition of sentence;
MONTANA CODE ANNOTATED - Section 46-18-204.

HELD: When a deferred imposition of sentence results in a dismissal of charges the expungement of the defendant's record mandated by section 46-18-204, MCA, requires that all documentation and physical or automated entries concerning the expunged offense be physically destroyed or obliterated.

20 July 1988

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion of the meaning of the words "expunge" and "record" in the deferred imposition of sentence statute, § 46-18-204, MCA. That statute in its entirety reads as follows:

> Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. Upon dismissal of the charges, the court shall send an order directing the department of

> justice to expunge the defendant's record. The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged. [Emphasis supplied.]

The statutory terms at question are not independently defined within the code, and record clerks are often faced with the problem of not knowing whether to seal or destroy records and wondering what documents are affected.

Your question may be answered by referring to the definitions of the relevant words. Black's Law Dictionary (5th ed. 1979), at page 522, defines "expunge" as follows: "To destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information - including criminal records - in files, computers, or other depositories." Webster's Third New International Dictionary, at page 803, similarly defines expunge: "to strike out...obliterate...to cause to be effaced...to cause the physical destruction of." Case law of other jurisdictions concludes that an expungement order necessitates destruction of the record. See Police Commissioner of Boston v. Municipal Court of Dorchester District, 374 N.E.2d 272 (Mass. 1978); Bergel v. Kassebaum, 577 S.W.2d 863 (Mo. Ct. App. 1978).

What is often repeated in the case law is the principle that "expunge" means not a legal act but a physical annihilation. For example, in K. v. K., 483 N.Y.S.2d 602, 604 (N.Y. Sup. Ct. 1984) the court noted:

> Significantly, the Legislature provided that unfounded reports of child abuse be expunged, not sealed. The two words are not synonymous. "The word 'expunge' is described as a term expressive of cancelation or deletion, implying not a legal act, but a physical annihilation." [Citation omitted.] On the other hand, when a record is sealed it is merely segregated to ensure its confidentiality to the extent specified in the controlling statute. [Emphasis in original.]

As to the meaning of the word "record," I note that the purpose of an expungement statute is to remove records so that all evidence of the underlying arrest, conviction, or other disposition is eliminated. Thus, the statute would have little effect unless the record expunged included all documents that identified the subject or connected him to the underlying offense. As the Supreme Court of Massachusetts noted in Dorchester, supra:

> First, the distinction between expungement of a record and sealing of a record is important. The former term refers to the type of order issued by the defendant judgment in the instant case--an order to remove and destroy records "so that no trace of the information remains." [Emphasis supplied.]

Records are therefore not destroyed until all documents, information, and identifiable descriptors are eliminated. The term "record" in the statute must be interpreted to give effect to the statute.

Implicit in the statutory provision is the understanding that the court order must be directed at the particular offense for which the deferred imposition of sentence was granted. The order must specify the offense with sufficient particularity to allow Montana Department of Justice personnel to accurately remove and destroy records. For instance, the subject of an expungement record may have multiple offenses on his record. The order must allow record clerks to remove all information pertaining to the expunged offense without deleting other record information.

Section 46-18-204, MCA, provides that upon dismissal of the charges, the court sends an order to the Department of Justice (the Department) directing that agency to expunge the subject's record. As a practical matter the Department will be unable to accomplish the task single-handedly because the great balance of a defendant's criminal record resides with the local law enforcement agency responsible for initiating the arrest and prosecution. The Department is nonetheless directly responsible for four tasks in effectuating the expungement. First, the Department must authenticate the expungement order and determine that sufficient information is provided to identify the defendant and

the expunged offense. Second, the Department must remove that part of the defendant's record within its control, namely the offense entry within the Montana automated criminal history file and the fingerprint cards. The Department maintains an inquiry log that identifies all parties who have requested and received information upon the subject. Those parties must be notified by the Department of the expungement order and the fact that the prior information has become outdated. Following notification the inquiry log itself must be destroyed. Third, the Department must notify the National Crime Information Center (NCIC) within the Federal Bureau of Investigation and request that notation of the defendant's offense record at the federal level be expunged. Finally, the Department must direct the originating local law enforcement agency to expunge their offense records.

Records held at the local level may be difficult to comprehensively expunge. The paper record accompanying an arrest, detention, and judicial proceeding is voluminous and often distributed throughout several local agencies. Nonetheless, in keeping with the clear intent of the Legislature, local record clerks who are most familiar with what information exists and where it may be located, must make a good faith effort to completely expunge the defendant's record. This record within a law enforcement agency will include entries on index files, booking sheets, jail records, offense reports, computer files, microfilm, as well as all mugshots and fingerprint cards. The judicial record will include entries on the court's docket sheet as well as the judicial file itself. While sound policy reasons may exist for sealing rather than destroying these records, the Legislature has deliberately chosen to have the records expunged, and I am constrained to so interpret the statute.

THEREFORE, IT IS MY OPINION:

> When a deferred imposition of sentence results in a dismissal of charges, the expungement of the defendant's record mandated by section 46-18-204, MCA, requires that all documentation and physical or automated entries concerning the expunged offense be physically destroyed or obliterated.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 101

EXEMPTIONS - Application of Subdivision and Platting Act and "sanitation in subdivisions" statutes to sale of parcel used as security for construction lien;
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF - Application of "sanitation in subdivision" statutes to sale of parcel used as security for construction lien;
LAND USE - Application of Subdivision and Platting Act and "sanitation in subdivisions" statutes to sale of parcel used as security for construction lien;
LIENS - Application of Subdivision and Platting Act and "sanitation in subdivisions" statutes to sale of parcel used as security for construction lien;
SANITATION - Subdivision sanitation review of sale of parcel used as security for construction lien;
SUBDIVISION AND PLATTING ACT - Application to sale of parcel used as security for construction lien;
MONTANA CODE ANNOTATED - Title 76, chapters 3, 4; sections 76-3-102, 76-3-103(3), 76-3-103(15), 76-3-201, 76-3-301, 76-3-601, 76-4-103, 76-4-104;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 16 (1983), 37 Op. Att'y Gen. No. 41 (1977).

HELD: The subsequent sale of an undivided parcel of land that was segregated from another parcel to provide security for a construction lien is not subject to the provisions of Title 76, chapters 3 and 4, MCA.

25 July 1988

Susan Loehn
Lincoln County Attorney
Lincoln County Courthouse
Libby MT 59923

Dear Ms. Loehn:

You requested my opinion on the following issues:

1. Where a parcel of land was divided to provide security for a construction lien, and the exemption from subdivision review and survey requirements found in section 76-3-201, MCA, was properly invoked, does

the subsequent sale of the parcel require application of Title 76, chapter 3, MCA?

2. Does the subsequent sale of such a parcel of land require application of Title 76, chapter 4, MCA, regarding sanitation in subdivisions?

The concern here is for the situation where a person has divided land to create a parcel to be used as security for a construction lien. The division was evidenced by either a separate deed for the parcel to be used as security or by a mortgage document which set out the boundaries of the parcel to be used as security. In any case, there was documentation of the boundaries of the parcel that was divided from the whole for purposes of providing security. The division was reviewed by the local governing entity and was deemed exempt from the subdivision review and survey requirements of Title 76, chapter 3, MCA (the Montana Subdivision and Platting Act, hereinafter the Act). Section 76-3-201, MCA, found within the Act, provides:

> Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:
>
> ....
>
> (2) is created to provide security for construction mortgages, liens, or trust indentures[.]

Subsequent to the division of land, the lienholder took possession of the parcel offered as security and then decided to sell it. The question then arose as to whether the sale of the parcel was subject to the requirements of the Act.

As a preliminary matter, you have asked whether the exemption found in section 76-3-201(2), MCA, exists after the extinguishment of the lien. I note that exemptions from review and survey under the Act arise when the land is divided and an exemption is claimed. The validity of claimed exemptions is to be determined by the governing authority. §§ 76-3-102, 76-3-301, 76-3-601, MCA; 40 Op. Att'y Gen. No. 16 at 58 (1983).

The exemption from the Act's requirements for the division of land would not "exist" apart from the division of land or after its purpose had been fulfilled.

I now turn to your primary question of the applicability of the Act to a subsequent sale of a parcel that was originally created to provide security for a construction lien. The Subdivision and Platting Act establishes a system of local government review of proposed subdivisions as well as survey requirements for divided land and subdivisions. Any "subdivision," as defined in section 76-3-103(15), MCA, is subject to the Act and certain divisions of land for sale are subject to the survey requirements found in part 4 of the Act.

There is no requirement in the Act that the subsequent sale of a parcel that was originally used as security for a construction lien pursuant to section 76-3-201(2), MCA, be reviewed or that the parcel be surveyed upon subsequent sale. The words "division of land" as used in section 76-3-201, MCA, are defined as follows:

> "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

§ 76-3-103(3), MCA. It is such a "division of land" which triggers the applicability of the Act. Given the above definition, I see no applicability to the sale of an undivided parcel. If the parcel is divided by the seller prior to sale, that division of land would be reviewed under the Act independently and irrespectively of the exemption that was granted in recognition of the parcel's prior status as security for a construction lien.

This conclusion is consistent with my holding in 37 Op. Att'y Gen. No. 41 (1977). In that opinion I was asked about the applicability of section 11-3862(9), R.C.M. 1947 (now section 76-3-201(2), MCA), to the situation where a buyer of property on a contract for deed basis

obtains title to a portion of the property in order to obtain financing for improvements. In that opinion I stated:

> As related by your letter, people are buying land under contracts for deed which contain a release provision which allows them to obtain title to a portion of the land upon payment of a stated portion of the purchase price. This allows the purchaser to mortgage that portion of the land to obtain financing for building or other improvements. ...
>
> ....
>
> [A] bona fide transaction such as the one described above is exempted from the Act, even though the seller actually parts with legal title to a portion of the land. This transaction must be stated as an exception, because the legal effect is in fact to create a division of land since the seller holds legal title to the larger portion and the purchaser holds title to the smaller (section 11-4861(2.1)).
>
> If the purchaser then sells the deeded portion to a third party there are technically no subdivision consequences attached. There is simply a transfer of a single undivided parcel of land. [Emphasis added.]

37 Op. Att'y Gen. No. 41 at 177-78. In essence you are concerned with the same situation as that discussed in the above opinion. The rationale of the opinion is applicable to the sale of the parcel by the lienholder. Because such a sale does not involve a division of land within the Act's definition, such a transfer would not require review or survey.

You have also asked whether the subsequent sale of such a parcel of land is subject to review under Title 76, chapter 4, MCA, regarding sanitation in subdivisions. Those statutes require review pursuant to rules and standards for water use and sewage disposal. § 76-4-104, MCA. The definition of subdivision found in Title 76, chapter 4, MCA, focuses on parcels of land "which have been created by a division of land."

§ 76-4-103, MCA. Thus, as with the Subdivision and Platting Act, the applicability of the "sanitation in subdivisions" statutes hinges on whether there is a division of land.

Because there is no division of land in the situation with which you are concerned, Title 76, chapter 4, MCA, would not apply to require review and approval. These statutes do not apply to the sale of a parcel of land that has not been divided.

Finally, some discussion is warranted regarding the division of land that gave rise to the construction mortgage exemption. Both sections 76-3-201 and 76-4-125, MCA, provide that the exemption for construction mortgages is not to be allowed where it is claimed in order to evade the requirements of the statutes. As I stated in 37 Op. Att'y Gen. No. 41 at 176 (1977), it is the local governing body's responsibility to determine whether the division of land is made for the purpose of evading the statutes. In the process of making such a determination, a local governing body should adopt regulations which would establish procedures to ensure that the division is not made with the purpose of evasion.

THEREFORE, IT IS MY OPINION:

> The subsequent sale of an undivided parcel of land that was segregated from another parcel to provide security for a construction lien is not subject to the provisions of Title 76, chapters 3 and 4, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 102

FIRE DEPARTMENTS - Powers and duties of fire service area trustees;
FIRE DISTRICTS - Powers and duties of fire service area trustees;
TAXATION AND REVENUE - Establishing rate schedules in fire service areas;
MONTANA CODE ANNOTATED - Sections 7-33-2105, 7-33-2401 to 7-33-2404;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 75 (1988).

HELD: 1. If the county commissioners appoint a board of trustees to govern and manage the affairs of a fire service area, the fire service area trustees must "prepare and adopt" suitable bylaws.

2. The county commissioners have the sole power to set the rate schedules in fire service areas to finance the budget which has been prepared by the fire service area board of trustees.

3. Because the commissioners have the sole power to set the rate schedules in the fire service area, the fire service area trustees may not require that rates be modified by popular vote of the residents located in the fire service area.

26 July 1988

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

You have requested my opinion concerning the following questions:

1. May the board of trustees of a fire service area write its own bylaws?

2. May the board of trustees of a fire service area set the rate schedule?

3. May the board of trustees require that rates be established and modified only by popular vote of the residents located in the fire service area?

The 1987 Legislature authorized county commissioners to establish fire service areas within unincorporated areas of Montana counties. §§ 7-33-2401 to 2404, MCA. This legislation enables small rural property owners to create a district for protection of structures located on their property, and to finance the district's operation by a special assessment on the structures benefited by the service area. See Hearing on House Bill 579 before House Committee on Local Government, Feb. 9, 1987. See also 42 Op. Att'y Gen. No. 75 (1988).

Section 7-33-2401(1), MCA, empowers county commissioners to create a fire service area upon receipt of a petition signed by at least 30 "owners of real property" or a majority of the owners of real property if there are more than 30 such owners in the proposed service area. Subsection (2) of that section sets forth the procedure for establishing a fire service area. Once the county commissioners establish a fire service area, they may operate the area or appoint "five qualified trustees to govern and manage the affairs of the area." § 7-33-2403(1)(b), MCA.

Your first question is whether boards of trustees may write their own bylaws. Section 7-33-2403, MCA, states that "[i]f the commissioners appoint trustees [to govern and manage the affairs of the district] the provisions of 7-33-2105 ... shall apply, except that the trustees shall prepare annual budgets and request a schedule of rates therefor." Section 7-33-2105, MCA, regarding powers and duties of fire district trustees provides:

> (1) The trustees shall prepare and adopt suitable bylaws.
>
> (2) The trustees shall have the authority to provide adequate and standard firefighting apparatus, equipment, housing, and facilities for the protection of the district. They shall appoint and form fire companies that

> shall have the same duties, exemptions, and privileges as other fire companies.
>
> (3) The trustees shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets shall, as far as applicable, apply to fire districts. [Emphasis added.]

Under well-established principles of statutory construction, when the language of a statute is plain and unambiguous the statute speaks for itself. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). The above statutes clearly provide that fire service trustees have the powers and duties of fire district trustees, except that fire service trustees request rates instead of levies to finance the area's operation. Therefore, I conclude that pursuant to section 7-33-2105, MCA, fire service area trustees are to prepare and adopt suitable bylaws for the service area.

Your next question is whether the board of trustees may set the rate schedule to finance the cost of operating the service area. This question presents two issues: (1) who has power to establish the initial rates, and (2) once established, who has the power to change the rates. For the reasons set forth below, I conclude that the county commissioners have the sole power to set and change the rate schedule in fire service areas.

Section 7-33-2404(1), MCA, expressly provides that in the first instance the county commissioners set the rate schedule: "In the resolution creating the fire service area ... the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the fire services offered by the fire service area." Moreover, fire service area trustees cannot set the initial rates because they are not appointed until after the commissioners create the district and adopt the initial fee schedule. See §§ 7-33-2403(1) and (3), MCA.

Once the commissioners appoint trustees to "govern and manage the affairs of the area," the trustees have the duty to "prepare annual budgets and request a schedule of rates therefor." § 7-33-2403(2), MCA. (Emphasis added.) As section 7-33-2404(1), MCA, clearly provides,

the commissioners then set the rate schedule to finance the budget which has been prepared by the trustees: "In the resolution creating the fire service area and by resolution as necessary thereafter, the board of county commissioners shall establish a schedule of rates ...." (Emphasis added.) In construing a statute, the intent of the Legislature must first be determined from the plain meaning of the words used. State ex rel. Board of Commissioners of Valley County v. Bruce, 106 Mont. 322, 332, 77 P.2d 403, 408 (1938), aff'd, 305 U.S. 577, 59 S. Ct. 465, 83 L. Ed. 363 (1938). Accordingly, I conclude that the plain language of the statute requires the county commissioners to set the rate schedules.

Your final question is whether the board of trustees may require that rates be established and modified only by popular vote of the residents located in the fire service area. As established above, the county commissioners have the sole power to set the rates in the fire service area. Consequently, fire service area trustees may not submit to the residents of the fire service area the issue of rate modification.

THEREFORE, IT IS MY OPINION:

1. If the county commissioners appoint a board of trustees to govern and manage the affairs of a fire service area, the fire service area trustees must "prepare and adopt" suitable bylaws.

2. The county commissioners have the sole power to set the rate schedules in fire service areas to finance the budget which has been prepared by the fire service area board of trustees.

3. Because the commissioners have the sole power to set the rate schedules in the fire service area, the fire service area trustees may not require that rates be modified by popular vote of the residents located in the fire service area.

Very truly yours,

MIKE GREELY
Attorney General

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Application of Montana-Dakota Utilities Company to Revise the Language of Gas Transportation Rates 81, 82 and 97.)	UTILITY DIVISION DOCKET NO. 87.1.8

DECLARATORY RULING

Background

On May 3, 1988, the Public Service Commission (Commission) received a Petition for Declaratory Ruling from Montana-Dakota Utilities Company (MDU) in Docket No. 87.1.8. The question put by MDU for ruling is as follows:

> Pending the Commission's decision in this Docket, should MDU charge pursuant to Rate 82 or Rate 97 for any transportation of natural gas from Western Gas Processors to Holly Sugar that might occur after Holly begins taking gas from Chevron?

It is MDU's position that, pending a Commission decision in this Docket, it is obligated to charge pursuant to Rate 97 for any transportation of natural gas from Western Gas Processors to Holly Sugar that might occur after Holly begins taking gas from Chevron.

The Commission issued notice of the Petition on May 18, 1988, and received comments on the Petition through May 31, 1988. Comments were received from Western Gas Processors, Exxon Corporation and Conoco.

Discussion and Ruling

Rate 97 is a tariff which permits MDU to charge $.05 per Mcf for transporting natural gas to an industrial customer in Montana over MDU's distribution system, if the supplier of the gas entered into a transportation agreement before April 1, 1985, to transport gas over Williston Basin Interstate Pipeline Company's (WBIP) system under a tariff approved by the Federal Energy Regulatory Commission (FERC). The Holly Sugar plant at Sidney, Montana, qualified to receive transport gas under Rate 97 because Holly's supplier, Western Gas Processors, has a FERC approved transportation agreement with WBIP.

Holly Sugar has located another gas supplier, Chevron, and has requested that MDU complete the transportation of the gas to its Sidney plant over MDU distribution facilities. Chevron does not have an underlying transportation agreement with WBIP that was consummated prior to April 1, 1985. Therefore, MDU's transportation of Chevron's gas for Holly does not qualify for Rate 97, but must be transported under Rate 82. MDU now asks this Commission whether in the event that Holly

once again takes gas from Western Gas Processors, MDU should transport that gas pursuant to Rate 97, or Rate 82.

The Commission finds that MDU should charge pursuant to Rate 97 if Holly Sugar renews the purchase of gas from Western Gas Processors. Western Gas Processors is a qualifying supplier according to the terms of Rate 97, and there is nothing in Rate 97 to indicate that an interruption in supply changes that status. As long as Western Gas Processors remains a qualifying supplier, with a valid underlying transportation agreement with WBIP, MDU must charge pursuant to Rate 97 for transporting gas supplied by Western Gas Processors, for as long as Rate 97 is in effect.

Done and Dated this 13th day of June, 1988 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

DANNY OBERG, Commissioner

TOM MONAHAN, Commissioner
(Voting to Dissent)

ATTEST:
Carol Frasier
Secretary

(SEAL)

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 March 31, 1988. This table includes those rules adopted during the period March 31, 1988 through June 30, 1988 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1988, this table and the table of contents of this issue of the MAR.

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