RESERVE

MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF INVESTMENTS

In the matter of the proposed amendment of rules pertaining to names and addresses of board members of and to investments made by the Montana board of investments	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.97.1101 AND 8.97.1404

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 24, 1990, the Board of Investments proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.97.1101 ORGANIZATIONAL RULE (1) will remain the same.

(2) The board consists of nine members appointed by the governor in the manner prescribed by 2-15-124, MCA. The members are one member from the public employees' retirement board provided for in 2-15-1009, MCA, one member from the teachers' retirement board provided in 2-15-1010, MCA, and seven members who will provide a balance of professional expertise, public interest, and public accountability, and who are informed and experienced in the subject of investment and who are representative of the financial community, agriculture, and labor. The names and addresses of the members of the board are as follows:

~~Dave~~ David E. Aageson, RR 74, Box 15, Gildford, Montana 59525

G. Steven Brown, 1520 Highland, Helena, Montana ~~59620~~ 59601

John Conners, P.O. Box 157, Whitefish, Montana 59937

James Cowan, P.O. Box 369, Seeley Lake, Montana 59868

Dwight MacKay, 2811 Terrace Drive, Billings, Montana 59102

F. Lee Robinson, Box Q, Malta, Montana 59538

~~W. E. Schreiber, 488 Barkley Lane, Whitefish, Montana 59937~~

Wilbur E. Scott, 3021 8th Avenue South, Great Falls, Montana ~~59401~~ 59405

Frederick B. Tossberg, Box ~~210~~ 278 Grantsdale Road, Hamilton, Montana 59840

Warren Vaughan, P.O. Box 1316, Billings, Montana 59103

Auth: Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-324, MCA

REASON: This proposed amendment acknowledges one board member's resignation and subsequent replacement, and corrects

other pertinent information about names and addresses of board members.

8.97.1404 CONVENTIONAL LOAN PROGRAM - PURPOSE AND LOAN RESTRICTIONS (1) through (4) will remain the same.

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

(5)(a) through (8) will remain the same."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA

REASON: This amendment is being proposed in response to requests from several lenders requesting that the Board purchase refinances of properties which are not primary residences of borrowers. FHLMC underwriting guidelines do permit such refinances.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Investments, Department of Commerce, 555 Fuller Avenue, Helena, Montana 59620, no later than February 22, 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 this request along with any comments he has to the Board of Investments, Department of Commerce, 555 Fuller Avenue, Helena, Montana 59620, no later than February 22, 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.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY: _____
MICHAEL D. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 15, 1990.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption, amendment repeal and transfer of rules relating to state equalization	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION, AMENDMENT, REPEAL AND TRANSFER OF RULES RELATING TO STATE EQUALIZATION, TITLE 10, CHAPTER 13, AND RULES I THROUGH IV

To: All Interested Parties.

1. On February 15, 1990, at 9:00 a.m., at Room 108, State Capitol, Helena, Montana, a public hearing will be held to consider the adoption of rules which relate to state equalization aid.

2. The proposed rules and the existing rules as modified will be transferred to another chapter to create continuity. "XX" is used in the proposed rules because a chapter has not yet been assigned.

3. The amended rules provide as follows:

10.13.101 APPLICATION INFORMATION ~~All--information outlined-in-Topic-7,-pages-4,-5-and-6-of-the-School-Finance-and Statistics-Reference-Manual-must-be-provided-with-an-application for-isolated-classification.~~ (1) The trustees of a district applying to have a school classified as an isolated school shall provide information as requested by the superintendent of public instruction. Isolation status shall be approved for a period of three consecutive school years, or until there are changes in the approval criteria documentation provided to the superintendent of public instruction. If during that period there are changes in the conditions allowing isolation classification, or the school is no longer accredited by the board of public education, isolation classification is terminated.

(Auth: Sec. 20-3-106 (18) MCA; IMP, Sec. 20-9-302 MCA)

10.13.102 APPROVAL CRITERIA ~~An-applicant-school-cannot-be approved--as--isolated--if~~ (1) In considering a request for approval of an application to have a school classified as an isolated school, the superintendent of public instruction shall utilize the following criteria:

(a) an application form has been completed by the trustees, approved by the board of county commissioners (budget board), received by the county superintendent on or before May 1, and received by the superintendent of public instruction on or before June 1;

(b) the applicant school is an operating elementary school district of less than 10 ANB or a high school of less than 25 ANB for the second consecutive year;

(c) another operating school(s) with room to accommodate applicant's students is further than a distance of 20 passable

road miles from applicant school; and

(d) less than fifty percent or more of the students from the applicant school can, under ~~average~~ normal conditions, be transported to the closest operating school(s) in a period of one hour or less.

(i) in determining ~~the~~ transportation time ~~required to transport children~~ to the closest operating school with room to accommodate students, ~~existing~~ available bus transportation, either elementary or high school, ~~must be considered~~ will be taken into consideration.

(ii) ~~in all cases where an older brother or sister~~ If a family member rides a bus to another school, that bus will be considered as available transportation for an elementary child in the same family if the bus provides transportation to an available operating school with room to accommodate the student.

(e) extenuating circumstances which support a variance from the requirements of (1) through (4), must be documented for consideration by the superintendent of public instruction.

(AUTH: Sec. 20-3-106, MCA; IMP, 20-9-302 MCA)

~~10.13.103 VARIANCES--A variance from criterion contained in ARM 10.13.132 may be granted if information is supplied with the application which, in the opinion of the superintendent of public instruction, supports the need for granting such a variance. (History: Sec. 20-3-106 (10) MCA; IMP, 20-9-302 MCA; Eff. 3/5/74; ARM Pub. 11/26/77).~~

10.13.201 APPROVAL CRITERIA--MIDDLE SCHOOL ~~(1) Under state law, the trustees of an elementary school district may open or establish a middle school if approved by the superintendent of public instruction.~~ 1) In considering a request for approval to open a middle school, the superintendent of public instruction shall utilize the criteria set forth below:

~~(a) grade seven and grade eight of the middle school each must have an enrollment of 90 students or more;~~

(a) the program must comprise the work of grades 4 through 8 or any combination thereof as defined in Section 20-6-501 (1), MCA;

(b) the middle school must be organized and administered to provide a cohesive unit within the educational system of the school district. A cohesive unit shall be interpreted as a portion of a school system which is located in one area of the school facilities, is under the overall direction of a single administrative leadership, and is easily identifiable as a unique school unit;

(c) sufficient evidence must be provided that, if established, the middle school can meet state accreditation standards ~~in conformance with the policy statement on accreditation of~~ for middle schools ~~adopted~~ as set forth in Title 10 Chapter 55 by the board of public education;

(d) ~~Discretionary authority shall be exercised by the superintendent of public instruction in considering or applying~~ Other factors may be taken into account which are deemed

reasonable and appropriate to consider in establishment of a middle school.

(AUTH: Sec. 20-3-106, MCA; IMP, 20-6-507, MCA)

4. The proposed rules are as follows:

RULE I APPROVAL CRITERIA--JUNIOR HIGH SCHOOL (1) In considering a request for approval to open a junior high school, the superintendent of public instruction will utilize the criteria set forth below:

(a) the program will comprise the work of grades 7 through 9 or their equivalents as defined in Section 20-6-501 (2)(a), MCA;

(b) the junior high school must be organized and administered to provide a cohesive unit within the educational system of the school district. A cohesive unit shall be interpreted as a portion of a school system which is located in one area of the school facilities, which is under the overall direction of a single administrative leadership and which is easily identifiable as a unique school unit;

(c) sufficient evidence is provided that, if established, the junior high school can meet state accreditation standards for junior high schools as set forth in Title 10 Chapter 55 by the board of public education;

(d) other factors may be taken into account which are deemed reasonable and appropriate to consider in establishment of a junior high school.

(AUTH: Sec. 20-3-106, MCA; IMP, 20-6-504, 20-6-505, MCA)

RULE II DEFINITIONS For purposes of calculating ANB, the following definitions shall apply:

(1) "attendance" means a student must have been present for at least a minimum amount of pupil-instruction (PI) time before the student may be counted for ANB purposes,

(2) "absent" means those days the student is not present on pupil-instruction days. A student must first meet the criteria for attendance before the student can be considered as absent,

(3) "budget unit" means the unit for which the ANB of a district is aggregated for all regularly enrolled, full-time students and includes the following funding groups:

(a) all the schools of one district which are inside the incorporated city limits will form a single budget unit,

(b) any school more than 3 miles on the shortest passable road beyond the incorporated limits of a city or town or from another school of the district will calculate ANB as a budget unit separate from the other schools of the district,

(c) those students in the 7th and 8th grade who are enrolled in programs which were approved and accredited by the board of public education will be considered high school pupils for ANB purposes.

(4) "enrolled student" means a student who has been in attendance.

(5) "first semester for ANB purposes" means the first ninety (90) pupil-instruction days of the school year.

(6) "homebound instruction" means instruction services for

those students who were in the education program and due to medical reasons, certified by a medical doctor, are unable to be present for pupil-instruction;

(7) "minimum amount of pupil-instruction (PI) time for an elementary student" means the student must be present for the lesser of:

(a) 2 hours of either a morning or afternoon session in order to be counted as being in attendance for one-half day, or

(b) the entire morning or afternoon session in order to be counted as being in attendance for one-half day.

(8) "minimum amount of pupil instruction (PI) time for a high school student" means the student must be present for the lesser of:

(a) 2 periods of either a morning or afternoon session in order to be counted as being in attendance for one-half day, or

(b) the entire morning or afternoon session in order to be counted as being in attendance for one-half day.

(9) "present" means those days the student is in attendance, as defined in (1), for pupil-instruction days.

(10) "pupil-instruction (PI) days" are those days when school districts provide organized instruction for pupils enrolled in public schools while under the supervision of a teacher. The PI days for ANB calculations may not exceed a total of 180 in the first and second semesters as used for ANB purposes.

(11) "pupil-instruction-related (PIR) days" are those days of teacher activities, approved by the office of public instruction for the school year preceding the year to be funded, which are devoted to improving the quality of instruction. For calculation of ANB the PIR days may not exceed 7.

(12) "regularly enrolled full-time pupil" means a student who meets the definition of "enrolled student", is on a full-time basis, and is not a special student.

(13) "second semester for ANB purposes" means the last ninety (90) pupil-instruction days of the school year.

(AUTH: Sec. 20-9-102, MCA; IMP Sec. 20-9-313, 314 MCA)

RULE III CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) A school must receive accreditation from the board of public education before the regularly enrolled, full-time pupils attending the school are eligible for ANB calculation purposes and for determining the foundation program for the district (Section 20-9-311, MCA).

(2) The superintendent of public instruction shall determine the appropriate budget unit for the ANB calculation and the foundation program for the district.

(3) If the school district budget report indicates calculation of foundation program for a separate budget unit because of location more than 3 miles on the shortest passable road beyond the incorporated limits of a city, town, or another school of the district, but the school does not meet the criteria for a separate budget unit, the superintendent of public instruction shall aggregate the regularly enrolled, full-time pupils with the appropriate budget unit;

(4) If the school district budget report indicates calculation of foundation program for students in grades 7 and

8 funded at the high school rate (Sections 20-9-312 or 20-9-320, MCA) but the school has not received accreditation by the board of public education, the office of public instruction shall consider the regularly enrolled 7th and 8th grade students as elementary pupils for ANB purposes.

(5) As indicated in Section 20-9-311, MCA, a student will be dropped from the rolls for ANB calculation purposes following the 10th consecutive school day of absence, with or without excuse.

(6) A student will be dropped from the rolls prior to the 10th consecutive absence and will cease to be counted for ANB purposes when the student is enrolled in another school, the student's records are transferred to another school, or the student is unable to continue in attendance (i.e., death).

(7) After a student is dropped from the rolls as in (5) or (6), student absences will not be included for ANB calculations, and student enrollment may not be considered in ANB calculations until attendance is resumed at school;

(8) A maximum of one-half ANB for pupil-instruction days will be allowed for each kindergarten pupil in an approved five-year-old schooling program. The ANB will be computed in accordance with any variance which was granted as provided in Section 20-3-302, MCA.

(9) An equivalent ANB for 11th or 12th grade high school students enrolled on a part-time basis may be calculated by counting the student's presence or absence for each enrolled class period as a fraction of the total number of instructional periods in one day (a student enrolled for one period of a seven class period day would be considered as present or absent for 1/7 of a pupil-instruction day).

(10) Homebound students, as defined in RULE II (6), and students who are confined to a treatment, medical, or custodial facility must not be counted for ANB purposes after the 10th consecutive day of absence unless the student:

(a) is an enrolled student RULE II (4) in the regular education program, and is currently receiving organized pupil instruction as defined in Section 20-1-101 (11), MCA.

(b) is in a home or facility which does not offer a regular educational program, and

(c) has instructional costs during the absences which are financed by the school district general fund,

(11) Extenuating circumstance for homebound students who do not meet the criteria in (10)(a) through (c) but which would support a variance should be submitted to the superintendent of public instruction by a responsible school official prior to the 10th day of absence for consideration of inclusion of the student count for ANB purposes beyond the 10th day of absence.

(12) When high school districts provide early graduation after 175 pupil-instruction days in the 12th grade for a class of students who have completed the requirements for graduation (Section 20-9-313(7), MCA), the district trustees shall:

(a) report the days between graduation and the last pupil-instruction day of the school fiscal year as days of absence for those students who completed the requirements for graduation and

who graduated after 175 pupil-instruction days, and

(b) include the days of absence in (12)(a) with the aggregate district attendance data which is provided to the office of public instruction.

(13) For ANB calculations the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related (PIR) days (Section 20-9-313(1), MCA) approved by the office of public instruction and conducted by the school district.

(14) The 180 pupil-instruction days for ANB calculations will include 90 days from the first semester, as defined for ANB purposes in RULE II (9), of the school year immediately preceding the year for which the foundation payments will be received, and 90 days from the second semester, as defined for ANB purposes in 10.XX.301(5), of the school year prior to the preceding school year.

(15) The PIR days used for calculating ANB will be the number of PIR days, not to exceed 7, which were approved by the office of public instruction and conducted by the school district in the school fiscal year immediately preceding the school year for which the foundation program payment will be received.

(16) The time designated as PIR days must not overlap with the time designated as PI days.

(17) Effective July 1, 1990 (Section 20-1-304), a minimum of 3 of the PIR days must be planned for the entire staff for instructional and professional development meetings or appropriate inservice training.

(18) If the school district fails to conduct the 3 PIR days for professional development or does not conduct the approved PIR days for the purposes set out in ARM 10.65.101, the superintendent of public instruction shall reduce the state and county equalization payments to reflect the actual number of PIR days which may be counted for ANB calculations.

(19) If the school district fails to conduct 180 days of pupil instruction, the superintendent of public instruction will reduce the state and county equalization payments by 1/90th for each school day less than 180 school days (Section 20-1-301, MCA).

(20) For purposes of determining the foundation program of a district, ANB will be calculated using the following method:

(a) the total aggregate days present and absent for the second and the first semesters reported by the school district to the office of public instruction, pursuant to Section 20-9-311, MCA, will be added together and then divided by 180 to determine an attendance ANB;

(aggregate days present for 2 semesters for PI days)
+ (aggregate days absent) for 2 semesters for PI days)

(total aggregate days present and absent for PI days)

divided by 180 = (attendance ANB)

(b) additional approved ANB, as determined in 10.XX.303, will be added to calculate the average ANB for PI days;

(attendance ANB)
+ (additional approved ANB)
(average ANB for PI days)

(c) the average ANB for PI days, calculated in (20)(b), will be multiplied by the approved number of PIR days to determine the calculated aggregate PIR days;

(average ANB for PI days) X (number of PIR days) = (calculated aggregate PIR days)

(d) the calculated aggregate PIR days from (20)(c) will be added to the total aggregate days present and absent for PI days (4)(a) and divided by 180 to determine the PIR-PI days ANB;

(calculated aggregate PIR days)
+ (total aggregate days present and absent for PI days)
(aggregate PIR and PI days) divided by 180 = (PIR-PI days ANB)

(e) additional approved ANB (20)(b) will be added to the PIR-PI days ANB to obtain the ANB calculation for foundation program payments.

(PIR and PI days ANB)
+ (additional approved ANB)
(ANB calculation for foundation program payments)

(AUTH: Sec. 20-9-102, MCA; IMP Sec. 20-9-313, 314, MCA)

RULE IV CIRCUMSTANCES UNDER WHICH THE REGULAR AVERAGE NUMBER BELONGING MAY BE INCREASED

(1) The average number belonging (ANB) of a school, calculated in accordance with RULE II, RULE III, and Section 20-9-311, MCA, may be increased upon approval of the superintendent of public instruction. The ANB of a school for a given school year will be determined from data obtained in two different school years; therefore an ANB increase may be requested for both semesters, or may be requested for only one semester, depending on the circumstances of the requested increase.

(2) The board of trustees or the county superintendent will provide information requested by the superintendent of public instruction to establish the basis for an increase in ANB and the estimates or data required to determine the number of additional ANB to be approved for the following situations (Section 20-9-313, MCA):

(a) the opening or reopening of an elementary school in accordance with Section 20-6-502, MCA,

(b) the opening or reopening of a high school or branch of the county high school in accordance with Section 20-6-503, 20-6-504, or 20-6-505, MCA,

(c) an anticipated increase in the ANB due to the closing of any private or public school in the district or a neighboring district,

(d) an anticipated unusual enrollment increase in the ensuing school fiscal year (Section 20-9-314, MCA),

(e) the initial year of operation of a five-year-old schooling program, established under Section 20-7-117(1), MCA,

(f) a special full-time pupil, as defined in Section 20-9-311(2), MCA, who will no longer be considered as a special

full-time pupil, and will be considered as a regular student for ANB calculations,

(g) early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment.

(h) special unanticipated circumstances resulting from the application of Section 20-9-318, MCA.

(3) application for increased ANB will be made to the superintendent of public instruction by:

(a) June 1 for situations (2)(a), (b), and (c). The superintendent will approve, disapprove, or adjust the application by the fourth Monday in June;, or

(b) May 10 for situations (2)(d), (e), (f), (g) and (h). The superintendent will approve, disapprove, or adjust the application by the first Monday in June.

(AUTH: Sec. 20-3-106 (13) MCA; IMP Sec. 20-9-313 MCA, Sec. 20-9-314)

5. The Office of Public Instruction proposes these rule amendments and adoptions in order to implement Chapter 11, Special Legislative Session, June 1989.

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Mt. 59620, until 5:00 p.m. on February 23, 1990.

7. An official of the Legal Services Division, Office of Public Instruction, has been designated to preside over and conduct the hearing.

Nancy Keenan

Nancy Keenan, Superintendent of Public Instruction

Certified to the Secretary of State on January 15, 1990.

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

In the Matter of Proposed Amendment of Rule 38.5.3332 (5)(a), Regarding Customer Billing	)	NOTICE OF PROPOSED AMENDMENT REGARDING CUSTOMER BILLING
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 26, 1990 the Department of Public Service Regulation proposes to adopt amendments to rule 38.5.3332(5)(a) regarding customer billing.

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

38.5.3332 CUSTOMER BILLING (1) through (4) No changes.

(5) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment of services deregulated by the Montana Telecommunications Act. A telecommunications provider's bill to its customer shall clearly indicate regulated service and distinguish between tariffed and detariffed service. Regulated and not regulated service may appear on the same bill but must be presented as separate line items.

(a) Undesignated partial payments of a bill shall be applied first to regulated local exchange service and then to service other than regulated local exchange service in such percentage as each service provider's charges represent of the total charges to the customer for services other than regulated local exchange service. Regulated service may not be affected by billing disputes over not regulated service.

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-221

3. Rationale: The rule presently requires partial payments be applied first to "regulated service," which could be construed to include regulated local exchange carrier services and AT&T services. Its application with respect to other carriers' services is unclear. The proposed amendment would clarify the rule to express an unambiguous priority for payment of regulated local exchange service. Any excess would then be apportioned on a pro-rata basis.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Charles Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than February 26, 1990.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Charles Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than February 26, 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 amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of telephone subscribers in Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 10, 1990.

Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.12.205 and 42.12.208) relating to Requirements) When Licensing Is Subject to) Lien.)	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of ARM 42.12.205 and 42.12.208 relating to Requirements When Licensing Is Subject to Lien.

TO: All Interested Persons:

1. On February 21, 1990, at 10:00 a.m., a public hearing will be held in the Third Floor Conference Room, Mitchell Building, Helena, Montana, to consider the amendment of ARM 42.12.205, relating to Requirements When License is Subject to Lien.

2. On July 19, 1989, the Department held a public hearing proposing to amend the rules shown in this notice. The notice of that hearing was published on page 828 of the 1989 Montana Administrative Register, issue no. 12. At that hearing oral and written comments were received. The Revenue Oversight Committee reviewed the proposed amendments and made suggestions to the Department. After review of the testimony at the hearing, the written comments and the suggestions from the Revenue Oversight Committee, the Department proposes a substantial revision to the rules as they were proposed at the hearing of July 19, 1989.

3. Those amendments provide as follows:

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN ~~(1) All beverage and beer licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a financing statement or by a copy of the note or mortgage, security agreement, or other lien (in which the license or licenses to be affected are described with common certainty such as inclusion of license number) together with a fee of $10, the name of the mortgagee, secured party, or other lien holder must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder.~~

~~(2) No transfer of any license subject to any mortgage security interest, or other lien shall be approved unless the mortgagee, secured party, or lien holder shall subscribe and acknowledge the instrument of assignment.~~

~~(3) At such time as any mortgage, security interest, or lien affecting any license has been satisfied and fulfilled, the name of the mortgagee, secured party, or lien holder shall be removed upon written request of all parties in interest and upon the payment of a fee of $10, provided, however, that in the case of foreclosure and the transfer of license to the mortgagee, secured party, or lien holder, no such fee is required.~~

(1) Alcoholic beverage licenses may be subject to security interests as defined in 30-9-102(2), MCA, and other valid liens. The perfection of a security interest or other lien in an alcoholic beverage license does not depend upon filing with the department but rather by the statutory requirements which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in 30-9-301(3), MCA, desires to give additional public notice he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security interest and other liens.

(2) The consent of a secured party or a lien creditor is not required by the department to transfer a license. Persons who have filed a claim of a security interest or lien will be given notice by the department of any application for transfer of the license.

(3) An alcoholic beverage license which is subject to a current claim of security interest or lien, a request for which was submitted to the department prior to the effective date of this rule on a form prescribed by the department, and signed by both the licensee and the secured party or lien creditor, shall not be transferred unless consented to in writing by the secured party or lien creditor. If the secured party or lien creditor is deceased, or otherwise unavailable, the transfer may be consented to by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien.

(4) Upon written request to the department, together with a fee of $20, the name of a person claiming a security interest shall be endorsed upon the license and shall be kept on file with the department. All such requests shall be upon forms prescribed by department and signed in each case by the licensee and the person claiming the security interest.

(5) The name of a lien creditor shall not be endorsed upon the license. However, upon written request to the department, the department shall keep the name of the lien creditor on file. The request must be accompanied by sufficient proof of perfection of the lien claimed. No fee is required.

(6) Any notice of security interest or other lien may be deleted from the department's file upon written request of the secured party or lien creditor. If the secured party or lien creditor is deceased, or otherwise unavailable, the written request for deletion may be made by a personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any notice of security interest or other lien may also be deleted from the department's file upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(7) A security interest or other lien may be foreclosed upon in any manner provided by law. For the transfer of a license pursuant to a foreclosure, the department shall accept a foreclosure bill of sale, which specifically refers to the license by number, in lieu of the voluntary assignment of the license by the licensee. In non-judicial foreclosures, the department may require sufficient documentation that the proper foreclosure proceedings were followed. Purchasers of a license at a foreclosure sale must apply to the department for transfer of the license and are subject to all statutes and rules required of any other applicant.

AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-303 & 16-4-404, MCA

42.12.208 TEMPORARY AUTHORITY (1) through (3) remain the same.

(4) ~~In the event liens, attachments, or judgments have attached to the license, the department will not grant an extension beyond the initial 45 days.~~ The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary authority has expired and cannot be extended.

(5) and (6) remain the same.

AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-303 & 16-4-404, MCA

4. The authority to amend these rules is found in 16-1-303, MCA. The amendments to ARM 42.12.205 are proposed for the following reasons:

Subsection (1) clarifies the department's role and responsibility in the perfection of security interests and liens involving alcoholic beverage licenses. There are no statutory requirements that security interests and liens affecting alcoholic beverage licenses be recorded with the department in order to perfect.

Subsection (2) specifically deletes the current provision that secured parties and lien creditors must give their consent in order for the license to be transferred. There is no statutory basis or administrative reason to require such consent. Instead all persons claiming a security interest or lien will be given notice of any applications for transfer.

Subsection (3) provides for a transition from the current provision requiring consent of secured parties and lien holders to any transfer. All current secured parties and lien creditors whose security interest or lien was voluntarily consented to by the licensee will maintain their right to consent prior to transfer.

Subsection (4) clarifies the process for filing a claim of security interest and placing the secured party's name on the license. The $20 fee does not represent a $10 increase in the fee because the current $10 fee required to remove the secured party's name from the license is deleted.

Subsection (5) clarifies the process for filing a claim of lien. The names of lien creditors are not required by statute to be placed on the license. Since the primary administrative cost is associated with physically placing a name on the license, no fee is required for claims of lien.

Subsection (6) clarifies the process for removing claims of

security interest or lien from the license and from the department files.

Subsection (7) clarifies the process for the transfer of a license pursuant to a security interest or lien foreclosure.

The amendment to ARM 42.12.208 deletes that portion of subsection (4) which provides liens, attachments or judgments with ability to prevent temporary operating authority. There are no statutory authority or administrative reason to support such provision.

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

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

no later than February 26, 1990.

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

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 15, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of RULE I through III for Property Tax - Reappraisal of Real Property Dealing with Statistical Procedures and Results.	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of Rules I through III for Property Tax - Reappraisal of Real Property Dealing with Statistical Procedures and Results.

TO: All Interested Persons:

1. On February 21, 1990, at 1:30 p.m., a public hearing will be held in the SRS Auditorium, 111 Sanders, Helena, Montana, to consider the adoption of rules I through III dealing with statistical procedures and results on real property.

2. The proposed new rules are as follows:

RULE I DATA USED TO ESTIMATE SALES ASSESSMENT RATIOS

(1) For purposes of conducting the sales assessment ratio studies required under 15-7-111 MCA, the department will use all valid, arm's length sales recorded during the three years preceding the tax year for which the results are to apply. Sales of properties with sales assessment ratios of less than 50% or greater than 200%; or which have undergone reconstruction, have been remodeled or are newly constructed during the period between the appraisal and sales dates are not considered to be valid sales for purposes of estimating the sales assessment ratios.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111, MCA

RULE II ADJUSTMENT FOR DATE OF SALE AND SALES ASSESSMENT RATIO ESTIMATE (1) In those areas where a statistically significant time trend in sales prices is estimated, all sales prices will be adjusted to a common date of November of the latest year. (e.g. the tax year 1990 sales assessment ratios will be based on sales prices adjusted to a common date of November, 1989). If the estimated time trend is not statistically different from zero at the 95 percent confidence level, then the time trend will be considered statistically insignificant.

(2) Two steps will be used to make these adjustments:

(a) the influence of the date of sale on sales prices will be statistically estimated using regression techniques. These regression equations will be of the following form:

$$\ln RATIO_i = a + \beta t_i + e$$

where: t_i = number of months between sale date and November of the latest year for the ith property. The variable is assigned a value of 0 if the sale was completed in November of the latest year and

progresses backward so that the oldest potential sale (January 1987) receives a value of -34.

$RATIO_i$ = the sales assessment ratio (appraisal/sales price) for the ith property at the time of sale.

(b) the estimated time trend (ß) will be used to adjust sales prices and estimate the sales assessment ratio using the following formulas:

Average Monthly Rate of Change in Sales Prices (G) = $e^{(-\beta)}-1$

Adjusted Sales Price (adj S) = Sales Price * $(1+G)^{-t}$

Sales Assessment Ratio (R) = $\sum_{i=1}^{n}$ appraised / $\sum_{i=1}^{n}$ adj S

where n = the number of valid sales for the area.

(3) For those areas where an insignificant time trend is estimated, ß equal to zero will be used in the steps in (b).

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-7-111, MCA

RULE III PERCENTAGE ADJUSTMENTS FOR THE 1990 TAX YEAR

(1) The following table reflects the sales assessment ratios and the adjustment multipliers (percentage adjustments converted to decimal form) as calculated in conformance with the provisions of 15-7-111 MCA, and Rule II, for each of the areas specified in ARM _____ Designated Areas - Residential.

(a) Residential area results for tax year 1990:

		Sales Assessment Ratio	Adjustment Multipliers
Area No. 1	Carbon County	.9789	1.00
Area No. 2	Rural Cascade County	.9030	1.11
Area No. 2.1	Great Falls Outlying Urban	.8244	1.21
Area No. 2.2	Great Falls East	.6922	1.44
Area No. 2.3	Great Falls West	.8320	1.20
Area No. 3	Rural Gallatin County	.8446	1.18
Area No. 3.1	Bozeman	.8375	1.19
Area No. 4	Jefferson County	.7947	1.26
Area No. 5	Rural Lewis and Clark	1.0180	1.00
Area No. 5.1	Urban Helena	.9637	1.00
Area No. 6	Lincoln County	.9994	1.00
Area No. 7	Madison County	.8708	1.15
Area No. 8	Rural Missoula County	.9068	1.10
Area No. 8.1	Eastern Urban Missoula	.9511	1.00
Area No. 8.2	Central Urban Missoula	.9602	1.00
Area No. 8.3	Western Urban Missoula	.9651	1.00
Area No. 9	Silver Bow County	.8444	1.18
Area No. 10	Stillwater County	.9493	1.00
Area No. 11	Rural Yellowstone County	1.0482	1.00

Area No. 11.1	Billings Lockwood	1.1822	.85
Area No. 11.2	Billings South Side	1.3215	.76
Area No. 11.3	Billings South West Side	1.1348	.88
Area No. 11.4	Billings West Side	1.0973	.91
Area No. 11.5	Billings Heights	1.1167	.90
Area No. 11.6	Laurel	1.0776	.93
Area No. 12	Mineral and Sanders	.9817	1.00
Area No. 13	Flathead, Lake and Ravalli	.9361	1.07
Area No. 13.1	Greater Kalispell	.9177	1.09
Area No. 14	Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Treasure and Wheatland	.9920	1.00
Area No. 15	Beaverhead, Broadwater, Deer Lodge, Granite, Meagher, Park and Powell	.9559	1.00
Area No. 16.1	Blaine, Glacier, Phillips and Roosevelt	.9926	1.00
Area No. 17	Big Horn and Rosebud	.8948	1.12
Area No. 18	Dawson, Fallon, Powder River, Richland and Wibaux	1.1579	.86
Area No. 19	Chouteau, rural Hill, Liberty, Pondera, Teton and Toole	.9963	1.00
Area No. 19.1	Greater Havre	1.0135	1.00
Area No. 20	Carter, rural Custer, Daniels, Garfield, McCone, Prairie, Sheridan and Valley	1.0428	1.00
Area No. 20.1	Miles City	1.1665	.86

(b) Commercial area results for tax year 1990:

		Sales Assessment Ratio	Adjustment Multipliers
Area No. 100	Silver Bow, and Lewis and Clark Counties	.9243	1.08
Area No. 200	Cascade County	1.0218	1.00
Area No. 300	Yellowstone County	1.3543	.74
Area No. 400	Missoula County	.9743	1.00
Area No. 500	Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lake, Lincoln, Meagher, Mineral, Park, Powell, Ravalli and Sanders	.9525	1.00
Area No. 600	Gallatin and Madison	.9728	1.00
Area No. 700	Flathead County	1.0039	1.00
Area No. 800	All other counties	1.1317	.88

(AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111 & 15-7-102, MCA)

3. The 1989 Legislature considered and passed House Bill 703. The new law requires the Department of Revenue to annually review and, if necessary, adjust property values. The determination of adjustments must be made using sales assessment ratio studies.

The law requires the Department to partition the state into residential and commercial areas, and conduct sales assessment ratio studies for each of the areas. The results of the studies are to be used to adjust real property values in the areas to ensure the adjusted appraised values equal current market values. The ratios and the percentage adjustments must, by law, be adopted by administrative rule. These results can't be appealed by property owners. Thus, the hearing on the administrative rule is the property owners' only opportunity to contest the percentage adjustments.

In conducting the sales assessment ratio studies, the Department carefully considered commonly accepted statistical standards and methodologies. Other states who have similar laws also were contacted to review their procedures and methodologies. The methods used to prepare the percentage adjustments are based on commonly accepted statistical procedures for sales assessment ratio studies. Hence, the percentage adjustments comply with the law.

Rule I describes the sales data on which the studies are based. This offers property owners a more complete understanding of what sales are included in the analysis.

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

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

no later than February 23, 1990.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearings.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 15, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE CORRECTION relating to the Proposed Adoption of Rule I through V for Property Tax Reappraisal of Real Property.	NOTICE OF CORRECTION relating to the Proposed Adoption of Rule I through V for Property Tax Reappraisal of Real Property.

TO: All Interested Persons:

PLEASE NOTE: The Department of Revenue's proposed adoption notice published at page 54, 1990 Montana Administrative Register, issue number 1, incorrectly listed the location for the public hearing to be held in Kalispell, Montana.

1. The Public hearing will be held February 1, 1990, at 10:00 a.m., in the ~~Conference Room, Courthouse East~~, JUSTICE CENTER BASEMENT CONFERENCE ROOM, 920 SOUTH MAIN, Kalispell, Montana.

2. All other listings for the public hearings throughout the state will remain as originally published at page 54, 1990 Montana Administrative Register, issue number 1.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 15, 1990.

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 44.10.331 pertaining to limitations on receipts from political committees to legislative candidates	) NOTICE OF PROPOSED AMENDMENT) OF RULE 44.10.331 PERTAINING) TO LIMITATIONS ON RECEIPTS) FROM POLITICAL COMMITTEES) TO LEGISLATIVE CANDIDATES) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 24, 1990, the Commissioner of Political Practices proposes to amend Rule 44.10.331 which pertains to limitations on receipts from political committees by legislative candidates.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES (1) Pursuant to the operation specified in sections 13-37-218 and 15-30-101(8), MCA, limits on total combined monetary contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the house of representatives may receive no more than ~~$800.~~ $900.

(b) a candidate for the state senate may receive no more than ~~$1350.~~ $1500.

(2) These limits apply to total combined monetary receipts for ~~both~~ the entire election cycle ~~primary and general election campaigns~~ of ~~1988.~~ 1990.

AUTH: Section 13-37-114, MCA
IMP: Sections 13-37-218 and 15-30-101(8), MCA

3. Rationale: The proposed amendment is needed to conform the rule to the mandate of section 13-37-218, MCA, requiring that the limitations set out in that statute be adjusted for each election year by the inflation factor as defined in section 15-30-101(8), MCA. The proposed amendment also is needed to clarify that contribution limitations mean total monetary amounts exclusive of in-kind contributions and that the limitations apply to the total campaign period embracing the 1990 elections.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, no later than February 22, 1990.

5. If any person who is directly affected by this proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, then the person must make written request for a public hearing and submit this request, along with any written comments, to the Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, no later than February 22, 1990.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is fewer, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled 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 persons based on 125 contested elections in 1990 with 2 candidates each.

Dalares Collins
Commissioner of Political Practices

Certified to the Secretary of State January 11, 1990.

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

In the matter of the amendment of Rules 46.12.1823 and 46.12.1831 pertaining to hospice services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.1823 AND 46.12.1831 PERTAINING TO HOSPICE SERVICES

TO: All Interested Persons

1. On February 15, 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 46.12.1823 and 46.12.1831 pertaining to hospice services.

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

46.12.1823 HOSPICE, COVERED SERVICES Subsections (1)(a) through (1)(d) remain the same.

(2) For covered hospice services, medicaid will generally pay for the services covered by medicare. The department hereby adopts and incorporates by reference 42 CFR 418.202 through 418.204, as amended through October 1, 1988, except for those provisions of 42 CFR 418.202 which apply to physicians' services, ~~and to drugs and biologicals.~~ The incorporated material sets forth requirements for medicare coverage of hospice services. Copies of 42 CFR 418.202 through 418.204, as amended through October 1, 1988, except for those provisions of 42 CFR 418.202 which apply to physicians' services, ~~and to drugs and biologicals,~~ are available from the Montana Department of Social and Rehabilitation Services, Economic Assistance Division, 111 N. Sanders, P.O. Box 4210, Helena, Montana 59620-4210.

Subsection (2)(a) remains the same.

(b) Outpatient drugs and biologicals not related to the terminal conditions will be reimbursed separately under the provisions of ARM 46.12.701 through 46.12.703.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1831 HOSPICE, ELECTION AND WAIVER OF OTHER BENEFITS Subsections (1) through (3)(b)(i) remain the same.

(ii) services provided by another hospice under arrangements made by the designated hospice; and

(iii) services provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.~~,-and~~

~~(iv)---coverage-of-approved-drugs;~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. This rule change is being made to meet the federal requirements for their approval of the Montana Medicaid State Plan Amendment for Hospice care services.

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 February 22, 1990.

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

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1990.

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

In the matter of the adoption of Rules I and II pertaining to transitional child care	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I AND II PERTAINING TO TRANSITIONAL CHILD CARE

TO: All Interested Persons

1. On February 16, 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 adoption of Rules I and II pertaining to transitional child care.

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

RULE I TRANSITIONAL CHILD CARE, REQUIREMENTS (1) Transitional child care, if necessary to permit a member of the AFDC family to accept or retain employment, and if requested, shall be provided to needy families with dependent children:

(a) under age 13; or

(b) age 13 or older if:

(i) the child is physically or mentally incapable, as determined by a physician or licensed or certified psychologist, of caring for himself; or

(ii) if under the supervision of the court and who would be a dependent child except for the receipt of benefits under supplemental security income under Title XVI or foster care under Title IV-E.

(2) The family is eligible for transitional child care if:

(a) the family ceased to be eligible for AFDC because of either:

(i) the loss of the $30 plus one-third (1/3) disregard at the end of four (4) months;

(ii) the loss of the $30 disregard at the end of eight (8) months; or

(iii) increased income from employment or increased hours of employment.

(b) the family received AFDC in at least three (3) of the six (6) months immediately preceding the first month of ineligibility; and

(c) the family requests transitional child care benefits, provides required information and meets application standards.

(3) Eligibility for transitional child care begins with the first month which the family is ineligible for AFDC, for reasons included in section (2)(a)(i), (ii) or (iii) and continues for a period of 12 consecutive months unless the caretaker relative:

(a) terminates employment without good cause; or
(b) fails to cooperate in establishing payments and enforcing child support obligations.
(4) If the caretaker relative loses a job without good cause, and then finds another job, the family may qualify for the remaining portion of the twelve (12) month eligibility period.
(a) If the family reestablishes eligibility for AFDC, a new twelve month period of eligibility for transitional child care may be established if the family meets the conditions of eligibility found in sections (1) and (2) above.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-701 MCA

RULE II SLIDING FEE SCALE FOR TRANSITIONAL CHILD CARE
(1) The following is a sliding fee scale which indicates the amount the department will contribute towards the family's child care costs:
(a) for the first six (6) months of the transitional child care eligibility period, 90% of established reimbursement rates, for the appropriate type of care (such as day care center, family home or group home) or 90% of actual cost (whichever is less) per child;
(b) for the 7th and 8th months, 75% of established reimbursement rates or 75% of actual cost (whichever is less) per child;
(c) for the 9th and 10th months, 50% of established reimbursement rates or 50% of actual cost (whichever is less) per child; and
(d) for the 11th and 12th months, 25% of established reimbursement rates or 25% of actual cost (whichever is less) per child.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-701 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 program who have been on assistance for 3 of the 6 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 1/3 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.

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 February 22, 1990.

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

Julia E. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1990.

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

In the matter of the amendment of Rule 46.12.3401 pertaining to transitional medicaid coverage	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3401 PERTAINING TO TRANSITIONAL MEDICAID COVERAGE

TO: All Interested Persons

1. On February 16, 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 46.12.3401 pertaining to transitional medicaid coverage.

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

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (1)(b)(iii) remain the same.

(iv) individuals whose AFDC is terminated because of loss of the $30 and one-third (1/3) disregard at the end of four (4) months or the $30 disregard at the end of eight (8) months. These individuals will continue to receive medicaid ~~for nine (9)~~ up to twelve (12) months.

Subsection (1)(b)(v) remains the same.

(c) individuals whose AFDC is terminated ~~solely~~ because of increased income ~~from employment~~ or ~~increased~~ hours ~~of~~ from employment, or because of termination of AFDC as specified in subsection (1)(b)(iv) of this rule. Those individuals will continue to receive medicaid ~~for four (4)~~ up to twelve (12) months, providing:

Subsection (1)(c)(i) remains the same.

(ii) a member of the household continues to work during the ~~four (4)~~ twelve (12) months.

(A) this ~~four (4)~~ twelve (12) month period of continued medicaid coverage begins the month following the date of AFDC closure, or, if AFDC eligibility ends prior to the month of closure, with the first month in which AFDC was erroneously paid.

(B) the transitional medical assistance is not available to any family who received AFDC because of fraud during the last six months prior to the beginning of the transitional period.

Subsections (1)(d) through (4) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 and 53-6-134 MCA

3. This rule amendment is necessary because the state of Montana is mandated by the Federal Family Support Act of 1988 (Welfare Reform) to provide Transitional Medicaid services for twelve months, effective April 1, 1990, to participants of the Aid to Families with Dependent Children (AFDC) program who have received AFDC financial assistance for 3 of the 6 months prior to loss of financial assistance and have lost such assistance because of 1) increased hours of employment (Unemployed Parent program only), 2) increased earned income, or 3) the expiration of the $30 plus 1/3 or $30 disregard.

The federal and state changes were brought about because many participants of the AFDC program decided not to apply for, accept or continue employment because of the loss of medicaid benefits.

The department may, at a later date, further amend rules governing the second six months of the twelve month transition period to be effective October 1, 1990. During this later period, there are options regarding services and other issues which are currently being examined.

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 February 22, 1990.

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

Julia E. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1990.

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

In the matter of the amendment of Rule 46.12.3401 pertaining to medicaid coverage for pregnant women and children up to age six	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3401 PERTAINING TO MEDICAID COVERAGE FOR PREGNANT WOMEN AND CHILDREN UP TO AGE SIX

TO: All Interested Persons

1. On February 16, 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 46.12.3401 pertaining to medicaid coverage for pregnant women and children up to age six.

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

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (1)(f)(i) remain the same.

(g) a pregnant woman whose pregnancy has been verified and whose family income does not exceed ~~100%~~ 133% of the federal poverty guidelines.

Subsections (g)(i) and (h) remain the same.

(i) a~~n infant~~ child through the month of the ~~first~~ sixth birthday whose family income does not exceed ~~100%~~ 133% of the federal poverty guidelines.

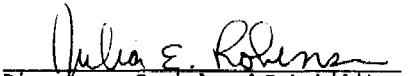
Subsections (j) through (4) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

3. This rule amendment is necessary because the federal Omnibus Reconciliation Act of 1989 (Section 6401 of Public Law 101-239) requires the state of Montana to provide medicaid coverage to: 1) infants and children through the month of the sixth birthday, and 2) pregnant women, whose family income is less than 133% of the federal poverty level.

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 February 22, 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 January 15, 1990.

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

In the matter of the amendment of Rule 46.12.2013 pertaining to reimbursement for certified registered nurse anesthetists	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.2013 PERTAINING TO REIMBURSEMENT FOR CERTIFIED REGISTERED NURSE ANESTHETISTS

TO: All Interested Persons

1. On February 16, 1990, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.2013 pertaining to reimbursement for certified registered nurse anesthetists.

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

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT

Subsections (1) through (3)(a) remain the same.

(i) "Independent employment status" means that a separate federal tax identification number is obtained for the nurse specialist and the billed services are not provided in the course of the nurse anesthetist's employment by or contract with a physician, hospital or ambulatory surgical center.

Subsections (3)(b) through (3)(b)(iii) remain the same.

(c) physicians or ambulatory surgical centers which employ certified registered nurse anesthetists or contract for certified registered nurse anesthetist services, if:

(i) the physician or the ambulatory surgical center obtains from the department or its fiscal agent a provider number for certified registered nurse anesthetist services; and

(ii) the physician or ambulatory surgical center bills for services on form HCFA-1500.

Subsections (4) through (7)(h) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The proposed rule change will allow physicians to bill for certified registered nurse anesthetists services and receive the correct level of Medicaid reimbursement for these services. The proposed change concurs with current Medicare practices and is necessary to avoid overpayment of certified registered nurse anesthetists services which would otherwise be paid at the higher level for physician services and not at the rate established for certified registered nurse anesthetists.

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 February 22, 1990.

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

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1990.

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

In the matter of the amendment of Rule 46.12.4008 pertaining to earned income disregards for institutionalized individuals	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 46.12.4008 PERTAINING TO EARNED INCOME DISREGARDS FOR INSTITUTIONALIZED INDIVIDUALS

TO: All Interested Persons

1. On February 15, 1990, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.4008 pertaining to earned income disregards for institutionalized individuals.

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

46.12.4008 POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE Subsections (1) through (2) remain the same.

(a) Up to $65.00 of gross earned income;

(~~a~~b) $40.00 personal needs allowance for the institutionalized individual;

(~~b~~c) amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including:

Original subsections (2)(b)(i) through (3) remain the same but will be recategorized as (2)(c)(i) through (3).

(a) Up to $65.00 of gross earned income;

(~~a~~b) $40.00 personal needs allowance for the institutionalized individual;

(~~b~~c) the SSI-related medically needy income level for an individual for maintenance of the non-institutionalized spouse only;

Original subsections (3)(c)(i) and (3)(c)(ii) remain the same but will be recategorized as (3)(d)(i) and (3)(d)(ii).

(~~d~~e) An amount for maintenance of a single individual's home for not longer than 6 months, if a physician has certified that the individual is likely to return home within that period. The amount allowed for maintenance of the home is the SSI-related medically needy income level for an individual.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

3. This amendment to ARM 46.12.4008 will allow an earned income disregard for working institutionalized individuals. This change is being made in response to a petition filed by Andree Larose with the Montana Advocacy Program. Allowing earned income disregard will provide incentive for institutionalized individuals to work.

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 February 22, 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 January 15, 1990.

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

In the matter of the adoption of rules regarding the establishment and operations of a surplus lines stamping office, imposition upon transactions of surplus lines insurance of a stamping fee, and compulsory membership in a surplus lines advisory organization	))))))))	NOTICE OF ADOPTION OF ARM 6.6.2801 THROUGH ARM 6.6.2809 (RULES I THROUGH IX) GOVERNING SURPLUS LINES INSURANCE TRANSACTIONS

TO: All Interested Persons.

1. On December 7, 1989, the Department of Insurance published notice of proposed adoption of ARM 6.6.2801 through ARM 6.6.2809 (RULE I through RULE IX) regarding the establishment and operations of a surplus lines stamping office, imposition upon transactions of surplus lines insurance of a stamping fee, and compulsory membership in a surplus lines advisory organization at page 2008 of the 1989 Montana Administrative Register, issue number 23.

2. Oral comment was taken at the public hearing on January 4, 1990, at 9:00 a.m., in Room 270 of the Mitchell Building, 111 Sanders, Helena, Montana. Written comments were received through January 10, 1990.

3. The Department has adopted the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

6.6.2801 (RULE I) PURPOSE AND SCOPE (1) and (2) Adopted as proposed.

6.6.2802 (RULE II) DELEGATION OF AUTHORITY (1) Adopted as proposed.

6.6.2803 (RULE III) EXAMINATION OF SUBMISSIONS (1) and (2) Adopted as proposed.

(3) All such submissions are to be made by licensed Montana surplus lines producers to the association on forms approved by the commissioner, and shall be submitted to the association within ~~7 working days of receipt by the surplus lines producer of the policy~~ 30 working days of the effective date of the policy~~, whichever comes first~~.

(4) Adopted as proposed.

6.6.2804 (RULE IV) COLLECTION OF STAMPING FEE (1) and (2) Adopted as proposed.

(3) Both the base premium and the stamping fee of every policy of surplus lines insurance transacted in this state shall appear on the policy's declarations page and be clearly

labelled as such. For the purposes of collecting this stamping fee only, any inspection fees or placement fees payable separately by the insured in consideration of the policy shall be excluded from calculations of the base premium. Designation of a base premium for purposes of calculating the stamping fee shall not operate to exclude from the definition of "premium" contained in 33-15-102, MCA, any assessment or membership, policy, survey, inspection, service or similar fee or charge in consideration of that surplus lines insurance policy.

(4) Adopted as proposed.

6.6.2805 (RULE V) ORGANIZATION AND DUTIES OF SURPLUS LINES ADVISORY ORGANIZATION (1) (a) through (e) Adopted as proposed.

6.6.2806 (RULE VI) OPERATING EXPENSES (1) Adopted as proposed.

6.6.2807 (RULE VII) MEMBERSHIP IN SURPLUS LINES ADVISORY ORGANIZATION (1) through (3) Adopted as proposed.

6.6.2808 (RULE VIII) PUBLICATION AND DISTRIBUTION (1) through (3) Adopted as proposed.

6.6.2809 (RULE IX) LIST OF KINDS OF INSURANCE PRESUMED UNOBTAINABLE FROM AUTHORIZED INSURERS (1) through (4) Adopted as proposed.

4. At the public hearing which was held on January 4, 1990, three persons testified concerning the proposed adoption of these rules. Two of those, Jacqueline Terrell, representing the American Insurance Association, and Roger McGlenn, representing the Montana Surplus Lines Agents Association and the Independent Insurance Agent's Association of Montana, supported adoption of the rules as proposed. The third person testifying at the hearing, George Jones, representing the Yardley Insurance Agency of Livingston, Montana, also submitted the only written comments prior to the date on which the Department closed the hearing record. The department has considered the comments received from Mr. Jones and responds as follows:

COMMENTS REGARDING ARM 6.6.2803(3) (RULE III(3)): The deadline in the proposed rules for licensed Montana surplus lines producers to file submissions with the association within 7 days of receipt or 30 days of the effective date of the policy, whichever comes first, (1) does not allow those producers sufficient turnaround time, and (2) holds those producers responsible whenever a surplus lines insurer fails to timely deliver a policy. The deadline should allow submissions within 30 days of receipt, period.

RESPONSE: Since the 7-day submission deadline only applies whenever a surplus lines insurer delivers a policy

within 23 days or less after the effective date of the policy, the department deletes the 7-day requirement and thereby extends the submission deadline in those cases. However, the department declines to delete or extend the requirement that submissions be made within 30 days of the effective date of the policy. Section 33-15-412(1), MCA, requires the insurer to deliver every policy "within a reasonable period of time after its issuance," and Section 33-15-411, MCA, allows the insurer to bind a policy orally for 90 days before issuance and, with the written approval of the insurer, for an additional 90 days. Consequently, surplus lines insurance producers can satisfy the rule's submission requirements on the basis of oral confirmations from the insurer as much as 6 months before the insurer issues the policy. The 30-day submission requirement encourages surplus lines insurers to issue policies to Montana policyholders in a timely manner, impresses upon surplus lines producers the limited validity and desirability of binders, and protects the association from unmanageable numbers of year-end submissions.

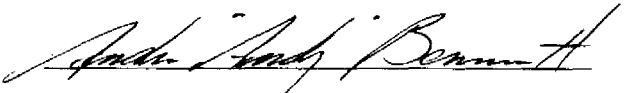
COMMENTS REGARDING ARM 6.6.2804(3) (RULE IV(3)): The proposed method for calculating stamping fees imposes too much additional paperwork on surplus lines producers because (1) those producers must perform the impossible task of determining the portion of a base premium allocated by the insurer to inspection fees and placement fees, and (2) those producers must calculate stamping fees on the basis of one definition of premium and premium taxes on the basis of a second definition of premium.

RESPONSE: Nothing in these rules alters the statutory definition of "premium" contained in 33-15-102, MCA. The department's interpretation of that definition does not depend on these rules.

If inspection fees and placement fees fall within that statutory definition, the department does not expect either the association or surplus lines producers to determine the portion of a base premium allocated by the insurer to inspection fees and placement fees. The department only expects the association and surplus lines producers, in calculating the stamping fee, to exclude inspection fees and placement fees separately charged to the insured. Consequently, the department has amended the rule to clarify that the association shall exclude from its calculation of the stamping fee those inspection fees and placement fees charged separately from the base premium. Thus, any inspection fee or placement fee included within the base premium does not qualify for the exemption and is subject to the stamping fee.

Having chosen to authorize the association, the department finds that the benefits of the proposed stamping fee, particularly to surplus lines producers, far outweigh any potential costs of calculating the stamping fee and the premium tax on different bases. Again, nothing in the proposed rules alters the statutory definition of "premium" contained in 33-15-102, MCA. The department's interpretation

of that definition does not depend on the proposed rules. If inspection fees and placement fees fall outside the statutory definition of premium, then the stamping fee and premium tax will be calculated on the same basis. If, however, inspection fees and placement fees fall within that statutory definition, neither the association nor any surplus lines producer has suggested that the stamping fee should be calculated on the same basis as the premium tax. Moreover, these rules provide that the association is funded not by surplus lines producers but instead by Montana policyholders who obtain surplus lines insurance. Nevertheless, the association will produce for each surplus lines producer, without charge, monthly statements and a detailed annual report complying with the requirements of 33-2-310(2), MCA, thus relieving that producer of considerable paperwork. The department finds that any potential burden on surplus lines producers of calculating stamping fees and premium taxes differently will prove minimal in comparison.



Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 15th day of January, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendment of rules pertaining to prior referral for partial dentures	)))	NOTICE OF AMENDMENT OF 8.17.808 PRIOR REFERRAL FOR PARTIAL DENTURES

TO: All Interested Persons:

1. On August 17, 1989, the Board of Dentistry published a notice of public hearing on the proposed amendment of the above-stated rule at page 1065, 1989 Montana Administrative Register, issue number 15. The hearing was held on September 13, 1989, in Helena, Montana.

2. The Board amended 8.17.808 exactly as proposed.

3. All comments received have been thoroughly considered. Those comments and the board's responses thereto are as follows:

COMMENTS REGARDING 8.17.808: Two proponents of the proposed new rule submitted written comments. No proponents testified at the hearing. Twenty-five opponents of the proposed new rule submitted written comments. Two opponents testified at the hearing. One person identified himself as neither a proponent nor an opponent, but wished to be heard on the matter.

The points made by the proponents are summarized as follows:

1. Prior to the manufacture or insertion of partial dentures, the supporting structures and surrounding teeth must be examined for abnormalities or problems, and any problems discovered must be addressed. Lack of such evaluation or treatment can result in serious, long-term complications for the patient, such as periodontal disease.

2. In most cases, re-shaping or repair of surrounding teeth must be performed in order to properly fit partial dentures. That restorative work cannot be performed by a denturist. If it is not done by a dentist, there is a possibility of serious detriment to the patient's health.

The points made by the opponents are summarized as follows:

1. The extra cost and time required for a referral to a dentist imposes a burden on senior citizens or people on fixed incomes.

2. The proposed interpretive rule is contrary to the intent of Initiative 97 (a primary object of which was to reduce cost). During the drafting of Initiative 97, the phrase "as needed" was added to the initiative language with the intent of authorizing the denturist to make the judgment call as to whether a referral was needed or not.

3. The proposed rule violates citizens' constitutional right to choose who will provide their denture care. If a patient does not wish to see a dentist prior to obtaining partials, he should not have to do so.

4. In the opinion of some, denturists are better trained in the manufacturing and fitting of dentures than dentists. Denturists provide excellent service and products, are professionals, and have their patients' confidence.

5. The proposed rule would require the dentist to work at the denturist's instructions, pursuant to the denturist's model. The dentist would not lawfully be able to provide any care in addition to or consistent with that prescribed by the denturist.

6. In accepting referrals from denturists, the dentist would be subjecting himself to potential liability for improper or substandard work performed by the denturist.

The person wishing to be heard made the following point:

1. Proper preparation of partial dentures mandates x-rays of the mouth. Denturists are not qualified to take or interpret x-rays, so referral to a dentist is a necessary element in the making of partial dentures.

RESPONSE: The Board has considered all the comments, both written and oral. Giving great weight to its obligation to protect the public, the Board concludes that it is in the best interests of the Montana public to require by rule that prior to the preparation or fitting or partial dentures, denturists shall refer all partial denture patients to a dentist for examination, evaluation and/or treatment that the dentist may deem necessary prior to the insertion of the partials. The consequences of insertion of partials into an inadequately prepared, or compromised, mouth may be serious dental problems for the patient. Under the Dental Practice Act, the diagnosis and treatment of diseases or other physical conditions of the mouth is reserved to dentists. The judgement call of whether any work should be done on the patient's mouth prior to the insertion of partial dentures should be left to the dentist.

4. No other comments or testimony were received.

BOARD OF DENTISTRY
ROBERT B. COTNER, PRESIDENT

By: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 15, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SANITARIANS

In the matter of the amendment of rules pertaining to minimum standards for registration certificate	)))	NOTICE OF AMENDMENT OF 8.60.408 PERTAINING TO MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE

TO: All Interested Person:

1. On October 26, 1989, the Board of Sanitarians published a notice of proposed amendment of the above-stated rule at page 1629, Montana Administrative Register, issue number 20.

2. The Board has amended ARM 8.60.408 exactly as proposed.

3. No comments or testimony were received.

BOARD OF SANITARIANS
SAMUEL KALAFAT, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 15, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SANITARIANS

In the matter of the amendment of rules pertaining to fees) NOTICE OF AMENDMENT OF 8.60.413 PERTAINING TO FEES

TO: All Interested Persons:

1. On December 7, 1989, the Board of Sanitarians published a notice of proposed amendment of the above-stated rule at page 2014, Montana Administrative Register, issue number 23.

2. The Board has amended ARM 8.60.413 exactly as proposed.

3. The comments received and Board's responses thereto are as follows:

COMMENT: The authority and implemented sections in the notice of proposed amendment are incorrect.

RESPONSE: The Board complies and lists the correct authority as 37-40-203, MCA, and the implementing as 37-40-304, MCA.

4. No other comments or testimony were received.

BOARD OF SANITARIANS
SAMUEL KALAFAT, CHAIRMAN

BY: _____
MICHAEL L. LETSON, CHAIRMAN
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 15, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA LOTTERY

In the matter of the amendment of rules pertaining to definitions, retailer bonding, duties, revocation or suspension of license, and prizes and the adoption of a new rule pertaining to on-line endorsement	))))))))	NOTICE OF AMENDMENT OF 8.127.203 DEFINITIONS, 8.127.406 RETAILER BONDING, 8.127.408 RETAILER DUTIES, 8.127.611 REVOCATION OR SUSPENSION OF LICENSE, 8.127.1201 PRIZES AND THE ADOPTION OF NEW RULE I (8.127.613) ON-LINE ENDORSEMENT

TO: All Interested Persons:

1. On December 7, 1989, the Montana Lottery published a notice of proposed amendment and adoption of the above-stated rules at page 2017, 1989 Montana Administrative Register, issue number 23.

2. The Lottery amended and adopted the rules exactly as proposed.

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

COMMENT: Staff of the Administrative Code Committee submitted one comment stating the authority section for 8.127.406 should be 23-5-1007, MCA and not 23-5-1016, MCA.
RESPONSE: The Lottery concurred and the proper section has been inserted.
COMMENT: Staff of the Administrative Code Committee also submitted a comment stating that the statements of reasonable necessity were not sufficient.
RESPONSE: The Lottery concurred and is expanding the statements of reasonable necessity for the rules as follows:

With respect to 8.127.203, 8.127.406, 8.127.408, 8.127.611 and 8.127.1201, these rule amendments implement Chapter 408, allowing for multi-state games, as permitted by the 1989 Legislature. With respect to 8.127.613, this new rule implements Chapter 248, allowing for multi-state games, as permitted by the 1989 Legislature.

4. No other comments or testimony were received.

MONTANA LOTTERY
SPENCER HEGSTAD, CHAIRMAN

BY: _____
MICHAEL A. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 15, 1990.

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

In the matter of the amendment of rules 16.26.102 through 16.26.105, 16.26.302, 16.26.401 and 16.26.402	NOTICE OF AMENDMENT OF RULES (Women, Infants & Children)

To: All Interested Persons

1. On December 7, 1989, the department published notice at pages 2022-2026 of the Montana Administrative Register, issue No. 23, to amend rules 16.26.102 through 16.26.105, 16.26.302, 16.26.401 and 16.26.402, which set standards for implementation of the Women, Infants and Children (WIC) Program.

2. The department has amended the rules as proposed with no changes.

3. No comments were received.

DONALD E. PIZZINI, Director

Certified to the Secretary of State January 15, 1990.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of new rules to reject permit applications for consumptive uses and to modify permits for nonconsumptive uses in the Grant Creek Basin	NOTICE OF ADOPTION OF ARM 36.12.1010 DEFINITIONS, ARM 36.12.1011 GRANT CREEK BASIN CLOSURE

To: All Interested Persons.

1. On July 27, 1989, the Department of Natural Resources and Conservation published a notice of public hearing on the proposed new rules to reject permit applications in Grant Creek Basin at page 959 of the 1989 Montana Administrative Register, issue number 14. Notices were also published on July 27, August 3, and August 10, 1989, in the Missoulian. Individual notices were mailed on July 31, 1989, to the Grant Creek water users.

2. On September 22, 1989, at 7:00 p.m., the public hearing was held at the Missoula City Council Chambers, Missoula, Montana. During the hearing or prescribed comment period the department received comments, oral and/or written from the following persons: Reed Marbut of Spokane, Washington and John Longstaff, Elmer Flynn, Vernon White, Randle White, Bill Wheeler, Jr. of Missoula, Montana.

3. The rules are being adopted as proposed except for the following catchphrase: (new material underlined).

" ARM 36.12.1011 GRANT CREEK BASIN CLOSURE (1)... "

4. A summary of the comments received, and the agencies' responses to those comments follow.

GENERAL COMMENTS

COMMENT: Grant Creek has been abused in its lower reaches by adjacent land owners in the industrial zone and by irrigators struggling to get their water in the lower reaches.

RESPONSE: Modification to the Grant Creek stream channel is predominantly controlled by the provisions of the Montana Streambank Preservation Act, Sections 75-7-101 through 75-7-124, MCA (1989). The department's authority on streambank issues is limited to evaluating the adequacy of a permit application's proposed means of diversion, construction and operation under § 85-2-311(1)(c), MCA (1989), criteria for issuance of permit and its authority to grant, change or condition a permit under § 85-2-310, MCA (1989). Therefore, no modification of the rules was made.

RULE II(1) BASIN CLOSURE

COMMENT: Concern was expressed that the state has unilaterally narrowed, from the petition, the time period covered by the closure rules. It was indicated that historically, water may be available above the adjudicated rights in May and June in most years, but there are also a lot of years when flows are not sufficient to satisfy the needs of

the current irrigation users. (Testimony indicated that high water lasted a short period, possibly 30 days, and occurred in the later part of May ending by early June or possibly July 1.

RESPONSE: Report and Water Availability Study on the Petition to Close Grant Creek Basin, Pengelly (August 1984), identifies the adjudicated, decreed, irrigation water right demand in Grant Creek as 71.71 cubic feet per second (cfs) (total demand irrigation flows were 86.33 cfs). Technical Finding Regarding Grant Creek Proposed Basin Closure, Holnbeck (October 1988), identifies 50% exceedance frequency flows above the 71.71 cfs decreed demand in May and June, 98.5 cfs and 94.4 cfs respectively. Testimony substantiated these analysis with their personal observations. Facts show that during May and June of the irrigation season unappropriated waters exist. Therefore, no modification to the rule was made.

COMMENT: Decrees issued in 1914 were not limited to diversion from July through September, they were for a flow of water whenever that flow was available. There is more water decreed from the stream then there is available except during the spring runoff, and in some years there isn't excess water at that time, either.

RESPONSE: Historic water rights are limited by their historic patterns of operation even if the decree is nonspecific to that pattern of use, Quigley v. McIntosh, 110 M.494 (1940). Therefore, evaluation of these water rights, in terms of irrigation, has been limited to the typical irrigation season. The rules proposed recognize both the commentor's views and the department's technical report, in that irrigation demand outstrips available water supply after the runoff period every year. Further, gross irrigation diversion requirements may outstrip 80% exceedance frequency flows in June, Holnbeck (October 1988). However, both comments and technical report indicate that there is water available in excess of irrigation demand during the limited period of spring runoff 50-80% of the time. Therefore, no modification to the closure period to include that irrigation period occurring in late April to June 30, has been made.

COMMENT: The lowest period of water flow in Grant Creek occurs in February and March. During periods of extreme cold the creek flows freeze and ice over to the point where flows are diminished to virtually nothing, causing stockwater to dry up. If there were substantial diversions in the upper end of Grant Creek a great deal of stockwater would not be available.

RESPONSE: A Department report, Pengelly (August 1984), indicated 1) 50.59 cfs of the water of Grant Creek have been "claimed" for stockwater in the Montana statewide general adjudication, and 2) this stockwater usage was assumed to be incidental usage to the 85.63 cfs "claimed" for irrigation. The identified exceedence frequency flows are substantially lower than the claimed stockwater demand. Holnbeck (October 1988), identifies the 50% exceedance level flows at the mouth

of Grant Creek as 8.40 cfs and 9.90 cfs for February and March respectively. January is even lower at 6.1 cfs and September slightly lower at 7.89 cfs. Assessing this demand remains problematic in that testimony specifically addressing stockwater appears to indicate that 1) stockwater demand during the winter months is predominantly an "instream" use, 2) that except for freezing, stockwater is presently available, and 3) a potential problem exists if future development occurs in the upper drainage. Solely on the basis of stockwater demand, evidence does not clearly identify facts necessary to warrant modification of the period of closure July 1 through September 30.

COMMENT: Commentors suggest that Rule II(1) creates the idea that excess water is available for new permits in May and June and supports a belief that the new permit is an economic asset, even though the water can't be used when it is most needed. Further a policing burden is created for the existing appropriators.

RESPONSE: Commentor testimony and departmental reports, Pengelly (August 1984) and Holnbeck (October 1988), both indicate that after spring runoff, water availability conditions are such that throughout July, August and September irrigation demand substantially outstrips availability. During this period, there already exists a "policing" or admeasurement situation administered by the water users or by a water commissioner, as inferred by one commentor. Statutory responsibility for the day to day management of water lies with the individual water users or on their behalf, a court appointed water commissioner. The department has held that unappropriated water includes utilization of the amount of water requested without being called by a senior user, Application for Beneficial Water Use Permit No. 60662 Wayne and Kathleen Hadley (March 1988) and Application for Beneficial Water Use Permit No. 60194 Leonard and Leroy Cobler (March 1988). Additional consumptive appropriations made during the period of May and June would increase the burden on water users however, these appropriations would be prohibited from diverting during the closure period. A new appropriator for a consumptive use who did divert water during the closure period, would be in violation of the permit conditions and subject to possible revocation under § 85-2-314, MCA (1989). Although, closure on a year round basis may lessen these burdens of admeasurement, it does not remove such responsibilities. Further, the intent of the closure rule is to reject or modify new applications where evidence has indicated water may not be available. Therefore no changes in the rule have been made based on the questions of water admeasurement.

COMMENT: Several commentors were questioned as to the significance and use of industrial claims in Grant Creek basin. A variety of somewhat conflicting responses were received including:

a. The industrial user is no longer functioning in the Grant Creek area. So the land, if the water is to be used, would be used agriculturally at this point.

b. Water is diverted at the industrial user's point of diversion but its utilization is not known.

c. A belief that the industrial use is inconsequential. Winter time diversion is impossible since the ditch would freeze and therefore is not an element in winter time depletion of Grant Creek.

d. There wasn't enough water to begin with. With the industrial use inactive, it leaves more water available for the active users, which doesn't necessarily mean that there is enough.

RESPONSE: Summary Item #4 of Technical Findings Regarding Grant Creek - Proposed Basin Closure, Holnbeck (October 1988), indicates that the reasonable period of closure for future appropriation, if both agricultural (irrigation) and industrial claims are considered, is the period from July through March. However, if the industrial claims are considered abandoned (not in use) the period of closure should include the months of July through September. Testimony indicates uncertainty as to the utilization of the industrial water rights but generally agree that the industrial demand does not presently exist. There is some question whether the water is diverted or undiverted or perhaps being utilized for agricultural purposes.

Arguably this period could be extended with resolution of the status of Grant Creek industrial water use. However, the rules discount the industrial demand by identifying the period of closure as July 1 to September 30. The rules do not and cannot, however, declare the industrial claim abandoned.

COMMENT: Commentors provided differing views of future water demand and existing water demand for irrigation including the opinions:

1) that residential development, rather than increasing demand for water use, limits the land available for water use. Since 1983 irrigated meadows have been subdivided and are no longer in use. Before the department allocates any more water right claims, a decision should be made as to how much previous claim owners are using; and

2) the pressures for additional water demand in Grant Creek will increase as the area develops and as more and more property owners want their little bit of water.

RESPONSE: Testimony indicates the land use patterns of the area are changing. However, comments and departmental reports, Pengelly (August 1984) and Holnbeck (October 1988), indicate that demand during July, August and September far exceeds available water supply. Net depletion for the months of June, July and August, as identified by Holnbeck (October 1988), are 26.72 cfs, 35.12 cfs and 24.32 cfs, which is less than the 86.33 cfs demand identified by Pengelly (August 1984). The 50% exceedance frequency flow for these same

months, is 23.8 cfs, 8.4 cfs and 7.9 cfs, respectively, Holnbeck (October 1988). Therefore, although some irrigation demand may be changing along with land use patterns, the demand will still exceed available supply during the late irrigation season. No modification of rule is necessary due to recent changes in irrigation water use patterns.

RULE II(2) BASIN CLOSURE

COMMENT: Future consumptive withdrawals of water in the upper portion of Grant Creek valley could diminish naturally occurring streamflow in February and March. This could be disastrous for the ecology of the streambed itself and in turn take longer for the water to come back when spring arrives.

RESPONSE: There presently exists no water rights or reservations of water for instream flow protection on record in the Grant Creek drainage, Department Central Records and Pengelly (August 1984). Rule II(2) conditions future demands for nonconsumptive uses during the closure period to assure that there is no decrease in the source of supply, but does not restrict the development of a water right or a reservation of water for nonconsumptive uses such as instream flow protection. Further, development of a water right is not prohibited outside the closure period. Since no claims, permits, or instream flow reservations exist for this purpose no modification of the rule is required.

COMMENT: One commentor made a plea for instream flow, indicating that it was important to conserve habitat and streamflow. Further there was a need to increase instream flows so that a permanent flow existed to the river.

RESPONSE: At this time Grant Creek has no instream flow water right protection. To increase water availability for instream purposes would require reallocation of existing water rights. With the enactment of the Water Leasing Study § 85-2-436, MCA (1989) and, Changes in Appropriation Rights § 85-2-402(6), MCA (1989), there has been created a window of opportunity where existing consumptive water rights may be leased for instream flow purposes. The water leasing study is temporary and will terminate June 30, 1993, unless extended or modified by the legislature. This study has the potential of directly addressing increases in water availability for instream flow. However, since § 85-2-319, MCA (1989) does not provide the authority to reallocate existing uses, no modifications of Rule II(2) have been made.

5. No other written or oral comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY: 
DONALD D. MACINTYRE
CHIEF LEGAL COUNSEL

Certified to the Secretary of State, January 15, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (ARM 42.21.314) relating to Property Tax for Co-op Vehicles.	NOTICE OF THE ADOPTION of Rule I (ARM 42.21.314) relating to Property Tax Co-op Vehicles.

TO: All Interested Persons:

1. On November 9, 1989, the Department published notice of the proposed adoption of Rule I (42.21.314) relating to property tax for co-op vehicles at page 1805 of the 1989 Montana Administrative Register, issue no. 21.

2. A Public Hearing was held on December 1, 1989 to consider the proposed adoption of the rule. One comment was received on behalf of the Montana Electric Cooperative Association and the Montana Telephone Cooperative Association. That comment and response are as follows:

COMMENT: These cooperative associations represent the majority of the taxpayers directly affected by the rule.

RESPONSE: With the support of the associations and no comments in opposition to the rule the department will proceed with the adoption of the rule as proposed.

3. Therefore, the rule as proposed is adopted.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 15, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.23.117 relating to a Surtax for Corporations.	NOTICE OF THE AMENDMENT of ARM 42.23.117 relating to a Surtax for Corporations.

TO: All Interested Persons:

1. On December 7, 1989, the Department of Revenue published notice of the proposed amendment of ARM 42.23.117 relating to a surtax for corporations at page 2044 of the 1989 Montana Administrative Register, issue no. 23.

2. No comments were received. Therefore, the Department amends ARM 42.23.117 as proposed.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State 1/15/90.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

Administrative Code Committee

51st Montana Legislature

ROOM 138
STATE CAPITOL
HELENA 59620
(406) 444-3064

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FOR THE COMMITTEE
JOHN MACMASTER
ATTORNEY

December 19, 1989

Mike Cooney
Secretary of State
Room 225, State Capitol
Helena, Montana 59620

Dear Secretary of State Cooney:

At its December 15, 1989, meeting the Administrative Code Committee unanimously voted to send you the committee's objection to ARM 10.55.804 for publication in the ARM adjacent to the rule. The committee's objection is as follows:

> At its December 15, 1989, meeting, the Administrative Code Committee unanimously voted that this rule is invalid because it mandates a gifted and talented children program in each school district. Section 20-7-902(1), MCA, provides that "a school district may identify gifted and talented children and devise programs to serve them". The code section thus makes establishment of the program discretionary, at the choice of the school district. An administrative rule is invalid if it conflicts with a statute. See 2-4-305(5) and (6)(a), MCA. The committee, which has general legislative branch oversight over the adoption and application of administrative rules, has done extensive research into the validity of this rule and considered the matter at numerous committee meetings. This objection is authorized by, and is published pursuant to, 2-4-406, MCA, which also provides that once the objection is published the agency that adopted the rule bears the burden, in any action challenging the legality of the rule, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with sections 2-4-302, 2-4-303, and 2-4-305, MCA. That section also provides that the court may award costs and reasonable attorney fees against the agency if the court finds that the agency failed to meet its burden of proof and that the rule was adopted in arbitrary and capricious disregard for the purposes of the statute that authorized the rule. The Administrative Code Committee's

objection to the rule does not constitute a vote or opinion on the question of the desirability of gifted and talented children programs, but rather, an opinion solely on the issue of whether the rule violates the Montana Administrative Procedure Act found in Title 2, Chapter 4, of the Montana Code Annotated in that the rule makes mandatory what the Montana Code Annotated makes discretionary.

I have discussed this matter and the manner in which the objection can be published and the placement of the objection in the ARM with Kathy Lubke, your Administrative Rules Bureau Chief. You may find her suggestions valuable.

Sincerely yours,

John MacMaster

M5025 9353jmgb

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1989. This table includes those rules adopted during the period October 1, 1989 through December 31, 1989 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 September 30, 1989, 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 1989 and 1990 Montana Administrative Register.

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