

RESERVE  
KFM  
9035  
1973  
.A245a

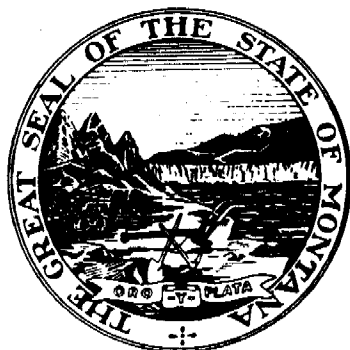
**RESERVE**

LAW LIBRARY  
SEP 06 '990  
OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

# **DOES NOT CIRCULATE**

1990 ISSUE NO. 16  
AUGUST 30, 1990  
PAGES 1644-1747



# STATE LAW LIBRARY

SEP 06 1990

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16  
**OF MONTANA**

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

Page Number

## TABLE OF CONTENTS

### NOTICE SECTION

#### COMMERCE, Department of, Title 8

8-12-45 (Board of Cosmetologists) Notice of Proposed Amendment Curriculum for Students - Fees. No Public Hearing Contemplated. 1644-1645

8-86-37 (Board of Milk Control) Notice of Public Hearing on Proposed Amendment - Class I Price Formula and Wholesale Prices - Class III Producer Prices. 1646-1655

8-86-38 (Board of Milk Control) Notice of Public Hearing on Proposed Amendment - Statewide Pooling and Quota Plan. 1656-1659

#### STATE LANDS, Department of, Title 26

26-2-60 (Board of Land Commissioners) Notice of Public Hearing on Proposed Adoption and Amendment - Sale of Cabinsites and Homesites on State Trust Lands. 1660-1663

#### REVENUE, Department of, Title 42

42-2-470 Notice of Proposed Adoption - Local Government Severance Tax Distribution Procedures. No Public Hearing Contemplated. 1664-1666

42-2-471 Notice of Proposed Amendment - Special Fuel Dealers Tax Returns. No Public Hearing Contemplated. 1667-1668

Page Number

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

|          |   |           |
|----------|---|-----------|
| 46-2-622 | Notice of Public Hearing on Proposed Amendment - Low Income Weatherization Assistance Program.  | 1669-1671 |
| 46-2-623 | Notice of Public Hearing on Proposed Amendment - Low Income Energy Assistance Program (LIEAP).  | 1672-1684 |
| 46-2-624 | Notice of Public Hearing on Proposed Amendment - Sliding Fee Scale for Transitional Child Care. | 1685-1687 |

RULE SECTION

STATE AUDITOR, Title 6

|            |  |           |
|------------|--|-----------|
| AMD<br>NEW | Medicare Supplement Insurance Minimum Standards. | 1688-1697 |
|------------|--|-----------|

COMMERCE, Department of, Title 8

|            |  |           |
|------------|--|-----------|
| AMD        | (Board of Hearing Aid Dispensers) Traineeship Requirements and Standards.  | 1698      |
| AMD        | (Board of Landscape Architects) Fees.  | 1699      |
| AMD<br>REP | (Board of Medical Examiners) Definitions - Reinstatement - Hearings and Proceedings - Temporary Certificate - Annual Registration and Fees - Approval of Schools - Requirements for Licensure - Application for Licensure and Fees - Supervision of Licensees - Application for Examination - Reciprocity. | 1700      |
| AMD        | (Board of Professional Engineers and Land Surveyors) Statements of Competency - Land Surveyor Nonresident Practice in Montana - Avoidance of Improper Solicitation of Professional Employment.   | 1701-1702 |
| AMD        | (Board of Investments) Seller/Service Approval Procedures - Forward Commitment Fees.   | 1703      |

FISH, WILDLIFE AND PARKS, Department of, Title 12

|     |   |           |
|-----|---|-----------|
| REP | (Fish and Game Commission) Manhattan Game Preserve. | 1704-1706 |
|-----|---|-----------|

Page Number

LABOR AND INDUSTRY, Department of, Title 24

AMD Montana's Prevailing Wage Rates 1707-1711

REVENUE, Department of, Title 42

REP Bad Debt Collection. 1712

REP Clarification of Exception to Tax Levy Limit. 1713

AMD Applications for Property Tax Exemptions. 1714

AMD Subchapter S Elections for Corporations. 1715-1716  
REP

NEW Gasoline From Refineries. 1717

AMD Payment of Alcohol Tax Incentive. 1718

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

AMD Third Party Liability. 1719-1723

INTERPRETATION SECTION

Opinions of the Attorney General.

70 Hospitals - Power of Hospital District to Fund Private Nonprofit Nursing Home. 1724-1728

71 Counties - Power to Register as County Warrants, and then Purchase, Unpaid Hospital District Warrants - County Officers and Employees - Authority of County Treasurer to Register Unpaid Hospital District Warrants - Hospitals - Power of Hospital District to Borrow Money by Use of Promissory Note - Power of Hospital District to Lease Hospital Facility to Nonprofit Corporation Without Restricting Corporation's Right to Borrow Money - Procedure for Registering Unpaid Hospital District Warrants - Public Funds - Power of County to Register as County Warrants, and then Purchase, Unpaid Hospital District Warrants - Procedure for Registering Unpaid Hospital District Warrants. 1729-1736

Page Number

SPECIAL NOTICE AND TABLE SECTION

|   |           |
|---|-----------|
| Functions of the Administrative Code Committee. | 1737      |
| How to Use ARM and MAR.                         | 1738      |
| Accumulative Table.                             | 1739-1747 |

BEFORE THE BOARD OF COSMETOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of rules pertaining ) OF 8.14.605 AND 8.14.1010  
to curriculum for students and ) PERTAINING TO THE PRACTICE  
fees ) OF COSMETOLOGY, MANICURING  
AND ELECTROLOGY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 29, 1990, the Board of Cosmetologists proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.14.605 CURRICULUM - COSMETOLOGY/MANICURING STUDENTS

(1) The hours for training courses for cosmetologists shall be distributed as follows:

Manicuring.....200 hours  
Shampoo (scalp treatment).....125 hours  
Permanent Waving.....400 hours  
Hair styling (pin curls, finger waving,  
thermal).....275 hours  
Facials..... 75 hours  
Dyes, tints, and bleaches.....300 hours  
Hair shaping.....225 hours  
Ethics, sales, personal grooming.....100 hours  
Shop management, business methods, state  
law, rules, appointment book and shop  
etiquette.....100 hours  
Cosmetic chemistry, electricity.....50 hours  
Instructor's discretion.....150 hours  
(2) through (9) will remain the same."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, MCA

REASON: This amendment is being made because the added language was inadvertently deleted from the rule in the adoption notice of MAR Notice No. 8-14-44 in issue number 11, Montana Administrative Register.

"8.14.1010 FEES - INITIAL, RENEWAL, PENALTY AND REFUNDS

(1) Initial:

(a) Examination to practice shall be \$100.00, plus  
~~\$25.00~~ \$10.00 license fee.

(b) Examination fee to teach shall be \$100.00, plus  
~~\$25.00~~ \$15.00 instructor license fee.

(c) through (2)(d) will remain the same.

(e) All Manager/operator licenses expire on December 31 of each year and must be renewed on or before December 31 of each year that date. Salon licenses are renewed July 1 of each year.

(f) through (j) will remain the same."

Auth: Sec. 37-1-134, 37-32-201, MCA; IMP, Sec. 37-1-134, 37-32-304, 37-32-305, MCA


**REASON:** These fee reductions are necessary to make the fees commensurate with program area costs. The amendment to subsection (e) is necessary because the renewal date for salons has been changed to July 1 and all other licenses are renewed December 31.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Cosmetologists, Arcade Building, 111 N. Jackson, Helena, Montana 59620, no later than September 27, 1990.

4. If a person who is directly affected by the proposed amendments 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 the request along with any comments he has to the Board of Cosmetologists, Arcade Building, 111 N. Jackson, Helena, Montana 59620, no later than September 27, 1990.

5. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, 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 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 500 based on the 5000 licensees in Montana.

BOARD OF COSMETOLOGISTS  
MARLENE SORUM, CHAIRMAN

BY:   
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 20, 1990.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

|                             |   |                             |
|-----------------------------|---|-----------------------------|
| In the matter of proposed   | ) | NOTICE OF PUBLIC HEARING ON |
| amendments of Rule 8.86.301 | ) | PROPOSED AMENDMENTS OF      |
| as it relates to class I    | ) | RULE 8.86.301               |
| price formula and wholesale | ) |                             |
| prices and the class III    | ) | PRICING RULES               |
| producer price              | ) |                             |
|                             | ) | DOCKET #1-90                |

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:

1. On Tuesday, October 2, 1990, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of: Clover Leaf Dairy, located in Helena, Montana; Equity Supply Co., located in Kalispell, Montana; Vita Rich Dairy, located in Havre, Montana; Country Classic Dairies, located in Bozeman, Montana; and Meadow Gold Dairies Inc., with plants located in Kalispell, Great Falls and Billings, Montana, and on the board's own motion.

Petitioners propose to amend table II of ARM 8.86.301 (6)(b) and ARM 8.86.301(g)-(k). The reasons given for the proposed action is to set prices which are economically and reasonably profitable. Petitioners assert that the present price structure is resulting in the demise of milk distributors within the state and amendments are needed to insure their survival and their ability to pay their producers.

The board also proposes on its own motion to consider amending ARM 8.86.301(8)(b) and (f) so the language in the rule is consistent with the methods required under a statewide pool.

3. The petitioners propose amending ARM 8.86.301 as follows: (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES  
(1)-(6)(a) remains the same.

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of class I milk in the state of Montana utilizes a November, 1969 base equalling 100, an interval of 5.3 and consists of five (5) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

|       | FACTOR                               | WEIGHT      | CONVERSION<br>FACTOR |
|-------|--------------------------------------|-------------|----------------------|
| (i)   | Weekly wages - total private revised | 50%         | .4035187             |
| (ii)  | Wholesale price index (US)           | 28%         | .7806202             |
| (iii) | Pulp, paper and allied products (US) | 12%         | .3299850             |
| (iv)  | Industrial machinery (US)            | 6%          | .1550846             |
| (v)   | Motor vehicle and equipment (US)     | 4%          | .0945103             |
|       |                                      | <u>100%</u> |                      |

NOTE: The reported revised weekly wages - total private is seasonally adjusted by dividing each months revised figures by the factors listed above in paragraph (6)(a).

The following table will be used in computing distributor prices.

TABLE II

Handler incremental deviation from last official reading of present formula. (December, 1973 - 122.10; Formula Base = November, 1969; Interval = 5.3.)

| FORMULA INDEX   | HANDLER INCREMENTAL<br>DEVIATION |         |
|-----------------|----------------------------------|---------|
| 196.70 - 200.94 | \$ 0.14                          | \$ 0.22 |
| 202.00 - 206.24 | 0.15                             | 0.23    |
| 207.30 - 211.54 | 0.16                             | 0.24    |
| 212.60 - 216.84 | 0.17                             | 0.25    |
| 217.90 - 222.14 | 0.18                             | 0.26    |
| 223.20 - 227.44 | 0.19                             | 0.27    |
| 228.50 - 232.74 | 0.20                             | 0.28    |
| 233.80 - 238.04 | 0.21                             | 0.29    |
| 239.10 - 243.34 | 0.22                             | 0.30    |
| 244.40 - 248.64 | 0.23                             | 0.31    |
| 249.70 - 253.94 | 0.24                             | 0.32    |
| 255.00 - 259.24 | 0.25                             | 0.33    |
| 260.30 - 264.54 | 0.26                             | 0.34    |
| 265.60 - 269.84 | 0.27                             | 0.35    |
| 270.90 - 275.14 | 0.28                             | 0.36    |
| 276.20 - 280.44 | 0.29                             | 0.37    |

|                 |      |      |
|-----------------|------|------|
| 281.50 - 285.74 | 0+30 | 0.38 |
| 286.80 - 291.04 | 0+31 | 0.39 |
| 292.10 - 296.34 | 0+32 | 0.40 |
| 297.40 - 301.64 | 0+33 | 0.41 |
| 302.70 - 306.94 | 0+34 | 0.42 |
| 308.00 - 312.24 | 0+35 | 0.43 |
| 313.30 - 317.54 | 0+36 | 0.44 |
| 318.60 - 322.84 | 0+37 | 0.45 |
| 323.90 - 328.14 | 0+38 | 0.46 |

(c)-(f) remains the same.

(g) The minimum wholesale price will be marked up ten percent (10%) to arrive at minimum retail prices.

4+1(h) Special wholesale prices for retail grocery stores will be based on the provisions contained in subsections 4A+(i), 4B+(ii), 4E+(iii) and 4B+(iv) below.

4A+(i) The minimum full service wholesale price for retail grocery stores will be calculated by multiplying the minimum retail prices by a factor of eighty-seven percent (87%). The minimum wholesale prices charged to retail grocery stores by distributors and paid by retail grocery stores to distributors shall be at this price if the distributor provides any ordering services, shelf-stocking services, outdated product credit services, or retail price marking services to the retail grocery store. All fluid milk purchased by retail grocery stores pursuant to this subsection 4A+(i) must be paid within fifteen (15) days after invoicing.

4B+(ii) The minimum drop shipment wholesale price for retail grocery stores that purchase their fluid milk without the provision of any of the services outlined in 4A+(i) shall be calculated by multiplying the minimum retail prices by a factor of eighty-three percent (83%). Distributors selling fluid milk to retail grocery stores at this price will not be allowed to provide services to retail grocery stores, other than delivery of the fluid milk products to the back room refrigerated storage area of the retail stores. In the event the distributor or his agents provide any other service to the retail grocery store, the minimum wholesale price paid for the milk products by the retail grocery store to the distributor shall be the full service wholesale price as set forth in 4A+(i) above. Distributors selling fluid milk to retail grocery stores at this price will be allowed to make deliveries of fluid milk products no more than four (4) times per week. In the event a distributor or his agents provide delivery of fluid milk products more than four (4) times per week, the minimum wholesale price paid for the fluid milk products by the retail grocery store to the distributor shall be the full service wholesale price set forth in section 4A+(i) above. All fluid milk purchased by retail grocery stores pursuant to this subsection 4B+(ii) must be paid within fifteen (15) days after

invoicing.

4e+(iii) The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the distributor's dock. The distributor shall not provide any service of any type to retail grocery stores purchasing milk pursuant to this section 4e+(iii). In order for a retail store to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a minimum of seven hundred fifty (750) gallons of fluid milk products per week.

4B+(iv) Retailers are prohibited from purchasing fluid milk at more than one pricing level as set forth in subsections 4A+(i), 4B+(ii) and 4e+(iii) from any one distributor in any single billing period which constitutes a period of at least two weeks. Distributors are prohibited from selling fluid milk to any retail grocery store at more than one pricing level as set forth in sections 4A+(i), 4B+(ii) and 4e+(iii) to any one retailer in any single billing period.

4E+(v) The minimum wholesale price for fluid milk purchased by wholesale grocery distribution centers will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by wholesale grocery distribution centers must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the wholesale grocery distribution center's dock or distributor's dock. A wholesale grocery distribution center must purchase a minimum of seven hundred fifty (750) gallons of fluid milk products per week from a distributor to be eligible to purchase fluid milk products at this pricing level. The minimum resale price to retail grocery stores will be a full service or a drop-shipment wholesale price.

4h+(i) Minimum jobber prices will be calculated by multiplying the minimum retail prices by a factor of seventy percent (70%). The jobber prices so calculated will be the minimum jobber prices.

4i+(j) On-the-farm wholesale and retail pricing:  
(i)-(iii) remains the same.

4j+(k) Low fat chocolate two percent milk will be priced by adding the difference between whole white milk and whole chocolate milk to the price of white low fat two percent milk. Monthly price announcements will be amended accordingly.

4k+(l) A special price on low fat milk and low fat chocolate milk in half (1/2) pints purchased by elementary and high schools is hereby established by applying the same differential that is used for pricing whole, homogenized milk

to schools and monthly price announcements amended accordingly.

(7)-(14) remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

4. The board proposes amending ARM 8.86.301 as follows. (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana.) (new matter underlined, deleted matter interlined)

**"8.86.301 PRICING RULES**

(1)-(8)(a) remains the same.

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

another market, the difference will be added to the hauling as computed above.

(b) Producers who ship in excess of any beneficial use, and that milk is shipped to a different market and classified by statute and rule as class III, shall receive a reduced price for that milk based on calculations in (a) less the calculations as described below.

The total cost to a plant for surplus milk that is shipped to a cheese or powder plant is determined by the following formula.

(i) First compare the price paid to the price received for the milk. If the price paid exceeds the price received, add the difference to the cost at \$.95 per running mile for hauling, or if the price paid is less than the price received, subtract the difference from the hauling cost.

In situations where there is a cost to the plant in disposing of the surplus milk, the volume of milk involved and the net cost of disposing of all surplus milk shall be tabulated on a per plant basis. The above individual plant volumes and costs shall be totaled for all plants.

(ii) The average cost per hundredweight of surplus milk shall be determined by dividing the total cost by the total volume in hundredweight.

Individual plant costs for surplus milk shall be divided by the total surplus milk cost to determine their percentage of the total surplus milk cost.

(iii) The volume of excess milk over quota in CWT's will be multiplied times the average cost per CWT to determine the total cost allocated to excess milk over quota.

(iv) The total cost allocated to excess milk over quota will be subtracted from the total overall allowable cost of handling surplus milk and that result divided by two. The allowable cost assignable to quota and excess milk is then allocated back to each individual plant based on the percentage above that each plant's cost is of the total.

(c)-(e) remains the same.

(f) Producers who are producing in excess of their assigned quota under a board adopted quota plan shall be paid for milk in excess of their assigned quota based upon the sales price of that milk less all freight and other costs related to its movements and sale.

(9)-(13) remains the same.

(14) Monthly Quarterly price announcements.

(a) Monthly Quarterly price announcements will be issued pursuant to paragraph 6 of this rule. Producer, jobber, institutional, wholesale, retail and on-the-farm wholesale and retail prices will be uniform and identical throughout the state of Montana."

(b) remains the same. AUTH & IMP: 81-23-302, MCA

3. Specific factors which the board will take into consideration in these proceedings will include, but may not be

limited to, the following:

- (a) supplies of milk in adjacent and surrounding areas;
- (b) actual prices being charged for unregulated milk in the marketplace in Montana;
- (c) prices of milk in adjacent and surrounding areas;
- (d) current and prospective supplies of milk in relation to current and prospective demand for such milk for all purposes;
- (e) cost factors in distributing milk, which shall include, among other things, prices paid by distributors for equipment of all types required to process and market milk, and prevailing wage rates in this state;
- (f) cost factors in jobbing milk, which shall include, among other things, raw product and ingredient costs, carton or other packaging costs, processing costs, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state.

6. In its consideration on the merits of the proposals in this matter, the board takes official notice as facts within its own knowledge of the following:

TABLE A

The most current cost survey conducted by staff of the Milk Control Bureau shows a simple average dock cost for the period July 1989 through February 1990 as follows:

| ITEM              | RAW PROD<br>COSTS | CRTN/INGR<br>COSTS | PROCESS<br>COSTS | GEN/ADMN<br>COSTS | DOCK<br>COSTS |
|-------------------|-------------------|--------------------|------------------|-------------------|---------------|
| =====             |                   |                    |                  |                   |               |
| <u>WHOLE MILK</u> |                   |                    |                  |                   |               |
| Gallon            | 1.32469           | .16159             | .33118           | .09312            | 1.90503       |
| <u>LOWFAT 2%</u>  |                   |                    |                  |                   |               |
| Gallon            | 1.19064           | .16159             | .33118           | .09312            | 1.77098       |
| <u>SKIM MILK</u>  |                   |                    |                  |                   |               |
| Gallon            | .98032            | .16159             | .38850           | .09802            | 1.58882       |

**TABLE B**

The most current cost survey conducted by staff of the Milk Control Bureau shows delivery costs for period July 1, 1989 through February 28, 1990 as follows:

| ITEM              | DOCK COST<br>TABLE B | WHSL DEL<br>COSTS | TL WHSL<br>DEL COST | RETAIL<br>DEL COSTS | TL RETAIL<br>DEL COSTS |
|-------------------|----------------------|-------------------|---------------------|---------------------|------------------------|
| =====             |                      |                   |                     |                     |                        |
| <b>WHOLE MILK</b> |                      |                   |                     |                     |                        |
| Gallon            | 1.90503              | .41127            | 2.31630             | .58188              | 2.48691                |
| <b>LOWFAT 2%</b>  |                      |                   |                     |                     |                        |
| Gallon            | 1.77098              | .41127            | 2.18225             | .58188              | 2.35286                |
| <b>SKIM MILK</b>  |                      |                   |                     |                     |                        |
| Gallon            | 1.58882              | .46611            | 2.05493             | .61251              | 2.20133                |

Note: The survey in table A and B involved costs of two major processing plants in Montana.

**TABLE C**

Margins between retail prices and raw product costs for selected cities for the last week of July and first week of August 1989: (Comparison is made on a gallon of whole milk.)

|                 | RETAIL<br>PRICE | RAW PROD.<br>COST | NET<br>MARGIN |
|-----------------|-----------------|-------------------|---------------|
| Kellogg, ID     | \$2.51          | \$1.09530         | \$1.41470     |
| Spokane, WA     | 2.52            | 1.09530           | 1.42470       |
| Moscow, ID      | 2.57            | 1.06083           | 1.50917       |
| Twin Falls, ID  | 2.33            | 1.06083           | 1.26917       |
| Boise, ID       | 2.29            | 1.06083           | 1.22917       |
| Jackson, WY     | 2.42            | 1.09424           | 1.32576       |
| *Sheridan, WY   | 2.63            | 1.20731           | 1.42269       |
| *Gillette, WY   | 2.84            | 1.16473           | 1.67527       |
| *Rapid City, SD | 2.65            | 1.17180           | 1.47820       |
| *Cheyenne, WY   | 2.35            | 1.18493           | 1.16507       |
| *Laramie, WY    | 2.49            | 1.18493           | 1.30507       |
| *Casper, WY     | 2.39            | 1.18493           | 1.20507       |
| *Powell, WY     | 2.58            | 1.20731           | 1.37269       |
| *Montana        | 2.65            | 1.20731           | 1.44269       |
| Montana         | 2.63            | 1.18921           | 1.44079       |

\*August price

**TABLE D**

Retail price comparisons on a gallon of whole milk for selected cities for the last week of July and first week of August 1989:

|                 | <u>HIGH VOLUME<br/>AVERAGE PRICE</u> | <u>LOW VOLUME<br/>AVERAGE PRICE</u> | <u>PRICE<br/>RANGE</u> |
|-----------------|--------------------------------------|-------------------------------------|------------------------|
| Kellogg, ID     | \$2.51                               | \$2.60                              | \$2.49-2.60            |
| Spokane, WA     | 2.52                                 | 2.61                                | 2.47-2.89              |
| Moscow, ID      | 2.57                                 | 2.43                                | 2.35-2.61              |
| Twin Falls, ID  | 2.33                                 | 2.21                                | 2.15-2.69              |
| Boise, ID       | 2.29                                 | 2.14                                | 2.09-2.48              |
| Jackson, WY     | 2.42                                 | 2.36                                | 2.29-2.45              |
| *Sheridan, WY   | 2.63                                 | 2.44                                | 2.39-2.89              |
| *Gillette, WY   | 2.84                                 | 2.57                                | 2.49-3.09              |
| *Rapid City, SD | 2.65                                 | 2.52                                | 2.35-2.83              |
| *Cheyenne, WY   | 2.35                                 | 2.35                                | 2.17-2.49              |
| *Laramie, WY    | 2.49                                 | 2.38                                | 2.37-2.59              |
| *Casper, WY     | 2.39                                 | 2.46                                | 2.22-2.69              |
| *Powell, WY     | 2.58                                 | 2.69                                | 2.45-2.74              |
| *Montana        | 2.65                                 | ----                                | ----                   |
| Montana         | 2.63                                 | ----                                | ----                   |

\*August price

Note: Information presented in tables C & D will be updated prior to the hearing.

**TABLE E**

Country Classic milk prices in Wyoming program for Montana stores beginning August 1, 1990.

| <u>ITEM</u>    | <u>WHOLE MILK</u> | <u>LOWFAT 2%</u> | <u>SKIM MILK</u> |
|----------------|-------------------|------------------|------------------|
| =====          |                   |                  |                  |
| <u>BRANDED</u> |                   |                  |                  |
| 1/2 Gallon     | \$1.18            | \$1.12           | \$1.01           |
| Gallon         | 2.38              | 2.28             | ----             |
| <u>PRIVATE</u> |                   |                  |                  |
| 1/2 Gallon     | 1.12              | 1.09             | 1.01             |
| Gallon         | 2.23              | 2.155            | ----             |

7. The burden is on the petitioner to prove that their requested amendments would be beneficial to the public and in the public interest.

8. Interested persons may participate and present data, views, or arguments pursuant to Section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to

the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than September 28, 1990.

9. Mr. John Bobinski, 314 N. Last Chance Gulch, PO Box 1224, Helena, Montana, 59624-1224, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

10. Authority for the board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA DEPARTMENT OF COMMERCE

BY:

  
Andy J. Poole, Deputy Director

Certified to the Secretary of State August 20, 1990.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of proposed ) NOTICE OF PUBLIC HEARING ON  
amendments of Rules 8.86.501, ) PROPOSED AMENDMENTS OF  
8.86.502, 8.86.504, 8.86.505 ) RULES 8.86.501, 8.86.502  
and 8.86.514 as they relate ) 8.86.504, 8.86.505 and  
to the statewide pooling and ) 8.86.514 - QUOTA AND  
quota plan ) POOLING RULES  
)  
) DOCKET #2-90

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:

1. On Tuesday, October 2, 1990, at 1:00 p.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of Larry Kaufman on behalf of the Montana Dairymen's Association (MDA) and on the board's own motion.

Petitioner proposes to amend ARM 8.86.501(1)(a), ARM 8.86.502 and ARM 8.86.504(1). The reason given for the proposed action is to allow Montana producers that were shipping milk out-of-state prior to the effective date of the statewide pooling and quota plan to be assigned quota as contained in ARM 8.86.501 through ARM 8.86.515.

The board also proposes on its own motion to consider amending ARM 8.86.501(1)(a)(i), ARM 8.86.505(1)(b)-(g) and ARM 8.86.514(1)(c). The purpose of the proposed amendments are to charge processors interest who use pool monies, eliminate inapplicable sections, and to permit Montana producers who were a part of the Montana market prior to the effective date of the statewide pooling and quota plan to be treated as eligible producers under ARM 8.86.501 through ARM 8.86.515.

3. The petitioners propose amending ARM 8.86.501, ARM 8.86.502 and ARM 8.86.504 as follows: (Full text of the rule is located at pages 8-2555 through 8-2567, Administrative Rules of Montana.) (new matter underlined, deleted matter interlined)

**"8.86.501 QUOTA DEFINITIONS**

(1)-(a)(i) remains the same.

(ii) is approved by the pool plant and acquires quota pursuant to additional assignments to quota milk; or  
(iii) acquires quota through transfer; or  
(iv) was actively producing and selling milk to a plant located outside Montana on June 1, 1990, and who meets the requirements of ARM 8.86.502(9).

(b)-(h) remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.502 INITIAL DETERMINATION AND/OR LOSS OF QUOTA

(1)-(8) remains the same.

(9) A Montana producer (licensed or unlicensed by the Montana milk control bureau) who was actively producing and selling milk to a plant located outside Montana on June 1, 1990, but who has begun or will begin selling all his milk to a Montana pool plant, may become an eligible producer and be assigned quota under this plan. To be assigned quota, such producer shall apply to the milk control bureau within 90 days after the effective date of this paragraph, and be a licensed producer in Montana at the time he makes such application. The quota to be assigned such producer shall be computed and governed by the preceding paragraphs of this rule, except that each producer's quota shall be limited to the lowest percentage previously assigned to eligible producers under paragraph (4) after this plan initially became effective. If the Montana state prison applies for and is assigned quota pursuant to this paragraph, thereafter the class I and II utilization of the prison shall be included in the computation of pool utilization under ARM 8.86.511 through ARM 8.86.515."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.504 TRANSFER OF QUOTA

(1)-(a)(i) remains the same.

(j) A producer who was assigned quota under ARM 8.86.502(9) may not transfer his quota for three years after the assignment of such quota, unless such transfer is an intrafamily quota transfer as defined in paragraph (f) above."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

4. The board is considering amending ARM 8.86.501, ARM 8.86.505, and ARM 8.86.514 as follows: (Full text of the rule is located at pages 8-2555 through 8-2567, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.501 QUOTA DEFINITIONS

(1)-(a)(i) remains the same.

(ii) is approved by the pool plant and acquires quota pursuant to additional assignments to quota milk; or  
(iii) acquires quota through transfer; or  
(iv) was supplying milk for the Safeway bottling arrangement at the time this plan became effective.

(b)-(h) remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

(1)(a) remains the same.

~~(b) No quota will be readjusted before January 1990. Provided that pool plants have sufficient milk during September, October, November and December of 1989 and 1990, no quota will be readjusted before January 1991.~~

~~(c)~~ (b) No additional quota will be issued until there is less than twelve percent (12%) in class III. If the quota to be assigned is less than five-tenths of one percent (0.5%) of the quota held by all eligible producers, the entire quota pounds to be assigned shall be carried over until the following year and combined with any other quota for assignment at that time.

~~(d)~~ (c) On or before the first day of April each year where applicable, the administrator shall calculate each eligible producer's additional quota to be assigned in accordance with the following computations:

(i)-(vi) remains the same.

~~(e)~~ (d) If the established quota contains more surplus than can be effectively handled, any affected party may petition the milk control board for a hearing.

~~(f)~~ (e) Each eligible producer will have six (6) months after this plan's effective date to reduce his production to his assigned quota. Following the initial six (6) months, any freight costs and loss on the movement and sale of surplus milk over quota will be charged back to those eligible producers who produced above their quota. The proceeds for the sale of surplus milk above quota, less transportation, will be paid to the eligible producers who ship in excess of their quota.

~~(g) During periods when the total production of all Meadow-Gold producer's milk is less than 90% of the total quota assigned for two consecutive months, the quota plan provisions will be temporarily suspended until such time as the total combined production of all Meadow-Gold producers reaches 95% of the total assigned quota."~~

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.514 PROCEDURES FOR POOLING OF RETURNS FROM POOL

MILK

(1)(a)-(b) remains the same.

(c) on or before the 13th day of the month, notify each pool handler of the amount if any by which his utilization value for the preceding month exceeds the amount due pool dairymen with respect to the pool handler's pool milk, based on the appropriate quota and excess prices. The amount of such difference must then be paid by such pool handler to the administrator on or before the 15th day of the month, or the first business day thereafter, for deposit into the pool settlement reserve; Any amount due that is not paid by the 25th of the month will have a late charge or an interest charge of 1.5% automatically attached each month the payment is not made. For purposes of calculating the interest, the 1.5% charge will be added to the unpaid balance each month.

(d) remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

5. Specific factors which the board will take into consideration in these proceedings will include, but may not be limited to the following:

(a) Possible impact of the proposal upon individual producers supplying individual distributor plants and their ability to supply Montana's market requirements.

(b) Possible impact upon the quality of milk available to consumers.

(c) Possible impact of the proposal upon individual producers supplying individual distributor plants.

(d) Possible impact upon the supplies of milk in individual plant pools.

6. Interested persons may participate and present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than September 28, 1990.

7. Mr. John Bobinski, 314 N. Last Chance Gulch, PO Box 1224, Helena, Montana, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

8. Authority for the board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA DEPARTMENT OF COMMERCE

BY: 

Andy J. Poole, Deputy Director

Certified to the Secretary of State August 20, 1990.

BEFORE THE BOARD OF LAND COMMISSIONERS  
AND THE DEPARTMENT OF STATE LANDS  
OF THE STATE OF MONTANA

\* \* \* \* \*

|                                    |   |                 |
|------------------------------------|---|-----------------|
| In the Matter of the Adoption      | ) | NOTICE OF       |
| of new Rules I through III         | ) | PUBLIC HEARINGS |
| and the amendment of ARM 26.3.129, | ) |                 |
| all relating to the sale of        | ) |                 |
| cabinsites and homesites on state  | ) |                 |
| trust lands.                       | ) |                 |

\* \* \* \* \*

TO: All Interested Persons

1. The Board and Department will hold public hearings to consider adoption of Rules I through III and amendment of ARM 26.3.129 at the following times in the following places:  
September 24, 1990, at 7:00 P.M. - Scobey Golf Club,  
Lower Level Meeting Room, Scobey.  
September 19, 1990, at 7:00 P.M. - Seeley-Swan High School  
Cafeteria, Seeley Lake.  
September 20, 1990, at 7:00 P.M. - Meeting Room, Elk's Club,  
1820 Highway 93 South, Kalispell.
2. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed amendment modifies ARM 26.3.129.
3. The proposed new rules provide as follows:

RULE I. SALE OF CABIN SITES, AND CITY OR TOWN LOTS: APPLICATION AND NOTICE PROCEDURES (1) The lessee of a cabin site or city or town lot who is a handicapped lessee or whose 65th birthday occurs before October 1, 1999, may submit to the department an application to purchase the leased land pursuant to 77-2-318, MCA, at any time prior to October 1, 2009. Any other cabin site or city or town lot lessee may apply for purchase prior to October 1, 1999. For a sale to occur, however, the certificate of purchase or deed must be issued before these deadlines. Lessees are therefore encouraged to file applications no later than 18 months prior to these deadlines. An application must be accompanied by a nonrefundable appraisal fee of \$150. In the application, the lessee shall advise the department which of the buildings, if any, the lessee will remove if the cabinsite is sold to another person. If the applicant intends to remove any building, he shall agree to eliminate any hazards resulting from removal of the building and to reclaim the site. If the applicant intends to leave any building, the applicant shall agree to allow department personnel to inspect and photograph the interior and exterior of that building and include with the application the appraised value of the building as determined by the department of revenue and, if the lessee disagrees with that appraisal, the

value the applicant believes to be correct. The lessee shall also include a listing of all other permanent improvements and an estimate of their value.

(2) Upon receipt of an application for the sale pursuant to 77-2-318, MCA, the department shall with reasonable diligence prepare and provide to the board an appraisal of the cabinsite and a report advising whether 77-2-303, MCA, would prohibit the sale, and, if not, whether the sale would be consistent with the orderly development and management of state lands and in the best interests of the trust. The appraisal must take into consideration whether the purchaser will be required to purchase an easement for access to the tract. The department shall also advise the board whether reservation of a conservation easement pursuant to 77-2-319, MCA, is required. The department shall mail to the applicant a copy of its recommendation when it sends the recommendation to the board.

(3) The board shall determine whether to hold the sale for the land. In determining whether to hold the sale, the board shall consider the criteria described in (2).

(4) The department shall advise the applicant of the board's decision. If the board decides to hold a sale, the applicant shall file with the department a \$850 application processing fee. The department shall keep a strict accounting of its costs, including employee time and travel, incurred in conjunction with the application. If the costs are less than the amount of the application fee, the department shall refund the unused fee to the applicant. If the applicant is not the successful bidder, the unrefunded amount of the fee must be considered an improvement pursuant to 77-2-325, MCA.

(5) If the board authorizes sale, the applicant shall also file with the department a certificate of survey. Preparation of the certificate is the responsibility of the applicant. The certificate must be prepared in consultation with the department to ensure that it accurately depicts the boundaries of the cabinsite. On the basis of the survey, the department shall finalize its appraisal.

(6) When the appraisal is finalized, the department shall proceed with the notice of sale in accordance with 77-2-322, MCA. In addition, the department shall publish notice of sale in such other newspapers and periodicals as it determines reasonably necessary to provide an open and competitive market for the sale and the best return to the trust.

(7) The notice of sale must:

- (a) indicate the appraised value of the tract;
- (b) describe any easement across state lands necessary for access to the tract and the price the successful bidder must pay for that easement; and
- (c) list the improvements on the cabinsite and which, if any, of the improvements would be removed if the lessee is not the high bidder;
- (d) describe any conservation easement that will be placed on the tract;
- (e) describe the time, date, and location of the sale; and
- (f) describe the sale procedures and terms of sale.

(8) If the board determines that the state land should be sold, the sale must be held in accordance with the procedures contained in Title 77, chapter 2, part 3, MCA, and the additional procedures and requirements contained in this rule and Rule II. AUTH: 77-2-328, MCA; IMP, 77-2-318, 319, MCA.

**RULE II. SALE OF CABIN SITES AND CITY OR TOWN LOTS: BIDDING AND FINAL BOARD DETERMINATION** (1) Sale of a cabinsite must be by oral auction. Before the sale commences, any person other than the applicant who wishes to bid must post with the department a bid bond in the amount of ten percent of the appraised value as a guarantee of purchase should that bidder be awarded the sale. The existing lessee must be afforded the right to meet the high bid in accordance with 77-2-324, MCA. If the lessee meets the high bid, he is considered the high bidder for purposes of this rule.

(2) The board shall disapprove a cabinsite sale whenever it determines that the sale would be disadvantageous to the state. AUTH: 77-2-328, MCA; IMP, 77-2-318, 321, MCA.

**RULE III. SALE OF CABINSITES AND CITY OR TOWN LOTS: IMPROVEMENTS** (1) If the lessee is not the purchaser, the lessee must remove all his movable improvements unless he and the purchaser reach an agreement that some or all of them will remain. The lessee may remove any building which he has designated for removal in his application for sale. The lessee must leave all other permanent improvements unless he and the purchaser agree otherwise.

(2) The purchaser must, in accordance with 72-2-325, MCA, reimburse the lessee for all permanent improvements that he chooses to leave. If the lessee and purchaser cannot agree on the value of the improvements, the parties shall engage in the arbitration process described in 77-6-306, MCA. If the arbitration process is not completed within 6 months or a reasonable time determined by the department, the improvements become the property of the department. The department shall then determine the value of the improvements, obtain that amount from the purchaser, and reimburse the lessee.

(3) If the lessee removes any permanent improvements, he shall reclaim the site by removing any foundations and hazards and by filling with suitable material any pits or excavations that result from removal of the improvement. AUTH: 77-2-328, MCA; IMP, 77-2-318, 325, MCA.

The proposed amendment provides as follows:

**26.3.129 DEFINITIONS** When used in the subchapter of the ARM, unless a different meaning clearly appears from the context:

(1) through (10) remain the same.

(11) "Full market value" means the most probable price in terms of money that a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus.

(11) remains the same but is renumbered (12).

(13) "Handicapped lessee" means a lessee certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the lessee's ability to obtain, retain, or advance in employment.

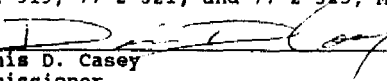
(12) through (28) remain the same but are renumbered (14) through (30). AUTH: 77-2-328, MCA; IMP, 77-2-318, MCA.

4. The proposed rules and rule amendments are necessary to (1) establish and commit the Department to, and advise lessees and licensees of, detailed procedures and requirements for processing of applications for the sale of cabinsites, homesites and city and town lots on state lands; and (2) provide a source of funding for the processing of those applications. These rules and rule amendments implement Chapter 602, Laws of 1989.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dennis D. Casey, Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59620 no later than October 1, 1990. Written data, views, or arguments that are postmarked by October 1, 1990 will be considered.

6. John North, Chief Legal Counsel, Department of State Lands, has been designated to preside over and conduct the hearing in Scobey. Jeff Jahnke, Chief of the Forest Management Bureau, Department of State Lands, has been designated to conduct the hearings in Seeley Lake and Kalispell.

7. The authority of the agency to make the proposed rules and amendment is 77-2-328, MCA, and the rules and amendments implement 77-2-318, 77-2-319, 77-2-321, and 77-2-325, MCA.

  
Dennis D. Casey  
Commissioner

Certified to the Secretary of State August 20, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                 |                              |
|---------------------------------|------------------------------|
| IN THE MATTER OF THE ADOPTION ) | NOTICE OF PROPOSED ADOPTION  |
| of RULE I and II relating to )  | of RULE I and II relating to |
| Local Government Severance )    | Local Government Severance   |
| Tax Distribution Procedures )   | Tax Distribution Procedures  |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 26, 1990, the Department of Revenue proposes to adopt new Rule I and II relating to Local Government Severance Tax Distribution Procedures.
2. The proposed rules are as follows:

RULE I SEMI-ANNUAL DISTRIBUTION TO THE COUNTIES-LOCAL GOVERNMENT SEVERANCE TAX (1) The department has established a database containing the 1988 unit values for all school districts having oil and/or gas production for leases or units that were required to file the annual net proceeds returns for calendar year 1988. For leases and units that had both oil and gas produced from the same lease or unit in 1988, net proceeds were not separated between oil and gas, therefore for the purpose of establishing the unit values, net proceeds were prorated between the oil and gas using the following formula:

Gas Gross Value  
----- X Total Net Proceeds = Gas Net Proceeds  
Total Gross Value

Oil Gross Value  
----- X Total Net Proceeds = Oil Net Proceeds  
Total Gross Value

(2) The unit value database will be adjusted once a year as needed to reflect amended returns for 1988 and audits that affect the 1988 annual net proceeds and taxable royalties. The adjustment will be done on, or about, June 30 each year. Any adjustments that affect the unit values will only be applied on a perspective basis to distribute the local government severance tax.

(3) A separate unit value has been determined for oil and gas, and therefore a separate distribution will be done for the oil collections and the gas collections. The amount to be distributed will be the total local government severance tax (oil or gas) collected, both for working interest owners and nonworking interest owners, plus any interest and penalty assessed and collected on the local government tax delinquencies since the last distribution for each product (oil or gas). In addition, any interest earned from temporarily investing the tax, penalty and interest on the local government severance tax

will be included in the distribution. The total amount to be distributed on each November 30 will be the total tax, delinquent interest and penalty, and interest earned on account with the department as of November 1 of each year. The total amount to be distributed on each May 31 will be the total tax, delinquent interest and penalty, and interest earned on account with the department as of May 1 of each year.

(4) Once a distribution has been completed and the payments have been made to the counties the department will not adjust the distribution for additional payments or refunds retroactively. Any additional tax collected or refunds made will be treated as a current transaction for the distribution as follows:

(a) If a taxpayer makes a payment for a period after the distribution has been completed for that period, the tax collected will be distributed based upon the unit values for the current period:

For example, a taxpayer makes a payment on December 31, 1990 that was due May 31, 1990. This payment will be included in the total to be distributed on May 31, 1991. If the payment had been made timely it would have been included in the November 30, 1990 distribution.

(b) If a taxpayer receives a refund of the local government severance tax the amount refunded will be taken from the total amount to be distributed in the current period:

For example, a taxpayer requests and receives a refund on December 31, 1990 for taxes that were paid on May 31, 1990. The original payment of the tax would be included in the distribution made on November 30, 1990. The refunded amount will be included as part of the net total distribution made on May 31, 1991.

(c) If a taxpayer elects to take a credit for an overpayment of the local government severance tax, the credit will be taken from the total amount to be distributed in the current period.

(5) Any units of production that are exempt from the local government severance tax will not be used in determining the distribution of the tax. This includes exempt production for federal, state, county, and non-taxable Indian royalties.

AUTH: 15-1-201, MCA

IMP: 15-36-112, MCA

RULE 11 REVISED NET PROCEEDS (1) If the net proceeds of an operator changes for any reason, (i.e. amended returns, audit etc.) for the production years 1988 and prior, and it was not considered new or interim production, the additional tax or refund due will be calculated using the mill levies for the year that applied to the original net proceeds assessment. In addition, any payment of additional tax will be made directly to the appropriate county, or if a refund is due, the request for the refund will be made directly to the county.

3. The authority for the Department to adopt these rules is found at 15-1-201, MCA, and the rules implement 15-36-112, MCA.

4. The proposed adoption of these rules is necessary to implement the local government severance distribution to local governments. The local government severance tax was enacted by the 1989 special legislative session, and amended by the 1990 special legislative session. The law as finally adopted requires the department to distribute the local government severance tax collections to the counties that have oil and gas production based upon a formula. These rules clarify for the benefit of the local governments certain dates and information the distributions will be based upon.

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

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

no later than September 28, 1990.

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 28, 1990.

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



DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                             |   |                              |
|-----------------------------|---|------------------------------|
| IN THE MATTER OF THE AMEND- | ) | NOTICE OF PROPOSED AMENDMENT |
| MENT of ARM 42.28.405       | ) | of ARM 42.28.405 relating to |
| relating to Special Fuel    | ) | Special Fuel Dealers Tax     |
| Dealers Tax Returns         | ) | Returns                      |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 26, 1990, the Department of Revenue proposes to amend ARM 42.28.405 relating to the Special Fuel Dealers Tax Returns for Motor Fuels.
2. The rule as proposed to be amended provides as follows:

42.28.405 SPECIAL FUEL DEALER TAX RETURNS (1) The department of revenue is hereby authorized to accept special fuel dealer tax returns without requiring a listing of all individual sales made by those dealers whose tax records are acceptable for proper audit by the department. Upon written request the department will examine the dealer's records prior to granting written authority to file tax returns as provided by this section. ~~in those cases where individual sales listings are not required, the department of revenue shall accept receipted gallons or metered sales in computing the tax liability.~~ The department reserves the right to approve or refuse such requests. AUTH: Sec. 15-70-104 MCA; IMP, Sec. 15-70-325 MCA.

3. This amendment is necessary to make the rule consistent with Section 15-70-324(3), MCA.

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

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

no later than September 28, 1990.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than September 28, 1990.

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

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



---

DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

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

|                         |   |                             |
|-------------------------|---|-----------------------------|
| In the matter of the    | ) | NOTICE OF PUBLIC HEARING ON |
| amendment of Rule       | ) | THE PROPOSED AMENDMENT OF   |
| 46.14.402 pertaining to | ) | RULE 46.14.402 PERTAINING   |
| low income weatheriza-  | ) | TO LOW INCOME WEATHERIZA-   |
| tion assistance program | ) | TION ASSISTANCE PROGRAM     |
|                         | ) |                             |

TO: All Interested Persons

1. On September 20, 1990, 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 Rule 46.14.402 pertaining to low income weatherization assistance program.

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

46.14.402 DETERMINING LOW INCOME WEATHERIZATION ASSIST-  
ANCE Subsections (1) through (3)(b) remain the same.

(4) STATE STANDARDS FOR WEATHERIZATION  
BY STANDARD DWELLING TYPE

| <u>PRIORITY</u> | <u>SOURCE OF HEAT LOSS</u> | <u>WEATHERIZATION</u><br><u>MEASURE REQUIRED</u> |
|-----------------|----------------------------|--|
|-----------------|----------------------------|--|

All Homes Other Than Mobile

|   |  |  |
|---|--|--|
| 1 | <del>General Energy Waste</del>              | <del>Stop Infiltration/Adjust Heating Source/Insulate Water Tank/Provide Energy Education/Turn Down H<sub>2</sub>O Setting/Replace Electric H<sub>2</sub>O Heaters With Natural Gas H<sub>2</sub>O Heaters When Possible/Dust Insulation</del> |
| 2 | <del>* Uninsulated Ceiling</del>             | <del>Insulate Ceiling</del>  |
| 3 | <del>Uninsulated Floor</del>                 | <del>Insulate Floor</del>  |
| 4 | <del>Uninsulated Walls</del>                 | <del>Insulate Walls</del>  |
| 5 | <del>Perimeter of Basement Uninsulated</del> | <del>Insulate Perimeter</del>  |
| 6 | <del>** Partially Insulated Ceiling</del>    | <del>Insulate Ceilings</del>   |
| 7 | <del>Windows</del>                           | <del>Install Storm Windows/Thermal Curtain</del>   |

~~Mobile homes all sizes, all heat types~~

- |              |                                  |   |
|--------------|----------------------------------|---|
| <del>1</del> | <del>General Heat Waste</del>    | <del>Stop Infiltration/Adjust Heating Source/Insulate Water Tank/Provide Energy Education/Turn Down H<sub>2</sub>O Setting/ Replace Electric H<sub>2</sub>O Heaters With Natural Gas H<sub>2</sub>O Heaters When Possible</del> |
| <del>2</del> | <del>Uninsulated Floor</del>     | <del>Insulate Floor</del>   |
| <del>3</del> | <del>Jalousie Windows</del>      | <del>Replace or Install Storm Windows</del>   |
| <del>4</del> | <del>Single Glass</del>          | <del>Install Storm Windows/ Window Quilts</del>   |
| <del>5</del> | <del>No Skirting</del>           | <del>Install Skirting</del>   |
| <del>6</del> | <del>Pre 1975 Construction</del> | <del>Roof Cap</del>   |
- ~~\* Uninsulated is defined as R-11 or less.~~  
~~\*\* Partially insulated is defined as R-11 or more.~~

Priority list for all homes

1. Heating systems
  - a. CO test
  - b. tune-ups
  - c. modifications
  - d. replacements
  - e. ducts (check for breaks &/or leakage)
2. Water heaters
  - a. CO test
  - b. insulation blanket (unconditioned spaces)
3. Air infiltration
4. Insulation
  - a. attic
  - b. wall
  - c. perimeter
  - d. floor
  - e. pipe and duct wrap
  - f. mobile home belly
5. Ventilation and moisture control
6. Storm windows
  - a. interior
  - b. exterior

7. Primary door replacement

8. General repairs and miscellaneous measures necessary to protect energy conservation materials or meet safety standards

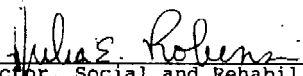
AUTH: Sec. 53-2-201 MCA

IMP: Sec. 90-4-201 and 90-4-202 MCA

3. These changes are being made to ensure that state policy is in compliance with the Department of Energy's standards of assistance.

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 59604-4210, no later than September 28, 1990.

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

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

Certified to the Secretary of State August 20, 1990.

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

|                            |   |                             |
|----------------------------|---|-----------------------------|
| In the matter of the       | ) | NOTICE OF PUBLIC HEARING ON |
| amendment of Rules         | ) | THE PROPOSED AMENDMENT OF   |
| 46.13.106, 46.13.303,      | ) | RULES 46.13.106, 46.13.303, |
| 46.13.304, 46.13.401 and   | ) | 46.13.304, 46.13.401 AND    |
| 46.13.502 pertaining to    | ) | 46.13.502 PERTAINING TO     |
| the low income energy      | ) | THE LOW INCOME ENERGY       |
| assistance program (LIEAP) | ) | ASSISTANCE PROGRAM (LIEAP)  |

TO: All Interested Persons

1. On September 20, 1990, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.13.106, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to the low income energy assistance program (LIEAP).

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

46.13.106 FRAUD/TRANSFER OF PROPERTY RESOURCES Subsections (1) through (4) remain the same.

(5) Fuel assistance shall not be granted to any person who has deprived himself directly or indirectly of any property resources for the purpose of qualifying for assistance. Any person who has transferred real property resources or interest in real property resources within one year of the date of application without receiving adequate consideration in money or money's worth shall be presumed to have made such transfer for the purpose of qualifying for assistance.

(a) The applicant or recipient may submit evidence that he did not make the transfer of property resources for the purpose of qualifying for assistance.

Subsection (5)(b) remains the same.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS

(1) The income standards in the table in subsection (2) below are the ~~1988~~ 1990 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 ~~1988~~ 1990 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1988~~ 1990 poverty level are ineligible for low income energy assistance.

(2) Income standards for all households:

| Family<br>Size           | Poverty<br>Guideline | 50<br>Percent  | 125<br>Percent | 150<br>Percent |
|--------------------------|----------------------|----------------|----------------|----------------|
| 1                        | \$ 5,980 6,280       | \$ 2,990 3,140 | \$ 7,475 7,850 | \$ 8,970 9,420 |
| 2                        | 8,020 8,420          | 4,010 4,210    | 10,025 10,525  | 12,030 12,630  |
| 3                        | 10,060 10,560        | 5,030 5,280    | 12,575 13,200  | 15,090 15,840  |
| 4                        | 12,100 12,700        | 6,050 6,350    | 15,125 15,875  | 18,150 19,050  |
| 5                        | 14,140 14,840        | 7,070 7,420    | 17,675 18,550  | 21,210 22,260  |
| 6                        | 16,180 16,980        | 8,090 8,490    | 20,225 21,225  | 24,270 25,470  |
| 7                        | 18,220 19,120        | 9,110 9,560    | 22,775 23,900  | 27,330 28,680  |
| 8                        | 20,260 21,260        | 10,130 10,630  | 25,325 26,575  | 30,390 31,890  |
| Additional<br>member add | 2,040 2,140          | 1,020 1,070    | 2,675 2,675    | 3,060 3,210    |

AUTH: Sec. 53-2-201 MCA  
IMP: Sec. 53-2-201 MCA

46.13.304 CALCULATING INCOME Subsections (1) through (3)(a) remain the same.

(b) Dependent care deductions shall be subtracted from annual gross income that is between 125% and 150% of the 1988 1990 U.S. government office of management and budget poverty level for the particular household size.

Subsections (3)(c) and (4) remain the same.

(a) Medical and dental deductions can only be subtracted from annual gross income that is between 125% and 150% of the 1987 1990 U.S. government office of management and budget poverty level for the particular household size. Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for benefits.

Subsections (4)(a)(i) through (4)(a)(x) remain the same.

AUTH: Sec. 53-2-201 MCA  
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 are entitled to two bedrooms benefit designation 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, Shendan, Roosevelt, Garfield,  
McConne, Richland, Dawson, Prairie, Wibaux, Rosebud,  
Treasure, Custer, Fallon, Powder River and Carter Counties

Single Family Units

| bedrooms | natural<br>gas | M.D.U.<br>electricity | fuel<br>oil   | propane       | wood          | coal          | R.E.A.<br>electricity |
|----------|----------------|-----------------------|---------------|---------------|---------------|---------------|-----------------------|
|          | 100% 75%       | 100% 75%              | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%              |
| one      | \$232 254 191  | \$543 523 457         | \$354 362 287 | \$283 265 244 | \$445 189 142 | \$452 175 131 | \$438 483 370         |
| two      | \$284 311 233  | \$664 781 571         | \$431 466 349 | \$346 397 298 | \$506 237 177 | \$490 218 164 | \$504 602 452         |
| three    | \$321 351 264  | \$754 865 649         | \$490 530 397 | \$393 451 339 | \$541 284 213 | \$528 262 197 | \$568 684 513         |
| four     | \$361 395 296  | \$846 969 726         | \$560 594 445 | \$440 505 379 | \$588 331 248 | \$566 306 229 | \$662 766 575         |

Multi Family Units

| bedrooms | natural<br>gas | M.D.U.<br>electricity | fuel<br>oil   | propane       | wood          | coal          | R.E.A.<br>electricity |
|----------|----------------|-----------------------|---------------|---------------|---------------|---------------|-----------------------|
|          | 100% 75%       | 100% 75%              | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%              |
| one      | \$262 221 166  | \$473 542 406         | \$308 332 249 | \$246 283 212 | \$443 185 123 | \$432 152 114 | \$372 429 322         |
| two      | \$302 270 203  | \$578 662 496         | \$348 405 304 | \$301 346 239 | \$479 206 134 | \$466 160 142 | \$466 524 393         |
| three    | \$339 306 229  | \$668 795 584         | \$407 461 346 | \$343 393 295 | \$518 247 185 | \$490 228 171 | \$518 595 446         |
| four     | \$374 344 256  | \$735 843 632         | \$458 517 387 | \$383 440 330 | \$551 288 216 | \$522 266 199 | \$580 687 500         |

Mobile Family Units

| bedrooms | natural<br>gas | M.D.U.<br>electricity | fuel<br>oil   | propane       | wood          | coal          | R.E.A.<br>electricity |
|----------|----------------|-----------------------|---------------|---------------|---------------|---------------|-----------------------|
|          | 100% 75%       | 100% 75%              | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%              |
| one      | \$246 236 177  | \$506 575 434         | \$326 355 267 | \$263 302 227 | \$463 176 132 | \$443 162 122 | \$389 458 344         |
| two      | \$284 269 217  | \$617 708 531         | \$401 433 325 | \$323 369 277 | \$494 220 165 | \$472 203 152 | \$449 560 420         |
| three    | \$329 307 245  | \$702 804 603         | \$466 493 370 | \$366 420 315 | \$540 254 196 | \$512 244 183 | \$532 636 477         |
| four     | \$366 356 276  | \$796 901 675         | \$511 552 414 | \$410 470 353 | \$588 308 231 | \$548 284 213 | \$600 713 535         |

(b)  
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          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$162 252 189 | \$470 571 429 | \$341 486 364 | \$361 472 354 | \$176 202 151 | \$162 186 140 |
| two      | \$235 308 231 | \$674 895 524 | \$484 593 444 | \$441 576 432 | \$210 232 189 | \$203 233 174 |
| three    | \$286 349 262 | \$852 784 595 | \$528 674 505 | \$501 655 491 | \$263 302 227 | \$243 279 209 |
| four     | \$300 393 294 | \$230 889 687 | \$602 715 566 | \$561 733 550 | \$302 353 264 | \$284 325 244 |

Multi Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$162 220 165 | \$408 487 373 | \$331 423 317 | \$314 410 308 | \$183 175 131 | \$141 162 121 |
| two      | \$204 269 201 | \$480 608 456 | \$404 515 387 | \$383 501 376 | \$188 219 184 | \$176 202 152 |
| three    | \$221 304 228 | \$587 680 518 | \$480 588 440 | \$428 559 427 | \$228 263 197 | \$214 243 182 |
| four     | \$260 342 256 | \$438 775 590 | \$616 657 493 | \$488 638 478 | \$267 307 230 | \$242 263 212 |

Mobile Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$120 235 176 | \$432 531 399 | \$364 452 339 | \$335 439 329 | \$183 187 141 | \$181 173 130 |
| two      | \$219 281 215 | \$524 649 497 | \$432 551 413 | \$410 536 402 | \$204 234 176 | \$188 216 162 |
| three    | \$247 325 243 | \$606 738 554 | \$498 608 470 | \$466 608 457 | \$245 281 211 | \$236 259 195 |
| four     | \$278 365 274 | \$670 827 620 | \$550 702 527 | \$522 682 511 | \$286 328 246 | \$264 303 246 |

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT V

Glacier, Toole, Pondera, Teton,  
Chouteau and Cascade Counties

(C)

Single Family Units

| bedrooms | natural<br>gas | electricity   | fuel<br>oil   | propane       | wood          | coal          | Great Falls<br>natural gas |
|----------|----------------|---------------|---------------|---------------|---------------|---------------|----------------------------|
|          | 100% 75%       | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%                   |
| one      | \$164 182 136  | \$406 475 356 | \$406 380 285 | \$343 353 265 | \$450 172 129 | \$138 159 119 | \$482 216 162              |
| two      | \$300 222 166  | \$484 590 435 | \$406 463 347 | \$449 431 323 | \$482 215 161 | \$132 156 148 | \$235 263 196              |
| three    | \$327 231 188  | \$460 659 494 | \$441 537 395 | \$426 490 367 | \$236 258 193 | \$302 236 179 | \$369 298 224              |
| four     | \$356 282 212  | \$417 738 554 | \$406 590 443 | \$433 459 411 | \$363 301 226 | \$343 278 208 | \$384 335 231              |

Multi Family Units

| bedrooms | natural<br>gas | electricity   | fuel<br>oil   | propane       | wood          | coal          | Great Falls<br>natural gas |
|----------|----------------|---------------|---------------|---------------|---------------|---------------|----------------------------|
|          | 100% 75%       | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%                   |
| one      | \$143 158 118  | \$246 413 310 | \$283 331 248 | \$289 307 230 | \$435 150 112 | \$139 138 104 | \$483 188 141              |
| two      | \$174 193 145  | \$451 505 378 | \$446 403 302 | \$366 375 281 | \$463 187 140 | \$140 173 129 | \$490 229 172              |
| three    | \$202 218 164  | \$420 573 430 | \$392 456 320 | \$414 426 320 | \$485 224 168 | \$180 207 155 | \$235 259 194              |
| four     | \$223 248 184  | \$506 642 482 | \$438 513 385 | \$464 477 358 | \$528 262 196 | \$210 242 181 | \$283 292 219              |

Mobile Family Units

| bedrooms | natural<br>gas | electricity   | fuel<br>oil   | propane       | wood          | coal          | Great Falls<br>natural gas |
|----------|----------------|---------------|---------------|---------------|---------------|---------------|----------------------------|
|          | 100% 75%       | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%                   |
| one      | \$150 169 127  | \$389 441 331 | \$302 353 265 | \$319 328 246 | \$439 160 120 | \$139 148 111 | \$424 200 150              |
| two      | \$196 206 155  | \$451 529 405 | \$369 431 323 | \$390 401 301 | \$424 200 150 | \$141 185 138 | \$213 245 184              |
| three    | \$211 233 175  | \$514 613 460 | \$449 490 367 | \$443 455 342 | \$390 240 180 | \$149 221 166 | \$241 277 209              |
| four     | \$237 263 197  | \$523 687 515 | \$476 549 412 | \$496 510 383 | \$344 280 210 | \$258 258 194 | \$271 312 234              |

(d) 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          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$147 207 155 | \$448 459 344 | \$383 432 324 | \$374 416 312 | \$121 156 147 | \$158 181 136 |
| two      | \$220 253 190 | \$648 581 421 | \$482 527 395 | \$482 508 381 | \$214 245 184 | \$492 286 170 |
| three    | \$269 286 215 | \$829 637 478 | \$531 569 449 | \$619 677 453 | \$266 284 221 | \$523 573 204 |
| four     | \$304 322 242 | \$907 714 535 | \$606 671 503 | \$682 846 488 | \$309 343 257 | \$576 512 238 |

Multi Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$142 180 135 | \$390 399 299 | \$323 376 282 | \$326 362 271 | \$140 171 126 | \$132 156 118 |
| two      | \$190 220 165 | \$478 488 368 | \$408 459 344 | \$398 442 331 | \$186 213 160 | \$174 197 148 |
| three    | \$228 249 187 | \$544 554 416 | \$462 521 391 | \$452 502 376 | \$223 256 182 | \$206 236 177 |
| four     | \$263 289 210 | \$608 621 466 | \$518 584 436 | \$508 562 422 | \$260 292 224 | \$240 276 207 |

Mobile Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$124 183 144 | \$412 427 320 | \$356 402 301 | \$348 387 260 | \$159 182 137 | \$142 166 126 |
| two      | \$143 235 177 | \$509 522 391 | \$435 480 364 | \$426 472 354 | \$189 228 171 | \$182 210 158 |
| three    | \$240 266 200 | \$829 583 444 | \$604 567 416 | \$583 537 402 | \$238 274 205 | \$220 263 189 |
| four     | \$271 300 225 | \$848 664 496 | \$664 624 466 | \$644 601 451 | \$278 319 239 | \$263 296 221 |

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,  
Yellowstone and Big Horn Counties

(a)

Single Family Units

| bedrooms | M.P.C.<br>natural gas | electricity   | fuel          |               | propane       | wood          |               | coal          | M.D.U.<br>natural gas |  |
|----------|-----------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|-----------------------|--|
|          |                       |               | oil           | 100% 75%      |               | 100% 75%      | 100% 75%      |               |                       |  |
| one      | \$159 172 129         | \$349 455 341 | \$382 353 265 | \$382 322 242 | \$382 322 242 | \$143 163 122 | \$141 150 113 | \$141 150 113 | \$106 224 168         |  |
| two      | \$190 210 158         | \$426 555 417 | \$350 431 323 | \$351 394 295 | \$351 394 295 | \$122 204 153 | \$164 188 141 | \$164 188 141 | \$238 273 205         |  |
| three    | \$216 236 178         | \$486 631 473 | \$368 460 367 | \$368 447 336 | \$368 447 336 | \$113 245 183 | \$207 226 169 | \$207 226 169 | \$260 309 232         |  |
| four     | \$243 268 201         | \$543 707 530 | \$346 549 412 | \$346 501 376 | \$346 501 376 | \$106 265 214 | \$200 263 197 | \$200 263 197 | \$303 346 261         |  |

Multi Family Units

| bedrooms | M.P.C.<br>natural gas |         | electricity |         | fuel<br>oil |         | propane |         | wood  |         | coal  |         | M.D.U.<br>natural gas |         |
|----------|-----------------------|---------|-------------|---------|-------------|---------|---------|---------|-------|---------|-------|---------|-----------------------|---------|
|          | 100%                  | 75%     | 100%        | 75%     | 100%        | 75%     | 100%    | 75%     | 100%  | 75%     | 100%  | 75%     | 100%                  | 75%     |
| one      | \$146                 | 150 112 | \$304       | 395 297 | \$350       | 307 231 | \$350   | 280 210 | \$144 | 142 106 | \$144 | 131 98  | \$130                 | 195 146 |
| two      | \$166                 | 183 137 | \$324       | 453 362 | \$368       | 375 281 | \$368   | 343 257 | \$164 | 177 133 | \$144 | 164 123 | \$207                 | 238 178 |
| three    | \$182                 | 207 155 | \$423       | 549 412 | \$342       | 426 320 | \$342   | 389 292 | \$185 | 213 160 | \$121 | 196 147 | \$234                 | 269 202 |
| four     | \$210                 | 233 175 | \$422       | 615 461 | \$388       | 478 358 | \$388   | 436 327 | \$216 | 248 186 | \$200 | 229 172 | \$264                 | 303 227 |

Mobile Family Units

| bedrooms | M.P.C.<br>natural gas | electricity   | fuel          |               | propane       | wood          |               | coal          | M.D.U.<br>natural gas |          |
|----------|-----------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|-----------------------|----------|
|          |                       |               | oil           | 100% 75%      |               | 100% 75%      | 100% 75%      |               | 100% 75%              | 100% 75% |
| one      | \$145 160 120         | \$324 423 317 | \$367 329 246 | \$367 300 225 | \$367 300 225 | \$129 152 114 | \$129 140 105 | \$129 140 105 | \$141 208 156         | 100% 75% |
| two      | \$172 196 147         | \$387 517 387 | \$336 401 300 | \$336 366 275 | \$336 366 275 | \$165 189 142 | \$152 175 131 | \$152 175 131 | \$251 254 191         | 100% 75% |
| three    | \$200 221 166         | \$481 587 440 | \$370 456 342 | \$370 418 312 | \$370 418 312 | \$198 227 171 | \$183 210 157 | \$183 210 157 | \$281 288 216         | 100% 75% |
| four     | \$226 249 187         | \$505 658 493 | \$416 511 393 | \$416 468 350 | \$416 468 350 | \$221 265 199 | \$212 245 184 | \$212 245 184 | \$323 324 243         | 100% 75% |

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          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$190 180 149 | \$440 521 391 | \$333 400 300 | \$443 514 396 | \$164 189 142 | \$152 174 131 |
| two      | \$220 233 193 | \$532 536 477 | \$408 488 366 | \$541 626 471 | \$208 238 177 | \$190 218 163 |
| three    | \$249 273 207 | \$649 723 542 | \$441 555 416 | \$648 714 535 | \$248 283 212 | \$228 261 196 |
| four     | \$300 310 232 | \$844 810 608 | \$647 822 456 | \$849 800 600 | \$300 330 249 | \$266 305 229 |

Multi Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$152 173 130 | \$383 453 340 | \$309 348 261 | \$385 447 336 | \$143 164 123 | \$132 152 114 |
| two      | \$191 212 159 | \$467 554 415 | \$353 424 318 | \$471 547 410 | \$170 205 154 | \$165 188 142 |
| three    | \$216 240 180 | \$531 626 472 | \$401 483 362 | \$536 621 468 | \$214 248 185 | \$198 222 170 |
| four     | \$243 270 202 | \$638 705 523 | \$460 541 405 | \$639 699 522 | \$250 287 213 | \$234 265 199 |

Mobile Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$147 185 139 | \$400 484 363 | \$300 372 279 | \$443 478 359 | \$153 175 132 | \$144 162 121 |
| two      | \$204 228 170 | \$500 592 444 | \$377 454 340 | \$503 564 436 | \$191 219 165 | \$176 202 152 |
| three    | \$231 256 192 | \$568 673 504 | \$429 516 397 | \$572 664 496 | \$220 263 197 | \$212 243 182 |
| four     | \$260 288 216 | \$638 753 565 | \$481 578 434 | \$640 744 550 | \$267 307 230 | \$247 283 213 |

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          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$180 200 150 | \$441 519 389 | \$324 416 312 | \$380 482 346 | \$146 189 142 | \$153 175 131 |
| two      | \$201 244 203 | \$500 634 476 | \$456 506 381 | \$425 564 423 | \$206 237 177 | \$100 218 164 |
| three    | \$250 276 207 | \$613 721 540 | \$519 577 433 | \$540 641 481 | \$242 264 213 | \$208 262 197 |
| four     | \$281 311 233 | \$686 807 605 | \$581 647 485 | \$604 718 538 | \$268 331 248 | \$268 306 229 |

Multi Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$152 174 130 | \$384 451 339 | \$325 362 272 | \$338 402 301 | \$143 165 123 | \$133 152 114 |
| two      | \$164 212 159 | \$460 552 414 | \$382 442 331 | \$413 491 368 | \$129 208 154 | \$148 190 142 |
| three    | \$217 240 180 | \$523 627 470 | \$461 502 377 | \$420 558 418 | \$216 247 185 | \$109 228 171 |
| four     | \$244 270 203 | \$607 702 527 | \$506 553 422 | \$526 525 469 | \$261 288 216 | \$232 266 199 |

Mobile Family Units

| bedrooms | natural gas   | electricity   | fuel oil      | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$164 186 139 | \$410 463 362 | \$348 387 290 | \$463 429 322 | \$153 176 132 | \$143 162 122 |
| two      | \$206 227 170 | \$501 560 442 | \$424 472 354 | \$443 524 393 | \$160 220 165 | \$122 203 152 |
| three    | \$233 257 193 | \$570 670 503 | \$483 537 403 | \$503 595 447 | \$204 264 198 | \$214 244 183 |
| four     | \$261 289 217 | \$638 751 563 | \$540 602 451 | \$563 668 501 | \$268 308 231 | \$248 284 213 |

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT X

Lincoln, Flathead, Lake  
and Sanders Counties

Single Family Units

| bedrooms | natural gas   | M.P.C.<br>electricity | fuel<br>oil   | propane       | wood          | coal          | P.P.L.<br>electricity |
|----------|---------------|-----------------------|---------------|---------------|---------------|---------------|-----------------------|
|          | 100% 75%      | 100% 75%              | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%              |
| one      | \$481 211 158 | \$468 582 414         | \$385 451 338 | \$481 590 443 | \$174 200 150 | \$481 165 136 | \$354 398 289         |
| two      | \$513 258 194 | \$520 675 506         | \$483 549 412 | \$588 721 541 | \$318 250 188 | \$501 231 173 | \$439 498 366         |
| three    | \$564 292 219 | \$642 787 573         | \$648 625 469 | \$688 819 615 | \$381 300 225 | \$541 277 208 | \$462 554 418         |
| four     | \$602 329 246 | \$728 859 644         | \$644 700 525 | \$748 918 688 | \$398 350 263 | \$581 323 242 | \$561 621 465         |

Multi Family Units

| bedrooms | natural gas   | M.P.C.<br>electricity | fuel<br>oil   | propane       | wood          | coal          | P.P.L.<br>electricity |
|----------|---------------|-----------------------|---------------|---------------|---------------|---------------|-----------------------|
|          | 100% 75%      | 100% 75%              | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%              |
| one      | \$488 164 136 | \$468 480 360         | \$344 392 324 | \$449 514 385 | \$160 174 131 | \$140 161 120 | \$308 347 260         |
| two      | \$503 225 186 | \$508 587 440         | \$419 478 359 | \$511 627 471 | \$186 218 163 | \$176 201 151 | \$328 424 318         |
| three    | \$520 254 191 | \$583 687 500         | \$472 544 408 | \$581 713 535 | \$222 261 196 | \$210 241 181 | \$428 482 362         |
| four     | \$558 286 214 | \$631 747 590         | \$534 609 457 | \$651 799 599 | \$265 305 228 | \$245 261 211 | \$470 540 405         |

Mobile Family Units

| bedrooms | natural gas   | M.P.C.<br>electricity | fuel<br>oil   | propane       | wood          | coal          | P.P.L.<br>electricity |
|----------|---------------|-----------------------|---------------|---------------|---------------|---------------|-----------------------|
|          | 100% 75%      | 100% 75%              | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%              |
| one      | \$122 196 147 | \$438 513 385         | \$362 419 314 | \$448 549 412 | \$162 186 140 | \$150 172 128 | \$328 371 278         |
| two      | \$112 240 180 | \$530 627 471         | \$448 511 383 | \$542 671 503 | \$203 233 174 | \$181 215 161 | \$402 453 340         |
| three    | \$246 272 204 | \$609 713 535         | \$500 591 436 | \$601 762 572 | \$249 279 209 | \$224 258 193 | \$462 515 396         |
| four     | \$276 306 229 | \$674 799 599         | \$521 651 489 | \$696 854 640 | \$284 326 244 | \$263 300 225 | \$512 577 433         |

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT XI

Mineral, Missouri and Nevada Counties

Single Family Units

| bedrooms | natural gas   | electricity   | fuel<br>oil   | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$182 201 151 | \$410 474 350 | \$352 408 302 | \$359 481 361 | \$168 191 143 | \$153 176 132 |
| two      | \$222 246 185 | \$504 560 435 | \$438 495 374 | \$444 568 441 | \$206 238 179 | \$182 220 165 |
| three    | \$361 278 209 | \$649 669 494 | \$587 587 425 | \$644 668 501 | \$340 286 215 | \$300 264 196 |
| four     | \$483 313 235 | \$838 738 553 | \$844 635 476 | \$874 748 561 | \$501 334 250 | \$468 306 231 |

Multi Family Units

| bedrooms | natural gas   | electricity   | fuel<br>oil   | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$188 175 131 | \$352 413 309 | \$340 358 267 | \$324 419 314 | \$146 166 124 | \$133 153 115 |
| two      | \$404 214 161 | \$438 504 373 | \$328 334 305 | \$393 512 364 | \$184 207 156 | \$167 191 144 |
| three    | \$519 242 182 | \$488 573 430 | \$438 463 370 | \$448 581 436 | \$212 249 187 | \$200 230 172 |
| four     | \$546 273 204 | \$588 642 461 | \$440 553 415 | \$500 651 498 | \$253 290 219 | \$233 268 201 |

Mobile Family Units

| bedrooms | natural gas   | electricity   | fuel<br>oil   | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$189 187 140 | \$381 441 331 | \$322 390 285 | \$344 448 336 | \$156 177 133 | \$143 164 123 |
| two      | \$301 229 172 | \$468 539 404 | \$404 464 346 | \$429 547 410 | \$183 222 166 | \$168 205 154 |
| three    | \$384 259 194 | \$509 613 459 | \$440 527 395 | \$472 621 466 | \$224 266 200 | \$214 246 184 |
| four     | \$483 291 219 | \$593 686 515 | \$444 591 443 | \$474 696 522 | \$270 310 233 | \$250 267 215 |

MAXIMUM BENEFIT AWARD MATRIX FOR  
LC DISTRICT XII  
Powell, Granite, Deer Lodge, Silver Bow,  
Beaverhead and Madison Counties

(1)

Single Family Units

| bedrooms | natural gas   | electricity   | fuel<br>oil   | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$248 235 177 | \$530 611 459 | \$447 406 305 | \$465 561 421 | \$404 223 167 | \$470 206 134 |
| two      | \$260 288 216 | \$565 767 560 | \$508 495 371 | \$567 666 514 | \$424 279 209 | \$494 257 193 |
| three    | \$294 326 244 | \$623 869 637 | \$558 563 422 | \$645 779 584 | \$494 335 251 | \$560 309 232 |
| four     | \$334 366 273 | \$688 951 713 | \$647 631 473 | \$722 873 654 | \$540 390 293 | \$614 360 270 |

Multi Family Units

| bedrooms | natural gas   | electricity   | fuel<br>oil   | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$485 205 154 | \$663 532 399 | \$343 353 265 | \$404 488 346 | \$469 194 146 | \$544 179 134 |
| two      | \$506 250 188 | \$693 650 487 | \$442 431 323 | \$494 596 447 | \$494 263 182 | \$594 224 166 |
| three    | \$556 283 212 | \$738 739 534 | \$504 490 367 | \$564 678 508 | \$559 291 218 | \$644 269 201 |
| four     | \$608 319 239 | \$793 827 620 | \$563 549 412 | \$638 759 569 | \$596 340 255 | \$694 313 235 |

Mobile Family Units

| bedrooms | natural gas   | electricity   | fuel<br>oil   | propane       | wood          | coal          |
|----------|---------------|---------------|---------------|---------------|---------------|---------------|
|          | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      | 100% 75%      |
| one      | \$408 219 164 | \$483 569 426 | \$388 378 283 | \$423 522 391 | \$484 207 156 | \$542 191 144 |
| two      | \$423 268 201 | \$504 692 521 | \$433 461 345 | \$496 618 478 | \$534 257 194 | \$588 239 179 |
| three    | \$453 303 227 | \$544 790 702 | \$477 492 373 | \$540 722 543 | \$584 311 233 | \$640 287 213 |
| four     | \$490 341 255 | \$593 886 663 | \$522 507 440 | \$592 812 609 | \$634 363 272 | \$694 333 251 |

46.13.502 SUPPLEMENTAL ASSISTANCE (1) To the extent funds are available, one-time supplemental assistance for the amount of the outstanding heat bill not to exceed \$150.00 is available to LIEAP households at or below ~~50%~~ 100% of Office of Management and Budget (OMB) poverty standards, as listed in ARM 46.13.303, who have paid at least 5% of their income, as defined in ARM 46.13.304, toward their home heating costs for ~~the October 1 through April 30 heating season 12 months previous to the date of application for supplemental assistance.~~

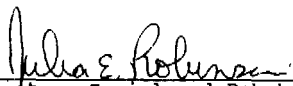
Subsections (1)(a) through (2)(c) remain the same.

~~(3) The amount of any single PIP supplemental grant will not exceed the amount of one single PIP co-payment.~~

3. The LIEAP changes are necessary to ensure that state policy coincides with the federal Office for Management of the Budget (OMB) current poverty standards and to ensure that benefit award matrices coincide with the LIEAP budget. In addition, it will allow supplemental assistance to be given to households at or below 100% of the OMB poverty standard as opposed to 50% of the OMB poverty standard. Further, the rule change allows the state to count all applicant's resources when qualifying for LIEAP assistance.

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 59604-4210, no later than September 28, 1990.

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

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

Certified to the Secretary of State August 20, 1990.

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

|                           |   |                             |
|---------------------------|---|-----------------------------|
| In the matter of the      | ) | NOTICE OF PUBLIC HEARING ON |
| amendment of Rule         | ) | THE PROPOSED AMENDMENT OF   |
| 46.10.409 pertaining to   | ) | RULE 46.10.409 PERTAINING   |
| the sliding fee scale for | ) | TO THE SLIDING FEE SCALE    |
| transitional child care   | ) | FOR TRANSITIONAL CHILD CARE |

TO: All Interested Persons

1. On September 20, 1990, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.409 pertaining to the sliding fee scale for transitional child care.

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

46.10.409 SLIDING FEE SCALE FOR TRANSITIONAL CHILD CARE

(1) The following is a sliding fee scale which indicates the amount the ~~department~~ family will contribute towards the family's child care costs at the established reimbursement rate in accordance with ARM 46.10.404:

(a) for the first six (6) months of the transitional child care eligibility period, ~~90~~10% of established reimbursement rates, for the appropriate type of care (such as day care center, family home or group home) or ~~90~~10% of actual cost (whichever is less) per child;

(b) for the 7th and 8th months, ~~75~~25% of established reimbursement rates or ~~75~~25% of actual cost (whichever is less) per child;

Subsections (1)(c) remains the same.

(d) for the 11th and 12th months, ~~25~~75% of established reimbursement rates or ~~25~~75% of actual cost (whichever is less) per child.

(2). In addition, the family is also required to pay an additional fee per child based on family income. The following scale indicates what the family share is:

(a)

SLIDING FEE SCALE

for

TRANSITIONAL CHILD CARE (TCC)

OCTOBER 1, 1990

Family Share  
Projected Gross Annual Family Income

| <u>TCC</u><br><u>Month</u> | <u>\$ 0 - 10,000</u> | <u>\$10,001-15,000</u> | <u>\$15,001-20,000</u> | <u>\$20,001 and Over</u> |
|----------------------------|----------------------|------------------------|------------------------|--------------------------|
| 1                          | 10%                  | 10% + 5 p/c            | 10% + \$10 p/c         | 10% + \$20 p/c           |
| 2                          | 10%                  | 10% + 5 p/c            | 10% + 10 p/c           | 10% + 20 p/c             |
| 3                          | 10%                  | 10% + 5 p/c            | 10% + 10 p/c           | 10% + 20 p/c             |
| 4                          | 10%                  | 10% + 5 p/c            | 10% + 10 p/c           | 10% + 20 p/c             |
| 5                          | 10%                  | 10% + 5 p/c            | 10% + 10 p/c           | 10% + 20 p/c             |
| 6                          | 10%                  | 10% + 5 p/c            | 10% + 10 p/c           | 10% + 20 p/c             |
| 7                          | 25%                  | 25% + 5 p/c            | 25% + 10 p/c           | 25% + 20 p/c             |
| 8                          | 25%                  | 25% + 5 p/c            | 25% + 10 p/c           | 25% + 20 p/c             |
| 9                          | 50%                  | 50% + 5 p/c            | 50% + 10 p/c           | 50% + 20 p/c             |
| 10                         | 50%                  | 50% + 5 p/c            | 50% + 10 p/c           | 50% + 20 p/c             |
| 11                         | 75%                  | 75% + 5 p/c            | 75% + 10 p/c           | 75% + 20 p/c             |
| 12                         | 75%                  | 75% + 5 p/c            | 75% + 10 p/c           | 75% + 20 p/c             |

p/c means "per child"

(3) The department will pay the portion of the family's child care costs, based on the established reimbursement rates for the appropriate type of care, which the family is not required to pay pursuant to subsections (1) and (2) of this rule above.

AUTH: Sec. 53-4-212 MCA

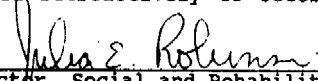
IMP: Sec. 53-4-701 and 53-4-716 MCA

3. The state of Montana is mandated by the Federal Family Support Act of 1988 (Welfare Reform) to provide transitional child care services to participants of the Aid to Families with Dependent Children (AFDC) program who have been on assistance for three of the six months prior to loss of financial assistance and have lost their assistance because of 1) increased hours of employment, 2) increased earned income (Unemployed Parent program), or 3) the expiration of the \$30 plus one-third or \$30 earned income disregard. These child care services are to be available for 12 months from the date of termination from AFDC financial assistance. This rule establishes the amounts to be contributed by the recipients and the Department toward the payment of day care costs and bases the family's contribution on the family's ability to pay.

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 59604-4210, no later than September 28, 1990.

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

6. This rule will be applied retroactively to October 1, 1990.

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

Certified to the Secretary of State August 20, 1990.

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

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| In the matter of the adoption of   | ) | NOTICE OF ADOPTION        |
| rules pertaining to medicare       | ) | AND AMENDMENT OF          |
| supplement insurance minimum       | ) | ARM 6.6.505 THROUGH       |
| standards and amendment            | ) | 6.6.511 AND ARM 6.6.513   |
| of ARM 6.6.505 through ARM 6.6.511 | ) | AND RULE I (6.6.514)      |
| and ARM 6.6.513                    | ) | THROUGH RULE IX (6.6.522) |

TO: All Interested Persons:

1. On July 2, 1990, the State Auditor and Commissioner of Insurance, Department of Insurance (department) published a notice of hearing on the proposed adoption of the above-stated amendments and rules at page 1285 of the 1990 Montana Administrative Register, issue number 13.

2. Oral comment was taken at the public hearing held on August 2, 1990, at 9:00 a.m. in Room 160 of the Mitchell Building, 126 North Sanders, Helena, Montana. The hearing, which was tape-recorded and transcribed, was attended by twelve persons. Three persons offered testimony. The department received written comment from five persons. The tape of the hearing, a transcript of that tape, the written comments received and the hearing officer's report are on file in the department's law library.

The comments received were generally in favor of adoption of the amendments and proposed rules. Comments to the amendments and proposed rules are discussed below in reference to each rule.

3. The department received both oral and written testimony on two jurisdictional topics not specifically addressed to any proposed amendment or rule. These comments and responses are summarized below.

**COMMENT:** An interested party asserted in testimony and in writing that the department lacks authority to adopt the entire proposed rule amendments and new rules. The gravamen is that 33-22-902, MCA, limits the commissioner's authority to adopt rules to those that were necessary to meet the requirements of the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360. This act was repealed in the Medicare Catastrophic Coverage Repeal Act of 1989. The repeal, therefore, resulted in a loss of the commissioner's extended rulemaking authority granted under 33-22-902, MCA.

**RESPONSE:** 33-22-902, MCA, provides as follows: "The purpose of this part is to establish minimum standards for medicare supplement insurance policies and to establish a regulatory program that meets the requirements of Public Law 92-265, the Social Security Disability Amendments of 1980, approved June 9, 1980." Reading this section in its entirety reveals that the legislature intended two purposes: (1) To establish minimum standards for medicare supplement insurance

policies and (2) to establish a regulatory program that met federal requirements. The repeal of the Medicare Catastrophic Coverage Act had no effect on the first purpose contained in 33-22-902, MCA. The authority of the commissioner to establish minimum standards for medicare supplement insurance policies remains inviolate. The department has the authority to adopt in rule minimum standards for medicare supplement insurance policies.

COMMENT: An interested party asserted that the proposed new rules that regulate the market conduct of insurers providing medicare supplement insurance in Montana are beyond the scope of authority of the department. Section 33-22-905, MCA, grants the commissioner authority to adopt rules to establish minimum standards for benefits and payment of claims for medicare supplement policies. The interested party also asserts the same argument as presented in the immediately preceding comment but limits its applicability to the proposed new rules. It was further asserted that the department has patterned its rules upon the National Association of Insurance Commissioners (NAIC) adopted model regulations which, in turn, were based on the NAIC III, NAIC Model Laws, Regulations and Guidelines, Medicare Supplement Insurance Minimum Standards Model Act, pp 650.1 through 650.5. This model is to be adopted by the states to bring their medicare supplement regulatory programs into compliance with federal standards of the Medicare Catastrophic Coverage Repeal Act of 1989. Montana has not adopted the aforementioned model law. The contention is the commissioner does not have the authority to adopt rules designed to implement the model law.

RESPONSE: Section 33-1-313, MCA, is a general grant of rulemaking authority for the commissioner to "make reasonable rules necessary as an aid to effectuation of any provision of this code." Section 33-22-902, MCA, provides, in pertinent part, that "[t]he purpose of this part is to establish minimum standards for medicare supplement insurance policies . . ." The legislature granted broad authority to the commissioner to exercise discretion in determining what are appropriate minimum standards for medicare supplement insurance policies. Authority is not tied to any federal requirements. The commissioner has determined that the NAIC model regulations are appropriate standards under state law independently of federal standards and may set standards by general rulemaking authority. The commissioner has the authority to adopt rules that address the market conduct of insurers.

4. The department has adopted the amendments and rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

6.6.505 POLICY DEFINITIONS AND TERMS received no adverse comments and the amendments are adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.506 PROHIBITED POLICY PROVISIONS received no adverse

comments and the amendments are adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.507 MINIMUM BENEFIT STANDARDS received adverse comments, summarized below. The amendments are adopted as proposed.

COMMENT: Proposed amendment (2)(e) is objected to on the basis that it constitutes the taking of property without due process of law. The policies in force were underwritten and rated on the basis that medicare supplement policies are not noncancellable and not nonrenewable.

RESPONSE: The expectation of receipt of a certain level of premium payment is a contractual right which does not rise to the level of deserving due process protection. Whatever property rights attach in the insurer-insured relationship generally belong to the owner who is not the insurer. The proposed amendment is adopted.

COMMENT: Proposed amendment (2)(i) is objected to on the basis that this constitutes the taking of property without due process of law. The proposed change adds a terminal benefit upon which in-force policies were not rated.

RESPONSE: Ownership of a medicare supplement insurance policy does not reside with the insurer. The expectation of a certain level of premium payment is a contractual right only and not deserving of the due process of law. The proposed amendment is adopted.

COMMENT: Proposed amendment (2)(i) is objected to on the basis that the term "continuous loss" needs further definition.

RESPONSE: "Loss" means the basis of the claim. "Continuous" has the ordinary meaning as stated in dictionaries of common usage. The proposed amendment is adopted.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.508 LOSS RATIO STANDARDS received adverse comments, summarized below. The amendments are adopted as proposed.

COMMENT: (5) of the proposed amendment is objected to on the basis that the term "health care service plan" is not defined.

RESPONSE: The term "health care service plan" encompasses insurance offered by any number of entities, whether they are health service corporations, insurers, or other entities providing medicare supplement policies or contracts in this state. The amendment is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.509 REQUIRED DISCLOSURE PROVISIONS received no adverse comments and the amendments are adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT received adverse comments, summarized below. The amendments are adopted as proposed.

COMMENT: Two interested parties recommend that the proposed amendments be modified to require that an insurer be notified in writing that its in-force medicare supplement insurance policy is being replaced. The basis for the suggestion is that timely notice of the replacement of existing coverage would allow insurers the opportunity to identify producers engaged in unnecessary replacement activities, provides the existing insurer the opportunity to conserve business, and maintain persistency in the medicare supplement block and help to identify abusive or illegal marketing practices.

RESPONSE: The opinion of the department is that while the recommendation would reduce the number of unnecessary replacements, the effect would be marginal. The proposed new rules remove the economic incentive for unnecessary replacement. In many instances, the consumer may unwittingly be placed in the middle of efforts by the producer who sold the policy being replaced to save it and the efforts of the producer of the replacing policy to conclude the sale.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.511 SAMPLE FORMS received adverse comments, summarized below. The amendments are adopted as proposed.

COMMENT: The amendment to 6.6.511(4) was objected to on the basis that the new form, intended to inform consumers, is confusing.

RESPONSE: The form in the proposed amendment requires the insurer to indicate, with respect to minimum standards, what the insurance policy will pay and what the insured will pay. The department believes that this form more clearly provides the consumer with basic information necessary to make an informed choice about the purchase of medicare supplement insurance policy. The department believes this form simplifies rather than complicates the consumer's purchasing decision. Following this information, another part of the form requires the insurer to give notice of what coverage is contained within the policy. Again, this is basic information needed by the consumer to make a wise choice. The department believes that the clear delineation of these issues will enable the consumer to make a better choice. The amendments are adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.513 EFFECTIVE DATE received adverse comments, summarized below. The amendments are adopted as proposed.

**COMMENT:** The amendment is objected to on the basis that the proposed effective date of September 1, 1990, does not allow local insurance carriers enough time to make adjustments to bring their practices into conformity with these new rules and amendments. Specifically, the local insurance carrier will have to amend the contract with its producers to reflect the new commission structure, educate producers about the new standards, and develop new application forms. With respect to the contract between the insurer and its producers, the contract requires the insurer to give the producers thirty days warning of changes in the commission relationship.

**RESPONSE:** Other written comments by the interested party show that it knew as early as January, 1990, that there was a high probability that the commissioner would adopt these amendments. Notice of the proposed amendments and rules was published in the Montana Administrative Register on July 2, 1990. Therefore, the interested party had a sufficient period of time in which to adopt changes of operations. The amendment as proposed is adopted.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.514 (RULE I) BENEFIT CONVERSION REQUIREMENTS DURING TRANSITION received no adverse comments and is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.515 (Rule II) STANDARDS FOR CLAIMS PAYMENT received adverse comments, summarized below. The rule is adopted as proposed.

**COMMENT:** The rule was objected to on the basis that in Rule II(2), "medicare supplement insurance experience rating form" is not defined.

**RESPONSE:** This is a form that is currently under development by the NAIC. It will be provided to insurers to report data required by federal law. The rule is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.516 (RULE III) FILING REQUIREMENTS FOR OUT-OF-STATE GROUP POLICIES received no adverse comments and is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

6.6.517 (RULE IV) PERMITTED COMPENSATION ARRANGEMENTS

(1) An insurer or other entity may provide commission or other compensation to a producer or other representative for the sale of a medicare supplement policy or certificate only of the first year commission or other first year compensation is not

more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for 5 renewal years.

(3) No entity shall provide compensation to its producers or other representatives and no producer or other representative shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

(4) For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

(5) As part of the annual filing under ARM 6.6.508(3) of this rule the entity providing medicare supplement policies shall provide copies of commission schedules/documentation of its commission and other compensation for the 5 year period for renewal years for each form currently sold.

COMMENT: The proposed rule provides that the first year commission may not exceed second year commission by 200%. The comment was made that 200% needs further definition. For instance, if the second year commission is \$10.00, does this mean that the first year commission could be \$30.00 or is it \$20.00? 200% of \$10.00 added on to \$10.00 is \$30.00. Essentially, the first year commission could be three times the amount of the second and subsequent years.

RESPONSE: The term 200% of the second year commission means that the first year commission can be no more than exactly double the amount of money paid out in the second year.

COMMENT: Comment was received in objection to Rule IV(2). The proposed rule states that the commission or other compensation provided in subsequent years must be the same as that provided in the second year or period and must be provided for five renewal years. In some cases, the producer is entitled to a commission based upon a percentage of the premium paid each year. For those policies in which the premium increases year by year, the amount of commission payable to the producer will increase even if the percentage remains the same. In other cases where the commission is based upon a percentage of the premium and the premium remains level throughout the life of the policy, the renewal commission will remain the same throughout the five year period.

RESPONSE: In all cases, the renewal commission during each year of the five year period shall be the same as the dollar amount paid out the first year of renewal.

COMMENT: Comment was received in objection to Rule IV(3) on the basis that a larger first year commission is allowed if benefits of the new policy are "clearly and substantially greater than the benefits under the replaced policy." The

complaint is that the rules do not define what is "clearly and substantially greater" except to refer to marketing standards defined by the company. One interested party suggested that the problem could be resolved by changing the proposed rule to flatly prohibit a first year commission that is greater than the second year and subsequent years when the policy is sold to someone who is already insured under a medicare supplement policy.

**RESPONSE:** The aforementioned suggestion imposes a stricter standard than what was proposed and is not incorporated into the rule. The rest of Rule IV(3) is adopted as proposed.

**COMMENT:** The leveling of commissions in the second and subsequent years was objected to on the basis that it is unfair to the producer. Under current practice, the first year commission frequently is significantly larger than twice the commission paid in the second and subsequent years. The effect of the proposed rule is, in all probability, to reduce the amount of commission paid in the first year, although the amount of commission paid in the second and subsequent years might increase.

**RESPONSE:** The department believes that leveling of commissions in the second and subsequent years and limiting the first year commission to no more than double the amount of commission paid the second year, it is necessary to remove the economic incentive of producers to replace medicare supplement policies for the purpose of obtaining a higher first year commission when it is not in the best interests of the policyholder. Rule IV(1) is adopted as proposed.

**COMMENT:** Rule IV(5) was objected to on the basis that the section is not contained in the NAIC model rule. This requires entities which provide medicare supplement policies to provide documentation on the commission and other compensation for the first year and for renewal years for each form currently sold. Requiring entities to provide extensive documentation in terms of the actual amount of commissions paid by policy form would be costly and time-consuming from an administrative standpoint, particularly if it is not required by other states. An alternative was suggested which is to allow entities to submit copies of commission schedules with the provision that such schedules could be changed in the future so long as they accord to law.

**RESPONSE:** Proposed Rule IV(5) is amended to allow the filing of commission schedules. The remainder of Rule IV is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA                      IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.518 (RULE V) FILING REQUIREMENTS FOR ADVERTISING  
received adverse comments, summarized below. The rule is adopted as proposed.

**COMMENT:** The rule was objected to on the basis that 33-22-910, MCA, provides that insurers shall provide to the commissioner for review a copy of any medicare supplement

advertising intended for use in this state, whether it is a written, radio, or television medium. The proposed rule grants authority to the commissioner to review or approve advertising. The claim is the proposed rule exceeds the statutory mandate of 33-22-910, MCA.

**RESPONSE:** Sections 33-18-202 and 203, MCA, give the commissioner authority to apply administrative sanctions for the use of false, misleading or deceptive advertising. These sections apply to medicare supplement insurance policies. Therefore, proposed Rule V does not extend beyond the authority of the commissioner. Rule V is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.519 (RULE VI) STANDARDS FOR MARKETING received adverse comments, summarized below. The rule is adopted as proposed.

**COMMENT:** Comment was received in objection to the term "excessive" in proposed Rule VI(1)(b) because such term is not defined.

**RESPONSE:** A definition of the term "excessive" depends upon the particular circumstances of the consumer. Defining the term would frustrate the intent that the producer use reasonable care to determine the circumstances of the consumer and recommend a medicare supplement insurance policy that realistically meets those circumstances. Rule VI(1)(b) is adopted as proposed.

**COMMENT:** Comment was received in objection to proposed Rule VI(1)(c) on the basis that the terms "clearly and substantially" are not defined.

**RESPONSE:** Producers, presumably, have knowledge of the products they sell and if they are to abide by the other standards of producer conduct in these proposed rules to use reasonable care to determine the circumstances of the insurance applicant or enrollee, they should have little if any difficulty applying this standard. The rule is adopted as proposed.

**COMMENT:** Comment was received in objection to proposed Rule VI(1)(e). The objection was that the rule does not determine what should be done about the information of the prospective applicant or enrollee.

**RESPONSE:** The information is relevant to determine the circumstances of the prospective applicant or enrollee. The information is relevant to determine if excessive insurance is being sold or issued under proposed Rule VI(1)(b). The subsection is adopted as proposed.

**COMMENT:** Comment was received in objection to proposed Rule VI(1)(f). The objection was that the term "auditable" is not defined.

**RESPONSE:** The proposed subsection requires auditable procedures for verifying compliance with proposed Rule VI(1). This provides a standard to define what "auditable" means. The subsection is adopted as proposed.

**COMMENT:** Comment was received in objection to proposed

Rule VI(2)(b). The objection was that "undue pressure" is not defined.

RESPONSE: The terms "undue pressure" are to be used in their ordinary meaning as defined in dictionaries of common usage. Whether or not undue pressure is used is something that depends on the circumstances of each transaction. The term "undue pressure" is also used in the context of other tactics that are forbidden. These other terms provide guidance to what is meant by undue pressure. The subsection is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.520 (RULE VII) APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE received adverse comments, summarized below. The rule is adopted as proposed.

COMMENT: Comment was received in objection to proposed Rule VII(1) on the basis that the term "reasonable efforts" is not defined.

RESPONSE: The previous new proposed rules established certain forbidden practices. Proposed Rule VII establishes the standard of care that a producer must use not to violate those standards. The rule is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.521 (Rule VIII) REPORTING OF MULTIPLE POLICIES received no adverse comments and is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

6.6.522 (RULE IX) PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES received no adverse comments and is adopted as proposed.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 &  
33-22-901 through 33-22-924, MCA

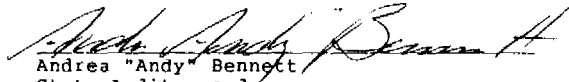
RULE X EFFECTIVE DATE received adverse comments, summarized below. Since the rule has already been covered in a previous amendment (6.6.513 Effective Date), there is no need to adopt it.

It should be noted that the rule was objected to on the basis that the date does not allow adequate time to amend commission contracts with producers, revise forms, and educate producers about the new marketing standards. However, other written comments by the interested person show that it knew as early as January, 1990, that there was a high probability that the commissioner would adopt these proposed rules. Notice was published in the Montana Administrative Register July 2, 1990. There was a period of time sufficient to adopt changes of

operations.

AUTH: 33-1-313, 33-22-904, MCA  
33-22-901 through 33-22-924, MCA

IMP: 33-15-303 &

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

Certified to the Secretary of State this 20th day of August,  
1990.

BEFORE THE BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of a rule pertaining to trainee- ) 20.401 TRAINEESHIP  
ship requirements and standards ) REQUIREMENTS AND STANDARDS

TO: All Interested Persons:

1. On April 26, 1990, the Board of Hearing Aid Dispensers published a notice of public hearing on the proposed amendment of the above-stated rule, at page 771, 1990 Montana Administrative Register, issue number 8. The hearing was held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF HEARING AID DISPENSERS  
BYRON RANDALL, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 20, 1990.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of a rule pertaining to fees ) 24.409 FEE SCHEDULE

TO: All Interested Persons:

1. On June 14, 1990, the Board of Landscape Architects published a notice of proposed amendment of the above-stated rule at page 1062, 1990 Montana Administrative Register, issue number 11.


2. The Board amended the rule exactly as proposed.

3. One written comment was received from Richard Mayer. Mr. Mayer was not in opposition to the fee increase, but rather recommended the board look at ways to reduce the budget, particularly in out-of-state meetings. The notice incorrectly listed 310 licensees when in fact there are only 53 current licensees.

4. No other comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS  
SANDRA FISCHER, CHAIRPERSON

BY:

  
ANDY POOLE / DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 20, 1990.

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

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of rules pertaining to defini- ) 28.402, 8.28.412, 8.28.413,  
tions, reinstatement, hearings, ) 8.28.414, 8.28.418, 8.28.  
and proceedings, temporary ) 420, 8.28.501, 8.28.502, 8.  
certificate, annual registra- ) 28.503 AND 8.28.504 AND  
tion and fees, approval of ) REPEAL OF 8.28.415, 8.28.  
schools, requirements for ) 505 AND 8.28.506 PERTAINING  
licensure, application for ) TO THE BOARD OF MEDICAL  
licensure and fees, and repeal ) EXAMINERS  
of rules pertaining to super- )  
vision of licensees, applica- )  
tion for examination and )  
reciprocity )

TO: All Interested Persons:


1. On May 17, 1990, the Board of Medical Examiners published a notice of proposed amendment and repeal of the above-stated rules at page 867, 1990 Montana Administrative Register, issue number 9.

2. The Board has amended and repealed the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS  
RICHARD W. BEIGHLE, M.D.  
PRESIDENT

BY:

  
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 20, 1990.

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of amendment of ) NOTICE OF AMENDMENT OF 8.  
rules pertaining to statements ) 48.902, 8.48.1102 AND 8.  
of competency, land surveyor ) 48.1206 PERTAINING TO THE  
nonresident practice in Montana ) PRACTICE OF PROFESSIONAL  
and avoidance of improper soli- ) ENGINEERING AND LAND  
citation of professional ) SURVEYING  
employment )

TO: All Interested Persons:

1. On April 26, 1990, the Board of Professional Engineers and Land Surveyors published a notice of proposed amendment of rules pertaining to the practice of professional engineering and land surveying at page 773, 1990 Montana Administrative Register, issue number 8.
2. The Board has amended ARM 8.48.902 and 8.48.1102 exactly as proposed. The Board amended ARM 8.48.1206 as proposed but with the following changes:

"8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT (1) will remain the same as proposed.

(2) Registrants shall not offer or give, either directly or indirectly, any gift or other valuable consideration to an elected, appointed or hired person in government service who has the authority, or who may be in a position to influence another official who has the authority, for the purpose of soliciting, recommending, voting upon or awarding contracts for work of the nature that is performed by the registrant. THIS SHALL NOT PRECLUDE POLITICAL CONTRIBUTIONS OTHERWISE LAWFUL.

~~(3) Registrants shall not derogatorily discuss the attributes of other persons or firms who may be seeking the same work the registrant is seeking.~~ Registrants shall not attempt to supplant other registrants or firms from work which that is in progress. This prohibition shall not preclude an engineer/surveyor from responding to a client/owner initiated solicitation for a second opinion.

(4) will remain the same as proposed."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-301, 37-67-331, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:


COMMENT: One comment was received from the staff of the Administrative Code Committee stating that subsection (3) may be interpreted to be in violation of the First Amendment free speech clause of the U.S. Constitution.

RESPONSE: The Board concurred and subsection (3) has been deleted from the proposed amendments as shown above.

4. No other comments or testimony were received.

BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
LOUIS FONTANA, CHAIRMAN

BY:

  
\_\_\_\_\_  
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 20, 1990.

BEFORE THE BOARD OF INVESTMENTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

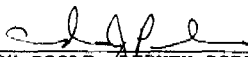
In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rules pertaining to seller/ ) 8.97.1302 AND 8.97.1303  
servicer approval procedures )  
and forward commitment fees )

TO: All Interested Persons:

1. On April 26, 1990, the Board of Investments published a notice of proposed amendment of the above-stated rules at page 786, 1990 Montana Administrative Register, issue number 8.
2. The Board amended the rules exactly as proposed.
3. No comments or testimony were received.

MONTANA BOARD OF INVESTMENTS  
WARREN VAUGHAN, CHAIRMAN

BY:

  
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 20, 1990.

BEFORE THE MONTANA FISH AND GAME COMMISSION

|                             |   |                     |
|-----------------------------|---|---------------------|
| In the matter of the repeal | ) | NOTICE OF REPEAL OF |
| of ARM 12.9.205             | ) | ARM 12.9.205        |
| Manhattan Game Preserve     | ) |                     |

TO: All Interested Persons:

1. On May 31, 1990, the Fish and Game Commission (Commission) published notice of the proposed repeal of Rule 12.9.205 concerning the abolishment of the Manhattan Game Preserve. The notice was published at page 985 of the 1990 Montana Administrative Register, issue number 10.

2. A public hearing was held on June 21, 1990, in Bozeman, Montana.

3. A report summarizing the public comment was prepared and submitted to the Commission and the Department.

4. The Department recommended to the Commission that ARM 12.9.205 concerning Manhattan Game Preserve be repealed.

5. After considering the public comment and the Department's recommendation the Commission approved the repeal as proposed.

6. The Commission responds to the comments opposing the adoption as follows:

COMMENT: Landowners within the Preserve have been experiencing excessive deer damage to crops, i.e. hay and grain.

RESPONSE: Unless the Preserve is abandoned the Department can do little to help alleviate their situation. The statutes governing game preserves (covered in 87-5-401 through 87-5-406, MCA) state that all hunting, not just specific to firearms, is flatly prohibited. The only activity dealing with deer under the exceptions would be their capture for purpose of propagation and scientific study.

COMMENT: Hunting will not eliminate all of the deer depredation problems.

RESPONSE: Although hunting will not eliminate all of the depredation problems, it will go a long way in reducing numbers to an acceptable level and alleviate many of the problems.

COMMENT: Excessive ground squirrel and marmot burrowing activity is causing damage to farm equipment. Beaver and muskrat activity have disrupted irrigation problems. Other nuisance animals have been difficult to control.

RESPONSE: The use of poison baits to control these species has become so restrictive that their application has essentially been curtailed. Unless the Preserve is abandoned, firearms to control these and other nuisance animals is strictly prohibited. The trapping of furbearers is allowed in the Preserve, but only by special permit issued by the Director.

COMMENT: If the Preserve is abandoned, what measures will the department take to ensure the protection and safety of residents in and adjacent to the Preserve? Could the department establish a caliber and/or special weapons restriction?

RESPONSE: All of the land in the Preserve is in private ownership, therefore, landowners can determine what is suitable means, i.e. type of weaponry, for addressing their situation. Most of the Gallatin Valley is privately owned and this has not been an apparent problem elsewhere. (However, the landowner can also dictate what caliber and/or type of weapon a hunter could use on the landowner's property without the department establishing a special area restriction.)

The department cannot establish a caliber restriction but it can establish a special weapons season, i.e. archery/muzzleloader/shotgun season.

COMMENT: A majority expressed concern for maintaining a secure place for waterfowl. If the Preserve is abandoned, how will the department address waterfowl protection?

RESPONSE: If the Preserve is abandoned, the department would hold a public meeting with the landowners in the Preserve, concerned sportsmen, and others to establish a waterfowl hunting closure in all or a portion of the area. Because the land involved is entirely in private ownership, the department would encourage the landowners to establish it themselves without a formal department designation. This notwithstanding, the department would recommend establishing a formal closure to hunting of waterfowl during the hunting season in a portion of the area mutually agreeable to the landowners.

COMMENT: Maintain the Preserve for the protection of game and waterfowl. Abandonment would be a tragedy for waterfowl and sportsmen.

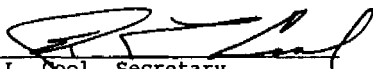
RESPONSE: Preserve status does not provide any habitat protection guarantees. Deer are not in short supply. By eliminating the Preserve status sportsmen will have increased opportunities in the Gallatin Valley. The area's importance as a waterfowl staging area will be addressed via the steps outlined above.

COMMENT: Can landowners within the Preserve sell their property? Will the department seek conservation easements with landowners so the area will remain in agricultural use, i.e. remain unsubdivided?

RESPONSE: The greatest threat to wildlife in the Preserve as well as the Gallatin Valley is subdivision. There are no provisions under Preserve status that prevents or limits subdivision. The department will pursue opportunities with the landowners regarding the use of conservation easements and/or any other means to maintain the area as much as feasible in an unsubdivided state.

COMMENT: Landowners within the Preserve should be able to control and determine uses on their own lands.

RESPONSE: Since all of the land is in private ownership the department feels the landowners should be allowed to establish the kinds of recreation which take place on their land. Under Preserve status the landowner does not have the right to allow hunting of any kind on his property. Also, the landowner cannot discharge firearms on his property. In addition, the department cannot address damage complaints in terms of excessive deer numbers within the Preserve.

  
K.L. Cool, Secretary  
Montana Fish and Game  
Commission

Certified to the Secretary of State August 20, 1990.

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

|                             |   |                            |
|-----------------------------|---|----------------------------|
| In the matter of the        | ) | NOTICE OF ADOPTION         |
| Amendment of Montana's      | ) | BY REFERENCE OF AMENDMENTS |
| Prevailing Wage Rates       | ) | TO THE PREVAILING          |
| Pursuant to Rule 24.16.9007 | ) | WAGE RATES                 |

TO: All Interested Persons:

1. On May 31, 1990, the Department of Labor and Industry published Notice of Proposed Amendments to the prevailing wage rates. The notice can be found on page 986 of the 1990 Montana Administrative Register, Issue No. 10.

2. Oral and written comments were received by the Department. In response to comments, some rates proposed by reference in the "State of Montana Prevailing Wage Rates-Building Construction" are changed. The comments, the Department's responses and the changes made to the "State of Montana Prevailing Wage Rates - Building Construction" are as follows:

COMMENT: Don Chance of the Montana Building Industry Association read a letter from Robert W. Ross, Building Contractors Company of Kalispell, Montana, regarding the pay of his employees.

RESPONSE: Mr. Ross was solicited as part of the survey and responded with usable data for District 1. His submission was weighted into calculation of rates in the Kalispell area.

COMMENT: Jerry Driscoll, Laborers Local #98, and Gene Fenderson, noted that under the federal Davis-Bacon Act, vacation is not included in the rate. It is an addition to the wage rate.

RESPONSE: Vacation benefits are subtracted from the check on most union contracts. To avoid confusion, the department has elected to present the rates and vacation benefits in a similar manner. The department will clarify the wording in the introduction section of the final rates publication.

COMMENT: Asbestos Removers should be moved to the laborer section.

RESPONSE: Asbestos remover rates and benefits are based on laborers' collectively bargained rates for each district. However, for the purposes of prevailing wage, the Department elected to include these occupations under the general classification of Asbestos and Insulation Workers. Blower Insulators are also included under the general classification of laborers and for prevailing wage purposes, the rates set for general laborers are those to be used for blower insulators.

COMMENT: Mr. Driscoll stated the cement mason rate is too low and that he would submit data to substantiate his claim.

RESPONSE: Mr. Driscoll did submit data for cement mason and that information was weighted into the calculation of the cement mason rate.

COMMENT: Corrections to benefit rates are required.

RESPONSE: The benefits rates for Laborers were updated

based on more recent collectively bargained contracts submitted by Mr. Driscoll and Mr. Gene Fenderson of the Helena Local.

COMMENT: Lars Erickson, Montana Council of Carpenters, objected to the rates for carpenters and millwrights.

RESPONSE: The proposed rates were based on data supplied by contractors. The department accepted additional data through June 28, 1990. The Montana Council of Carpenters did submit additional data and this information was weighted into the wage rate calculations.

COMMENT: John Forkan, Plumbers Local 41, Butte was concerned about the submission of data from contractors that were not doing commercial work.

RESPONSE: The department solicited only commercial work in the prevailing wage survey. Any data submitted by employers that was listed as "apprentice", "helper", or "residential" was deleted. If the data listed "journeyman" and the rates didn't correspond to those normally expected for journeyman work, the employer was called for confirmation. The department feels that most erroneous responses were edited out to the extent possible.

COMMENT: John Forkan commented that the training fund should be \$.20.

RESPONSE: The department concurs that the training fund amount should be \$.20.

COMMENT: John Forkan was further concerned about foreman and plumber rates in District 6, and asked about the foreman rate in all districts.

RESPONSE: The department considered additional data supplied by Mr. Forkan and weighted that information into the calculation of the plumber foreman rate.

COMMENT: Pete Forrest, Heat and Frost Insulators Local #82, questioned the travel matrix.

RESPONSE: The department considered Mr. Forrest's proposal and determined that it would be confusing to list the \$38.00 travel allowance under per diem as it could be construed to be in addition to the \$38.00 allowance for travel over sixty miles. Therefore, the travel matrix stands as proposed.

COMMENT: Ernest Zilch, Carpenters Local #72, objected to the rates for carpenter foreperson, carpenter and millwright. Said he would submit hours.

RESPONSE: The department accepted additional data from Mr. Zilch and this information was weighted into the calculations for these three occupations.

COMMENT: Rod Senger, Sheet Metal Workers, #103, commented that benefit amounts were short and that there is a change in amount of free zone.

RESPONSE: The department confirmed that there has been changes in the collectively bargained agreement that included higher benefit amounts and a change in the free zone. The department concurs that these amounts should be reflected in the prevailing rates.

COMMENT: Ron James, Ironworkers Local #841, questioned the rate for reinforcing steel placing worker.

RESPONSE: The data for this occupation is based on data submitted by employers, both non-union and union. No other

data was received and the rate stands.

COMMENT: Don Halverson, Plumbers Local #459, expressed concerns with the foreman's rate.

RESPONSE: The department concurs that the foreman's rate for plumbers for Districts 1 and 2 is probably the collectively bargained rate since all the plumber and pipefitter hours received for these districts was for commercial work by plumbers covered by a collectively bargained agreement. The department is aware of the problems that both employers and union representatives have in supplying hours worked for foreman since it is the practice in the industry for workers to move in and out of the foreman's position depending on the job. In other words, a worker may be a foreman one day and not the next. Mr. Halverson has agreed to furnish the department with an estimation of the total hours worked by foreman in Districts 1 and 2 and the department has agreed to consider that information is determining the plumber foreman's rate.

COMMENT: Mr. Halverson mentioned an employer in District 1 who may have submitted erroneous data.

RESPONSE: Mr. Halverson has been in contact with the department regarding the employer who may have submitted erroneous data. This employer did, in fact, include hours on his original submission that were for apprentices and helpers. This data was eliminated by the first edit. A call to the employer was made regarding the journeyman hours included as they were substantially lower than would be considered standard for journeyman plumbers. The employer claimed that the hours were for journeyman working on commercial work. Investigation by this department of prevailing wage data is limited to simply calling the employer which in most cases clears up questionable data. However, since this particular employer is well known to the Investigations Bureau, and the fact the Investigations Bureau confirmed that this employer did a prevailing wage job during the survey period and did not report those hours, it was determined by the department that this employer's data was unreliable and therefore not used.

COMMENT: Mr. Halverson would like to see job names and titles on survey forms and stated that a person should be able to challenge the data on the survey.

RESPONSE: The department feels that requiring names and titles on the survey forms is outside of the scope of the prevailing wage survey and would unnecessarily encumber the data gathering process.

COMMENT: Michael Masenko, Plumbers Local #139, Great Falls, asked whether the new contract health and welfare amount of \$1.65 will be included on the benefits.

RESPONSE: The department concurs that in all districts covered by a plumbers and pipefitters agreement in which the health and welfare benefit is now \$1.65, the prevailing health and welfare amount will be changed to \$1.65.

COMMENT: Mr. Masenko also questioned why no vacation amount was included for District 5.

RESPONSE: The department concurs that the collectively bargained vacation amount was inadvertently left out of

Districts 3, 5 and 6, which are covered by Local 41's agreement.

COMMENT: Reg McMurdo, Kalispell IBEW, asked why the rate for communications technicians was down from last year.

RESPONSE: The department had only recently confirmed the existence of a collectively bargained agreement for these workers and had not yet been able to obtain a copy. The department will consider that information when it is presented.

COMMENT: Ron Burke, IBEW Billings, asked the department to make sure that the data collected is for "licensed journeyman wireman".

RESPONSE: The department edits to the fullest extent possible any apprentices, helpers and any other less than journeyman classifications. Licensing of electricians is required by law and the enforcement falls on the Department of Commerce.

COMMENT: Ron Burke requested inclusion of the 3% national pension fund and .8% training amounts.

RESPONSE: The department concurs. The 3% pension and .8% training amounts are included in final rates.

COMMENT: Bill Egan, Great Falls, stated that Local #122 has a \$0.25 negotiated amount for LMCC that should be added to District 4's training amount.

RESPONSE: The department concurs. This amount was added to the training rate.

COMMENT: Bradford Roofing and Insulation allege there are two roofing collective bargaining agreements in Montana and the proposed rates only reflect one.

RESPONSE: The department will consider the second contract at such time as it is received.

COMMENT: Kathy Lubke of the Secretary of State's office noted that the proposed notice provides that copies of the proposed prevailing wage rates may be obtained from the Research and Analysis Bureau of the Employment Policy Division of the Department of Labor and Industry. However, ARM 24.26.9008 provides that copies of the rates are available from the Employment Relations Divisions, Department of Labor and Industry.

RESPONSE: The Research and Analysis Bureau of the Employment Policy Division is the entity responsible for the developing the prevailing wage rates. Therefore, it is the entity which should be contacted while prevailing wage rates are being determined. The Employment Relations Division is the entity responsible for enforcing adopted prevailing wage rates. Therefore, it should be contacted regarding questions concerning existing rates.


3. The Legislative Council Staff noted that the original notice of proposed amendments to the prevailing wage rates omitted any statement concerning why the amendment is necessary. It is necessary to amend the prevailing wage so the rates will conform with and accurately reflect current prevailing wage rates. ARM 24.16.9003(2)(c) requires the Commissioner of Labor and Industry to conduct biennial surveys of the wage rates paid to workers on construction projects.

4. Several proposed rates have been amended. The worker

classification and rationale for the change are as follows:

1. Asbestos Removal Worker - new collective bargaining agreement
  2. Asbestos Removal Foreperson - new collective bargaining agreement
  3. Tile Setter - new collective bargaining agreement
  4. Bricklayer Foreperson - new collective bargaining agreement
  5. Bricklayer - Districts 1 & 2 - new collective bargaining agreement; Districts 3 through 10 - additional data supplied by collective bargaining unit.
  6. Stone Mason - new collective bargaining agreement
  7. Carpenters - additional data supplied by collective bargaining unit changed rates in Districts 2, 5, 6, 7, 8, and 10
  8. Carpenter Foreperson - additional data supplied by collective bargaining unit.
  9. Cut Off Saw Operator - new collectively bargained agreement
  10. Millwright - additional data supplied by collective bargaining unit
  11. Cement Mason - additional data supplied by collective bargaining unit
  12. Communications Technician - additional data supplied by collective bargaining unit and an employer
  13. Electrician Foreperson - additional data supplied by collective bargaining unit
  14. Electrician - additional data supplied by collective bargaining unit
  15. Ironworkers - all occupations - additional data supplied by collective bargaining unit
  16. Laborers - all occupations - additional data supplied by collective bargaining unit
  17. Plumber Foreperson - additional data supplied by collective bargaining unit
  18. Plumber - additional data supplied by collective bargaining unit
  19. Roofer Foreperson - additional data supplied by collective bargaining unit
  20. Roofer - additional data supplied by collective bargaining unit and an employer
  21. Sheet Metal Foreperson and Sheet Metal Worker - change in collectively bargained benefit rates
5. The Commissioner of Labor and Industry adopts the rates as amended effective September 1, 1990.

DEPARTMENT OF LABOR AND INDUSTRY

  
Mario A. Micone, Commissioner

Certified to the Secretary of State this 20th day of August, 1990.

16-8/30/90

Montana Administrative Register

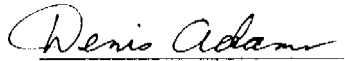
BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                  |   |                               |
|----------------------------------|---|-------------------------------|
| IN THE MATTER OF THE REPEAL      | ) | NOTICE OF THE REPEAL of       |
| ARM 42.5.101; 42.5.102;          | ) | ARM 42.5.101; 42.5.102;       |
| 42.5.103; 42.5.104;              | ) | 42.5.103; 42.5.104; 42.5.105; |
| 42.5.105; and 42.5.106           | ) | and 42.5.106 relating to      |
| relating to Bad Debt Collection) |   | Bad Debt Collection           |

TO: All Interested Persons:

1. On June 14, 1990, the Department of Revenue published notice of the proposed repeal of ARM 42.5.101; 42.5.102; 42.5.103; 42.5.104; 42.5.105; and 42.5.106 relating to bad debt collection at page 1080 of the 1990 Montana Administrative Register, issue no. 11.

2. No written comments were received. Therefore, the Department repeals the rules as proposed.

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

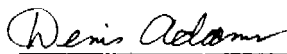
|                               |                            |
|-------------------------------|----------------------------|
| IN THE MATTER OF REPEALING )  | NOTICE OF REPEAL of ARM    |
| of ARM 42.19.301 relating to) | 42.19.301 relating to      |
| Clarification of Exception )  | Clarification of Exception |
| to Tax Levy Limit )           | to Tax Levy Limit          |

TO: All Interested Persons:

1. On June 14, 1990, the Department of Revenue published notice of the proposed repeal of ARM 42.19.301 relating to clarification of exception to tax levy limit for property taxes at page 1070 of the 1990 Montana Administrative Register, issue no. 11.

2. No comments were received.

3. Therefore, the Department repeals ARM 42.19.301.

  
\_\_\_\_\_  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- ) NOTICE OF AMENDMENT of ARM  
MENT of ARM 42.20.102 ) 42.20.102 relating to  
relating to Applications for ) Applications for Property Tax  
Property Tax Exemptions ) Exemptions

TO: All Interested Persons:

1. On June 28, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.20.102 relating to Applications for Property Tax Exemptions at page 1240 of the 1990 Montana Administrative Register, issue no. 12.-

2. No comments were received.

3. Therefore, the Department amends ARM 42.20.102 as proposed.



DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| IN THE MATTER OF THE AMEND-   | ) | NOTICE OF AMENDMENT of ARM    |
| MENT of ARM 42.24.101;        | ) | 42.24.101; 42.24.102;         |
| 42.24.102; 42.24.103; and     | ) | 42.24.103; and 42.24.107; and |
| 42.24.107; and REPEAL         | ) | REPEAL 42.24.104 relating to  |
| 42.24.104 relating to Sub-    | ) | Subchapter S Elections for    |
| Chapter S Elections for Corp- | ) | Corporations.                 |
| orations.                     | ) |                               |

TO: All Interested Persons:

1. On June 14, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.24.101; 42.24.102; 42.24.103; and 42.24.107; and REPEAL 42.24.104 relating to Subchapter S Elections for Corporations at page 1082 of the 1990 Montana Administrative Register, issue no. 11.

2. The Department received comments from Lee Heiman, Staff Attorney for the Montana Legislative Council.

COMMENTS: Legislative Council - Concerned with statutory authority to amend ARM 42.24.107 as proposed and the engrafting of additional requirements not necessary to effectuate the purpose of an implemented statute being impermissible in rulemaking.

RESPONSE: The requirement stated in ARM 42.24.107 as amended is established by Montana statute. By definition, at § 15-31-201, MCA, to qualify as a Montana S Corporation a corporation must have a valid federal election under the Internal Revenue Code. IRC § 1362(g) requires a corporation to wait five years after a revocation before re-electing federal S corporation status. The reference to § 15-31-201, MCA, which states in part, "valid election . . . under the Internal Revenue Code of 1954" makes IRC § 1362(g) applicable.

Unless one is very familiar with the interrelation between Montana and federal tax statutes it is not readily apparent that there must be a five year wait for re-electing terminated S corporation status at the state level. Tax preparers occasionally contact the Department to ask whether the five year wait for re-election applies under Montana law. ARM 42.24.107 will clarify this question.

3. Based on the comment cited above, the Department adopts the amendments proposed for ARM 42.24.101; 42.24.102; 42.24.103 as noticed on June 14, 1990, and makes the following additional amendments to ARM 42.24.107:

42.24.107 REVOCATION OF ELECTION (1) If a corporation elects to revoke its ~~subchapter-S~~ small business corporation election for federal purposes, such revocation shall be effective for state purposes. The corporation must notify the department within 30 days after such revocation as required under section 15-31-209, MCA.

(2) If a corporation elects to revoke its small business

election for Montana purposes, AS PROVIDED IN (1) a new election cannot be made for 5 years unless the department consents to an earlier election. The department can also waive inadvertent terminations if certain conditions are met as covered under 1362(f) and (g) IRC (1986).

4. The Department repeals ARM 42.24.104 as proposed.



DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

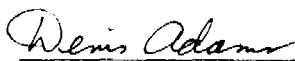
BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                 |                           |
|---------------------------------|---------------------------|
| IN THE MATTER OF THE ADOPTION ) | NOTICE OF THE ADOPTION of |
| of Rule I (ARM 42.27.205) )     | Rule I (ARM 42.27.205)    |
| relating to Gasoline from )     | relating to Gasoline from |
| Refineries )                    | Refineries                |

TO: All Interested Persons:

1. On June 14, 1990, the Department of Revenue published notice of the proposed adoption of new Rule I (ARM 42.27.205) EXEMPTION - U.S. AND OTHER STATES, relating to gasoline from refineries at page 1071 of the 1990 Montana Administrative Register, issue no. 11.

2. No written comments were received. Therefore, the Department adopts ARM 42.27.205 as proposed.

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

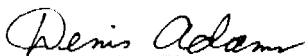
BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                  |                            |
|----------------------------------|----------------------------|
| IN THE MATTER OF THE AMENDMENT ) | NOTICE OF THE AMENDMENT of |
| of ARM 42.27.604 relating to )   | ARM 42.27.604 relating to  |
| Payment of Alcohol Tax )         | Payment of Alcohol Tax     |
| Incentive )                      | Incentive                  |

TO: All Interested Persons:

1. On June 14, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.27.604 relating to payment of alcohol tax incentive at page 1072 of the 1990 Montana Administrative Register, issue no. 11.

2. No written comments were received. Therefore, the Department amends ARM 42.27.604 as proposed.

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State August 20, 1990.

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

|                         |   |                            |
|-------------------------|---|----------------------------|
| In the matter of the    | ) | NOTICE OF THE AMENDMENT OF |
| amendment of Rule       | ) | RULE 46.12.304 PERTAINING  |
| 46.12.304 pertaining to | ) | TO THIRD PARTY LIABILITY   |
| third party liability   | ) |                            |

TO: All Interested Persons

1. On May 17, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.304 pertaining to third party liability at page 912 of the 1990 Montana Administrative Register, issue number 9.

2. The Department has amended the following rule as proposed with the following changes:

46.12.304. THIRD PARTY LIABILITY (1) The department is subrogated to the recipient's right to third party recoveries to the extent necessary to reimburse the department for services provided by the Montana medicaid program, when the third party's liability is established after assistance is granted, and in any other case in which the liability of the third party exists, but was not treated as a current source of payment. No payment shall be made by the department for any medical service for which there is a known third party who has a legal liability to pay for that medical service except those services specified in SUBsection (6) below.

(2) Before payments can be made to providers, all other identifiable sources of payment must be exhausted by recipients and/or providers, as follows: FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(a) A third party is defined as an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort. INDIAN HEALTH SERVICES IS NOT A THIRD PARTY WITHIN THE MEANING OF THIS DEFINITION.

(b) A KNOWN THIRD PARTY IS A THIRD PARTY FOR WHICH THE PROVIDER HAS SUFFICIENT INFORMATION TO SUBMIT A CLAIM AND WHICH IF BILLED FOR A MEDICAL SERVICE IS LIKELY TO PAY THE CLAIM WITHIN A REASONABLE TIME.

(c) A POTENTIAL THIRD PARTY IS A THIRD PARTY FOR WHICH THE PROVIDER EITHER HAS INSUFFICIENT INFORMATION TO SUBMIT A CLAIM OR WHICH IF BILLED FOR A MEDICAL SERVICE, IS LIKELY TO

DENY THE CLAIM AS HAVING NO CONTRACTUAL OR LEGAL OBLIGATION TO PAY.

Original subsections (2)(a) through (4)(b) remain as proposed.

(5) ~~Referrals shall be made to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59604. The program integrity bureau may send referrals to the department of revenue for recovery. If a provider learns of the existence of a KNOWN third party, that provider shall bill the third party prior to billing the department. If the department has knowledge of a KNOWN third party and the provider has not complied with SUBsections (6) or (7) below, the department shall deny payment of the services.~~

Subsections (6) through (6)(e)(iii) remain as proposed.

(f) THE THIRD PARTY IS ONLY A POTENTIAL THIRD PARTY AS DEFINED IN SUBSECTION (2)(c).

(7) ~~EXCEPT AS STATED IN SUBSECTION (8), TThe department shall pay its allowed amount for services, less any known third party payments for those services, for any claim where a known third party exists in the following circumstances:~~

Subsection (7)(a) remains as proposed.

(b) ~~the submitted claim clearly indicates the amount paid by the third party and includes WHATEVER documentation IS RECEIVED REGARDING THE PAYMENT from the third party showing the amount paid by that third party; or~~

Subsection (7)(c) remains as proposed.

(8) FOR INPATIENT HOSPITAL CLAIMS WHERE MEDICARE PART A BENEFITS HAVE BEEN PAID, THE DEPARTMENT'S SOLE OBLIGATION SHALL BE TO PAY THE MEDICARE PART A DEDUCTIBLE. FOR NURSING HOME CLAIMS WHERE MEDICARE PART A BENEFITS HAVE BEEN PAID, THE DEPARTMENT'S SOLE OBLIGATION SHALL BE TO PAY IN ACCORDANCE WITH ARM 46.12.1205(1)(a).

Original subsections (8) through (9) remain as proposed in text but will be recategorized as subsections (9) through (10).

~~(10) For any inpatient stay where the patient is determined eligible as a recipient for any portion of that stay, and where there was any third party payment towards any portion of that stay, any and all third party payments will be reported to the department by the provider and those payments will be deducted from the department's allowed amount for that entire stay.~~

Subsections (11) and (12) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and ~~53-1-111~~ 53-2-201, 53-6-111 AND 53-2-612 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: Several persons asked that the rules clarify that the Indian Health Service is not a third party to Medicaid.

RESPONSE: Subsection (2) has been changed to add: "Indian health services is not a third party within the meaning of this definition."

COMMENT: Does "individual" as included in subsection (2) mean that a person with attachable or convertible assets would be required to sell and pay for services provided prior to billing Medicaid?

RESPONSE: The action described in this comment would not be required.

COMMENT: Subsection (5) implies that providers must bill all third party sources first even if they are only potential payors or risk denial of payment by Medicaid. How far will this be taken?

RESPONSE: Subsections (2), (5) and (6) have been revised to clarify the definitions of a third party and the use of those definitions. These changes define to what extent Medicaid will require pursuit of a third party.

Subsection (2) defines a third party in language similar to the federal definition and identical to the state statutory definition. Medicaid denies claims for third party reasons only if a known third party is identified in the department's TPL system. Central and field staff entering TPL data into the claims processing system are instructed to only enter third parties which would pay within a reasonable time if a provider were to bill them.

For purposes of clarifying these two major distinctions, subsection (2) is revised to define these two groups. Subsections (5) and (6) are revised to refer only to known third parties as defined in subsection (2). These distinctions are also clarified by exempting potential third parties as a basis for denial in subsection (6).

COMMENT: In subsection (2), please define legal liability more clearly. This definition is so open ended as to mean that Medicaid would make no payment even in a tort situation that could continue for many years. To delay billing of Medicaid an additional 90 days while these potential payor sources are exhausted is an unfair delay in receiving payment for services.

RESPONSE: See response to the previous comment.

COMMENT: Subsection (4) is too open ended concerning claims that "have been or may be billed to Medicaid." If we don't know they are on Medicaid at the time, how can we comply?

RESPONSE: The rule states the claim need be marked when it is for a known recipient. Therefore, a provider needs to mark the claim only when it knows that the patient is a recipient.

COMMENT: Proposed subsection (7)(b) creates an administrative burden by requiring documentation showing the amount paid by the third party. This burden is created when the explanation of benefits (EOB) from the third party is lacking or not detailed enough to show what services were paid.

RESPONSE: This rule is proposed based on federal regulation which require states to assure that a third party has paid its full legal obligation. It is agreed that EOB's are often vague. Subsection (7) is revised to require the provider to merely attach whatever they receive from the third party concerning the payment.

COMMENT: Concerning subsection (8), what if the claim has not been settled with the insurer within 60 days?

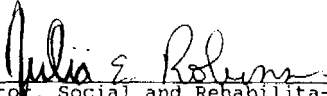
RESPONSE: The refund is due within 60 days of receipt of the third party payment. If the claim is unsettled and unpaid, the rule does not apply.

COMMENT: The department treats Medicare Part A inpatient hospital payments differently than other third party payments in that it pays the Medicare deductible without regard to either the Medicaid allowed amount for that service and without regard to the amount paid by Medicare. Subsection (7) is in conflict with the Medicare A pricing formula in that it states the Medicare payment will be deducted from the Medicaid allowed amount, which in many cases would result in no liability to Medicaid. Please exempt Medicare A from the definition of a third party. Is Medicare a third party under this rule? If so, language should be included to clarify that Medicare copayments are not considered "third party payments" under this rule.

RESPONSE: The department agrees there is a different pricing formula for Medicare Part A that is in conflict with the proposed rules. We disagree Medicare Part A is not a third party. We will not revise the rule to state that Medicare is not a third party. To address concerns, we will revise subsection (7) to reflect the distinct pricing policy in effect for Medicare Part A.

COMMENT: The department received numerous comments concerning subsection (10) as to necessity, authority, intent, effect, etc.

RESPONSE: These comments have been noted. The department has requested clarification from the federal government concerning its policy in this area. Because a response is not expected within the near future, subsection (10) will be deleted from the rule at this time. The request for clarification was made because the federal government issued a memo stating that the policy memo requiring the rule was obsolete. Once a response is received from the federal government, and if necessary, the department will draft and propose a new section in a separate rule notice.

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

Certified to the Secretary of State August 17, 1990.

VOLUME NO. 43

OPINION NO. 70

HOSPITALS - Power of hospital district to fund private nonprofit nursing home;

MONTANA CODE ANNOTATED - Sections 7-34-2101, 7-34-2102, 7-34-2122, 7-34-2123, 50-5-101(19) (temporary), 50-5-101(27)(a) (temporary);

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 105 (1978), 37 Op. Att'y Gen. No. 89 (1977).

HELD: A hospital district may fund a private nonprofit nursing home operating for the benefit of county residents, if the home complies with the admission standards and with other requirements provided by law concerning the operation of a long-term care facility.

August 9, 1990

Victor G. Koch  
Richland County Attorney  
Richland County Courthouse  
Sidney MT 59270

Dear Mr. Koch:

You have requested my opinion on a question I have rephrased as follows:

May a hospital district fund a private nonprofit nursing home operating for the benefit of county residents?

Your inquiry states that Richland Homes, a long-term nursing home, cares for elderly and disabled county residents. Richland Homes is a private nonprofit corporation. The county seeks to establish a hospital district to fund the home and asks whether or not Title 7, chapter 34, MCA, authorizes such funding.

Hospital districts provide hospital facilities and services to district residents. § 7-34-2101, MCA. To accomplish these purposes, the Legislature provided that a hospital district shall have

all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient.

§ 7-34-2122, MCA. The Legislature granted a hospital district broad discretion in fulfilling its purpose. However, a hospital district uses public funds, and thus is subject to limitations.

As a general rule, a government agency such as a hospital district must use its public funds for a public purpose. The 1972 Montana Constitution, Article VIII, section 1, provides: "Taxes shall be levied by general laws for public purposes." The Montana Supreme Court has determined that a private nonprofit organization may employ public funds in serving a public purpose. Grossman v. State Dept. of Natural Resources, 209 Mont. 427, 682 P.2d 1319 (1984) (local government may develop city water systems, water distribution systems, and water supply treatment facilities which the government would lease to private organizations); Douglas v. Judge, 174 Mont. 32, 568 P.2d 530 (1977) (private and industrial organizations may be loaned public money to develop renewable natural resources); Huber v. Groff, 171 Mont. 442, 558 P.2d 1124 (1976) (the State Board of Housing may loan money to private institutions to alleviate the high cost of housing for lower income persons). Although these cases do not involve a hospital district, they demonstrate that a governmental entity may fund private nonprofit organizations to realize a public purpose, and the court will not interfere unless the government has clearly abused its discretion.

Federal law also indicates that the government may fund a private nonprofit hospital. Ellis v. City of Grand Rapids, 257 F. Supp. 564 (N.D. Mich. 1966). In Ellis, the court noted a public need to fund private nonprofit hospitals, stating:

Promotion and improvement of our people's health is a ... fundamental obligation of governments, national, state and local .... The Congress of the United States and the state legislatures of the several states have in a multitude of ways established means to provide and care for the health of the people.

....

All have recognized that hospital care provided by public, private, and private sectarian nonprofit institutions is a public use clothed with an overriding public interest, and courts have sustained the Executive and Legislative branches of our governments in giving aid to such institutions.

Id., 257 F. Supp. at 573-74. The court reasoned that the government could fund a private nonprofit hospital because the expenditure of funds would promote public health.

In concluding that funding the hospital served a public purpose, the court examined the hospital's admission policy. This criterion merited special significance in Ellis since the case involved a religious hospital and a possible violation of the Establishment Clause of the United States Constitution. Citing Lien v. City of Ketchikan, Alaska, 383 P.2d 721 (Alaska 1963), the court noted that the hospital "provide[d] for the care of

the sick without regard to race, color, or creed, and thus accomplish[ed] a valid public purpose." Ellis, 257 F. Supp. at 574-75. This admission policy allowed the hospital to serve a large majority of the public.

Other courts have followed the Ellis rationale in upholding state and local funding for health care facilities. See Kentucky Building Comm'n v. Effron, 310 Ky. 355, 220 S.W.2d 836 (1949); Abernathy v. City of Irvine, Kentucky, 355 S.W.2d 159 (Ky. 1961), cert. denied, 371 U.S. 831 (1962); Lien v. City of Ketchikan, Alaska, 383 P.2d 721 (Alaska 1963); Truitt v. Board of Public Works of Maryland, 221 A.2d 370 (Md. 1966); Tulsa Area Hospital Council v. Oral Roberts, 626 P.2d 318 (Okla. 1981).

Admission standards similar to those stated in the Ellis case govern a hospital district's facilities in Montana. A hospital district must admit persons to its facilities without regard to race, color, or sex. § 7-34-2123, MCA. Under the Ellis rationale a private nonprofit institution providing hospital facilities and services in accordance with these admission standards would serve a public purpose and could receive public funds from a hospital district.

Of course, a hospital district's authority is tempered by the word "necessary" which appears twice in section 7-34-2122, MCA. Ordinarily, "necessary" means that which is "reasonable and appropriate." 37 Op. Att'y Gen. No. 89 at 371, 373 (1977); 37 Op. Att'y Gen. No. 105 at 441, 445 (1978). The word "necessary" modifies both a hospital district's exercise of power and the facilities and services it provides. Thus, in addition to serving a public purpose, a hospital district must: (1) exercise only those powers which are reasonable and appropriate to accomplish its purpose, and (2) provide facilities and services which are reasonable and appropriate for the needs of the district residents.

The relevant statutory definitions serve as a guideline for the types of services and facilities that are reasonable and appropriate for a hospital district to provide. Section 7-34-2102, MCA, defines "hospital facilities" in a general sense, listing many types of health care facilities. However, it does not provide an exact definition. Title 7, chapter 34, MCA, which governs a local government's role in providing health care facilities, must be read in conjunction with other relevant parts of the code. As the Montana Supreme Court noted under section 1-2-207, MCA, whenever a word is defined in the code, that definition will apply to the same word wherever it appears in other parts of the code unless the Legislature has expressed a contrary intention. Mountain View Education Assoc. v. Mountain View School, 227 Mont. 288, 738 P.2d 1288 (1987). Since the Legislature did not define "facilities" in section 7-34-2102, MCA, it has not expressed an intention to exclude the definitions found in related sections of the code.

A precise definition of a "health care facility" is found in Title 50, chapter 5, MCA, which regulates hospitals and related facilities. The relevant portion of section 50-5-101(19) (temporary), MCA, provides:

"Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term includes but is not limited to ... hospitals ... [and] long-term care facilities[.]

The statute details the kinds of care a facility should provide, evidencing the Legislature's intent as to what constitutes reasonable and appropriate services. The phrase "to any person or persons" ensures that the services will benefit the public at large, a requirement similar to that advanced in the Ellis analysis, supra. Of particular relevance to your question, the statute provides that a facility may be a private nonprofit hospital or long-term care facility.

Since your inquiry concerns a nursing home which provides long-term care, the definition of "long-term care facility" found in section 50-5-101 (temporary), MCA, is noteworthy. The pertinent part of section 50-5-101(27)(a) (temporary), MCA, defines a long-term care facility as

a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage.

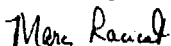
Section 7-34-2102, MCA, specifically includes long-term care facilities in the list of hospital facilities to be provided by a hospital district. By contrast, adult foster care facilities would not be long-term care facilities a hospital district could fund. § 50-5-101(27)(a) (temporary), MCA.

In summary, section 7-34-2102, MCA, lists the facilities a hospital district may provide. Section 50-5-101 (temporary), MCA, provides a list of the kinds of facilities which are reasonable and appropriate in advancing public health. Section 7-34-2123, MCA, establishes the admission standards a hospital district facility must follow in serving a "public purpose." A hospital district should apply these sections of the code in determining whether or not to fund a facility.

THEREFORE, IT IS MY OPINION:

A hospital district may fund a private nonprofit nursing home operating for the benefit of county residents, if the home complies with the admission standards and with other requirements provided by law concerning the operation of a long-term care facility.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot". The signature is fluid and cursive, with the first name "Marc" and last name "Racicot" clearly distinguishable.

MARC RACICOT  
Attorney General

VOLUME NO. 43

OPINION NO. 71

COUNTIES - Power to register as county warrants, and then purchase, unpaid hospital district warrants;  
COUNTY OFFICERS AND EMPLOYEES - Authority of county treasurer to register unpaid hospital district warrants;  
HOSPITALS - Power of hospital district to borrow money by use of promissory note;  
HOSPITALS - Power of hospital district to lease hospital facility to nonprofit corporation without restricting corporation's right to borrow money;  
HOSPITALS - Procedure for registering unpaid hospital district warrants;  
PUBLIC FUNDS - Authority of county treasurer to register unpaid hospital district warrants;  
PUBLIC FUNDS - Power of county to register as county warrants, and then purchase, unpaid hospital district warrants;  
PUBLIC FUNDS - Power of hospital district to borrow money by use of promissory note;  
PUBLIC FUNDS - Procedure for registering unpaid hospital district warrants;  
MONTANA CODE ANNOTATED - Sections 7-6-2601, 7-6-2603, 7-6-2701, 7-34-2115, 7-34-2122, 7-34-2131(1), 7-34-2137, 17-5-101, 17-5-102;  
MONTANA CONSTITUTION - Article XI, section 4;  
MONTANA LAWS OF 1985 - Chapter 92;  
MONTANA LAWS OF 1969 - Chapter 257, section 8;  
MONTANA LAWS OF 1953 - Chapter 155, section 8;  
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 70 (1990), 42 Op. Att'y Gen. No. 111 (1988), 40 Op. Att'y Gen. No. 17 (1983), 37 Op. Att'y Gen. No. 14 (1977), 36 Op. Att'y Gen. No. 88 (1976), 27 Op. Att'y Gen. No. 40 (1957);  
REVISED CODES OF MONTANA, 1947 - Section 16-4308.

- HELD: 1. The unpaid warrants of a hospital district may not be registered as county warrants and purchased by the county in which the hospital district is located.
2. A hospital district does not have authority to borrow money from a commercial lending institution by use of a promissory note.
3. A hospital district's board of trustees may enact an appropriate resolution directing the county treasurer, as ex officio treasurer of the district, to register unpaid hospital district warrants, to redeem them in the order of their registration, and to pay a particular rate of interest on unpaid warrants.
4. A hospital district may lease a district-owned hospital facility to a nonprofit corporation without restricting the right of the corporation, as an entity independent from the hospital district, to borrow

money from a commercial lending institution for the purpose of running the hospital.

August 14, 1990

Thomas J. Sheehy  
Chouteau County Attorney  
P.O. Box 518  
Fort Benton MT 59442

Dear Mr. Sheehy:

You have requested my opinion on four issues which I have rephrased as follows:

1. May the unpaid warrants of a hospital district be registered as county warrants pursuant to sections 7-6-2601 and 7-6-2603, MCA, and then purchased by the county in which the hospital district is located pursuant to section 7-6-2701, MCA?
2. May a hospital district borrow money from a commercial lending institution by use of a promissory note?
3. May warrants of a hospital district that are presented to the county treasurer for payment and that are unpaid for want of funds be registered as unpaid hospital district warrants by the county treasurer, and if so what procedure should be followed?
4. May a hospital district lease a hospital facility owned by it to some other entity such as a nonprofit corporation, with that other entity then borrowing money from a commercial lending institution for the purpose of running the hospital?

These questions arise from the concern of the Chouteau County Commissioners with financing the indebtedness of a local hospital district which owns and operates a hospital in Fort Benton. One proposal for financing the district's indebtedness of approximately \$95,000 contemplates registering the district's unpaid warrants in accordance with sections 7-6-2601 and 7-6-2603, MCA, which govern the registration of county warrants. It is suggested that the county could then invest surplus county funds in the district's unpaid warrants pursuant to section 7-6-2701, MCA. In the alternative, the trustees of the hospital district propose financing the debt by borrowing money from a local bank under the terms of a promissory note.

To answer your first question, it must be determined whether the Chouteau County Commissioners may authorize the registration of the hospital district's warrants as county warrants, thereby making them eligible for investment of surplus county funds under section 7-6-2701, MCA. Because Chouteau County is a county with general government powers, it has only those powers expressly or implicitly granted it by the Legislature. Mont. Const., Art. XI, § 4; D & F Sanitation Service v. City of Billings, 219 Mont. 437, 445, 713 P.2d 977, 982 (1986); 40 Op. Att'y Gen. No. 17 at 63 (1983); 42 Op. Att'y Gen. No. 111 at 425 (1988). Furthermore, statutes which authorize the transfer of idle public funds as a loan into another public fund must be "strictly construed and not extended beyond their plain terms." 15 McQuillin, Municipal Corporations § 39.50 (3d ed. 1985).

Registration of county warrants is expressly controlled by sections 7-6-2601 and 7-6-2603, MCA, which provide in pertinent part:

7-6-2601. Details related to county warrants. (1) Warrants issued pursuant to 7-6-2202(1) shall be signed by the county clerk and the chairman of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each and the name of the person to whom payable and the purpose for which drawn must be stated thereon; and the warrants must, at the time they are issued, be registered by him.

....

7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

Section 7-6-2601, MCA, refers to section 7-6-2202(1), MCA, which provides in pertinent part:

The county clerk must draw warrants on the county treasury in favor of all persons entitled thereto in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners[.]

Pursuant to section 7-6-2701, MCA, a county is expressly authorized to invest surplus funds in registered county,

municipal, or school district warrants:

(1) [I]f a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, or school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase such warrants of entities located in the same county.

....

(4)(a) A school district or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district or county warrant. [Emphasis added.]

Thus, in order for a warrant to qualify as a registered, unpaid county warrant which may be purchased by a county pursuant to section 7-6-2701, MCA, the warrant first must be drawn by the county clerk after having been examined, allowed, and ordered paid by the board of county commissioners, and then properly registered by the county clerk.

In contrast, the warrants of a hospital district are issued by order of the district's board of trustees, § 7-34-2137(2), MCA, which is empowered by statute to govern the district, §§ 7-34-2115, 7-34-2122, MCA. It is thus clear that hospital district warrants are never "examined, allowed, and ordered paid by the board of county commissioners" pursuant to section 7-6-2202, MCA, a step which is required before a warrant can be registered as a county warrant pursuant to sections 7-6-2601 and 7-6-2603, MCA. Because the Legislature has authorized counties to invest only in county, municipal, or school district registered warrants, I conclude that county commissioners are not authorized to invest surplus county funds in the unpaid warrants of a hospital district. My conclusion is bolstered by consideration of the recent legislative history of section 7-6-2701, MCA. Prior to 1985, that statute only permitted investment of surplus county funds in unpaid county warrants. In 1985, section 7-6-2701, MCA, was amended to permit such investment in the registered warrants of school districts and municipalities, in addition to registered county warrants. 1985 Mont. Laws, ch. 92. The purpose of the 1985 amendment was to broaden the class of registered warrants which a county could purchase in order to assist financially troubled school districts and municipalities. Minutes of House Local Government Committee, January 15, 1985; Minutes of Senate Local Government Committee, March 5, 1985. The Legislature has thus expressly enumerated those entities that may benefit from the county's largess under section 7-6-2701, MCA, and hospital districts are not included on the list. The express mention of one matter

excludes other similar matters not mentioned. 82 C.J.S. Statutes § 333 at 668.

With regard to your second question, it is important to note that a hospital district, as an entity created by authority of statute, §§ 7-34-2101 to 2164, MCA, has only those powers "expressly conferred upon it by statute and such as [are] necessarily implied in the exercise of that authority conferred." 36 Op. Att'y Gen. No. 88 at 501 (1976); 37 Op. Att'y Gen. No. 14 at 54 (1977). The Legislature first provided for the creation of hospital districts in 1953. 1953 Mont. Laws, ch. 155. While chapter 155 specifically enumerated the powers of a hospital district, there was no grant of authority permitting hospital districts to borrow money. 1953 Mont. Laws, ch. 155, § 8, codified as section 16-4308, R.C.M. 1947; see also 27 Op. Att'y Gen. No. 40 at 87 (1957) (hospital district has no power or authority to issue bonds, securities or obligations in the form of promissory notes or mortgages). However, in 1969 the Legislature amended section 16-4308, R.C.M. 1947, to authorize a hospital district to borrow money by issuing bonds. 1969 Mont. Laws, ch. 257, § 8. That authority has been preserved and is currently codified in sections 7-34-2122(8) and 7-34-2131(1), MCA, which provide as follows:

7-34-2122. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

....

(8) borrow money and issue bonds as hereinafter prescribed[.]

7-34-2131. Hospital district bonds authorized. (1) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

Section 7-34-2131(1), MCA, is the only provision in the statutes governing hospital districts which prescribes a method by which such districts are authorized to borrow money. Thus, the Legislature has expressly prescribed that the exclusive process by which a hospital district may borrow money to acquire, operate, and improve hospital facilities is through issuance of its bonds. I conclude that sections 7-34-2122(8) and 7-34-2131(1), MCA, cannot be construed as a grant of authority

to hospital districts to borrow money by use of a promissory note. See 36 Op. Att'y Gen. No. 88 at 503 (1976).

Regarding your third question, the controlling statute does not expressly provide for the registration of unpaid hospital district warrants:

The funds collected under the tax levy shall be held by the county treasurer, who shall be, ex officio, the treasurer for the hospital district, and such treasurer shall keep a detailed account of all tax money paid into the fund, of all other money from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by a majority of its membership.

§ 7-34-2137(2), MCA. However, this provision does clearly direct the county treasurer, as ex officio treasurer for the district, to "keep a detailed account of ... all payments and disbursements from the fund[,] including warrants, which are simply "funds ... paid out ... by direction of the board." Further, as ex officio treasurer for the district, the county treasurer manages hospital district funds pursuant to the general grant of power extended by the Legislature to hospital districts:

A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient.

§ 7-34-2122, MCA. The Legislature has committed the exercise of this broad grant of power to the board of trustees, which is charged with governing and managing the hospital district. § 7-34-2115, MCA. I conclude that it is consistent with the exercise of power necessary and convenient to the "betterment, operation, maintenance, and administration of ... hospital facilities" for the board of trustees to direct the ex officio treasurer of the district to register unpaid hospital district warrants, to redeem them in the order of their registration, and to pay a particular rate of interest (§§ 17-5-101(1), (2), 17-5-102, MCA) on unpaid warrants between the time they are registered and redeemed. See, for example, §§ 7-6-2603(1), 7-6-2604(3), 7-6-4501, 7-6-4503, 7-6-4504, MCA. The trustees could formalize such a directive to the treasurer by passage of an appropriate resolution in accordance with the bylaws of the district. See § 7-34-2119, MCA. My conclusion is consistent with that of a leading commentator:

If there is no regulation as to the order in which municipal warrants shall be paid, the courts will direct such application as will be fair to the warrant

holders and yet subserve the best interests of the municipality. Although it is sometimes held that warrants should be paid pro rata, other authority is to the effect that, in the absence of provision to the contrary, warrants are payable in the order either of their issuance or of their presentation, and generally should be paid in the order of their registration where they draw interest only after such time. [Footnotes omitted.]

15 McQuillin, Municipal Corporations § 42.18 (3d ed. 1985). The least problematic course would appear to be to provide for the redemption of unpaid, registered hospital district warrants in the order of their registration, rather than by a pro rata payment to all holders, as monies collected under the tax levy are paid into the hospital district fund. That result was endorsed in an Illinois case which arose because the legislature did not provide a method for redemption of unpaid school district warrants. Lubezny v. Ball, 59 N.E.2d 645, 647 (Ill. 1945); see also Berwind v. Chicago Park District, 65 N.E.2d 785, 791 (Ill. 1946). In Lubezny, the court opted for redemption of unpaid warrants "in their numerical order" because it was already a "long-continued practice" and because pro rata payments would lead to "endless confusion in the office of the treasurer," and "the nonsalability of warrants." Lubezny, 59 N.E.2d at 647. The rationale for the holding in Lubezny is fully applicable here, since the Chouteau County treasurer has informally adopted the practice of registering unpaid hospital district warrants and paying them out in the order of their registration.

With reference to your fourth question, it is clear that the hospital district possesses the power to lease a hospital facility to a nonprofit corporation. § 7-34-2122(10), MCA. Such an arrangement would create a valid lessor-lessee relationship between the district and the nonprofit corporation. Absent a controlling provision to the contrary in the lease, the nonprofit corporation would have a right as an entity independent from the district to incur indebtedness by borrowing from a commercial lending institution. See § 35-2-107(8), MCA. You suggest in your letter that "[a]t most, the private nonprofit corporation may pledge anticipated revenues from the hospital district as collateral for a loan." While a hospital district may provide funds to a nonprofit corporation operating a hospital district facility for the benefit of the community (see 43 Op. Att'y Gen. No. 70 (1990)), tax revenues may be committed for that purpose only by the district's trustees. §§ 7-34-2115(1), 7-34-2122, MCA. Thus, the nonprofit corporation may pledge only those revenues the district has obligated itself to pay over to the corporation pursuant to the terms of a lease, contract, or other formal agreement.

THEREFORE, IT IS MY OPINION:

1. The unpaid warrants of a hospital district may not be registered as county warrants and purchased by the county in which the hospital district is located.
2. A hospital district does not have authority to borrow money from a commercial lending institution by use of a promissory note.
3. A hospital district's board of trustees may enact an appropriate resolution directing the county treasurer, as ex officio treasurer of the district, to register unpaid hospital district warrants, to redeem them in the order of their registration, and to pay a particular rate of interest on unpaid warrants.
4. A hospital district may lease a district-owned hospital facility to a nonprofit corporation without restricting the right of the corporation, as an entity independent from the hospital district, to borrow money from a commercial lending institution for the purpose of running the hospital.

Sincerely,

*Marc Racicot*

MARC RACICOT  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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      | 1. Consult ARM topical index.                 |
| Subject    | Update the rule by checking the accumulative  |
| Matter     | table and the table of contents in the last   |
|            | Montana Administrative Register issued.       |
| Statute    | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and     |
| Department | corresponding ARM rule numbers.               |

#### ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1990. This table includes those rules adopted during the period July 1, 1990 through September 30, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1990, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1990 Montana Administrative Register.

#### ADMINISTRATION, Department of, Title 2

|           |   |
|-----------|---|
| I-XIII    | and other rules - Veteran's Employment Preference - Veteran's and Handicapped Person's Employment Preference, p. 1361, 478  |
| 2.5.118   | and other rules - Procuring Supplies and Services, p. 1419  |
| 2.13.102  | Use of the State Telecommunication Systems, p. 397, 928   |
| 2.21.3712 | and other rule - Recruitment and Selection - Reduction in Force, p. 1417  |
| 2.21.8017 | and other rule - Grievances, p. 1997, 377<br>(Public Employees' Retirement Board)   |
| 2.43.302  | and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999, 994A, 1250 |

#### AGRICULTURE, Department of, Title 4

|           |  |
|-----------|--|
| I-LV      | Montana Agricultural Chemical Ground Water Protection Act, p. 1199 |
| 4.12.1012 | Grain Fee Schedule, p. 1056, 1452                                  |
| 4.12.1202 | and other rules - Alfalfa Leafcutting Bees, p. 1, 378, 704         |

STATE AUDITOR, Title 6

- I-VII Establishment and Operations of a Prelicensing Education Program, p. 8, 487  
6.6.505 and other rules - Medicare Supplement Insurance Minimum Standards, p. 1285

COMMERCE, Department of, Title 8

(Board of Architects)

- 8.6.406 and other rules - Reciprocity - Qualification Required for Branch Office - Examinations - Individual Seal - Renewals - Standards of Professional Conduct - Fee Schedule - Architect Partnerships to File Statement with Board Office - Board Meetings - Seal - Governor's Report - Financial Records and Other Records - Grant and Issue Licenses - Duplicate License - Public Participation, p. 250, 583

(Board of Athletics)

- 8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Boxing Contestants - Physical Examination - Ring - Equipment - Disciplinary Actions - Relationship of Managers and Boxers, p. 765, 1143

(Board of Chiropractors)

- I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification and Fees of Impairment Evaluators, p. 255

- I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification - Fees of Impairment Evaluators, p. 399, 1453

- 8.12.601 and other rules - License Applications - Educational Standards for Licensure - License Examinations - Temporary Permits - Renewals - Unprofessional Conduct Standards - Reinstatement of Licenses - Disciplinary Actions - Recordation of License - Definitions, p. 258, 995

- 8.12.601 and other rules - Applications - Renewal Fees - Consolidating Board Fees Into One Central Rule, p. 769, 1144, 1251

(Board of Cosmetologists)

- 8.14.401 and other rules - Practice of Cosmetology - Booth Rentals, p. 658, 1145

(Board of Hearing Aid Dispensers)

- 8.20.401 Traineeship Requirements and Standards, p. 771

(Board of Horse Racing)

- 8.22.304 and other rules - Rules of Procedure - General Rules - Occupational Licenses - General Conduct of Racing - Medication - Corrupt Practices and Penalties - Trifecta Wagering, p. 1500

(Board of Landscape Architects)

- 8.24.409 Fee Schedule, p. 1062

(Board of Medical Examiners)

- 8.28.402 and other rules - Definitions - Reinstatement - Hearings and Proceedings - Temporary Certificate - Annual Registration and Fees - Approval of Schools - Requirements for Licensure - Application for Licensure - Fees - Supervision of Licensees - Application for Examination - Reciprocity, p. 867

(Board of Professional Engineers and Land Surveyors)

- 8.48.902 and other rules - Statements of Competency - Land Surveyor Nonresident Practice in Montana - Avoidance of Improper Solicitation of Professional Employment, p. 773

(Board of Private Security Patrolmen and Investigators)

- 8.50.423 and other rules - Definitions - Temporary Employment - Applications - Examinations - Insurance - Applicant Fingerprint Check - Fees - Probationary Private Investigators - Firearms Safety Tests - Unprofessional Standards - Record Keeping - Code of Ethics for Licensees - Code of Ethics for Employees - Powers of Arrest and Initial Procedures - Disciplinary Action, p. 776

(Board of Public Accountants)

- 8.54.204 and other rules - Licensing of Public Accountants, p. 1870, 584  
8.54.817 and other rules - Credit for Service as Report Reviewer - Definitions - Filing of Reports - Alternatives and Exemptions Reviews and Enforcement, p. 1866, 586

(Board of Radiologic Technologists)

- 8.56.602 and other rules - Permit Applications - Course Requirements - Permit Examinations - Temporary Permits - Permit Restrictions, p. 402, 1321

(Board of Realty Regulation)

- 8.58.401 and other rules - Administration, Licensing and Conduct of Real Estate Licensees - Registration and Sales of Subdivisions, p. 405, 1156  
8.58.412 Inactive Licenses - Reactivation of Licenses - Continuing Education, p. 467, 1339

(Board of Social Work Examiners and Professional Counselors)

- 8.61.404 and other rule - Fees, p. 424, 1171

(Board of Passenger Tramway Safety)

- 8.72.101 and other rules - Organization of the Board of Passenger Tramway Safety, p. 1438

(Milk Control Bureau)

- 8.79.301 Licensee Assessments, p. 426, 820

(Financial Division)

- I-III Application Procedure for Authorization to Engage In the Escrow Business - Change of Ownership in Escrow Businesses - Examination of Escrow Business, p. 2015, 929

- 8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 981

(Board of Milk Control)

8.86.301 Class I Price Formula - Class I Wholesale Prices, p. 2101, 821

8.86.505 Quota Rules for Producers Supplying Meadow Gold Dairies, Inc., p. 2099, 502

8.86.506 and other rules - Statewide Pooling Arrangements as it Pertains to Producer Payments, p. 2109, 705, 931

(Local Government Assistance Division)

I Administration of the 1990 Federal Community Development Block Grant (CDBG) Program, p. 682, 997

(Board of Investments)

I-II Incorporation by Reference of Rules Implementing the Montana Environmental Policy Act, p. 1222

8.97.802 and other rules - Montana Capital Company Act - Investments by the Montana Board of Investments, p. 1881, 503, 716

8.97.1101 and other rule - Names and Addresses of Board Members - Conventional Loan Program - Purpose and Loan Restrictions, p. 182, 589

8.97.1302 and other rules - Seller/services Approval Procedures Forward Commitment Fees, p. 786

(Board of Housing)

8.111.101 and other rules - Organization - Qualified Lending Institutions - Qualified Loan Servicers - Definitions - Officers Certification - False or Misleading Statements - Reverse Annuity Mortgage Loan Provisions, p. 1306

(Board of Science and Technology Development)

I-XX and other rules - Loans Made by the Montana Board of Science and Technology Development, p. 428, 1000

EDUCATION, Title 10

(Superintendent of Public Instruction)

I-IV Spending and Reserve Limits, p. 24, 508

I-V Guaranteed Tax Base, p. 15, 507

I-VI Special Education Cooperatives, p. 872, 1252

I-VII Permissive Amount, Voted Amount and School Levies, p. 29, 510, 723

I-XVII Special Education Due Process Matters, p. 440, 934

I-XXII and other Rules - Tuition and Accounting Practices, p. 330, 717

10.6.101 and other rules - All School Controversy Contested Cases Before County Superintendents of the State of Montana, p. 436, 933

10.13.101 and other rules - State Equalization, p. 184, 505

(Board of Public Education)

10.57.107 and other rules - Emergency Authorization of Employment - Test for Certification, p. 875, 1547

10.57.301 and other rule - Endorsement Information - Endorsement of Computer Science Teachers, p. 2116, 1064

- 10.57.401 Class I Professional Teaching Certificate, p. 1640, 725
- 10.57.403 Class 3 Administrative Certificates, p. 1227
- 10.57.601 Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action, p. 690
- 10.65.101 and other rule - Policy Governing Pupil Instruction-Related Days Approved for Foundation Program Calculations - Program of Approved Pupil Instruction-Related Days, p. 2118, 725
- 10.67.101 and other rules - State Aid Distribution Schedule - Reporting Requirements - Notice and Opportunity for Hearing - Hearing in Contested Cases - After Hearing, p. 684, 1254  
(Montana Arts Council)
- 10.111.701 and other rules - Cultural and Aesthetic Project Grant Proposals, p. 789, 1458

FAMILY SERVICES, Department of, Title 11

- 11.5.605 Access to Department Records, p. 693, 1001
- 11.7.402 and other rules - Composition of and Criteria for Approving Recommendations of Youth Placement Committees - Composition of Foster Care Review Committees, p. 265, 728
- 11.12.104 and other rule - Licensure of Youth Care Facilities, p. 263, 590

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Restricting Public Access and Fishing Near Montana Power Company Dams - Specifically Hebgen Dam, p. 878, 1548
- I-XII River Restoration Program, p. 795, 1461
- 12.6.801 and other rule - Restricting Public Access and Fishing Near Montana Power Company Dams - Boating Closures, p. 449, 1003
- 12.6.901 Establishing A No-Wake Restriction Below Canyon Ferry Dam, p. 983, 1460
- 12.6.901 Water Safety Regulations, p. 452, 1002
- 12.6.901 Water Safety Regulations - Closing Certain Waters, p. 35, 514
- 12.9.205 Manhattan Game Preserve, p. 985
- 12.9.210 Warm Springs Game Preserve, p. 38, 515

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-VIII Emergency Adoption - Underground Storage Tanks - Licensing of Underground Tank Installers - Permitting of Underground Tank Installations and Closures, p. 731
- I-X Water Quality - Procedures and Criteria Regarding Wastewater Treatment Works Revolving Fund, p. 799, 879, 1468

- I-XI      Handicapped Children's Services Program - Eligibility for the Handicapped Children's Program - Payment for Services - Covered Conditions - Record-Keeping - Application Procedure - Advisory Committee - Fair Hearings, p. 881, 1256
- I-XVI     Emergency Adoption - Underground Storage Tanks - Licensing of Underground Tank Installers - Permitting of Underground Tank Installations and Closures, p. 1549
- I-XXIV    Petroleum Tank Release Compensation Program, p. 40, 516
- I-XL      Underground Storage Tanks - Licensing of Underground Tank Installers and Inspectors - Permitting of Underground Tank Installations and Closures and Repeal of Emergency Rules I - XVI, p. 1512
- 16.8.921   and other rules - Air Quality - Definitions - Ambient Air Increments - Air Quality Limitations - Exclusions from Increment Consumption - Class I Variances - General, p. 805, 880, 1322
- 16.32.308   and other rule - Retention of Medical Records by Health Care Facilities, p. 891, 1259
- 16.44.202   and other rules - Solid and Hazardous Waste - Mining Waste Exclusion, p. 1536
- (Petroleum Tank Release Compensation Board)
- 16.47.311   and other rule - Definitions - Release Discovered After April 13, 1989 Construed, p. 1314

HIGHWAYS, Department of, Title 18

- 18.8.510B   and other rules - Convoy Moves of Oversize Vehicles - Flag Vehicle Requirements, p. 2027, 591
- 18.8.1101   Movement of Houses, Buildings and Other Large Objects, p. 578, 1260

INSTITUTIONS, Department of, Title 20

- 20.3.202    and other rules - Definitions - Clients' Rights - Outpatient Component Requirements - Certification System for Chemical Dependency Personnel - Chemical Dependency Education Course Requirements - ACT, p. 2121, 737
- 20.7.1101   Conditions on Probation or Parole, p. 695, 1560

JUSTICE, Department of, Title 23

- I-XIV      Admission - Attendance - Conduct - Evaluations and Requirements for Graduation from the Montana Law Enforcement Academy, p. 809, 1261
- 8.124.101   and other rules - Gambling, p. 12127, 828, 1172

LABOR AND INDUSTRY, Department of, Title 24

- I            Travel Expense Reimbursement, p. 816, 1564

- I-II            Establishing Montana's Minimum Hourly Wage Rate,  
                 p. 454, 852  
(Workers' Compensation Judge)  
24.5.101       and other rules - Procedural Rules of the Court,  
                 p. 349, 847  
(Human Rights Commission)  
24.9.212       Confidentiality - Procedure on Finding of Lack of  
                 Reasonable Cause - Contested Case Record - Exceptions  
                 to Proposed Orders, p. 2157, 525  
24.9.225       and other rules - Procedure on Finding of Lack of  
                 Reasonable Cause - Issuance of Right to Sue Letter  
                 When Requested by a Party - Effect of Issuance of  
                 Right to Sue Letter, p. 1065, 1561  
24.16.9007     Amendment of Prevailing Wage Rates, p. 986  
(Workers' Compensation)  
24.29.1415     Impairment Rating Dispute Procedure, p. 456, 1004

STATE LANDS, Department of, Title 26

- I-III           Investigation of Complaints Regarding Effects of Hard  
                 Rock Blasting Operations, p. 458, 1470  
I-VII           Authorizing Permitting and Requiring Reclamation of  
                 Hard Rock Mills and Operations that Reprocess  
                 Tailings and Waste Rock from Previous Operations,  
                 p. 267, 1008  
I-XII           and other rules - Disposal of Underground Coal Mine  
                 Waste - Individual Civil Penalties - Restrictions on  
                 Financial Interests of Multiple Interest Advisory  
                 Boards, p. 1309, 366A, 936  
26.4.724       and other rules - Revegetation of Land Disturbed by  
                 Coal and Uranium Mining Operations, p. 1885, 964

LIVESTOCK, Department of, Title 32

- 32.18.101      Hot Iron Brands Required, p. 1315

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I               Reject or Modify Permit Applications for Consumptive  
                 Uses and to Condition Permits for Nonconsumptive Uses  
                 in Walker Creek Basin, p. 893  
36.12.1010     and other rules - Definitions - Grant Creek and Rock  
                 Creek Basin Closures, p. 1542  
(Board of Water Well Contractors)  
I               Mandatory Training, p. 896, 1568  
I               Abandonment of Monitoring Wells, p. 273, 739  
(Board of Oil and Gas Conservation)  
I               Incorporating by Reference Rules Pertaining to the  
                 Montana Environmental Policy Act, p. 2164, 531

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-III           and other rules - Motor Carrier Status - Class C

- Contracts - Class C Pickups and Delivery - Contract  
and Common Carrier Distinction - Insurance - Transfer  
of Authority - Carrier Rate Increases - Vehicle  
Identification, p. 467, 1263  
38.5.2202 and other rule - Federal Pipeline Safety Regulations  
Including Drug-Testing Requirements, p. 275, 698  
38.5.3332 Customer Billing, p. 192, 593

REVENUE, Department of, Title 42

- I Gasoline From Refineries, p. 1071  
I-III Property Tax - Reappraisal of Real Property Dealing  
With Statistical Procedures and Results, p. 198, 596  
I-V Property Tax - Reappraisal of Real Property, p. 54,  
202, 367, 596  
42.5.101 and other rules - Bad Debt Collection, p. 1080  
42.11.401 and other rules - Liquor Bailment, p. 1229  
42.12.205 and other rule - Requirements When Licensing Is  
Subject to Lien, p. 194, 1266  
42.17.105 Computation of Withholding Taxes, p. 1803, 121  
42.18.101 and other rules - Property Tax - Reappraisal Plan,  
p. 2031, 594  
42.19.301 Clarification of Exception to Tax Levy Limit, p. 1070  
42.20.102 Applications for Property Tax Exemptions, p. 1240  
42.20.401 and other rules - Property Tax - Sales Assessment  
Ratio, p. 2039, 596  
42.20.420 and other rules - Sales Assessment Ratio Study,  
p. 818, 1270  
42.20.438 Sales Assessment Ratio Study, p. 700, 1271  
42.22.1311 Updating Trend Factors for Industrial Machinery and  
Equipment, p. 1074  
42.23.413 Carryover of Net Operating Losses - Corporation  
License Tax, p. 2166, 645  
42.24.101 and other rules - Subchapter S Elections for  
Corporations, p. 1082  
42.27.604 Payment of Alcohol Tax Incentive, p. 1072  
42.28.321 Required Records - Audits - Motor Fuels Tax, p. 580,  
1174

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)

- 44.10.331 Limitations on Receipts From Political Committees to  
Legislative Candidates, p. 203, 532

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I and other rules - Orthodontia and Dentures, p. 917,  
1331  
I-II Transitional Child Care, p. 207, 533  
I-III Freestanding Dialysis Clinics, p. 1086, 1607  
I-IV Rural Health Clinics, p. 1544  
I-VIII Skilled Nursing and Intermediate Care Services In

- I-LXV      Institutions for Mental Diseases, p. 278, 1175  
and other rules - Child Support Enforcement  
Procedures and Administration, p. 74, 375, 1337
- 46.8.901      and other rule - Developmental Disabilities  
Standards, p. 1317
- 46.10.403      AFDC Standards of Assistance, p. 1245, 1570
- 46.10.701      and other rules - Montana JOBS Program, p. 1122,  
1571
- 46.12.303      Medicaid Billing - Reimbursement - Claims Processing  
and Payment, p. 901, 1586
- 46.12.304      Third Party Eligibility, p. 912
- 46.12.505      Diagnosis Related Groups (DRGs), p. 904, 1588
- 46.12.522      and other rules - Two Percent (2%) Increase in  
Medicaid Fees for Provider Services, p. 923, 1479
- 46.12.532      Reimbursement for Speech Therapy Services, p. 596,  
876
- 46.12.541      and other rule - Hearing Aid Services, p. 898, 1326
- 46.12.545      and other rules - Occupational Therapy Services,  
p. 370, 582
- 46.12.552      Reimbursement for Home Health Services, p. 474, 1042
- 46.12.571      and other rules - Coverage Requirements and  
Reimbursement for Clinic Services - Psychological  
Services - Clinical Social Work Services, p. 71, 534,  
740
- 46.12.590      and other rules - Inpatient Psychiatric Services,  
p. 1117, 1589
- 46.12.703      Reimbursement for Outpatient Drugs, p. 906, 1481
- 46.12.802      Prosthetic Devices, Durable Medical Equipment and  
Medical Supplies, p. 987
- 46.12.1201      and other rules - Payment Rate for Skilled Nursing  
and Intermediate Care Services, p. 1107, 1598
- 46.12.1401      and other rules - Medicaid Home and Community Based  
Program for Elderly and Physically Disabled Persons,  
p. 1090
- 46.12.1823      and other rule - Hospice Services, p. 205, 539
- 46.12.2003      Reimbursement for Physicians Services, p. 1243, 1608
- 46.12.2003      Reimbursement for Obstetrical Services, p. 702, 1179
- 46.12.2013      Reimbursement for Certified Registered Nurse  
Anesthetists, p. 214, 540
- 46.12.3206      and other rule - Third Party Attorney Fees -  
Assignment of Benefits, p. 1088, 1609
- 46.12.3401      Transitional Medicaid Coverage, p. 210, 541
- 46.12.3401      Medicaid Coverage for Pregnant Women and Children up  
to Age Six, p. 212, 542
- 46.12.3803      Medically Needy Income Levels, p. 908, 1334
- 46.12.3804      Medically Needy Income Levels, p. 368, 853
- 46.12.4002      and other rules - Group Eligibility Requirements for  
Inpatient Psychiatric Services, p. 1104
- 46.12.4008      Earned Income Disregards for Institutionalized  
Individuals, p. 216, 543
- 46.12.4101      Qualified Medicare Beneficiaries Eligibility for  
Medicaid, p. 910, 1336