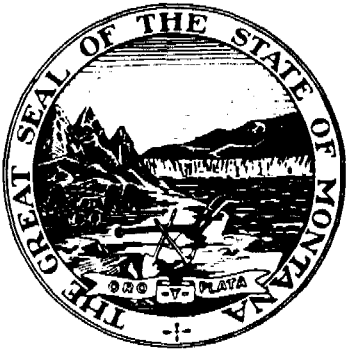
MONTANA ADMINISTRATIVE REGISTER

1990 ISSUE NO. 23
DECEMBER 13, 1990
PAGES 2143-2208



ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

RULE SECTION

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.5.1001 pertaining to day care payments	NOTICE OF PROPOSED AMENDMENT OF RULE 11.5.1001 PERTAINING TO DAY CARE PAYMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 12, 1991, the Department of Family Services proposes to amend Rule 11.5.1001 as it pertains to maximum rates for day care payments.

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

11.5.1001 DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Day care payment will be made for children of recipients who are attending employment related training or in need of protective services day care unless otherwise provided. AFDC recipients who attend ~~WIN~~ JOBS training shall be referred for ~~WIN~~ JOBS related day care.

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

(e) Title IV-A day care payment ~~shall not exceed $207 per month, per child~~ for children in licensed or registered day care facilities shall be in amounts as specified in ARM 11.5.1002.

(f) Remains the same.

(2) Limitations of non-Title IV-A protective services day care:

(a) Remains the same.

(b) Remains the same.

(c) Day care payments shall ~~not exceed $207 per month except in unusual circumstances when additional day care is approved by the department for the protection of the children~~ be in amounts as specified in ARM 11.5.1002.

3. AFDC recipients currently participate in the JOBS program which replaced the WIN program. In regard to the proposed amendments on the maximum payment allowed under Rule 11.5.1001, the maximum is already set out in Rule 11.5.1002. The proposed amendments would eliminate this repetition. In addition, the maximum amounts in Rule 11.5.1001 are already out of date and thus in conflict with the more specific provisions in Rule 11.5.1002. Rather than having to amend Rule 11.5.1001 each time the maximum rate changes in Rule 11.5.1002, the proposed amendments simply provide a cross-reference.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Office of Legal Affairs, Department of Family Services, 48 North

Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than January 10, 1991.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, that person must make written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than January 10, 1991.

6. If the Department of Family Services 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 are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES

TOM L. OLSEN, DIRECTOR

Certified to the Secretary of State, November 29, 1990.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I Document format, filing, service and time; and the amendment of rules 24.9.314 Document format, filing and service and 24.9.315 Time	))))))	NOTICE OF THE PROPOSED ADOPTION OF RULE I, DOCUMENT FORMAT, FILING, SERVICE AND TIME AND THE PROPOSED AMENDMENT OF RULES 24.9.314 DOCUMENT FORMAT, FILING, AND SERVICE AND 24.9.315 TIME

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 18, 1991, the human rights commission proposes to adopt Rule I and proposes to amend ARM 24.9.314 and 24.9.315. Rule I establishes procedures for document format, filing, service and time relating to certain documents filed during investigation and conciliation. ARM 24.9.314 relates to the format, filing and service of documents filed with the commission during contested case proceedings. ARM 24.9.315 relates to calculating the time limits for acts, such as filing documents, required under the contested case rules.

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

RULE I DOCUMENT FORMAT, FILING, SERVICE AND TIME (1) The format of all documents filed with the commission and served on opposing parties pursuant to ARM 24.9.225, 24.9.261, 24.9.262A and 24.9.264 and the procedures and timelines for filing and serving all such documents shall be as provided in ARM 24.9.314 and 24.9.315, unless otherwise provided.
AUTH: 49-2-204, 49-3-106 MCA; IMP: 2-4-106, 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA.

24.9.314 DOCUMENT FORMAT, FILING AND SERVICE (1) through (4) remain the same.

(5) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties shall be made in accordance with the Montana Rules of Civil Procedure and may be made by means of first class mail, postage prepaid, unless the hearing examiner designates another manner of service.

(6) remains the same.
AUTH: 49-2-204, 49-3-106 MCA; IMP: 2-4-106, 49-2-505, 49-3-308 MCA.

24.9.315 TIME. (1) In computing any period of time for acts required by any of the commission's ~~these~~ rules, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the commission offices are closed on such day. In that event, the period runs until the end of the next day when the commission offices are open or mail delivery is available. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in computation. A half holiday will be considered as other days and not as a holiday.

(2) Whenever a party has a right or is required to do some act under any of the commission's ~~these~~ rules within a prescribed period after service of a notice or other paper upon the party and service is by mail, three days shall be added to the prescribed period. The date of service is computed from the date on which service is made by mail, as shown by the certificate of service or date of mailing. Service by mail is complete upon mailing.

(3) Except as to dates fixed by statute and not subject to modification, the hearing examiner or the commission may enlarge the time to perform an act. The time may be enlarged for cause shown, with or without a motion or notice, ~~and with or without good cause~~ when a request for enlargement of time is made prior to the expiration of the time in which the act is ~~was~~ to be performed. If the request is made after the expiration of the specified period in which to act, enlargement may be allowed only upon a showing of excusable neglect in the failure to act. AUTH: 49-2-204, 49-3-106 MCA; IMP: 49-2-505, 49-3-308 MCA.

3. The commission proposes to adopt Rule I to make it clear that the rules for document format, filing and service in contested cases apply also to other proceedings in which a party makes a motion before the commission or requests commission review of an action of the commission staff. The commission proposes to amend ARM 24.9.314 to make it clear that a party filing a document with the commission must serve a copy of the document on opposing parties in accordance with the Montana Rules of Civil Procedure. The commission proposes to amend ARM 24.9.315 to make it clear that the rule for computing time for acts required by the commission's rules applies to acts required by all commission rules and not just the rules concerning contested cases. The commission proposes the other amendments to ARM 24.9.315 to make it clear that service by mail is complete upon mailing and to provide that the hearing examiner or the commission may enlarge the time for a party to perform an act prior to the expiration of the time in which the act is to be performed with or without a motion or notice but only for cause shown.

4. Interested parties may submit their data, views or arguments on the proposed rulemaking in writing to John B. Kuhr,

Chairperson, Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728 no later than January 11, 1991.

5. If a person who is directly affected by the proposed rulemaking 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 written comments to John B. Kuhr, Chairperson, Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728, no later than January 11, 1991.

6. If the agency receives requests for a public hearing on the proposed rulemaking from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption or 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 upon the number of potential parties to cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIRPERSON

By: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Certified to the Secretary of State December 3, 1990.

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

In the matter of the proposed new rules relating to financial assistance available under the wastewater treatment revolving fund act	)))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES I THROUGH X RELATING TO FINANCIAL ASSISTANCE AVAILABLE UNDER THE WASTEWATER TREATMENT REVOLVING FUND ACT

NO PUBLIC HEARING CONTEMPLATED

1. On January 18, 1991, the Board of Natural Resources and Conservation proposes to adopt the above-captioned rules I through X relating to financial assistance available under the Wastewater Treatment Revolving Fund Act.

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

3. The rules, as proposed, provide as follows:

RULE I PURPOSE (1) The purpose of this subchapter is to implement provisions of the Wastewater Treatment Revolving Fund Act pursuant to Title 75, Chapter 5, Part 11; and Sections 601 through 607 of Federal Water Pollution Control Act, 33 U.S.C. 1381 through 1387, as amended.

(2) The act creates a financing mechanism for wastewater treatment projects and certain non-profit source control pollution projects through use of loans and other financial incentives.

(3) The board of health and environmental sciences has adopted rules to assure that the state's Wastewater Treatment Program complies with the Clean Water Act. ARM 16.18.301 et seq.

(4) The act, authorizes the use of the revolving fund to provide several types of financial assistance to municipalities and private concerns. The rules implement one of the authorized forms of financial assistance, a direct loan to municipalities.

AUTH: 75-5-1105, MCA IMP: 75-5-1103, MCA

RULE II DEFINITIONS AND CONSTRUCTION OF RULES In this subchapter, the following terms have the meanings indicated below and are supplemental to the definitions contained in Mont. Code Ann. Title 75, chapter 5, part 11, MCA, sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, as amended, and ARM 16.18.302. Terms used but not defined herein have the meanings proscribed in ARM 16.18.302 or the general resolution. Any conflict between this subchapter and the general resolution shall be resolved in favor of the general resolution.

(1) "Act" means Wastewater Treatment Revolving Fund Act, Mont. Code Ann. Title 75, Chapter 5, Parts 11.

(2) "Administrative expense surcharge" means a surcharge on each loan charged by the department to the municipality expressed as a percentage per annum on the outstanding principal amount of the loan, payable by the municipality on the same dates that payments of principal and interest on the loan are due, calculated in accordance with these rules.

(3) "Administrative fee" means the fee expressed as a percentage of the initial committed amount of the loan retained by the department from the proceeds of the loan at closing, calculated in accordance with these rules.

(4) "Application" means the form of application provided by the department and the department of health which must be completed and submitted in order to request a loan.

(5) "Application fee" means the fee which must accompany a completed application in the amount specified in these rules.

(6) "Binding commitment" means a written agreement between the borrower and the department pursuant to which the department agrees to make a loan to the borrower in a specified principal amount on or before the date specified in the agreement.

(7) "Bond" means an obligation issued by a municipality pursuant to the provisions of Montana law and the Code.

(8) "Bond purchase agreement" means a written agreement between the department and the borrower setting forth the terms and conditions for the purchase of bonds of the borrower by the department.

(9) "Borrower resolution" means a resolution of a municipality authorizing the issuance of bonds.

(10) "Borrower" means a municipality to whom a loan is made.

(11) "Closing" means, with respect to a loan, the date of delivery of the borrower resolution or loan agreement and the borrower obligation to the department.

(12) "Code" means the Internal Revenue code of 1986, as amended.

(13) "Department" means the Montana Department of Natural Resources and Conservation.

(14) "Department of health" means the Montana Department of Health and Environmental Sciences.

(15) "Eligible water pollution control project" means projects that meet the requirements of the federal act and approved by the department of health.

(16) "EPA" means the United States environmental protection agency.

(17) "EPA agreement" means the operating agreement between the state and the EPA.

(18) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(19) "General obligation" means an obligation of a municipality pledging the full faith and credit of and unlimited taxing power of the municipality.

(20) "General resolution" means the general resolution adopted by the board of examiners establishing, implementing, and authorizing the program and the issuance of the state's general obligation wastewater revolving fund program bonds.

(21) "Governing body" means the duly elected or appointed board, council, or commission or other body authorized by law to govern the affairs of the municipality.

(22) "Gross revenues" means with respect to revenue bonds, all revenues derived from the operation of a sewage or wastewater system, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the sewage or wastewater system as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system and all income received from the investment of all moneys on deposit in system accounts.

(23) "Loan" means the loan of money from the department to a municipality from the revolving fund in accordance with the provision of the act and these rules.

(24) "Loan loss reserve surcharge" means a surcharge expressed as percentage per annum on the outstanding principal amount of the loan at the rate determined in these rules and imposed on all borrowers unless waived in accordance with the provisions of these rules.

(25) "Municipality" means a city, town, or other local government unit having authority to own and operate a sewage system or wastewater treatment work.

(26) "Net revenues" means the entire amount of gross revenues of the system less the actual operation and maintenance cost plus additional annual costs of operation and maintenance estimated to be incurred, including sums to be deposited in an operating reserve.

(27) "Outstanding bond" means any bonds currently outstanding payable from gross or net wastewater revenues.

(28) "Program" means the Montana wastewater treatment revolving fund program.

(29) "Project" means the facilities, improvements, and activities financed, refinanced, or the cost of which is being reimbursed to the borrower with the proceeds of the loan.

(30) "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of the bond as set forth in the bond purchase agreement which amount shall be the lesser of (1) 10% of the principal amount of the bond, or (2) maximum annual debt service on the bond in the then current or any future fiscal year.

(31) "Revenue bonds" means bond payable from the revenues (gross or net) derived from the system.

(32) "Sewage system" means any device for collection or conducting sewage, or other waste, to an ultimate disposal point.

(33) "State bonds" means the state's general obligation wastewater treatment revolving fund program bonds.

(34) "State revolving fund" means the wastewater treatment works revolving fund.

(35) "Special assessments" means assessments imposed on a property benefitted from the construction or operation of a project in accordance with Mont. Code Ann. Title 7, chapter 7, part 21, and Mont. Code Ann. Title 7, chapter 7, parts 41 and 42.

(36) "State match account" means the account in which state monies received through the sale of general obligation bonds are deposited.

(37) "System" means the sewage or wastewater system of a municipality and all extension, improvements, and betterments thereof.

(38) "Wastewater" means sewage, industrial waste, other waste, and drainage of sewage from all sources, or any combination thereof.

(39) "Wastewater debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to the system, without regard to the source of payment and security for such debt (i.e., without regard to whether it is general obligation revenue or special assessment debt).

(40) "Wastewater revenue" means revenues (gross or net) received by the municipality from or in connection with the operation of the system.

(41) "Wastewater System" means a public sewage system or other system that collects, transports, treats, or disposes of wastewater.

AUTH: 75-5-1105, MCA IMP: 75-5-1102, MCA

RULE III DIRECT LOANS (1) The department may make a direct loan to a municipality for the purpose of financing or refinancing an eligible water pollution control project. The loan must be evidenced by a bond issued by the governing body of the municipality pursuant to a bond resolution. The bond resolution must be in a form acceptable to the department and contain provisions and covenants appropriate to the type of bond being issued, consistent with the provisions of these rules and any financial or other requirements imposed by the department. The department has adopted a form of bond resolution that is available for review by prospective borrowers. The bond shall be issued in full compliance with all pertinent statutory provisions of Montana law and these rules, and applicable provisions of the code so that the interest thereon is exempt from federal income taxation.

(2) The municipality shall indicate on the application the type of bond it proposes to issue to secure the requested loan.

The municipality shall submit with its application the financial information necessary to enable the department to determine compliance with the provisions of these rules.
AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE IV TYPES OF BONDS; FINANCIAL AND OTHER REQUIREMENTS (1) The following types of bonds will be accepted by the department as evidence of and security for a loan under the program if Montana law authorizes the municipality to issue such bonds to finance the project and the department determines the municipality has the ability to repay the loan. The bonds must be issued in full compliance with the pertinent provisions of the Montana Code Annotated. Notwithstanding compliance with the provisions of state law, the department may determine that it will not approve the loan if it determines that the loan is not likely to be repaid in accordance with its terms or it may impose additional requirements that in its judgment it considers necessary.

(a) General obligation bonds. The department may accept general obligation bonds issued by a municipality, upon the following terms:

(i) the bond will not cause the municipality to exceed its statutory indebtedness limitation; and

(ii) the election authorizing the issuance of the bonds has been conducted by the date of a binding commitment.

(b) Revenue bonds. The department may accept revenue bonds issued by a municipality in accordance with the provisions of Mont. Code Ann. Title 7, chapter 7, part 44, subject to the following terms and conditions:

(i) the bonds must be payable from the revenues of the system on a parity with any outstanding revenue bonds payable from the system. The bond must be secured by a pledge of the net revenues of the system. If bonds are currently outstanding payable from the gross revenues of the system, a gross revenue pledge will be acceptable provided the requirements of (ii)-(iv) are met.

(ii) the payment of principal and interest on the revenue bonds must be secured by a reserve account equal to reserve requirement, such requirement to be met upon the issuance of the bond;

(iii) the municipality shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve, and to produce net revenues during each fiscal year not less than 125% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year;

(iv) the municipality shall agree not to incur any additional debt payable from the revenues of the system, unless the net revenues of the system for the last complete fiscal year

preceding the issuance of such additional bonds have equaled at least 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the municipality, except that if the rates and charges for service provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the municipality estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event may any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the municipality is in default in any of the other provisions;

(v) applications indicating the loan will be evidenced by the issuance of a revenue bond must be accompanied by:

(A) audited financial statements of the system for the last two completed fiscal years;

(B) a certificate as to its current population and number of wastewater system customers and the amount of outstanding wastewater debt;

(C) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

(D) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges and if subject to review by the public service commission, the schedule for hearing before the public service commission.

(vi) notwithstanding the fact that the municipal revenue bond act does not require that the issuance of the bonds be approved by the voters, the department may require the municipality to conduct an election to evidence community support and acceptance of the project or require the bonds be authorized by the electors and issued as general obligation bonds in accordance with Mont. Code Ann. 7-7-4202. A municipality shall conduct an election to evidence community support and acceptance of the project when in the opinion of the department there are projected large rate increases due to the improved facility or the facility is a projected high cost facility.

(c) County water and sewer district bonds. Bonds issued by county water and sewer districts created pursuant to Title 7, chapter 13, parts 22 and 23 will be accepted as evidence of the loan, subject to the following terms and conditions:

(i) The issuance of the bonds must be authorized by the electors of the district as provided in Mont. Code Ann. § 7-13-2321 through 7-13-2328;

(ii) the district shall covenant that it will cause taxes to be levied to meet the district's obligation on any bond issued to the department in the event that the revenues of the system are inadequate therefore in accordance with the provisions of Mont. Code Ann. § 7-13-2302 through 7-13-2310;

(iii) the bonds must be payable from the revenues of the system on a parity with any outstanding revenue bonds payable from the system;

(iv) the district should covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve and to produce net revenues during each fiscal year not less than 115% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year;

(v) the payment of principal and interest on the bonds must be secured by a reserve account equal to the reserve requirement, such requirement to be met upon the issuance of the bond;

(vi) the district shall agree not to incur any additional debt payable from the revenues of the system without the written consent of the department, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the district, except that if the rates and charges for services provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the district estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event shall any such additional bonds be issued and made payable from the

revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the district is in default in any of the other provisions;

(vii) an application by a district must be accompanied by:

(A) audited financial statements of the system for the last two completed fiscal years if there is an existing system;

(B) a map depicting the boundaries of the district;

(C) a certificate as to numbers of persons in the district subject to levy described in (v) and the number of wastewater system customers and the amount of outstanding wastewater debt;

(D) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

(E) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges.

(d) Special improvement district bonds. The department may accept as evidence of the loan, bonds issued by a municipality payable from assessments levied upon real property included within a special improvement district and specially benefited by the project being financed from the proceeds of the loan, upon the following terms and conditions:

(i) The district be created in accordance with the provisions of Title 7, chapter 12, part 21 and/or Title 7, chapter 12, parts 41 and 42, MCA;

(ii) the city or county agree to maintain a revolving fund as authorized by sections 7-12-2181 through 7-12-2186 and 7-12-4221 through 7-12-4225, MCA (respectively, the revolving fund statutes) and covenants to secure the bonds by such revolving fund and agrees to provide funds for the revolving fund by levying such tax or making such loan from the general fund as authorized by the revolving fund statutes;

(iii) five percent (5%) of the principal amount of the loan be deposited into the revolving fund;

(vi) the special improvement district be at least 75% developed. For purposes of this section, a district will be deemed to be 75% developed if 75% of the lots or assessable area in the district has a habitable residential dwelling thereon that is currently occupied or there is a commercial, professional, manufacturing, industrial, or other non-residential facility thereon;

(v) the total amount of special assessment debt including the amounts to be assessed for repayment of the loan against the lots or parcels of land in the district does not exceed 50% of the fair market value of such lots or parcels within the district;

(vi) if the project to be financed from the loan secured by a special assessment bond is not part of a wastewater system currently existing and operated by a municipality and for the normal maintenance and operation of which the municipality is

responsible and provides for such through rates and charges, a special maintenance district must be created at the time the improvement district is created pursuant to the applicable statutes in order to provide for the operation and maintenance of the project.
AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA.

RULE V OTHER TYPES OF BONDS (1) If a municipality wishes to secure a loan by a type of bond not specifically authorized in these rules, the department may accept the bond if the bond is duly authorized and issued in accordance with Montana law as evidenced by an opinion of bond counsel to that effect and the department determines that the terms and conditions of the bond, including the security therefore, are adequate. The department may impose upon the municipality wishing to issue such bonds such terms, conditions, and covenants consistent with the provisions of the law authorizing the issuance of such bonds that it deems necessary to make the bonds creditworthy and thus protect the viability of the program.
AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA.

RULE VI COVENANTS REGARDING FACILITIES FINANCED BY THE LOAN (1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the form of bond resolutions, which are available from the department, and may include the requirements and covenants set forth herein. The bond resolution should be consulted for more specific detail as to each of these covenants.

(2) The borrower must acquire all property rights necessary for the project including rights-of-way and interest in land needed for the construction, operation, and maintenance of the facility; to furnish title insurance, a title opinion, or other documents showing the ownership of the land, mortgages, encumbrances, or other lien defects; and to obtain and record the releases, consents, or subordinations to the property rights for holders of outstanding liens or other instruments as necessary for the construction, operation, and maintenance of the project.

(3) The borrower at all times shall acquire and maintain with respect to the system property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by state law, against such risks and in such amounts, and with such deductible provisions, as are customary in the state in the case of entities of the same size and type as the borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the department as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the borrower and the department 30 days' prior written

notice. The borrower shall give the department prompt notice of each insurance policy it obtains or maintains to comply with this rule and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. The notice shall specifically note any adverse change as being an adverse change.

(4) The department, the department of health, and the EPA and their designated agents have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the borrower for the purpose of inspecting the system or any or all books and records of the borrower relating to the system.

(5) The borrower agrees that for each fiscal year it shall furnish to the department and the department of health, promptly when available:

(a) the preliminary budget for the system, with items for the project shown separately; and

(b) when adopted, the final budget for the system, with items for the project shown separately.

(6) The borrower shall maintain proper and adequate books of record and accounts to be kept showing complete and correct entries of all receipts, disbursements, and other transactions relating to the system, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this resolution, in such reasonable detail as may be determined by the borrower in accordance with generally accepted governmental accounting practice and principles. It will maintain the books on the basis of the same fiscal year as that utilized by the borrower. The borrower shall, within 180 days after the close of each fiscal year, cause to be prepared and supply to the department a financial report with respect to the system for such fiscal year. The report must be prepared at the direction of the financial officer of the borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, must include the following:

(a) a statement in detail of the income and expenditures of the system for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(b) a balance sheet as of the end of the fiscal year;

(c) the number of premises connected to the system at the end of the fiscal year;

(d) the amount on hand in each account of the fund at the end of the fiscal year; and

(e) a list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond.

(7) The borrower shall also have prepared and supplied to the department and the department of health, within 180 days of

the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the system. The audit report shall include an analysis of the borrower's compliance with the provisions of the resolution.

(8) The borrower shall maintain project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by Section 602(b)(9) of the Clean Water Act.

(9) After reasonable notice from the EPA, the borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in section 606(e) of the Clean Water Act.

(10) The borrower shall agree to comply with all conditions and requirements of the Clean Water Act pertaining to the loan and the project.

(11) The borrower shall agree not to sell, transfer, lease, or otherwise encumber the system, any portion of the system, or interest in the system without the prior written consent of the department while the bond resolution is in effect.

(12) The borrower shall agree to secure written approval from the department for any changes or modifications in the project before or during construction as set forth in the bond resolution.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE VII FEES (1) The following fees and charges are established and imposed for participation in the revolving fund program.

(a) Environmental impact statement fees. If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the department or the department of health rules, the applicant shall bear the cost of the environmental impact statement.

(b) Administrative fee. An administrative fee up to 1% of the amount of the committed amount of the loan must be charged each borrower. The department shall retain the administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund administration account as provided in the general resolution. The department and department of health may determine and establish from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) Administrative expense surcharge. Each borrower shall be charged a surcharge on its loan equal to .75% per annum on the outstanding principal amount of the loan, payable on the same dates that payment of principal and interest on the loan

are due. The department and department of health may determine and establish from time to time, the precise amount of the administrative expense surcharge to be charged, based on the projected costs of administering the program and other revenues available to pay such costs. The administration expense surcharge must be deposited in the non-state revolving fund administration account as provided in the general resolution.

(d) Loan loss reserve surcharge. All borrowers unless excepted from the requirement by the department shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, payable on the same dates that payments of principal surcharge must be deposited in the loan loss reserve account established in the general resolution until the loan loss reserve requirement as defined in the general resolution is satisfied at which point it can be deposited in the match account. The department and department of health may determine and establish from time to time, the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account. The borrower shall repay the following items: the loan at an interest rate determined in accordance with rule X, plus the loan loss reserve surcharge plus the administrative expense surcharge. The borrower shall propose rates and charges for all wastewater services necessary to repay the above items. The department and the department of health shall rank all applications. Based on a consideration of social economic factors and measures of financial condition the department and department of health may agree not to impose the loan loss reserve surcharge on the borrower.

AUTH: 75-5-1105 MCA IMP: 75-5-1113, MCA

RULE VIII EVALUATION OF FINANCIAL MATTERS (1) Before the bond purchase agreement is executed, the department shall conduct a review of the applicant's financial status and determine based on the information available as to whether the borrower will be able to repay the loan. This review must include an analysis of all assets and liabilities as well as an analysis of the system's financial capability and may include but not be limited to: condition of the system, number of current and potential users, existing and proposed user fees for systen, existing and proposed user fees for other utilities in the jurisdiction, overlapping indebtedness within the jurisdiction and any other financial or demographic condition relevant to the applicant's ability to repay the loan. If on the review of such material, the department determines that the loan cannot be repaid in accordance with its terms, the application must be denied.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE IX REQUIREMENTS FOR DISBURSING OF LOAN (1) Loans will be disbursed by warrants drawn by the state auditor or wire

transfers authorized by the state treasurer in accordance with the provisions of this rule and the bond resolution. No disbursement of any loan shall be made unless the department has received from the municipality, the following:

(a) a duly adopted and executed bond resolution in a form acceptable to the department;

(b) a duly executed bond in a principal amount equal to the amount of the loan in a form acceptable to the department;

(c) a certificate of an official of the municipality that there is no litigation threatened or pending challenging the municipality's authority to undertake the project, to incur the loan, issue the bonds, collect wastewater charges in a form acceptable to the department;

(d) an opinion of bond counsel acceptable to the department that the bond is a valid and binding obligation of the municipality payable in accordance with its terms and that the interest in a form acceptable to the department thereon is exempt from state and federal income taxation in a form acceptable to the department;

(e) such other closing certificates or documents that the department or bond counsel may require to satisfy requirements of these rules;

(f) if all or part of a loan is being made to refinance a project or reimburse the borrower for the costs of a project paid prior to the closing, evidence, satisfactory to the department and the bond counsel (i) that the acquisition or construction of the project was begun no earlier than March 7, 1985, (ii) of the borrower's title to the project, (iii) of the costs of such project and that such costs have been paid by the borrower, and (iv) if such costs were paid in a previous fiscal year of the borrower, that the borrower intended at the time it incurred such costs to finance them with tax-exempt debt or a loan under a state revolving fund program such as the program;

(g) any certificate of insurance as evidencing insurance coverage as required by these rules and the bond resolution;

(h) a certified copy of the wastewater rate and charge ordinance, and if subject to approval by the public service commission, evidence that such approval has been obtained;

(i) executed copy of the construction contract accompanied by the appropriate performance and payment bonds;

(j) any additional documents required by the department or department of health as a condition to the approval of the loan described in the bond purchase agreement;

(k) a written order signed by a department of health representative authorizing a disbursement;

(l) a copy of the municipality's request for such disbursement on the form prescribed by the department.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE X TERMS OF LOAN AND BONDS (1) Rate of interest. (a) The source of funding of the loans under this program initially will be 83.33% from the EPA and 16.67% from the

proceeds of general obligations bonds issued by the state to provide its matching share. The interest rate on the loan will be determined by the department at the time the loan is made. The rate must be in an amount sufficient to pay the principal of and interest on the bonds issued by the state.

(b) The rate of interest on loans from the program will vary in accordance with the rate on the state's bonds from which the loan is made. The rate of interest on all loans financed from the proceeds of a specific issue of bonds will e the same. The department shall not set a rate of interest higher than the maximum rate permitted by applicable sate and federal law and the EPA agreement.

(2) Loan term and loan repayments. Unless the department otherwise agrees, each loan shall be amortized on a level debt service basis (treating the administrative expense surcharge and loan loss reserve surcharge, if any, as debt service for this purpose) over a term approved by the department, not to exceed 20 years. Interest, administrative expense surcharge and loan loss reserve surcharge, if any, payments on each disbursement of each loan or portion thereof which is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 15 days prior to the next following interest payment date). For construction loans, the department may permit principal amortization to be delayed until as late as the sixth month after completion of the project, provided that whether or not construction is completed the borrower shall begin repaying the principal amount of a disbursement no later than the twenty-fourth month after such disbursement is made provided further, that the payment of interest on each disbursement of a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 15 days prior to the next following interest payment date). In any event, the payment of interest must commence no later than the payment of principal.

(3) The department may also permit the borrower of a construction loan not to pay administrative expense surcharge and loan loss reserve surcharge, if any, on such construction loan until up to five months after the completion of construction of the Project, but such administrative expense surcharge and loan loss reserve surcharge, if any, shall nonetheless accrue and shall be payable not later than the fifth month following completion of construction. Notwithstanding the previous sentence, the borrower shall pay all interest, administrative expense surcharge and loan loss reserve surcharge, if any, accrued on any construction loan disbursement no later than the twenty-fourth month after such disbursement is made and must thereafter make regular payments of interest,

administrative expense surcharge and loan loss reserve surcharge, if any, on such disbursement.
AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

4. The Board is proposing these rules in order to implement a direct loan to municipalities financial assistance mechanism for new or improved wastewater treatment facilities.

5. Interested persons may present their data, views, or arguments concerning the proposed adoption of rules in writing to Anna Miller, Financial Officer, Conservation and Resource Development Division, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301, no later than January 14, 1991.

6. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Anna Miller, Financial Officer, at the above listed address, no later than January 14, 1991.

7. 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 amendments; 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.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

BY: Karen L. Barclay
KAREN L. BARCLAY, DIRECTOR

Certified to the Secretary of State, December 3, 1990.

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

In the matter of the amendment of Rules 46.12.3801, 46.12.3802, 46.12.3803, 46.12.3804, 46.12.3805 and 46.12.3808 pertaining to the medically needy program	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.3801, 46.12.3802, 46.12.3803, 46.12.3804, 46.12.3805 AND 46.12.3808 PERTAINING TO THE MEDICALLY NEEDY PROGRAM

TO: All Interested Persons

1. On January 4, 1991, 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 46.12.3801, 46.12.3802, 46.12.3803, 46.12.3804, 46.12.3805 and 46.12.3808 pertaining to the medically needy program.

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

46.12.3801 ~~GROUPS~~ INDIVIDUALS COVERED, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Medicaid under this subchapter will be provided to the following ~~groups of non-institutionalized AFDC-related families and children:~~

~~(a) I~~individuals who would be receiving AFDC if their income or resources had not exceeded the AFDC income standards found in ARM 46.10.403 or resource standard found in ARM 46.10.406 provided they are also eligible under ARM 46.12.3802 through 46.12.3805:~~

~~(i) This group does not include individuals whose AFDC is terminated solely because of increased income from employment and who, under ARM 46.12.3401(2)(f), are receiving 4 months continued medicaid coverage. However, this group does include such individuals when the 4-month period of continued medicaid coverage expires.~~

~~(ii) This group does not include individuals who are currently ineligible for an AFDC grant because the increase in OASDI benefits they received on July 1, 1972, raised family income over the AFDC income standards found in ARM 46.10.403. These individuals, under ARM 46.12.3401(2)(e) and ARM 46.12.3403(2)(c)(i), have their July 1, 1972, increase in OASDI benefits excluded from unearned income and are determined eligible for medicaid under subchapter 34. However, this group does include such individuals when, after excluding the July 1, 1972, increase in OASDI benefits, other income causes ineligibility for medicaid under subchapter 34. At this juncture, for the purposes of medicaid under the present subchapter, the July 1, 1972, increase in OASDI benefits is no longer excluded from but is counted as unearned income.~~

~~(iii) This group does not include individuals who would be eligible for AFDC had they applied. These individuals are not relevant to medicaid under this subchapter.~~

(~~b~~a) ~~P~~pregnant women ~~who, under ARM 46.12.3401(1)(b)(ii), would be deemed to be receiving AFDC if their income had not exceeded the AFDC income standards found in ARM 46.10.403.~~ whose pregnancy has been verified and whose family income and resources meet the requirements listed in ARM 46.10.403 and 46.10.406;

(~~c~~b) ~~I~~individuals ~~under age 19 who would be eligible for AFDC if they met the school attendance requirements which are found in ARM 46.10.301 and if their income had not exceeded the AFDC income standards found in ARM 46.10.403.~~ who are under the age of 18 or are age 18 and a full-time student in a secondary school and can reasonably be expected to obtain a secondary school diploma or its equivalent in or before the month of their 19th birthday;

(~~d~~c) ~~C~~caretaker relatives as defined in ARM 46.10.302 ~~who have in their care an individual under age 19 who is eligible for medicaid under subsection (d).~~;

(~~e~~d) ~~I~~individuals who failed to meet JOBS requirements found in ARM 46.10.805; ~~would be eligible for AFDC except for failure to meet the WIN participation requirements found in ARM 46.10.308 and income in excess of the AFDC income standards found in ARM 46.10.403.~~

(~~f~~e) ~~I~~individuals under age 21 who are ineligible for medicaid under ARM 46.12.3401~~(1)(b)(iii) and ARM 46.12.3401(3) because of excess income.~~; and

(f) individuals in an AFDC lump sum period of ineligibility.

(2) This group does not include individuals whose AFDC is terminated solely because of increased income from employment and who, under ARM 46.12.3401, are receiving continued medicaid coverage. However, this group may be eligible when the medicaid coverage terminates.

Original subsections (2) through (2)(b) remain the same in text but will be renumbered as subsections (3) through (3)(b).

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

46.12.3802 NON-FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Except as provided in subsection (2), for groups covered under ARM 46.12.3801(1) ~~non-institutionalized AFDC-related families and children~~, the AFDC nonfinancial requirements which are set forth in ARM 46.10.301 through .307, ~~313 and in~~ ARM 46.10.320 and .321 will be used to determine whether:

Subsections (1)(a) and (1)(b) remain the same.

(c) notwithstanding the above and in accordance with ARM 46.12.3801(1)(c), (d), and (e), the school attendance requirement found in ARM 46.10.301 and the ~~WIN~~ JOBS participation

requirements found in ARM 46.10.~~308~~805 through ~~313~~ .847 do not apply to this coverage group.

Subsection (2) remains the same.

(3) Except as provided in subsection (4), for groups under non-institutionalized SSI-related individuals and couples, the SSI nonfinancial requirements which are set forth in 20 CFR, Part 416, Subparts H and I, will be used to determine whether an individual is aged, blind or disabled.

(a) 20 CFR Part 416, Subpart H, contains the SSI criteria for determining age~~, and~~.

(b) 20 CFR Part 416, Subpart I, contains the SSI criteria for determining blindness and disability.

(c) The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts H and I. A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

Subsection (4) remains the same.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) To be eligible for medically needy assistance, SSI and AFDC-related ~~persons and families~~ institutionalized and non-institutionalized recipients must meet:

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

(2) ~~SSI and AFDC-related persons and families~~ Medically needy recipients must pay co-payments as provided for in ARM 46.12.204.

(3) The adjusted income for individuals and families is compared to the following table to determine medically needy assistance eligibility ~~lists the amounts of adjusted income, based on family size, which may be retained for the maintenance of SSI and AFDC-related families~~.

(a) Since families who are not residing in an institution are assumed to have a shelter obligation, an amount for shelter obligation is included in each level.

(b) Institutionalized recipients must also meet the income criteria of ARM 46.12.4008.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	One Month Net Income Level	Two Month Net Income Level	Three Month Net Income Level
1	$ ~~386~~ 400	$ ~~772~~ 800	~~$1,158~~ 1,200
2	400	800	1,200
3	423	846	1,269
4	445	890	1,335
5	519	1,038	1,557
6	594	1,188	1,782

7	669	1,338	2,007
8	744	1,488	2,232
9	780	1,560	2,340
10	814	1,628	2,442
11	846	1,692	2,538
12	876	1,752	2,628
13	904	1,808	2,712
14	930	1,860	2,790
15	954	1,908	2,862
16	976	1,952	2,928

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

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Medically needy ~~I~~income eligibility for ~~both noninstitutionalized~~ SSI and AFDC-related persons and families ~~and children and SSI-related individuals and couples~~ will be computed using a ~~quarterly~~ (~~three~~ one month) prospective budget period.

(a) For groups covered under ARM 46.12.3801, ~~non-institutionalized AFDC-related families and children, quarterly~~ monthly countable income will be determined using the AFDC income requirements, in particular those with respect to prospective budgeting and ~~including those with respect to the~~ earned income disregards, set forth in ARM 46.10.401 through .404 and ARM 46.10.505 through .514.

(i) In the case of ~~stepparent households, the above cited~~ individuals whose income must be deemed when determining eligibility, the AFDC income requirements ~~which pertain to evaluating the stepparent's income~~ contained in ARM 46.10.512 (2) will be used.

(ii) In the case of individuals under age 21 who reside in an in-patient psychiatric facility, only income which belongs to the individual or which is actually contributed to the individual will be used to determine eligibility ~~who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3), the above cited AFDC income requirements will be used to determine quarterly countable income for the individual in his placement. Because the individual is not living with his parent, parental income will be considered only when actually contributed~~.

(iii) To determine the income for the one month prospective period, ~~In the case of~~ individuals or families who, under ARM 46.10.403 (3), are ineligible for AFDC due to the receipt of a lump sum payment, ~~for a number of months on the basis of the net monthly income test, for each month of AFDC ineligibility in the quarterly prospective period~~ an amount equal to the AFDC net monthly income standard for the family size will be imputed to the individual or family and added to other income expected during the ~~quarter in order~~ month to arrive at the total countable income.

(b) For groups covered under ARM 46.12.3801, ~~non-institutionalized SSI-related individuals and couples, quarterly~~ countable income will be determined using the SSI income requirements set forth in 20 CFR, Part 416, Subpart K, as amended through ~~March~~ April 1, ~~1986~~ 1990, which contains the SSI criteria for evaluating income, including the income of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR, Part 416, Subpart K, as amended through ~~March~~ April 1, ~~1986~~ 1990. A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

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

(2) When an otherwise eligible ~~AFDC-related~~ family, ~~or SSI-related~~ individual or couple covered under ARM 46.12.3801 has ~~quarterly~~ countable income equal to or less than the applicable ~~quarterly~~ medically needy income level, the family, individual or couple is eligible for medicaid without an incurment of medical expenses.

(3) When an otherwise eligible individual or family covered under ARM 46.12.3801 has countable income which exceeds the medically needy income level, a medical expense incurment will be required. The incurment is equal to the difference between the countable income and the medically needy income limit for the family size. Eligibility will begin after the incurment requirement has been satisfied and will extend to the end of the budget period. The only medical expenses which may be used to meet the incurment requirement include: ~~If quarterly countable income exceeds the quarterly medically needy income level, eligibility will be based on an incurment requirement. Unpaid medical expenses incurred in and not already used to meet the incurment requirement for the prior prospective period and both paid and unpaid medical expenses incurred in the current prospective period will be deducted from quarterly countable income to reduce such income to the quarterly medically needy income level.~~

(a) ~~Such medical~~ expenses ~~may be~~ incurred by eligible ~~individuals~~ or ~~by~~ ineligible individuals who must be considered in determining family size as defined in ARM 46.12.102(24)~~;~~;

(b) ~~Such medical~~ expenses which are ~~may~~ not ~~be~~ the liability of a third party~~;~~;

(c) expenses which have not been used to meet a prior incurment requirement;

(ed) ~~Such medical~~ expenses will be deducted in the following order:

Original subsections (3)(c)(i) through (3)(c)(iii) remain the same in text but will be renumbered as subsections (3)(d)(i) through (3)(d)(iii).

(e) for the retroactive budget period:

(i) paid and unpaid expenses incurred during the retroactive period; and

(ii) unpaid expenses incurred during the three months preceding the retroactive period;

(f) for the prospective budget period, paid and unpaid expenses incurred during the:

(i) three months preceding the prospective period; and

(ii) the prospective budget period.

(4) ~~Under subsection (3), m~~Medicaid will pay only unpaid ~~bills for services~~ medical expenses:

(a) incurred by an eligible individual in the ~~current~~ retroactive or prospective budget period; ~~and not~~

(b) which have never been used to meet ~~the~~ an incurment requirement;

(~~b~~c) provided for under this chapter; and

(~~c~~d) for which no third party payment is available.

(5) ~~In determining medicaid eligibility, a~~An unborn child is considered a family member when determining medicaid eligibility.

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

46.12.3805 RESOURCE STANDARDS, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) The ~~following table sets forth the resource standards applicable for the~~ medically needy ~~program. To be eligible with respect to resources, the recipient's resources must not exceed the following~~ resource ~~standards.~~ limitations are:

Family Size	~~01/01/86 to 12/31/86~~	~~01/01/87 to 12/31/87~~	~~01/01/88 to 12/31/88~~	~~01/01/89 to 12/31/89~~
1	~~1,700~~	~~1,800~~	~~1,900~~	2,000
2	~~2,550~~	~~2,700~~	~~2,850~~	3,000

(a) one hundred dollars ($100) will be added to the two person standard ~~for two (2)~~ for each additional family member.

~~(a) In the case of individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3), the above cited resource standards will be used to determine whether the individual in his placement is eligible with respect to resources. Because the individual is not living with his parent, parental resources will be considered only when actually contributed.~~

(2) To establish resource eligibility for the medically needy program: ~~For groups under non-institutionalized SSI-related individuals and couples, the SSI resource standards set forth in 20 CFR, Part 416, Subpart L, as amended through March 1, 1986, will be used to determine whether the individual or couple is eligible with respect to resources. 20 CFR Part 416, Subpart L, contains the SSI criteria for evaluating resources, including the resources of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR, Part 416, Subpart L, as amended through~~

~~March 1, 1986. A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.~~

(a) AFDC-related individuals and families will have resources evaluated according to ARM 46.10.406. The value of the resources must not exceed the resource limit under subsection (1) as of the date of application to be eligible for any part of the month. ~~The exemption from the resources requirements relating to financially responsible relatives as described at ARM 46.12.3603(2)(b) applies to individuals applying as medically needy.~~

(b) SSI related individuals will have resources evaluated according to 20 CFR Part 416, Subpart L, as amended through April 1, 1990. The department hereby adopts and incorporates by reference 20 CFR, Part 416, Subpart L, as amended through April 1, 1990. A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, Family Assistance Division, 111 Sanders, P.O. Box 4210, Helena, MT 59604-4210. SSI-related applicants must be within the applicable resource limit under subsection (1) on the first moment of the first day of the coverage month.

(3) The exemption from the resource requirements relating to financially responsible relatives as described at ARM 46.12.3603(2)(b) applies to individuals applying as medically needy. ~~Under subsections (1) and (2), countable resources shall not exceed the applicable standard during any retroactive or prospective month over which income is evaluated.~~

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

46.12.3808 THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED MEDICALLY NEEDY ~~(1) Three month retroactive coverage will be provided to individuals if:~~

~~(a) they received medical services during any of the three months prior to application;~~

~~(b) they are determined financially eligible for medicaid for the three months prior to the month of application.~~

~~(c) Financial eligibility in the retroactive period will be determined in accordance with this subchapter, except that eligibility with respect to income will be determined using:~~

~~(i) actual income received in the three months prior to application;~~

~~(ii) a quarterly medically needy income level for the family size; and~~

~~(iii) if an incurment requirement must be met, only unpaid bills for services which were incurred in the retroactive period and in the three month period immediately prior to the retroactive period and for which no third party payment is available.~~

~~(2) Under subsection (1), medicaid will pay only unpaid bills for services:~~

~~(a) incurred in any of the three retrospective months if the individual was also non-financially eligible for that month;~~

~~(b) not used to meet the incurment requirement;~~

~~(c) provided for in this chapter; and~~

~~(d) for which no third party payment is available.~~

(1) The retroactive period may include any or all of the three months immediately preceding the month of application.

(2) to be eligible for retroactive medically needy coverage, during each month of the retroactive period, SSI and AFDC-related persons and families must meet:

(a) non-financial criteria of ARM 46.12.3802;

(b) resource criteria of ARM 46.12.3805; and

(c) income criteria of ARM 46.12.3804 except that income will be determined using actual income received in the retroactive period.

(3) Medical expenses incurred during the retroactive period will be paid according to ARM 46.12.3804(4).

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

3. The Administrative Rules relating to the Medically Needy program are being amended to clarify the Medically Needy eligibility processing and to reflect the prospective period change from three months to one month. The adoption of a one month prospective budget period is a direct result of Montana's implementation of an automated eligibility computer system (TEAMS). Additionally, because Supplemental Security Income (SSI) will increase effective January 1, 1991, the Medically Needy Income Levels are being adjusted to coincide with the change.

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, MT 59604-4210, no later than January 12, 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. Rollyson

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 3, 1990.

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

In the matter of the adoption of rules implementing a loss cost system in property-casualty lines other than workers' compensation	))))	NOTICE OF ADOPTION OF ARM 6.6.3001 THROUGH ARM 6.6.3007 (RULES I THROUGH VII)

TO: All Interested Persons.

1. On September 27, 1990, the State Auditor and Commissioner of Insurance, Department of Insurance (department) published a notice of public hearing on the proposed adoption of the above-stated rules at page 1806 of the 1990 Montana Administrative Register, issue number 18.

2. Oral comment was taken at the public hearing held on October 30, 1990, at 9:00 a.m. in Room 260 of the Mitchell Building, 126 North Sanders, Helena, Montana. The hearing which was tape-recorded and transcribed, was attended by two persons. Each offered testimony. The department received written comment from four persons. The tape of the hearing, a transcript of that tape, the written comments received, and the report of the hearing officer are on file in the law library of the department.

The comments received generally were in favor of adoption of the proposed rules. Comments to the proposed rules are summarized below.

6.6.3001 RULE I PURPOSE AND SCOPE (1) The purpose of these rules is to set forth procedures for the development and filing ~~for approval~~ of prospective loss cost and supplementary rating information filings of property and casualty ~~insurance~~ rating organizations. These filings can be made in place of full advisory rates. Member or subscriber insurers may ~~not~~ ~~rely/must~~ refer to and incorporate in whole or in part filings made by advisory/rating organizations.

(2) These rules apply to the kinds and lines of insurance described in 33-16-103, MCA, and to insurers and rating organizations making filings under 33-16-203, MCA, except they do not apply to workers' compensation insurance.

COMMENT: Comment was provided recommending that the phrase "for approval" be stricken. The phrase in question suggests that prospective loss costs and supplementary rating information must be filed under a prior approval rating filing system. Montana insurance statutes implement a file and use system rather than a prior approval rating system.

RESPONSE: The department has amended Rule I(2) [ARM 6.6.3001(2)] to delete the phrase "for approval".

COMMENT: The term "rating organizations" should be inserted in place of "insurers" in Rule I(2) [ARM 6.6.3001(2)]. The intent of the rules is to allow insurers to adopt by reference the advisory loss cost rates of a rating organization, of which it is a member. The prospective loss

cost and supplementary information filings are to be done by rating organizations acting on behalf of member or subscriber insurers.

RESPONSE: The term "rating organization" is added in Rule I(2) [ARM 6.6.3001(2)] in lieu of "insurers".

COMMENT: Comments were received suggesting that a period be inserted following the terms "advisory rates" in the fifth line of Rule I(1) [ARM 6.6.3001(1)]. The phrase "but they must" at the end of the fifth line and beginning of the sixth line of Rule I(1) [ARM 6.6.3001(1)] should be stricken. The terms "Member or subscriber groups may" should be inserted in place of the stricken language. The reason is to make explicit the intent of the rule that use of prospective loss cost and supplementary information filings is permissive and not mandatory.

RESPONSE: A period is inserted following "advisory rates" in the fifth line of Rule I(1) [ARM 6.6.3001(1)]. The terms "but they must" at the end of the fifth line and the beginning of the sixth line are stricken, and the terms "Member or subscriber groups may" are inserted in the same place.

COMMENT: Comments were received suggesting that a comma be inserted at the end of Rule I(2) [ARM 6.6.3001(2)] and the phrase "except they do not apply to workers' compensation insurance" added following the comma. The change makes explicit that the purview of the rules does not extend to workers' compensation insurance.

RESPONSE: A comma is inserted at the end of Rule I(2) [ARM 6.6.3001(2)] and the phrase "except they do not apply to workers' compensation insurance" is added immediately following the comma.

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.3002 RULE II AUTHORITY received no comments and is adopted as proposed.

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.3003 RULE III DEFINITIONS (1) "Expenses" means the portion of a rate attributable to costs of loss adjustment, acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.

(2) "Prospective loss costs" means the portion of a rate that does not include provisions for expenses (other than loss adjustment expenses at the discretion of the rating organization) or profit, and which is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

(3) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit and variations in loss experience, prior to any application of individual risk variations based on loss or

expense considerations. The term does not include minimum premiums.

(4) "Rating organization" is an organization licensed pursuant to 33-16-403, MCA.

(5) "Supplementary rating information" means any classification system, territory code or description, manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, rate-related underwriting rule, experience rating plan, statistical plan and any other similar information needed to determine the applicable rate in effect or to be in effect.

(6) "Supporting information" means:

(a) the experience and judgment of the insurer and the experience or data of other insurers or rating organizations relied upon by the insurer;

(b) the interpretation of any statistical data relied upon by the insurer;

(c) descriptions of methods used in making the rates; and

(d) other similar information required by the commissioner to be filed ~~to be filed by the commissioner~~.

COMMENT: Comments were received suggesting that the definition of "expenses" under subsection (1) should include costs of "loss adjustment." Costs of loss adjustment are costs to the insurer of doing business. The recommendation makes explicit the inclusion of these costs in the definition of "expenses."

RESPONSE: Rule III [ARM 6.6.3003] is amended to reflect these suggestions.

COMMENT: A comment was received suggesting that a rating organization should be allowed to include or exclude loss adjustment expenses at its discretion in the termination of its advisory loss cost rates. In some lines of insurance, the loss adjustment expense component varies substantially among insurers. In such cases, it is advantageous to the rating organization and its member insurers to allow each insurer to identify the appropriate loss adjustment expense component, and thereby reflect the operating methods of the insurer.

RESPONSE: Rule III(2) [ARM 6.6.3003(2)] is changed by inserting "at the discretion of the rating organization" after the term "expenses" in Rule III(2) [ARM 6.6.3003(2)] and inserting a closing parenthesis following the inserted phrase.

COMMENT: The phrase "to be filed by the commissioner" should be stricken and "by the commissioner to be filed" inserted in its place in Rule III(6)(d) [ARM 6.6.3003(6)(d)]. This clarifies that it is incumbent upon the rating organization to file information with the commissioner.

RESPONSE: The phrase "to be filed by the commissioner" is stricken and "by the commissioner to be filed" inserted in Rule III(6)(d) [ARM 6.6.3003(6)(d)].

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.3004 RULE IV RATING ORGANIZATION REFERENCE FILINGS OF ADVISORY PROSPECTIVE LOSS COSTS (1) Rating organizations may develop and may make reference filings containing advisory

prospective loss costs. Such filings shall contain the statistical data and supporting information for any calculations or assumptions underlying those prospective loss costs. The reference filings shall be filed pursuant to 33-16-203, MCA.

(2) An insurer may satisfy its obligation to make rate filings by:

(a) becoming a participating insurer of a licensed rating organization which makes reference filings of advisory prospective loss costs;

(c) ~~(b)~~ authorizing the commissioner to accept such reference filings on its behalf; and

(b) ~~(c)~~ filing with the commissioner the information required in [Rule V] 6.6.3005.

(3) The insurer's rates will include the prospective loss costs filed by the rating organization which have been filed pursuant to subsection (1), ~~and~~ the insurer's loss cost adjustments filed in accordance with [Rule V] 6.6.3005 which are in effect for that insurer, and the insurer's expense component.

(4) An insurer's filing of loss cost adjustments becomes effective in the same manner as rates filed under 33-16-203, MCA.

COMMENT: Rule IV(2)(b) [ARM 6.6.3004(2)(b)] should be designated as Rule IV(2)(c) [ARM 6.6.3004(2)(c)]. Rule IV(2)(c) [ARM 6.6.3004(2)(c)] should be designated as Rule IV(2)(b) [ARM 6.6.3004(2)(b)]. These changes would conform the order of the subsections to the order in which the events addressed in those subsections would occur.

RESPONSE: The proposed amendments are enacted thereby making the order of appearance is changed to conform to the new designations.

COMMENT: The term "and" should be stricken from the third line of Rule IV(3) [ARM 6.6.3004(3)] and the period stricken at the end of the same subsection, to be replaced by a comma and followed by the phrase "and the insurer's expense component." The changes would make explicit all the components to the rates of an insurer.

RESPONSE: The term "and" is stricken from the third line of Rule IV(3) [ARM 6.6.3004(3)]. The period at the end of the same subsection is stricken and a comma inserted in its place. The phrase "and the insurer's expense component" is inserted immediately after the comma.

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.3005 RULE V REQUIRED FILING DOCUMENTS (1) All filings by insurers which refer to a reference filing of prospective loss costs made by a rating organization shall include, in the order listed, the following documents:

(a) reference filing adoption form as specified by the commissioner; and

(b) a summary of supporting information.

COMMENT: It was noted that the rule refers to forms. The National Association of Insurance Commissioners (NAIC) has

developed forms for use with these rules. Comment was received recommending that the NAIC forms be made a part of the rules.

RESPONSE: The forms will be specified by the commissioner and will be available to insurers and rating organizations either from the commissioner or referenced in the National Insurance Laws Service. The forms will reflect with those developed by the NAIC. The rule is amended to reflect "as specified by the commissioner."

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.3006 RULE VI RATING ORGANIZATION FILINGS OF ADVISORY SUPPLEMENTARY RATING INFORMATION received no comments and is adopted as proposed.

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.3007 RULE VII EXISTING RATES AND DEVIATIONS REMAIN IN EFFECT UNTIL DISAPPROVED, REPLACED OR MODIFIED received no comments and is adopted as proposed.

AUTH: 33-1-313, MCA IMP: 33-16-201, 33-16-203, MCA

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 29th day of November, 1990

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, of rules pertaining to meetings, examinations, reciprocity, practice requirements, fees, continuing education requirements, approved courses and examinations and permissible drugs for diagnostic pharmaceutical agents, approved course and examination and approved drugs for therapeutic pharmaceutical agents, repeal of rules pertaining to definitions, unprofessional conduct and continuing education; and adoption of a new rule pertaining to unprofessional conduct	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF OPTOMETRY - ARM 8.36.401, 8.36.404 THROUGH 8.36.406, 8.36.409, 8.36.601, 8.36.701, 8.36.704, 8.36.803, 8.36.804, 8.36.402, 8.36.407, 8.36.703, AND 8.36.412

TO: All Interested Persons:

1. On September 13, 1990, the Board of Optometrists published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of optometry at page 1748, 1990 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received.

BOARD OF OPTOMETRISTS
P. L. KATHREIN, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 3, 1990.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

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

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

1. On August 20, 1990, the Montana Board of Milk Control published notice of proposed amendments of rule 8.86.301 (6)(b),(g)-(k),(8)(b) and (f) and (14) as it relates to the class I price formula and wholesale prices and the class III producer price. Notice was published at page 1646 of the 1990 Montana Administrative Register, issue no. 16 as MAR NOTICE 8-86-37.

2. The board has amended the rule exactly as originally proposed except for the following changes: (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

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

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

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

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

The following table will be used in computing distributor prices.

TABLE II

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

FORMULA INDEX	HANDLER INCREMENTAL DEVIATION		
196.70 - 200.94	~~$ 0.14~~	~~$ 0.22~~	$ 0.19
202.00 - 206.24	~~0.15~~	~~0.23~~	0.20
207.30 - 211.54	~~0.16~~	~~0.24~~	0.21
212.60 - 216.84	~~0.17~~	~~0.25~~	0.22
217.90 - 222.14	~~0.18~~	~~0.26~~	0.23
223.20 - 227.44	~~0.19~~	~~0.27~~	0.24
228.50 - 232.74	~~0.20~~	~~0.28~~	0.25
233.80 - 238.04	~~0.21~~	~~0.29~~	0.26
239.10 - 243.34	~~0.22~~	~~0.30~~	0.27
244.40 - 248.64	~~0.23~~	~~0.31~~	0.28
249.70 - 253.94	~~0.24~~	~~0.32~~	0.29
255.00 - 259.24	~~0.25~~	~~0.33~~	0.30
260.30 - 264.54	~~0.26~~	~~0.34~~	0.31
265.60 - 269.84	~~0.27~~	~~0.35~~	0.32
270.90 - 275.14	~~0.28~~	~~0.36~~	0.33
276.20 - 280.44	~~0.29~~	~~0.37~~	0.34
281.50 - 285.74	~~0.30~~	~~0.38~~	0.35
286.80 - 291.04	~~0.31~~	~~0.39~~	0.36
292.10 - 296.34	~~0.32~~	~~0.40~~	0.37
297.40 - 301.64	~~0.33~~	~~0.41~~	0.38
302.70 - 306.94	~~0.34~~	~~0.42~~	0.39
308.00 - 312.24	~~0.35~~	~~0.43~~	0.40
313.30 - 317.54	~~0.36~~	~~0.44~~	0.41
318.60 - 322.84	~~0.37~~	~~0.45~~	0.42
323.90 - 328.14	~~0.38~~	~~0.46~~	0.43

(c)-(g) remains the same.

(h)-(l) remains the same as proposed.

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

(b) Producers who ship in excess of any beneficial use, and that milk is shipped to a different market and classified by statute and rule as class III, shall receive a reduced price for that milk based on calculations in (a) less the calculations as described below. The total cost to a plant for surplus milk that is shipped to a cheese or powder plant is determined by the following formula.

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

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

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

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

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

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

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

(c)-(e) remains the same.

(f) remains the same as proposed.

(9)-(13) remains the same.

(14) Monthly ~~Quarterly~~ price announcements.

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

3. Principal reasons for the adoption of the amendments to the rule were as follows:

a) Montana processors were forced to give part of their margins to retailers because the board previously had reduced retailer margins at a time when retailers were becoming the dominant power in the retail sector of the dairy business. These reductions are the bulk of the pricing problems facing the dairy industry processors today. Pressure by these retailers has created the instability and several processors will be faced with closure unless adequate margins are restored.

b) Levels of profitability are not adequate to provide sufficient returns to the dairy processing industry to encourage newer and more efficient plants and equipment. Unless necessary improvements are made plants will not be efficient and ample supplies of fresh, high quality dairy products to the consuming public will be jeopardized.

c) In states where minimum price regulations are in effect, established minimum prices are typically the actual selling price because the consumer is very price sensitive and will shop in the store with the lowest milk price. This puts severe downward pressure on the price because milk is a traffic builder and it's impossible for the distributor to raise prices above the minimum. Since they cannot raise prices on their own, the board must increase minimum prices.

d) An increase in price is necessary because the processing industry in Montana is not earning profits at a level comparable to industry standards. Unless processors are granted their request, the producers livelihood will be jeopardized as well because of high transportation costs to transport their milk to another plant, and the economic loss the producer will sustain if his distributor is unable to pay.

e) The processor's costs justify an increase in the wholesale and retail prices. The results indicate the dairy processing industry currently is not earning a reasonable profit to which they are entitled to by law.

4. There were no comments received contrary to the proposal. The board however, did not grant the full request because there were mathematical errors in the petitioner's proposal. The board granted the petitioners what their corrected mathematical results justified.

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

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

BY: _____
Andy J. Poole, Deputy Director

Certified to the Secretary of State December 3, 1990.

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

In the matter of the adoption of new and amended rules governing unemployment insurance	))))))	NOTICE OF AMENDMENT AND ADOPTION OF UNEMPLOYMENT INSURANCE RULES, 24.11.411, 24.11.442, 24.11.450 through 24.11.453, 24.11.457, 24.11.467, 24.11.613, 24.11.463 and 24.11.464

TO: All Interested Persons:

1. On October 25, 1990, the Department of Labor and Industry published Notice of Proposed Amendment and Adoption of Unemployment Insurance Rules, Title 24, Chapter 11, Parts 4 and 6 at page 1920 of the 1990 Montana Administrative Register, issue number 20.

2. The rules are amended and adopted as proposed.

3. COMMENT: The Legal Services Division, Legislative Council commented that the rationale for the two (2) new rules should be expanded.

RESPONSE: Pursuant to Title 39 Chapter 51, MCA, the Department of Labor and Industry administers the Unemployment Insurance Laws of Montana. The Department receives federal funds for the administration of the unemployment insurance program. In addition to the requirements of state laws, the Department is bound to conform its administration of the program to federal laws.

Rule I (24.11.464) Benefits Based On Services In Educational Institutions, is being proposed to comply with the U. S. Department of Labor's interpretation of "Reasonable Assurance" in Section 3304(a)(6)(A), Federal Unemployment Tax Act (FUTA). This FUTA section requires States to pay unemployment insurance compensation based on services performed for certain governmental entities and nonprofit organizations on the same terms and conditions as are applicable to other services covered by State Law. Exceptions to this requirement are found in five distinct clauses of Section 3304(a)(6)(a). These exceptions provide that an employee of an educational institution, an educational service agency, and certain other entities will be ineligible to receive unemployment insurance compensation (based on such

educational employment) between academic years or terms and during vacation periods and holiday recesses within terms if the employee has a "reasonable assurance" of performing services in such educational employment in the following year, term or remainder of a term. The provisions creating these exceptions are referred to as the "between and within terms denial" provisions.

Rule II (24.11.463) Lie Detector Tests -- Blood and Urine Testing, is being proposed so that determinations of disqualification for unemployment insurance benefits conform to the requirement of section 39-2-304, MCA.

4. No other comments or testimony were received.

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: December 3, 1990

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment and repeal of the rules regarding reduced reporting requirements	)	NOTICE OF AMENDMENT OF ARM 24.29.802, AND 24.29.2001; THE REPEAL OF ARM 24.29.806; PERTAINING TO REDUCED REPORTING REQUIREMENTS

TO ALL INTERESTED PERSONS:

1. On October 25, 1990, the Department of Labor and Industry published Notice of Public Hearing on the Proposed Amendment of ARM 24.29.802, and 24.29.2001; The Repeal of ARM 24.29.806; Pertaining to Reduced Reporting Requirements, at page 1928 of the 1990 Montana Administrative Register, issue number 20.

2. The Department has amended ARM 24.29.802 and 24.29.2001 and repealed ARM 24.29.806 as proposed.

3. No written comments or testimony were received.

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: December 3, 1990.

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

In the matter of the adoption of Rules I, II, and III, the amendment of Rules 46.12.1401 through 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 through 46.12.1440, 46.12.1450 through 46.12.1455, 46.12.1463, 46.12.1469, 46.12.1475, 46.12.1476, 46.12.1480 through 46.12.1482, and the repeal of 46.12.1410 pertaining to medicaid home and community based program for elderly and physically disabled persons	))	NOTICE OF THE ADOPTION OF RULES I, II, AND III, THE AMENDMENT OF RULES 46.12.1401 THROUGH 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 THROUGH 46.12.1440, 46.12.1450 THROUGH 46.12.1455, 46.12.1463, 46.12.1469, 46.12.1475, 46.12.1476, 46.12.1480 THROUGH 46.12.1482, AND THE REPEAL OF 46.12.1410 PERTAINING TO MEDICAID HOME AND COMMUNITY BASED PROGRAM FOR ELDERLY AND PHYSICALLY DISABLED PERSONS

TO: All Interested Persons

1. On June 14, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I, II, and III, the amendment of Rules 46.12.1401 through 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 through 46.12.1440, 46.12.1450 through 46.12.1455, 46.12.1463, 46.12.1469, 46.12.1475, 46.12.1476, 46.12.1480 through 46.12.1482, and the repeal of 46.12.1410 pertaining to medicaid home and community based program for elderly and physically disabled persons at page 1090 of the 1990 Montana Administrative Register, issue number 11.

2. The Department has amended Rules 46.12.1401, 46.12.1402, 46.12.1404, 46.12.1406 through 46.12.1408 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 through 46.12.1440, 46.12.1450 through 46.12.1455, 46.12.1463, 46.12.1469, 46.12.1475, 46.12.1476 and 46.12.1480 through 46.12.1482 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.1403 PERSONS WHO MAY BE SERVED Subsections (1) through (1)(f) remain as proposed.

(g) are not receiving services ~~from~~ AS AN ENROLLED PARTICIPANT OF a certified hospice program.

Subsections (2) through (2)(c) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1405 GENERAL REQUIREMENTS Subsections (1) through (9) remain as proposed.

(a) be made by the case management team; AND

(b) be based on whether the needs of the recipient can safely be met under this arrangement~~;~~.

~~(c) require the agreement of the service provider that they can and will safely extend services to the recipients and other family members; and~~

~~(d) result in a reduction of medicaid's portion of the service rate by 20%.~~

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

46.12.1409 ~~INDIVIDUAL~~ PLANS OF CARE ~~FOR ELDERLY AND PHYSICALLY DISABLED PERSONS~~ Subsection (1) remains as proposed.

(2) The ~~individual~~ plan of care shall be developed prior to the person's entry into home and community services and be formally reviewed and approved by the department. The plan must be reviewed and, if necessary, revised and approved ~~no later than ninety (90) days from the initial plan of care approval and~~ at intervals of at least six (6) months ~~thereafter~~ beginning with the DATE OF THE initial plan of care ~~approval~~.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

4. The Department has repealed Rule 46.12.1410 as proposed.

5. The Department has adopted [Rule III] 46.12.1419, ENVIRONMENTAL MODIFICATIONS/ADAPTIVE EQUIPMENT, REIMBURSEMENT as proposed.

6. The Department has adopted the following rules as proposed with the following changes:

[RULE I] 46.12.1415 ENVIRONMENTAL MODIFICATIONS/ADAPTIVE EQUIPMENT, DEFINITIONS Subsections (1) and (2) remain as proposed

(a) ADAPTIVE EQUIPMENT MAY INCLUDE MODIFICATIONS TO A PERSONAL VEHICLE WHICH MEET ALL THE REQUIREMENTS OF THIS RULE AND WHICH WILL ALLOW THE RECIPIENT TO BE MORE INDEPENDENT.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

[RULE II] 46.12.1417 ENVIRONMENTAL MODIFICATIONS/ADAPTIVE EQUIPMENT, REQUIREMENTS Subsections (1) through (1)(b) remain as proposed

~~(c) be ordered by a physician;~~

Original subsections (1)(d) and (1)(e) remain as proposed but will be renumbered as subsections (1)(c) and (1)(d).

(~~f~~e) be cost effective; AND

Original subsections (1)(g) through (3) remain as proposed but will be renumbered as subsections (1)(f) through (3).

AUTH: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

7. The Department has thoroughly considered all commentary received:

COMMENT: The Department should pay for automobile modifications under adaptive equipment. An order by a physician for adaptive equipment or environmental modifications to the home is unnecessary.

RESPONSE: The Department agrees and has changed the rule to reflect these comments.

COMMENT: The Department should pay for clothing and additions to a home which would increase the square footage of a home. The proposed language is too restrictive.

RESPONSE: The Department believes these additions to allowable services under adaptive equipment/environmental modification to the home are excessive. Clothing is neither equipment nor a modification to the home. It is not the intent of the program to increase the size of a recipient's home, rather the intent is to modify a recipient's current residence to reasonably accommodate accessibility and safety in the home.

COMMENT: Rule 46.12.1405 (9)(c) and (d) create problems of liability for case management teams and would be difficult or impossible to track or enforce.

RESPONSE: The Department agrees and has deleted (c) and (d) from the rule.

COMMENT: The Department should clarify 46.12.1403 (g), which indicates that a person may not receive HCS benefits if receiving services from a certified hospice program. If an

individual is eligible for services from a certified hospice, but is not subscribing to the benefit, can they receive HCS?

RESPONSE: The Department has changed the wording to state that a person must not be receiving services as an enrolled participant of a certified hospice program. An enrolled participant is subscribing to the benefit. Federal regulations mandate that a person enrolled as a participant in a certified hospice may not receive other Medicaid services, including HCS.

COMMENT: Habilitation services should be better defined.

RESPONSE: The Department did not change the definition of habilitation services. The change made was to delete the specific types of providers. Habilitation services are intended to encompass a wide range of services, based on recipient need as identified in a plan of care, which will assist recipients to acquire, retain and improve the self-help, socialization and adaptive skills necessary to reside successfully in home and community settings. Rather than restrict the type of provider who might be able to help a recipient accomplish these goals, we have chosen to allow case management teams discretion in choosing the type of provider.

COMMENT: The Department should allow a 90 day grace period to initiate services to a recipient at increased cost during the prior authorization process.

RESPONSE: The Department has a responsibility by federal regulation to approve plans of care prior to implementation. We also may not exceed certain cost limits except in specified situations, which are outlined in the rule.

COMMENT: Several individuals commented on changes made to the health and safety provisions of the rule. Some commentors felt stronger emphasis should be placed on criteria which would terminate all home and community services to a recipient if the case management team felt the recipient's health and safety needs could not be met. Other commentors felt rule language should not restrict the choice-making of competent program recipients.

RESPONSE: The Department has previously interpreted federal regulations regarding health and safety issues in a more restrictive manner than the regulations require. The result of the more restrictive language has sometimes been termination of all home and community services even though the recip-

ient was capable of making choices and taking risks. The purpose of this program is to help people remain independent, including making choices about the care they need, but program restrictions often take those choices away. The rule has been changed to define "assurance of health and safety needs" in the same manner it is defined in federal regulations. This change ensures a recipient's right to be informed of the services available and to choose which services are necessary for his safety and well-being, while staying within the federal regulations.

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 29, 1990.

VOLUME NO. 43 OPINION NO. 77

CLERKS - Authority in clerk of court to employ deputy or raise deputy's salary without approval of county commissioners;
CLERKS - Deputy clerk of court acting on behalf of clerk;
COUNTIES - Authority in clerk of court to employ deputy or raise deputy's salary without approval of county commissioners;
COUNTY COMMISSIONERS - Authority in clerk of court to employ deputy or raise deputy's salary without approval of county commissioners;
COUNTY GOVERNMENT - Authority in clerk of court to employ deputy or raise deputy's salary without approval of county commissioners;
COURTS, DISTRICT - Authority in clerk of court to employ deputy or raise deputy's salary without approval of county commissioners;
SALARIES - Authority in clerk of court to employ deputy or raise deputy's salary without approval of county commissioners;
SALARIES - Authority of county commissioners to set salaries for part-time and full-time service in same position;
MONTANA CODE ANNOTATED - Sections 3-5-404, 7-4-2401 to 7-4-2403, 7-4-2505, 7-6-2315, 7-6-2318, 7-6-2320, 7-6-2324, 7-6-2325, 7-6-2413, 7-31-2101;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 23 (1987), 40 Op. Att'y Gen. No. 61 (1984), 39 Op. Att'y Gen. No. 78 (1981), 38 Op. Att'y Gen No. 35 (1979).

HELD: 1. A deputy clerk of the district court may act on behalf of the clerk of the district court in performing the clerk's duties and obligations.

2. The clerk of the district court may not employ a chief deputy or deputy without authorization of the board of county commissioners.

3. The clerk of the district court may not raise the salary of a deputy without authorization in the county budget and without specific approval of the county commissioners.

4. The board of county commissioners may calculate the years of service of a county employee based upon the number of hours worked rather than the number of calendar years in part-time service.

November 29, 1990

Robert Slomski
Sanders County Attorney
P.O. Box 519
Thompson Falls MT 59873

Dear Mr. Slomski:

You have requested my opinion on the following questions relating to the employment of a part-time deputy clerk of court:

1. Is a deputy clerk of the district court authorized to perform all of the duties and functions of the clerk of the district court in the clerk's absence, or is only a "chief deputy" authorized to perform those duties and functions?

2. Is the clerk of the district court entitled as a matter of law to employ a chief deputy, or any deputies, without authorization of the board of county commissioners and without funds approved by the board of county commissioners in the final county budget?

3. Is the clerk of the district court authorized to promote her part-time deputy clerk to chief deputy clerk at the higher pay scale without authorization in the county budget as approved by the county commissioners and without consent of the board of county commissioners?

4. In determining length of service, is the board of county commissioners required to calculate years of service according to the actual number of years that an employee has been employed, or may length of service be calculated for part-time employees by calculating 2,080 work hours as one year of service?

You state that the clerk of the district court of Sanders County has employed a deputy clerk who works approximately one-third time. The budget for fiscal year 1989-1990, as approved by the board of county commissioners of Sanders County, authorizes this position of deputy clerk for 700 hours per year at a salary of $6.41 per hour. While the deputy clerk has six years of part-time experience in her job, the total number of hours that she has actually worked represents more than one year of full-time service (2,080 hours) but less than two years of full-time service.

You further state that the clerk of court had to leave on short notice because of a family emergency and that before leaving she appointed her deputy as "chief deputy." Under the county personnel plan a chief deputy full-time position earns $8.15 per hour. The personnel plan does not provide for a part-time chief deputy position. Further, the budget approved by the county commissioners does not authorize a chief deputy position.

These facts have given rise to several questions. You ask first whether a deputy clerk may perform all of the functions and duties of the clerk of court or whether only the "chief deputy" may perform these duties in the clerk's absence. This question is readily answered by application of section 7-4-2403, MCA, which provides:

> Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes his deputies.

Under the plain meaning of this section, any deputy clerk of the district court may perform any of the duties of the clerk. The Montana Supreme Court has also held that "[a] deputy is one who is 'appointed as the substitute of another, and empowered to act for him, in his name, or on his behalf.'" State v. Board of County Commissioners, 121 Mont. 162, 191 P.2d 670 (1948). Any deputy, by definition, may act on behalf of the clerk of court in performing any of the clerk's duties.

Your second question is analogous to the question addressed by the Montana Supreme Court in Spotorno v. Board of County Commissioners of Lewis and Clark County, 212 Mont. 253, 687 P.2d 720 (1984). In Spotorno, the county auditor sought to compel the board of commissioners to fund a deputy auditor position. The Court held that the board of county commissioners, not the auditor, had the authority to determine the number of deputy auditors. In making that determination, the Court interpreted sections 7-4-2401, 7-4-2402, and 7-6-2413, MCA. Section 7-4-2401, MCA, describes the general authority of a county officer to appoint deputies and provides:

> (1) Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.
>
> (2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk.

Under this section, it would seem that the authority to appoint deputies rests solely within the discretion of the county officer. Section 7-4-2402, MCA, however, vests the board of county commissioners with the authority to "fix and determine the number of county deputy officers," providing:

> The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than

> the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

§ 7-4-2402, MCA.

In Spotorno, the Supreme Court compared these two statutes and stated:

> The question becomes one of whether the auditor can appoint one deputy and therefore compel the county commissioner to fund that position. We conclude, based on section 7-4-2402, supra, that the auditor has no authority to appoint a deputy; rather, the authority to determine the number of deputies resides with the county commissioners. [Emphasis added.]

687 P.2d at 722. Similarly, in Reep v. Board of County Commissioners, 191 Mont. 162, 622 P.2d 685 (1981), the county auditor sought a writ of mandate to compel the county commissioners to provide for a larger staff in the county's final budget. The Supreme Court in Reep reversed the lower court's issuance of the writ, holding that although the commissioners were required to fund the office of the county auditor so that she could adequately perform her duties at the minimum level imposed by the Legislature, there was no factual basis for concluding that those duties were not being adequately performed. The Court reviewed the minimum duties of the auditor and remanded the matter for a finding on the question of whether the commissioners had sufficiently funded the position in accordance with those minimum duties. Also, in Butler v. Local 2033 American Federation of State Employees, 186 Mont. 28, 606 P.2d 141 (1980), the Supreme Court held that the sheriff could not promote his officers to a higher position without the approval of the board of county commissioners. These cases all recognize that the county commissioners have the authority through their control of the county budget to restrict the number of deputies hired by elected officials.

A former Attorney General's Opinion reached a similar conclusion. In 42 Op. Att'y Gen. No. 23 at 91 (1987), the question was whether the county assessor or the board of county commissioners could establish the number of deputies in the county assessor's office. The inherent conflict of sections 7-4-2401(1) and 7-4-2402, MCA, was recognized. The opinion, however, relied upon Spotorno and a careful reading of section 7-4-2401, MCA. The opinion analyzed section 16-2409, R.C.M. 1947, the predecessor of section 7-4-2401, MCA, which provided:

> Every county and township officer, except county commissioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no

> compensation or salary must be allowed any deputy except as provided in this code. [Emphasis added.]

§ 16-2409, R.C.M. 1947. The underlined portion highlights two words that were deleted in recodification. In construing this section, the opinion stated:

> [T]he language in the Revised Codes of Montana is a stronger statement that while the officeholder may appoint deputies, those deputies are not to receive compensation except as allowed by the board of county commissioners. That is the way the statute has been interpreted by several court decisions.

42 Op. Att'y Gen. No. 23 at 95. The opinion then cites and analyzes State v. Cockrell, 131 Mont. 254, 309 P.2d 316 (1957), and State v. Crouch, 70 Mont. 551, 227 P. 818 (1924), both of which recognize that a county attorney may appoint as many deputies as necessary providing that no compensation or salary is allowed therefor.

In analyzing these cases and sections 7-4-2401 and 7-4-2402, MCA, the opinion concluded:

> The implication of both of the court decisions referred to above is that where the deputy is to receive a salary, the statute granting an officeholder unlimited discretion to appoint deputies does not apply. That is also a reasonable interpretation of section 7-4-2401, MCA, particularly when the previous language of section 16-2409, R.C.M. 1947, is considered. Since the number of deputy assessors is not otherwise established by statute, there is no legal duty for the board of county commissioners to fund the position of deputy assessor. Consequently, the number of deputies resides with the county commissioners. [Emphasis added.]

42 Op. Att'y Gen. No. 23 at 95-96. Given these prior interpretations of the role of the county commissioners in establishing the county budget and thereby establishing the number of deputy positions available to an elected official, I must conclude that the clerk of the district court may not employ a chief deputy or any other deputies without authorization of the board of county commissioners.

Your third question is whether the clerk of court may promote a deputy clerk to chief deputy at a higher pay scale without authorization from the board of county commissioners. The authority to establish a final budget for county officers rests solely with the board of county commissioners. §§ 7-6-2315, 7-6-2318, 7-6-2320, MCA. In setting the budget, the county clerk and recorder must set out with specificity each salary for each position. Section 7-6-2314(2)(a), MCA, provides:

> Within the general class of salaries and wages, each salary shall be set forth separately, together with the title or position of the recipient.

Once the final budget is established, it is considered the final appropriation of expenditures of the county and, except as provided in sections 3-5-404 (provision of minimum facilities for district court), 7-6-2325 (allowable transfers within expenditure classes), and 7-31-2101 (authorization to transfer funds when governor has declared a state of emergency), MCA, each county official "shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively." § 7-6-2324, MCA. It is notable that in section 7-6-2325, MCA, which allows transfers of appropriations within particular classifications, the Legislature has imposed the restriction that "no salary shall be increased above the amount appropriated therefor." Thus, once the final budget is adopted, salaries for particular positions are fixed and are not subject to change by individual county officials during the budget period.

Moreover, the board of county commissioners has the specific and exclusive authority to establish the compensation allowed to a deputy clerk of the district court. Section 7-4-2505(1), MCA, provides in pertinent part:

> Subject to subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:
>
> ....
>
> (b) clerk of the district court[.]

Subsection (2) of this section places the only restriction upon the commissioners' authority to set salaries and provides only that the salary of a deputy may not be more than 90 percent of the salary of the officer under whom the deputy is serving. Based on these sections, it is fundamental to the structure of county government that the board of county commissioners has discretion to fix the salaries of deputies and assistants in the county offices within the statutory limits.

In State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 184 P.2d 998 (1947), a deputy clerk of court was hired at $150 per month with the approval of the county commissioners. The clerk later recommended to the commissioners that his deputy receive a raise to $160 per month, but the commissioners did not follow the recommendation and kept the salary at $150 per month. The commissioners had previously budgeted the position at $2,040 for the fiscal year (or $170 per month). The district court concluded that because the commissioners had budgeted for the higher salary, they could not preclude the raise. The Supreme

Court reversed, however, holding that "the board of county commissioners has discretion to fix the salary of deputies and assistants in the county offices within the bounds set by the legislature." 184 P.2d at 1001. The Court reasoned that the particular action of the commissioners to keep the salary at $150 per month, recorded solely in an entry in the commission journal, was sufficient to limit the general action of the commissioners in setting the county budget with its higher salary. Thus, the authority of the county commissioners to set salaries is so extensive that a particular decision of the board may, in effect, limit the higher budgeted amount.

This authority of the board to limit salaries generally provided for in the budget was recognized in 38 Op. Att'y Gen No. 35 at 121 (1979), in which it was held:

> In budgeting, the board of county commissioners may fix and determine specific wages and salaries pursuant to their authority to adjust and revise line item amounts in the proposed budget. Where the board has previously adopted a resolution limiting yearly salary and wage increases to five percent and they adopt a general budget for salaries and wages without individual salary detail, salary and wage increases of county employees cannot exceed the five percent amount established. A county official has no authority to increase his or her employees[']individual salaries in excess of the five percent limitation even if greater increases could be accommodated within the total salary budget established for that office.

Even if the county budget allows for an increase in salaries, only the county commissioners may authorize such an increase through the budgetary process. The clerk of court is, therefore, not authorized to promote a deputy clerk to a chief deputy position at a higher pay scale without authorization in the county budget and approval of the board of county commissioners.

Your last question concerns the manner in which the board of county commissioners may calculate rate of pay based upon years of service. In particular, you ask whether the board may use 2,080 work hours as one year of service rather than the number of calendar years in service. You state that your question arises from application of longevity requirements in the county personnel plan. The use of 2,080 hours for determining years of service and longevity status is well established. In 39 Op. Att'y Gen. No. 78 at 299 (1982), the term "year of service" was construed to mean 2,080 hours of employment for purposes of computing longevity payments for deputy sheriffs. Similarly, the phrase "years of employee's employment" was determined to mean 2,080 hours of service for state employees in 40 Op. Att'y Gen. No. 61 at 245 (1984). The rationale in these opinions is

equally applicable here. As such, the board may compute length of service for part-time employees by using 2,080 hours as equal to one year of service and need not compute length of service on a calendar year basis.

THEREFORE, IT IS MY OPINION:

1. A deputy clerk of the district court may act on behalf of the clerk of the district court in performing the clerk's duties and obligations.

2. The clerk of the district court may not employ a chief deputy or deputy without authorization of the board of county commissioners.

3. The clerk of the district court may not raise the salary of a deputy without authorization in the county budget and without specific approval of the county commissioners.

4. The board of county commissioners may calculate the years of service of a county employee based upon the number of hours worked rather than the number of calendar years in part-time service.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known 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 lists 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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1990. This table includes those rules adopted during the period October 1, 1990 through December 31, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

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

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

ADMINISTRATION, Department of, Title 2

2.5.118 and other rules - Procuring Supplies and Services, p. 1419, 1770
2.13.102 Use of the State Telecommunication Systems, p. 397, 928
2.21.1812 Exempt Compensatory Time, p. 2062
2.21.3712 and other rule - Recruitment and Selection - Reduction in Force, p. 1417, 1949
2.21.3802 and other rules - Probation - Recruitment and Selection - Reduction in Work Force, p. 1982

(Public Employees' Retirement Board)

2.43.302 and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999, 994A, 1250

(State Compensation Mutual Insurance Fund)

I-XI Organization and Board Meetings of the State Fund - Establishment of Premium Rates, p. 1975

AGRICULTURE, Department of, Title 4

I-LV Montana Agricultural Chemical Ground Water Protection Act, p. 1199
4.12.1012 Grain Fee Schedule, p. 1056, 1452
4.12.1229 Fees Established for Service Samples, p. 2065

STATE AUDITOR, Title 6

I-VI Pricing of Noncompetitive or Volatile Lines, p. 2067
I-VII Loss Cost System in Property-Casualty Lines Other Than Workers' Compensation, p. 1806
I-XVI Long-term Care Insurance, p. 1990
6.6.505 and other rules - Medicare Supplement Insurance Minimum Standards, p. 1285, 1688

COMMERCE, Department of, Title 8

(Board of Athletics)
8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Boxing Contestants - Physical Examination - Ring - Equipment - Disciplinary Actions - Relationship of Managers and Boxers, p. 765, 1143
(Board of Chiropractors)
I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification - Fees of Impairment Evaluators, p. 399, 1453
8.12.601 and other rules - License Applications - Educational Standards for Licensure - License Examinations - Temporary Permits - Renewals - Unprofessional Conduct Standards - Reinstatement of Licenses - Disciplinary Actions - Recordation of License - Definitions, p. 258, 995
8.12.601 and other rules - Applications - Renewal Fees - Consolidating Board Fees Into One Central Rule, p. 769, 1144, 1251
(Board of Cosmetologists)
8.14.401 and other rules - Practice of Cosmetology - Booth Rentals, p. 658, 1145
8.14.605 and other rule - Curriculum for Students - Fees, p. 1644
(Board of Hearing Aid Dispensers)
8.20.401 Traineeship Requirements and Standards, p. 771, 1698
(Board of Horse Racing)
8.22.304 and other rules - Rules of Procedure - General Rules - Occupational Licenses - General Conduct of Racing - Medication - Corrupt Practices and Penalties - Trifecta Wagering, p. 1500, 1891
(Board of Landscape Architects)
8.24.409 Fee Schedule, p. 1062, 1699
(Board of Medical Examiners)
8.28.402 and other rules - Definitions - Reinstatement - Hearings and Proceedings - Temporary Certificate - Annual Registration and Fees - Approval of Schools - Requirements for Licensure - Application for Licensure - Fees - Supervision of Licensees - Application for Examination - Reciprocity, p. 867, 1700

(Board of Optometrists)
8.36.401 and other rules - Meetings - Examinations - Reciprocity - Practice Requirements - Fees - Continuing Education Requirements - Approved Courses and Examinations - Permissible Drugs for Diagnostic Pharmaceutical Agents - Approved Drugs for Therapeutic Pharmaceutical Agents - Definitions - Unprofessional Conduct - Continuing Education, p. 1748

(Board of Physical Therapy Examiners)
8.42.402 and other rules - Examinations - Fees, Temporary Licenses - Licensure by Endorsement - Exemptions - Foreign-Trained Applicants - Lists, p. 1810, 2107

(Board of Professional Engineers and Land Surveyors)
8.48.902 and other rules - Statements of Competency - Land Surveyor Nonresident Practice in Montana - Avoidance of Improper Solicitation of Professional Employment, p. 773, 1701

(Board of Private Security Patrolmen and Investigators)
8.50.423 and other rules - Definitions - Temporary Employment - Applications - Examinations - Insurance - Applicant Fingerprint Check - Fees - Probationary Private Investigators - Firearms Safety Tests - Unprofessional Standards - Record Keeping - Code of Ethics for Licensees - Code of Ethics for Employees - Powers of Arrest and Initial Procedures - Disciplinary Action, p. 776, 1772, 1825

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

(Board of Social Work Examiners and Professional Counselors)
8.61.404 and other rule - Fees, p. 424, 1171

(Building Codes Bureau)
8.70.101 and other rules - Incorporation by Reference of Codes and Standards, p. 1756, 2041

(Board of Passenger Tramway Safety)
8.72.101 and other rules - Organization of the Board of Passenger Tramway Safety, p. 1438, 1774

(Financial Division)
I-III Application Procedure for Authorization to Engage In the Escrow Business - Change of Ownership in Escrow Businesses - Examination of Escrow Business, p. 2015, 929
8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 981
8.80.401 and other Rule - Credit Unions - Supervisory and Examination Fees - Credit Unions - Limited Income Persons - Definitions, p. 1872

(Board of Milk Control)
8.86.301 Class I Price Formula and Wholesale Prices - Class

FAMILY SERVICES, Department of, Title 11

11.5.605 Access to Department Records, p. 693, 1001
11.16.170 and other rules - Prohibition of Day Care in Adult Foster Homes - Licensing of Adult Foster Homes - Department Services Provided to and Procedures for Adult Foster Homes, p. 2017

FISH, WILDLIFE AND PARKS, Department of, Title 12

I Restricting Public Access and Fishing Near Montana Power Company Dams - Specifically Hebgen Dam, p. 878, 1548
I-XII River Restoration Program, p. 795, 1461
12.6.801 and other rule - Restricting Public Access and Fishing Near Montana Power Company Dams - Boating Closures, p. 449, 1003
12.6.901 Establishing A No-Wake Restriction on Tongue River Reservoir, p. 1918
12.6.901 Establishing A No-Wake Restriction Below Canyon Ferry Dam, p. 983, 1460
12.6.901 Water Safety Regulations, p. 452, 1002
12.9.205 Manhattan Game Preserve, p. 985, 1704

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I-X Water Quality - Procedures and Criteria Regarding Wastewater Treatment Works Revolving Fund, p. 799, 879, 1468
I-XI Handicapped Children's Services Program - Eligibility for the Handicapped Children's Program - Payment for Services - Covered Conditions - Record-Keeping - Application Procedure - Advisory Committee - Fair Hearings, p. 881, 1256
I-XVI Emergency Adoption - Underground Storage Tanks - Licensing of Underground Tank Installers - Permitting of Underground Tank Installations and Closures, p. 1549
I-XL Underground Storage Tanks - Licensing of Underground Tank Installers and Inspectors - Permitting of Underground Tank Installations and Closures and Repeal of Emergency Rules I - XVI, p. 1512, 1827
16.8.921 and other rules - Air Quality - Definitions - Ambient Air Increments - Air Quality Limitations - Exclusions from Increment Consumption - Class I Variances - General, p. 805, 880, 1322
16.8.1302 and other rule - Air Quality - Open Burning of Scrap Creosote-Treated Railroad Ties Under Appropriate Circumstances, Through the Use of a Permit Program p. 1815
16.32.308 and other rule - Retention of Medical Records by Health Care Facilities, p. 891, 1259
16.44.202 and other rules - Solid and Hazardous Waste - Mining Waste Exclusion, p. 1536

STATE LANDS, Department of, Title 26

I Prohibiting Export of Logs Harvested From State Lands and Requiring Purchasers of State Timber to Enter Into Non-export Agreements Implementing the Forest Resources Conservation and Shortage Relief Act of 1990, p. 1875, 2116

I-III and other rules - Sale of Cabinsites and Homesites on State Trust Lands, p. 1660

I-III Investigation of Complaints Regarding Effects of Hard Rock Blasting Operations, p. 458, 1470

I-VII Authorizing Permitting and Requiring Reclamation of Hard Rock Mills and Operations that Reprocess Tailings and Waste Rock from Previous Operations, p. 267, 1008

I-X Bonding Small Miner Placer and Dredge Operations - Permit Requirements for Small Miner Cyanide Ore Processing Operations, p. 2092

I-XII and other rules - Disposal of Underground Coal Mine Waste - Individual Civil Penalties - Restrictions on Financial Interests of Multiple Interest Advisory Boards, p. 1309, 366A, 936

26.4.724 and other rules - Revegetation of Land Disturbed by Coal and Uranium Mining Operations, p. 1885, 964

LIVESTOCK, Department of, Title 32

32.2.401 Fee Change for Recording of Brands, p. 1823

32.18.101 Hot Iron Brands Required, p. 1315, 1950

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Reject or Modify Permit Applications for Consumptive Uses and to Condition Permits for Nonconsumptive Uses in Walker Creek Basin, p. 893, 1837

36.12.1010 and other rules - Definitions - Grant Creek and Rock Creek Basin Closures, p. 1542, 1896

(Board of Water Well Contractors)

I Mandatory Training, p. 896, 1568

PUBLIC SERVICE REGULATION, Department of, Title 38

I Proper Accounting Treatment for Acceptable Conservation Expenditures, p. 1931

I-III and other rules - Motor Carrier Status - Class C Contracts - Class C Pickups and Delivery - Contract and Common Carrier Distinction - Insurance - Transfer of Authority - Carrier Rate Increases - Vehicle Identification, p. 467, 1263

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46.12.4101 Qualified Medicare Beneficiaries Eligibility for Medicaid, p. 910, 1336
46.13.106 and other rules - Low Income Energy Assistance Program (LIEAP), P. 1672, 1959
46.14.402 Low Income Weatherization Assistance Program, p. 1669, 1960
46.15.102 Refugee Cash Assistance, p. 1766, 1961
46.30.801 and other rules - Child Support Medical Support Enforcement, p. 2102