MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to SB 226 providing for annual retirement benefit adjustments for Montana residents.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES RELATING TO THE RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD

TO: All Interested Persons.

1. On November 7, 1991 at 9:00 am in the Board Meeting Room of the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing will be held to consider the adoption of new rules relating to the annual retirement benefit adjustment provided by SB 226, enacted by the 52nd Legislature.

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

3. The proposed rules provide as follows:

RULE I. ELIGIBILITY FOR ANNUAL BENEFIT ADJUSTMENT (1) All benefit recipients who maintain Montana as their official residence and who received at least one monthly benefit payment on or before December 31 of the preceding calendar year will be eligible for the annual benefit adjustment.

(2) For purposes of determining residence, eligible recipients will include those retirees (or their surviving beneficiaries receiving a continuing monthly benefit) who:

(a) have continuously maintained a Montana mailing address both for payment of monthly benefits and for mailing annual tax information statements since their effective retirement date, or

(b) have provided acceptable certification of Montana residency to the board.

(3) On or before February 1, certification forms will be mailed to those recipients who must provide certification of residency. The certification forms will be mailed to the current information address on file with the Public Employees' Retirement Division. Recipients not returning satisfactory certifications of Montana residency by March 1, will be considered non-residents for the purpose of determining eligibility for the annual adjustment to be made during May of that year. (Auth: Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203, and 19-13-202, MCA; IMP, 19-15-102, MCA)

RULE II. CALCULATION OF ANNUAL BENEFIT ADJUSTMENT (1) The annual adjustment payment made to each eligible recipient of a monthly benefit paid by a retirement system administered by the Public Employees' Retirement Board shall be a percentage of the gross annual benefit received by the eligible retiree (or their

eligible beneficiary) in the prior calendar year.

(2) Each calendar year, a uniform adjustment rate factor will be determined for each retirement system. The percentage rate for each system will be the ratio between:

(a) the total annual benefits paid to all eligible recipients in the prior calendar year, and

(b) the amount appropriated for the retirement adjustment in the current calendar year.

(3) The annual adjustment shall be made to each eligible recipient in a single payment which will be combined with the regular May benefit. (May benefits are mailed on or before the last business day of May.) (Auth: Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203, and 19-13-202, MCA; IMP, 19-15-102, MCA)

RULE III. ANNUAL CERTIFICATION OF PENSION PAYMENTS BY LOCAL POLICE AND FIRE PENSION PLANS (1) On or before January 1 of each year, the public employees' retirement division will mail annual certification forms to the boards of local police and fire pension systems operating under the authority of either Title 19, Chapter 10 or Chapter 11, MCA.

(2) The gross amount of public pension benefits paid during the preceding calendar year must be certified to the retirement division on or before February 15 of each year.

(3) Any local pension board not meeting an annual deadline will not have their pension payments included in the board's certification to the state treasurer of total annual pension payments made during the preceding calendar year, nor will the plan receive an allocation of the general fund appropriation made for the purpose of providing annual pension adjustments to eligible instate resident retirees during that year. (Auth: 19-15-101, MCA; IMP, 19-15-101, MCA)

4. Rules I, II and III are proposed to be adopted in order to implement the provisions of SB 226 enacted by the 1991 Legislature and codified at 19-15-101 and 102, MCA. The rules provide a process for certifying the eligibility of individual benefit recipients for annual retirement adjustment payments; for calculating the uniform adjustment rate to be paid eligible recipients of each system; and for gathering information from local police and fire pension funds required to certify total annual benefits to the state treasurer each year.

The eligibility date of December 31 set in Rule I is necessarily set by administrative rule since the statute is silent. Without a deadline for determining eligibility for each annual benefit adjustment, the statute would be impossible to administer. In addition, the rule identifies how residency will be determined and the process whereby individual recipients may certify such residence to the board.

Rule II is specifically mandated in 19-15-102, MCA which specifies that "The methodology that the public employees'

retirement board and the teachers' retirement board use to calculate adjustments for systems administered by them must be adopted by rule pursuant to Title 2, chapter 4."

Rule III provides the mechanism whereby the Public Employees' Retirement Board will obtain and certify information about local police and fire pension payments to the state treasurer by the annual April 1 deadline required in 19-15-101, MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted no later than November 14, 1991 to the:

Public Employees Retirement Board
1712 Ninth Avenue,
Helena, Montana 59620

6. Paul Smietanka, legal counsel for the Department of Administration, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on sections 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203, 19-13-202, and 19-15-101, MCA, and the rules implement the retirement benefit provisions of SB 226 enacted by the 1991 Legislature, codified at 19-15-101 and 102, MCA.

By: Robert L. Batista
Robert Batista, President
Public Employees' Retirement Board

Certified to the Secretary of State on October 7, 1991.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to scoring and number and duration of rounds and the adoption of a new rule pertaining to mouthpieces	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.8.3103 POINT SYSTEM - SCORING AND 8.8.3104 NUMBER AND DURATION OF ROUNDS AND ADOPTION OF A NEW RULE PERTAINING TO MOUTHPIECES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 16, 1991, the Board of Athletics proposes to amend and adopt the above-stated rules.

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

"8.8.3103 POINT SYSTEM - SCORING (1) through (2) will remain the same.

~~(3) If mouthpiece goes out, it will be replaced and one point will be deducted from the score.~~

(4) through (6) will remain the same but will be renumbered (3) through (5)."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: A new rule (below) is being proposed regarding mouthpieces to provide for the protection and safety of a boxer's mouth.

"8.8.3104 NUMBER AND DURATION OF ROUNDS (1) No match shall be more than ~~15~~ 12 rounds in length and such rounds shall be of not more than 3 minutes' duration, with 1 minute intermission between rounds."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: There are no 15 round fights anymore in professional boxing. This proposed amendment would bring the Montana regulations in line with other state and international boxing regulations.

3. The proposed new rule will read as follows:

"I MOUTHPIECE (1) Each participant shall wear an individually fitted mouthpiece. The mouthpiece shall be in the participant's mouth at all times during a round. A backup mouthpiece shall be available in case of loss or damage.

(2) If the mouthpiece was ejected as a result of natural fight action, no points will be deducted. The referee shall wait until the flurry during which the mouthpiece was ejected has subsided. He shall then take time out, direct the

participant whose mouthpiece remains in place to retire to a neutral corner, take the participant to his own corner, direct that the mouthpiece be rinsed and replaced in the participant's mouth and then order the fight to immediately continue.

(3) If the referee believes that the participant spit out or allowed the mouthpiece to fall out of his mouth he shall:

(a) Upon the first occurrence, wait until the initial flurry subsides, proceed as in (2) above and warn the participant that a point will be deducted if he subsequently spits out or allows the mouthpiece to fall out of his mouth;

(b) Upon the second occurrence, wait until the initial flurry subsides, proceed as in (2), warn the participant that he will be disqualified if he subsequently spits out or allows the mouthpiece to fall out of his mouth. The referee shall direct each judge to deduct a point from the participant's score and shall notify the board representative; and

(c) Upon the third occurrence, disqualify the participant who spit out or allowed his mouthpiece to fall out of his mouth. The opponent shall be declared the winner due to disqualification. The board representative shall immediately advise the promoter that the purse of such participant shall be forfeited and paid over to the board."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This rule is being proposed to clarify the use of the mouthpiece and intentional ejections by a boxer. If a boxer is very tired, he will spit the mouthpiece out in order to breathe and gain a rest. Disqualification may save the boxer from injury if the fight were to continue if he is having problems. These rules meet the major boxing organization rules and international regulations in professional boxing.

3. Interested persons may present their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Athletics, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than November 14, 1991.

4. If a person who is directly affected by the proposed amendments and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Athletics, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than November 14, 1991.

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

percent of those persons directly affected has been determined to be 4 based on the 40 licensees in Montana.

BOARD OF ATHLETICS
ANDY VANDOLAH, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 7, 1991.

**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 producer prices; and Rules 8.86.503, 8.86.504, and 8.86.505 as they relate to the quota rules.	**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF RULES 8.86.301-PRICING RULES RULES 8.86.503, 8.86.504 AND 8.86.505-QUOTA RULES** **DOCKET #10-91**

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

1. On Tuesday, November 19, 1991, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the Dept. of Transportation Auditorium, 2701 Prospect Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of Ted Doney, Esq. on behalf of the Montana Dairymen's Association (MDA).

3. The petition proposes to amend ARM 8.86.301(8)(b)(vi), 8.86.503(2), 8.86.504(1)(a),(j) and 8.86.505(1)(a)(iv)(b). The reasons for the proposed actions are as follows:

a) To clarify and/or make more workable certain provisions of the rules governing the statewide quota and pooling plan (8.86.503-505).

b) To prohibit the assignment of new quota for five (5) years to those producers who have voluntarily left the market (8.86.503).

c) The rule is redefining ownership; specifically it prohibits leasing (8.86.504).

d) To permit producers who had previously sold their milk to a plant outside Montana, and were assigned quota when they began selling milk to a plant located in Montana an opportunity to transfer their quota in less than three (3) years, provided it is part of a sale including the entire farm (8.86.504).

e) No reduction in quota will take place until at least January 1993. If there is a reduction, a producer will have until March 1 to sell it before it is forfeited and there must be less than 12% class III before the quota can be reduced (8.86.505).

f) The distributors will be required to pay for all the surplus freight associated with quota milk (8.86.301).

4. The MDA petition proposes amending ARM 8.86.301, 8.86.503, 8.86.504 and 8.86.505 as follows: (Full text of the rules are located at pages 8-2539 thru 8-2549, and 8-2555 thru 8-2567, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)-(8)(b)(v) remains the same.

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

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.503 ADDITIONAL ASSIGNMENT TO QUOTA MILK (1) A producer who begins producing for a plant during the months of April through August will receive 20% of his milk assigned as quota. Any producer who begins production in any other month will receive 35% of his milk as quota. A producer who has received 35% of his production history as quota will remain at that level for a period of six continuous months. In the seventh month he will be permanently assigned a daily quota equal to 35% of his total production history for the sixth month divided by the number of days in that sixth month.

(2) No producer who has ceased production of milk and disposed of his assigned quota, if any, during the five-year period preceding his re-entry into the market may be assigned start-up quota under this rule."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.504 TRANSFER OF QUOTA (1) Quota is the property of each eligible producer. It may be transferred pursuant to the following terms and conditions:

(a) A quota transfer is defined as a transfer of the ownership of all or a portion of an eligible producer's quota; leasing of quota is prohibited. Quota transfers must be made in increments of at least one hundred (100) pounds per day or for the entire amount of quota, whichever is less.

(b)-(i) remains the same.

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

However, he may transfer his quota if the transfer is part of the assets to be included in the sale or other transfers of the entire dairy farm of such producer. In such cases, the three-year transfer restriction of this rule shall continue to apply to the new owner(s) of the farm."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

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

(iv) reduce each eligible producer's quota for whom a figure was computed under section (iii) hereof by the number so computed effective on ~~February~~ March 1 next following. However, quota will be reduced only if there was less than 12% quota milk in class III for the preceding month of May. In addition, if quota milk is to be reduced pursuant to this rule, each producer whose quota will be reduced shall have until, but not including, March 1 to sell or otherwise transfer the underproduced quota before such reduction is effective.

(b) No quota will be readjusted before January ~~1992~~ 1993.

(c)-(f) remains the same."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

5. Persons known to have a possible interest in this proposal are milk producers and distributors.

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

a) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

b) Current and prospective supplies of milk in relation to current and prospective demand for such milk.

c) The cost of transporting bulk surplus milk.

7. In its consideration on the merits of the proposals in this matter, the board takes official notice as facts within its own knowledge of the following (ARM 8.86.301(9)(a):

DISTANCE	MAXIMUM FREIGHT ALLOWANCE
25 to 50 miles	$ .25
51 to 75 miles	.40
76 to 100 miles	.50
101 to 150 miles	.64
151 to 200 miles	.85
201 to 250 miles	1.06
251 to 300 miles	1.28
301 to 350 miles	1.49

8. Interested persons may participate and present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than November 15, 1991.

9. Mr. Clyde Peterson, Esq., Dept. of Justice, Legal Services Division, 3rd Floor--Justice Bldg., 215 N. Sanders Ave, Helena, MT 59620, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: _____
Andy J. Poole, Deputy Director
Department of Commerce

By: _____
Annie M. Bartos, Chief Legal Counsel
Department of Commerce

Certified to the Secretary of State October 7, 1991.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of new rules pertaining to definitions and certification of Microbusiness Development Corporations	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES PERTAINING TO THE MICROBUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. On November 8, 1991, at 10:00 a.m., a public hearing will be held in the upstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of new rules pertaining to certification of Microbusiness Development Corporations.

2. The proposed new rules will read as follows:

"I DEFINITIONS As used in this rule, the following definitions apply:

(1) "MBDC" means the microbusiness development corporation.

(2) "Region" means one of the 12 multicounty service regions as identified in section 17-6-406(8), MCA.

(3) "Standards of practice" means administrative rules, guidelines, policies and procedures, as well as performance indicators and historical performance levels, for the operation of loan programs serving microbusinesses, including, but not limited to, program elements such as client training and technical assistance, credit analysis, underwriting criteria, portfolio management, staffing, and general loan fund administration.

(4) "Direct loan program" means a program which makes direct loans to microbusinesses.

(5) "Loan guarantee program" means a program with development loan funds on deposit with a lending institution as guarantee against loss for loans which that institution makes directly to microbusinesses which have been screened, trained and/or counseled, and qualified by the MBDC.

(6) "Group or circle lending program" means a microbusiness loan to a group of microbusiness owners which in turn makes loans to its members based on the performance of all members.

(7) "Certification" means the criteria and process, described herein, by which an organization becomes eligible to apply for a development loan in the region in which that organization is located.

(8) "Development loan" means money loaned to a certified MBDC by the department for the purpose of making microbusiness loans under the provisions of section 17-6-401, MCA, et seq.

(9) "Funded" means a MBDC holding a development loan in good standing.

(10) "Default" shall be defined in the development loan agreement between the department and MBDC. An MBDC is in

default when it receives notice from the department declaring it to be in default under the provisions of the loan agreement.

(11) "Management training" means business-related training in a group setting.

(12) "Technical assistance" means business-related consultation in a one-to-one setting.

(13) "Loan committee" means the individuals assigned by the board of directors of the MBDC to review and award or deny applications to that MBDC for microbusiness loans.

(14) "Statewide MBDC" means an MBDC that meets all requirements for certification stated herein, and, in addition, has a viable plan to provide specialized services to constituents throughout the state, and does not preempt or duplicate efforts of MBDCs within local communities, and obtains written indications of support from local MBDCs in the communities in which it plans to offer its services."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-408, MCA

"II CERTIFICATION OF MICROBUSINESS DEVELOPMENT CORPORATIONS (1) Under the authority granted by section 17-6-406, MCA, the department adopts the following rules for the certification of microbusiness development corporations.

(2) The department will compile standards of practice by surveying a selection of revolving loan fund programs and lending institutions targeted to microbusinesses both inside and outside Montana, against which proposals for certification will be measured. This survey will include at least, but will not be limited to, a direct loan program model, a loan guarantee program model, and a group or circle lending program model.

(a) The department will distribute the standards of practice to all persons and organizations responding to requests for proposals to become certified MBDCs, and all others who request the information.

(b) The department with the council will review and update the standards of practice at least every biennium, to reflect evolving standards of practice and new program models.

(c) The department will review United States General Accounting Office and Generally Accepted Accounting Principles, and choose a standard set of accounting principles against which to measure the administrative procedures of applicants for certification. The department will announce the selected standard set of accounting principles in its requests for proposals for certification.

(3) There is no limit to the number of certified MBDCs per region; however, only one certified MBDC may be funded at any given time in any one region.

(a) When the certified and funded MBDC in a region is determined to be in default that MBDC is considered decertified and no longer funded, and another certified MBDC in that region may apply for and receive a development loan.

(b) To maintain its status as a certified MBDC, an MBDC that is certified but not funded must be reviewed and recertified every four years.

(4) The following information is required to be

presented to the department by applicants for certification as an MBDC:

(a) a plan for delivery of management training and technical assistance. The plan will show qualifications of providers, timeline, and cost of training. The plan will include, but will not be limited to, the subjects of business planning, accounting, financial planning, financial controls, personnel management, marketing, legal aspects of business operation, and loan proposal preparation.

(b) a plan for credit investigation and analysis, and loan analysis of microbusiness loan applicants. The plan will include, but will not be limited to, the manner in which the credit history of microbusiness loan applicants will be determined and evaluated, what business information and history will be required from applicants, and the manner in which confidentiality will be maintained. The plan will include a description of the exact credit approval and denial process, and the qualifications of those who will conduct the investigation, analysis, and evaluation.

(c) a plan for and evidence of ability to administer a revolving loan fund. The plan will include, but will not be limited to, loan servicing documentation, financial oversight and monitoring of borrowers, delinquent loans and collateral collections, internal accounting, financial procedures and controls, business management procedures, loan portfolio risk management policies, measures and procedures, and loan fund balance investment and management practices. The plan will include structure, composition, and organizational relationships of the loan committee and qualifications of its members.

(d) a staffing plan including job titles, job descriptions, necessary qualifications, experience, education and other qualifications of principle manager, and personnel training and supervision.

(e) evidence of broad-based community support, to include letters of support from persons and institutions throughout the region including, but not limited to, local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women, and representatives of low-income and minority populations. The evidence must include a full list of names and resumes of board members, demonstrating the minimum requirement for board representation of women, minorities and low-income persons.

(f) evidence of matching funds. Such evidence shall include a legally binding commitment from a governmental entity, organization, business, and/or individual pledging $1 for every $3 in development loan to be borrowed from the program. Matching funds must be in cash available for deposit with the development loan, or to be pledged as collateral for the development loan. Leveraging of development loan funds through banks or other lending institutions does not constitute matching funds.

(g) evidence of sufficient operating income including at least, but not limited to, financial reports for previous two years for an existing organization, and two-year full

financial projections for all applicants. In the case of a new organization, evidence shall include principals and board members with successful experience in financial management of similar non-profit corporations.

(h) evidence of adequate business clients to include, but not be limited to, a plan for identifying, qualifying, and marketing to potential borrowers throughout the region to be served.

(i) a plan for marketing to specific groups including at least, but not limited to, minorities, women, and low-income persons. The plan will include analysis of needs of these groups, and plan for design and delivery of training suited specifically to those needs.

(j) documented evidence that proposing organization is a nonprofit corporation organized and existing under the laws of the state of Montana.

(k) The department may require such additional information as the department in its discretion deems to be appropriate.

(5) The procedures for selection of certification of MBDC are as follows:

(a) The department will follow state agency procedures, in conducting requests for proposals for certification from each region.

(b) The department will develop a standard evaluation and scoring form for review of proposals, based on standards of practice as identified in subsection (2) above, and certification requirements as identified in subsection (4). Proposals that deviate from the standards of practice must provide a rationale for such deviations. Acceptance of such deviations and rationale is at the department's discretion.

(c) Using the standard evaluation and scoring form, the department will review proposals and determine whether to recommend certification of the MBDC. The proposal and staff's recommendation will be forwarded to the department director for a decision on certification.

(d) In regions with proposals for certification from more than one organization, a regional evaluation committee will select one proposal to be forwarded to the department for certification review. The committee will be called together by proposers in that region with assistance from the department. The committee will consist of representatives from at least, but not limited to, local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women, and representatives of low-income and minority populations. If a region with multiple proposals is unable to make a selection decision within one year from the deadline of the first request for certification proposals, the department will review all proposals and determine which one, if any, of the proposing organizations will be funded in that region.

(6) Statewide MBDCs may not be certified until the date one year from the deadline for receiving proposals specified in the first request for proposals for certification of MBDCs issued by the department."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-408, MCA

REASON: These proposed rules are necessary to implement House Bill 477 (the Microbusiness Development Act) as mandated by the 1991 Legislature.

3. Interested persons may present their views and comments either orally or in writing at the hearing. Written comments may also be submitted to the Business Development Division, 1424 - 9th Avenue, Helena, Montana 59620, no later than November 14, 1991.

4. Annie M. Bartos, attorney, has been designated to preside over and conduct the hearing.

BUSINESS DEVELOPMENT DIVISION

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS
RULE REVIEWER

Certified to the Secretary of State, October 7, 1991.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.12.101; 11.12.102; 11.12.104; 11.12.106; and 11.12.108 pertaining to youth care facilities	NOTICE OF PROPOSED AMENDMENT OF RULES 11.12.101; 11.12.102; 11.12.104; 11.12.106; AND 11.12.108 PERTAINING TO YOUTH CARE FACILITIES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 27, 1991, the Department of Family Services proposes to amend Rules 11.12.101; 11.12.102; 11.12.104; 11.12.106; and 11.12.108 pertaining to youth care facilities.

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

11.12.101 YOUTH CARE FACILITY, DEFINITIONS
Subsections (1)(a) through (d) remain the same.
(e) "Youth group home" means a YCF in which substitute care is provided to 7 to 12 children or youth~~, and includes a district youth guidance home~~.
Subsections (1)(f) through (2) remain the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

REASON: Statutes authorizing district youth guidance homes have been repealed. Existing homes still referred to by the term are licensed as youth care facilities.

11.12.102 YOUTH CARE FACILITY, PURPOSE (1) These rules establish licensing procedures and ~~minimum standards~~ licensing requirements for youth care facilities.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.104 YOUTH CARE FACILITY, LICENSES (1) One-year licenses. The department shall issue a one-year youth care facility license to any license applicant that meets all ~~minimum standards~~ licensing requirements established by these rules, as determined by the department after a licensing study, or, that is licensed or otherwise approved by another state agency.
Subsections (1)(a) through (8) remain the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.106 YOUTH CARE FACILITY, LICENSING PROCEDURES Subsection (1) remains the same.

(2) Upon receipt of an application for license or renewal of license, the department shall conduct a licensing study to determine if the applicant meets all ~~applicable standards~~ licensing requirements for ~~license~~ licensure as established in these rules.

Subsection (3) remains the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.108 YOUTH CARE FACILITY, LICENSE REVOCATION AND DENIAL (1) The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to a provisional status a license upon a finding that:

(a) the YCF is not in compliance with fire safety standards; or

(b) the YCF is not in substantial compliance with any other licensing ~~standards~~ requirements established by this rule; or

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

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

REASON: The department is attempting to use "licensing requirements" in place of such terms as "minimum standards", "licensing standards", and "applicable standards". These terms are synonymous, but the term "licensing requirements" best expresses the subject matter covered, and should be used consistently. The department also intends that the duty of the department to implement "standards" for youth care facilities, be in part fulfilled through imposition of standards referred to in applicable rules as "licensing requirements". In addition, licensing by another state agency may be sufficient for licensing without a department licensing study. For example, a transitional living facility certified by the Drug and Alcohol Division of the Department of Corrections and Human Services may be licensed by DFS based upon such certification.

3. Interested parties may submit their data, views or arguments on the proposed amendment 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 November 14, 1991.

4. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs,

Box 8005, Helena, Montana 59604, no later than November 14, 1991.

5. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who 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 Olsen, Director

Certified to the Secretary of State October 7, 1991.

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

In the matter of the adoption of new rules I-V; and amendment of 16.8.930 and 16.8.1105, dealing with air quality fees	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES I THROUGH V AND AMENDMENT OF RULES 16.8.930 and 16.8.1105

(Air Quality Bureau)

To: All Interested Persons

1. On November 15, 1991, at 10:30 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of new rules and amendment of the above-captioned rules, which implement a fee program for the department's air quality bureau. Currently, the bureau issues air quality permits to entities who wish to construct, install, alter or use air contaminant sources within the state. The proposed rules and amendments implement a permit application fee requirement applicable to applications for such permits. In addition, the proposed rules also implement an annual operation fee requirement, applicable to both permitted sources of air contaminants and those sources covered by Title V of the Federal Clean Air Act Amendments of 1990. The timely payment of this annual fee to the department is a condition of continued operation for these sources.

Subject to certain minimum fee amounts, all of the fees described above are determined on a per ton/per pollutant basis, with specific fees set for particular pollutants. For the annual operation fee, the total fee amount is based upon the source's actual or estimated actual emissions of air pollutants during the previous calendar year. For the permit fee, the total fee amount is based upon the estimated annual emissions of air pollutants contained in the inventory included in the permit application. The failure to pay the permit application fee assessed by the department will result in the filed permit application being declared incomplete. The proposed rules and amendments also set forth the procedures for appeal to the board of health and environmental sciences of the fee assessment made by the department, and allow for interim payment of the assessed fee pending completion of the appeal.

The proposed rules allow for assessment by the board of additional air quality operation fees which are required to fund specific activities of the air quality bureau directed at a particular geographical area. This additional assessment may only occur after the board has determined that the activities to be funded are necessary, the assessments are done equitably, and the department has obtained the required legislative

authorization.

2. The proposed new rules and the proposed amendments to existing rules appear as follows:

RULE I DEFINITIONS For the purposes of this subchapter:

(1) "Source(s) of air contaminants" shall mean all air contaminant emission points, including fugitive emissions, located on one or more contiguous or adjacent properties and under common control or ownership.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

RULE II AIR QUALITY OPERATION FEES (1) An annual air quality operation fee must, as a condition of continued operation, be submitted to the department by:

(a) each source of air contaminants holding an air quality permit, excluding an open burning permit, issued by the department; and

(b) each source of air contaminants which will be required to obtain a permit pursuant to Section 7661a of the Federal Clean Act, 42 U.S.C. 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department.

(2) The department shall give written notice of the amount of the air quality operation fee to be assessed and the basis for such fee assessment to the owner or operator of the air contaminant source annually. The air quality operation fee is due 20 days after receipt of the notice unless the fee assessment is appealed pursuant to [RULE V]. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 20 days after receipt of the notice. Any remaining fee which may be due after completion of the appeal is immediately due and payable upon issuance of the board's decision or when judicial review of the board's decision has been completed, whichever is later.

(3) The air quality operation fee is based on the actual or estimated actual amount of air pollutants emitted during the previous calendar year and is the greater of a minimum fee of $250 or a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by $2.50; plus
tons of sulfur dioxide emitted,
multiplied by $2.50; plus
tons of lead emitted,
multiplied by $2.50; plus
tons of oxides of nitrogen emitted,
multiplied by $0.60; plus
tons of volatile organic compounds emitted,
multiplied by $0.60.

(4) An air quality operation fee is separate and distinct from any air quality permit application fee required to be submitted to the department by a source of air contaminants. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(5) The annual assessment and collection of the air

quality operation fee, as described above, shall take place on a calendar year basis. The department may insert into any final permit issued after the effective date of these rules such conditions as may be necessary to require the payment of an air quality operation fee on a calendar year basis, including provisions which pro-rate the required fee amount.
AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

RULE III ADDITIONAL AIR QUALITY OPERATION FEES REQUIRED TO FUND SPECIFIC ACTIVITIES OF THE DEPARTMENT DIRECTED AT A PARTICULAR GEOGRAPHICAL AREA (1) The board may order the assessment of additional air quality operation fees to fund specific activities of the department directed at a particular geographical area. These activities may include emissions or ambient monitoring, preparation of generally applicable regulations or guidance, modeling analyses or demonstrations, emissions inventories or emissions tracking. The additional air quality operation fees may be levied only on those sources of air contaminants that are within or believed by the department to be impacting the particular geographical area.

(2) Before ordering the assessment described in section (1) above, the board must determine, after opportunity for hearing, that:

(a) the activities to be funded by the additional operation fee assessments are necessary for the administration or implementation of the department's duties under Title 75, Chapter 2, MCA; and

(b) the assessments apportion the required funding in an equitable manner; and

(c) the department has obtained legislative authorization for the expenditure and the necessary appropriation.
AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

RULE IV AIR QUALITY PERMIT APPLICATION FEES (1) Concurrent with the submittal of an air quality permit application, as required in ARM Title 16, chapter 8, subchapter 11 (Permit, Construction and Operation of Air Contaminant Sources), or ARM Title 16, chapter 8, subchapter 9 (Prevention of Significant Deterioration of Air Quality), the applicant shall submit an air quality permit application fee.

(2) A permit application is incomplete until the proper application fee is paid to the department. If the department determines that the air quality permit application fee submitted with the air quality permit application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be submitted for the application to be processed. If the fee assessment is appealed to the board pursuant to [RULE V], and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or when judicial review of the board's decision has been completed, whichever is later. Upon final disposition of the appeal, any portion of the fee which may be due to either the department or the applicant as a result is immediately due and payable.

(3) Air quality permit application fees are separate and distinct from any air quality operation fee required to be submitted to the department by a source of air contaminants. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(4) The air quality permit application fee is based on the estimated amount of air pollutants to be emitted annually. The estimated amount of air pollutants to be emitted annually is determined according to the emissions inventory included in the permit application.

(5) The fee is the greater of:

(a) a fee calculated using the following formula:
tons of total particulate emitted,
multiplied by $2.50; plus
tons of sulfur dioxide emitted,
multiplied by $2.50; plus
tons of lead emitted,
multiplied by $2.50; plus
tons of oxides of nitrogen emitted,
multiplied by $0.60; plus
tons of volatile organic compounds emitted,
multiplied by $0.60;

(b) or a minimum fee of:

(i) $1000 for sources of air contaminants subject to ARM 16.8.901 et seq. (Prevention of Significant Deterioration of Air Quality), or those sources of air contaminants which are major stationary sources or major modifications [as defined in 40 CFR 51.165(a) adopted by incorporation in ARM 16.8.1109(8)], and are seeking to locate within an area which is designated as nonattainment in 40 CFR 81.327 [adopted by incorporation in ARM 16.8.1109(8)] for any air contaminant;

(ii) $1000 for sources of air contaminants required to obtain an air quality permit under ARM Title 16, chapter 8, subchapter 11 (Permit, Construction and Operation of Air Contaminant Sources), with a potential to emit greater than 250 tons of any pollutant in a year; or

(iii) $250 for all other sources of air contaminants, not subject to subsections (b)(i) or (ii) above, required to obtain an air quality permit under ARM Title 16, chapter 8, subchapter 11.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

RULE V AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES (1) The department's fee assessment may be appealed by the owner or operator of a source of air contaminants to the board of health and environmental sciences within 20 days of:

(a) receipt of the fee assessment notice described in [RULE II(2)] (Operation Fees); or

(b) issuance of a determination of incompleteness of a permit application based on the lack of the proper permit application fee pursuant to [RULE IV(2)] (Permit Fees).

(2) An appeal may be initiated pursuant to section (1) above by filing with the board an affidavit setting forth the

grounds for such appeal and requesting a hearing before the board. An appeal must be based on the allegation that the department's fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board and contained in this rule.

(3) Any hearing before the board concerning the department's fee assessment must be conducted according to the contested case provisions of the Montana Administrative Procedure Act.

(4) Nothing in these rules may be construed as preventing the applicant for an air quality permit from submitting to the department that portion of the applicable fee which has been appealed during the pendency of the appeal proceedings before the board.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

16.8.930 PERMIT REVIEW--INFORMATION REQUIRED (1) The owner or operator of a proposed major stationary source or major modification shall submit to the department the permit application fee required pursuant to [RULE IV], and all information necessary to perform any analysis or make any determination required under this subchapter. Such information must include:

(a)-(c) Remains the same.

(2) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-211, MCA

16.8.1105 NEW OR ALTERED SOURCES AND STACKS -- PERMIT APPLICATION REQUIREMENTS (1) Remains the same.

(2) The application for an air quality permit to construct a new or altered source or stack shall include the following:

(a)-(h) Remains the same.

(i) A description of the shakedown procedures and time frames that will be used at the source or stack; and

(j) Such other information requested by the department which is necessary to review the application and determine whether the new or altered source will comply with applicable standards and rules; and

(k) The appropriate air quality permit application fee required pursuant to [RULE IV].

(3)-(4) Remains the same.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

3. The department is proposing these rules and amendments to existing rules in order to implement HB 781, passed by the 1991 Legislature, which significantly amended Section 75-2-211, MCA (1991). Institution of the fee program authorized by HB 781 is a requirement for the department to retain primacy for the air quality program under Title V of the Federal Clean Air Act Amendments of 1990.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in

writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 18, 1991.

5. David W. Simpson, Chairman of the Board, has been designated to preside over and conduct the hearing.

DAVID W. SIMPSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
DENNIS IVERSON, Director

Certified to the Secretary of State 10/7/91.

Reviewed by:

_____
Eleanor Parker,
DHES Attorney

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I Purpose and scope of rules; Rule II Definitions; Rule III Exemptions; Rule IV Complaints and answers; Rule V Investigation; Rule VI Conciliation; Rule VII Staff Representation of charging party; and Rule VIII Final disposition	))))))))	NOTICE OF THE PROPOSED ADOPTION OF RULE I, PURPOSE AND SCOPE OF RULES; RULE II DEFINITIONS; RULE III EXEMPTIONS; RULE IV COMPLAINTS AND ANSWERS; RULE V INVESTIGATION; RULE VI CONCILIATION; RULE VII STAFF REPRESENTATION OF CHARGING PARTY; AND RULE VIII FINAL DISPOSITION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 22, 1991, the human rights commission proposes to adopt Rules I through VIII as a new sub-chapter, "Housing Discrimination Procedures and Definitions."

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

RULE I PURPOSE AND SCOPE OF RULES (1) The following rules describe the procedures and definitions followed by the human rights commission in receiving, investigating and resolving complaints of housing discrimination. Except as otherwise provided in this sub-chapter, ARM 24.9.101 through 24.9.331 also apply to the procedure for housing complaints. AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

RULE II DEFINITIONS (1) "Child" means an individual who has not attained the age of 18 and who is domiciled with:

(a) A parent or another person having legal custody of the individual; or

(b) The designee of a parent or other person having custody, with the written permission of the parent or other person.

(2) "Familial status" - The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(3) "Housing for older persons" - The determination as to whether housing under any state or federal program is specifically designed and operated to assist elderly persons shall be made by the human rights commission or the United States department of housing and urban development. AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

RULE III EXEMPTIONS (1) Lawful discrimination in housing under 49-2-403 for the purpose of correcting a previous discriminatory practice must conform to legal standards justifying affirmative action.

(2) Lawful age or handicap discrimination in housing under 49-2-403 based upon capacity to make or be bound by contracts or other obligations must be legally justified by current legal standards regarding capacity to make or be bound by contracts.

(3) Any person or entity asserting entitlement to an exemption under 49-2-403 has the burden of proving justification for discrimination.

AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

RULE IV COMPLAINTS AND ANSWERS (1) Upon the filing of a complaint alleging a discriminatory housing practice, the commission shall serve notice upon the charging party by mail or personal service. The notice shall:

(a) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.

(b) Include a copy of the complaint.

(c) Advise the charging party of the time limits applicable to complaint processing and of the procedural rights and obligations of the charging party under 49-2-510.

(d) Advise the charging party of the right to commence a civil action under 49-2-510(5) in an appropriate district court not later than 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504. The notice shall state that the computation of this 2 year period excludes any time during which a proceeding is pending under 49-2-510(1) with respect to a complaint based on the alleged discriminatory housing practice. The notice shall also state that the time period includes the time during which an action arising from a breach of a conciliation agreement is pending.

(e) Advise the charging party that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation or an administrative proceeding is a discriminatory housing practice that is prohibited under 49-2-301.

(2) Within 10 days of the filing of a complaint or an amended complaint alleging a discriminatory housing practice, the commission shall serve notice on each respondent by mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of the identification. The notice shall:

(a) Identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.
(b) State the date that the complaint was accepted for filing.
(c) Advise the respondent of the time limits applicable to complaint processing and of the procedural rights and obligations of the respondent, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice.
(d) Advise the respondent of the charging party's right to commence a civil action under 49-2-510(5) in an appropriate district court not later than 2 years after the alleged discriminatory housing practice occurred or was discovered. The notice shall state that the computation of this 2 year period excludes any time during which a proceeding is pending under 49-2-510(1) with respect to a compaint based on the alleged discriminatory housing practice. The notice shall also state that the time period includes the time during which an action arising from a breach of a conciliation agreement is pending.
(e) Explain the basis for the commission staff's belief that the person is properly joined as a respondent if the person is not named in the complaint, but is being joined as an additional or substitute respondent.
(f) Advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation, conciliation or administrative proceeding under 49-2-510(1) is a discriminatory housing practice that is prohibited under 49-2-301.
(3) Each respondent may file an answer not later than 10 days after receipt of the notice described in subsection (2). The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent.
AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

RULE V INVESTIGATION (1) The commission shall commence proceedings with respect to a complaint alleging a discriminatory housing practice within 30 days after the filing of the complaint. The commission shall complete the investigation within 100 days after the filing of the complaint. If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for the delay.
AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

RULE VI CONCILIATION (1) A conciliation agreement shall be a written agreement between the respondent and the complainant, and shall be subject to approval by the commission staff administrator on behalf of the commission.
(2) Conciliation agreements shall be made public unless the charging party and the respondent otherwise agree and the

commission determines that the agreement involves a privacy interest entitled to protection by law.
AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

RULE VII STAFF REPRESENTATION OF CHARGING PARTY (1) In any case in which the commission staff has determined after investigation that there is substantial evidence to believe that a discriminatory housing practice has occurred (reasonable cause finding), the commission staff shall represent the charging party in any contested case hearing before the commission unless the charging party waives staff representation.
AUTH: 49-2-204; IMP: 49-2-305, MCA.

RULE VIII FINAL DISPOSITION (1) The commission shall make final administrative disposition of a complaint alleging a discriminatory housing practice within 1 year after the complaint is filed unless it is impracticable to do so. If the commission is unable to make final administrative disposition within 1 year, it shall notify the charging party and respondent in writing of the reasons for not doing so.
AUTH: 49-2-204, MCA; IMP: 49-2-305, MCA.

3. The commission proposes to adopt Rules I through VIII as a new sub-chapter implementing recent amendments to the housing discrimination statutes. Rule I is intended to make it clear that the new rules apply only to housing discrimination cases and that existing rules apply except as otherwise specified in Rules I through VIII. Rule II adds a definition of the term "child" as used in 49-2-305 to make it clear that a child is a person under 18 years. Rule II clarifies the definition of "familial status" to make it clear that familial status distinctions include distinctions based upon pregnancy and upon the fact that a person is in the process of obtaining legal custody of a child. Rule II also clarifies the statutory exemption in 49-2-305 for "housing for older persons" by stating that the commission or the department of housing and urban development will determine whether housing under a state or federal program is designed and operated to assist elderly persons. Rule III is intended to clarify the exemption in 49-2-403 allowing discrimination to correct a previous discriminatory practice to make it clear that any such discrimination must conform to the legal standards for affirmative action. Rule III is also intended to make it clear that age or handicap discrimination in housing based upon capacity to enter into a binding contract must be justified by current legal standards limiting capacity to make or be bound by a contract. Rule IV provides procedures for notifying charging parties and respondents of complaints which have been filed and the rights and obligations of the parties. Those rights include the right of either party to have the claim decided in a civil action in district court, the right of the respondent to file an answer and the right of the charging party to commence a civil action

in district court without first filing a complaint with the commission. Rule V provides a 30 day timeline for commencing investigation of housing discrimination complaints and a 100 day timeline for completion of investigation unless the commission is unable to do so. Rule VI clarifies that the commission staff administrator must approve any conciliation agreement and that conciliation agreements in housing discrimination cases are public unless the commission determines that there is a privacy interest entitled to protection by law. Rule VII provides that, if the commission staff determines after investigation that the allegations of a housing discrimination complaint are supported by substantial evidence, the commission staff will represent the charging party in a contested case hearing before the commission, unless the charging party requests otherwise. Rule VIII provides a 1 year timeline for final disposition of housing discrimination complaints except where impracticable.

4. The rules are necessary to effectuate the purposes of sections 49-2-305 and 49-2-510 and achieve substantial equivalency with the federal fair housing act of 1968, as amended by the fair housing amendments of 1988. Certification of substantial equivalency is necessary to maintain worksharing agreements with the department of housing and urban development which provide a substantial portion of the operating funds for the human rights commission.

5. 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 November 14, 1991.

6. 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 November 14, 1991.

7. 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 rulemaking, 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 housing discrimination cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIRPERSON

By: _____
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Certified to the Secretary of State October 7, 1991.

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

In the matter of proposed new rule to reject permit applications for consumptive uses and to modify permits for nonconsumptive uses in Towhead Gulch Basin	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULE TO REJECT OR MODIFY PERMIT APPLICATIONS IN TOWHEAD GULCH BASIN

To All Interested Persons:

1. The proposed new rule was published at page 1670 in Issue No. 17. The notice inadvertently omitted the time for the public hearing.

2. The public hearing will be held at 7:00 P.M. on October 29, 1991 at the Department of Natural Resources, 1520 E. 6th Avenue, Helena, Montana, in the Lee Metcalf Building, Room 43 to consider the adoption of a new rule to reject permit applications in the Towhead Gulch Basin.

Karen L. Barclay, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State, October 7, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) OF Rule I relating to Taxpayer) Request for Appraisal Review) for Property Taxes)	NOTICE OF PROPOSED ADOPTION of Rule I relating to Taxpayer Request for Appraisal Review for Property Taxes

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 18, 1991, the Department proposes to adopt Rule I relating to taxpayer request for appraisal review.

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

RULE I TAXPAYER REQUEST FOR APPRAISAL REVIEW (1) Taxpayers dissatisfied with a property tax appraisal may submit a request for review under the terms of 15-7-102, MCA. The request must be submitted on a property adjustment form (AB-26) available at the county appraisal or assessment office. In order to be considered for the current tax year, the form must be submitted within 15 days after receipt of a notice of classification and appraisal.

(2) The department shall review the property adjustment request and notify the property owner of its determination within 60 calendar days of receipt of the request form. The department's determination is the final notice of classification and appraisal for the property.

(3) If the owner of the property is not satisfied with the results of the review of the property adjustment request, he has 15 days from receipt of the determination on the property adjustment request form (AB-26) to appeal to the county tax appeal board. If no determination is received within 60 days, the taxpayer may proceed to the county tax appeal board without a determination. All appeals to the county tax appeal board must be filed within 90 days after the first notice of classification and appraisal when no determination is received within 60 days.

(4) If an appeal is still pending when the taxes become due, the taxpayer must pay the tax under protest.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-102, MCA.

3. The Department is proposing the new rule because currently the law does not specify the time for property owners to request reviews of their property appraisal by the Department. This is creating confusion and resulting in unnecessary appeals to County Tax Appeal Boards. To avoid unnecessary appeals the Department is proposing a rule to clarify a time for requesting reviews and allow an opportunity for property owners to appeal to the County Tax Appeal Board if

they are dissatisfied with the results of the review.

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

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

no later than November 15, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 15, 1991.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State October 7, 1991

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF Rule I relating to Taxable Rate Reduction for Value Added Property - New and Expanding Industry	NOTICE OF PROPOSED ADOPTION of Rule I relating to Taxable Rate Reduction for Value Added Property - New and Expanding Industry

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 18, 1991, the Department proposes to adopt Rule I relating to taxable rate reduction for value added property.

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

RULE I TAXABLE RATE REDUCTION FOR VALUE ADDED PROPERTY

(1) Manufacturing machinery and equipment installed as a result of a plant expansion program may be eligible for a reduction in taxable value based on a ratio of new qualifying employees to the number of employees prior to the expansion. In this regard, the following definitions apply:

(a) "Value added" means an increase in the worth of the product being produced and not merely an increase in existing production. The tax incentive is limited to manufacturing machinery and equipment involved in the value added process. If the department determines that manufacturing machinery and equipment qualifies for the tax incentive, the application must still be approved by the governing body of the local taxing jurisdiction.

(b) "Qualifying Employees" means a person whose job was created as a direct result of value added process expansion; and whose annual full time position pays not less than 3/4 the amount of gross annual wage which is typical for that particular job category.

(2) The applicant must provide the department with the number of employees before and after the value added expansion. The number of new qualifying employees shall be verified through withholding records obtained from the Withholding and Information Section of the Income and Miscellaneous Tax Division, Department of Revenue.

(3) Any year within the consecutive seven year qualifying period that the applicant does not meet the criteria for reduction in taxable value, the taxable percentage will revert to the statutory taxable percentage for manufacturing machinery and equipment. The seven year qualifying period commences with the first assessment year after the expansion project has become operational. The seven year qualifying period is to run consecutively without regard to change in ownership, suspension

of operation, or failure to qualify in any year within the qualifying standards set forth by statute. There is no tacking of periods.

(4) The following formula shall be used for the determination of the reduced taxable value rate:

$$(1-n/e) \times r = R$$

where:

n= number of qualifying new employees
e= number of existing employees
r= current machinery & equipment taxable rate
R= adjusted machinery & equipment taxable rate

Example: In 1992 a small sawmill operation increases from 10 full-time employees to 14 as a result of a value added expansion. The taxable rate will drop from 9 percent to 5.4 percent.

n = 4
e = 10
r = .09

(1 - 4/10) x .09 = new taxable rate
.6 x .09 = .054 or 5.4 % tax rate

AUTH: 15-24-2405, MCA; IMP: 15-24-2401 through 15-24-2404, MCA.

3. The Department is proposing the new rule to clarify the implementation of HB 452 and to establish a formula to compute employee to taxable value ratio determinations.

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

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

no later than November 15, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 15, 1991.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be

directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State October 7, 1991

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of new rules pertaining to real estate appraisers) NOTICE OF ADOPTION OF NEW RULES PERTAINING TO REAL ESTATE APPRAISERS

TO: All Interested Persons:

1. On August 29, 1991, the Board of Real Estate Appraisers published a notice of public hearing at page 1524, 1991 Montana Administrative Register, issue numer 16. The hearing was held on September 23, 1991, at 10:00 a.m., in the Scott Hart Auditorium.

2. The Board has adopted new rules I (8.57.101), II (8.57.201), III (8.57.202), VII (8.57.404), and XIII (8.57.409) exactly as proposed.

3. The Board has adopted new rules IV (8.57.401), V (8.57.402), VI (8.57.403), VIII (8.57.405), IX (8.57.406), X (8.57.407), XI (8.57.408), XII (8.57.409), XIII (8.57.410), XIV (8.57.411), XV (8.57.412) and XVI (8.57.413) as proposed but with the following changes:

"8.57.401 DEFINITIONS (1) will remain the same as proposed.

(2) "Year of experience" means AT LEAST 1000 hours of appraisal ~~experience~~ ACTIVITY. Maximum experience awarded for a calendar year is 1000 hours.

(3) through (3)(b) will remain the same as proposed.

(c) review appraisals, provided a separate review appraisal report was prepared ~~or the reviewer inspected the subject property and verified the appraisal processes employed; the comparable sales used and signed as a reviewer;~~

(3)(d) through (3)(l) will remain the same as proposed.

(4) "Review appraiser" means one who has ~~signed an appraisal report as review appraiser or who has~~ written a review of an appraisal completed by another party.

(5) will remain the same as proposed.

(6) UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) MEANS THE STANDARDS PROMULGATED FOR THE APPRAISER PROFESSION IN 1987 BY THE APPRAISAL FOUNDATION, INC. 1029 VERMONT AVENUE N.W., SUITE 900, WASHINGTON, D.C. 20005. COPIES ARE AVAILABLE FROM THE APPRAISAL FOUNDATION OR THE BOARD OF REAL ESTATE APPRAISERS, 111 N. JACKSON, HELENA, MONTANA 59620."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, MCA

"8.57.402 NARRATIVE APPRAISAL REPORT (1) ~~Narrative a~~Appraisal reports ~~will consist of~~ SHALL INCLUDE the following as minimum requirements:

(a) through (i) will remain the same as proposed."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, MCA

"8.57.403 EXAMINATION (1) will remain the same as proposed.

~~(2)--Applicants for examination must make application on forms approved by the board and accompanied by the required fee.~~

~~(3)--In addition to all other requirements, applications for and successful completion of the examination are prerequisites for application for licensure or certification.~~

(4) through (9) will remain the same as proposed but will be renumbered (2) through (7)."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-202, 37-54-304, MCA

"8.57.405 EXPERIENCE REQUIREMENTS (1) A licensed appraiser must present evidence of 2000 hours of appraisal experience, ~~as follows:~~

~~(a)--The applicant must demonstrate that he/she has completed a minimum of 125 residential appraisal reports prepared in conformity with USPAP.~~

~~(b)--Total experience claimed for a review appraiser shall consist of a minimum of 250 residential appraisal reports and the applicant shall certify that the applicant has viewed the subject property and verified the comparables for each appraisal claimed.~~

~~(c)--Experience claimed for a combination of appraisal activity and review activity shall consist of a minimum of 65 residential appraisal reports and a minimum of 125 residential appraisal review reports as described in subsection (1)(b) above.~~

~~(d)--A person who is unable to meet any of the above criteria due to the scale or complexity of appraisals performed shall petition the board to apply such experience toward the experience requirement.~~

(2) A certified residential appraiser must present evidence of ~~3000~~ 2000 hours of appraisal experience, ~~as follows:~~

~~(a)--The applicant must demonstrate that he/she has completed a minimum of 125 residential appraisal reports prepared in conformity with USPAP.~~

~~(b)--Total experience claimed for a review appraisal, shall consist of a minimum of 325 residential appraisal reports and the applicant shall certify that applicant has viewed the subject property and verified the comparables for each appraisal claimed.~~

~~(c)--Experience claimed for a combination of appraisal activity and review activity shall consist of a minimum of 95 residential appraisal reports in the format as described in subsection (2)(b) above, and a minimum of 325 residential appraisal review reports.~~

~~(d)--A person who is unable to meet any of the above criteria due to the scale or complexity of the appraisals performed shall petition the board to apply such experience toward the experience requirement.~~

(3) A certified general appraiser must present evidence of ~~3000~~ 2000 hours of appraisal experience, 1000 of which must be experience claimed in the appraisal of non-residential real estate, ~~as follows:~~

~~(a)--The applicant must demonstrate that he/she has completed a minimum of 50 narrative non-residential appraisal reports prepared in conformity with USPAP.~~

~~(b)--Total experience claimed for a review appraiser shall consist of a minimum of 100 narrative non-residential appraisals.~~

~~(c)--A person who is unable to meet any of the above criteria due to the scale or complexity of the appraisals performed shall petition the board to apply such experience toward the experience requirement.~~

(4) A certified agricultural/rural lands appraiser must present evidence of ~~3000~~ 2000 hours of appraisal experience, 1000 of which must be in the appraisal of agricultural real estate.

~~(a)--The applicant must demonstrate that he/she has completed a minimum of 50 narrative agricultural appraisal reports prepared in confirmity with USPAP.~~

~~(b)--Total experience claimed for review appraisal experience, shall consist of a minimum of 100 narrative agricultural appraisals.~~

~~(c)--A person who is unable to meet any of the above criteria due to the scale or complexity of the appraisals performed shall petition the board to apply such experience toward the experience requirement.~~"

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-202, MCA

"8.57.406 ~~EDUCATION~~ COURSE REQUIREMENTS (1) through (3)(e) will remain the same as proposed.

(4) The following ~~are~~ MAY BE approved as providers of educational and training courses provided the standards set forth in subsections (3)(a) through (e) are met:

(a) will remain the same as proposed.

(b) professional appraisal and real estate related organizations, provided that the organization is a member of the appraisal foundation AS DEFINED IN SECTION 37-54-102(3), MCA.

(4)(c) through (15) will remain the same as proposed."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-202, 37-54-203, MCA

"8.57.407 ~~LICENSURE~~ EDUCATION REQUIREMENTS FOR LICENSURE (1) Each applicant for original licensure shall complete at least 75 classroom hours of instruction, 15 hours of which must cover the standards of professional appraisal practice promulgated at the time the educational offering was completed. The remaining number of hours must cover ~~the following~~ subject matter RELATING TO THE FOLLOWING AREAS:

(a) through (p) will remain the same as proposed."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-202, 37-54-203, MCA

"8.57.408 EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Each applicant for original RESIDENTIAL certification PRIOR TO JANUARY 1, 1994, shall complete at least 105 classroom hours of instruction (AND AFTER JANUARY 1,

1994, SHALL COMPLETE AT LEAST 165 CLASSROOM HOURS OF INSTRUCTION), 15 hours of which must cover the standards of professional appraisal practice at the time the educational offering was completed. The remaining number of hours must cover ~~the following~~ subject matter RELATING TO THE FOLLOWING AREAS with particular emphasis on the appraisal of 1 to 4 unit residential properties:

(a) through (q) will remain the same as proposed."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-303, MCA

"8.57.409 EDUCATION REQUIREMENTS FOR GENERAL CERTIFICATION (1) Each applicant for original GENERAL certification shall complete at least 165 classroom hours of instruction, 15 hours of which must cover the standards of professional appraisal practice promulgated at the time the educational offering was completed. The remaining number of hours must cover ~~the following~~ subject matter RELATING TO THE FOLLOWING AREAS with emphasis on the appraisal of non-residential properties:

(a) through (q) will remain the same as proposed."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-303, MCA

"8.57.411 CONTINUING EDUCATION (1) ~~Each applicant for license or certificate renewal shall complete at least 45 classroom hours of instruction in courses or seminars approved by the board. At least 15 hours must be related to the uniform standards of professional appraisal practice as promulgated by the appraisal foundation as of the date of the course completion.~~ CONTINUING EDUCATION COURSES SHALL BE APPROVED ACCORDING TO THE CRITERIA OF ARM 8.57.406, EXCEPT THAT AN EXAMINATION SHALL NOT BE REQUIRED.

(2) and (3) will remain the same as proposed."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-210, 37-54-310, MCA

"8.57.412 FEES (1) The following fees will apply to all license/certificate holders. Fees are ~~deemed earned once received and are~~ not refundable or transferable.

(a)	original license/certificate application AND RENEWAL, FOR THREE YEAR PERIOD	$450.00
(b)	EXAMINATION FEE (PAYABLE TO TESTING SERVICE)	75.00
(c)	EXAM LATE REGISTRATION	15.00
~~(b)~~ (d)	address change/change of business	20.00
~~(c)~~ (e)	temporary license	150.00
~~(d)~~ (f)	course approval per course hour PAYABLE BY COURSE PROVIDER (with a minimum of $50.00 and a maximum of $200.00)"	10.00

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-112, 37-54-201, 37-54-210, 37-54-211, 37-54-302, 37-54-310, 37-54-406, MCA

"8.57.413 ADOPTION OF USPAP BY REFERENCE (1) The board hereby adopts and incorporates by reference the uniform standards of professional appraisal practice of the appraisal foundation AS DEFINED IN ARM 8.54.401(6)."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, 37-54-403, MCA

3. Authorization and implementation references for ARM 8.57.101, 8.57.201, 8.57.202, 8.57.404 and 8.57.409 will be amended to more specifically indicate the statutory sections when replacement pages are completed.

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

COMMENT: Application of Uniform Standards of Professional Appraisal Practice (USPAP) retroactively invalidates prior experience to meet qualifications for licensing and certification.

RESPONSE: USPAP standards essentially codified existing standards for the profession, so experience gained prior to adoption of USPAP in 1987 which conforms to USPAP standards may be considered to meet experience qualifications.

COMMENT: Experience credit should be given for appraisal activity earned prior to adoption of these rules if the applicant followed "generally accepted practices of appraisal."

RESPONSE: Such "generally accepted practices" vary to some degree and may be difficult to compare, so USPAP standards will be used as uniform criteria.

COMMENT: The fees proposed in new rule XV (8.57.412) are excessive.

RESPONSE: The fees are commensurate with program area costs as required by section 37-1-101, MCA. It should be noted that the licensing, certification and renewal fees listed are for a three year period.

COMMENT: Reference to a specific number of appraisals to establish experience should be deleted.

RESPONSE: The Board agrees that, due to the varying complexity of appraisals, hours of experience is a more useful measure than number completed.

COMMENT: The rules do not provide for a transitional license to allow a person to practice as a licensed appraiser while gaining experience, although the federal guidelines allow for a transitional license.

RESPONSE: Authority for a transitional license was not adopted in Montana statutes.

COMMENT: The rules require too much experience for licensing and certification.

RESPONSE: The state statutes require that licensing

requirements be no more stringent than federal guidelines, but that certification requirements be at least as stringent as federal guidelines. The federal guidelines require at least 2000 hours of experience for licensing and certification. The Board proposed 3000 hours of experience for certification to reflect its consideration that greater experience should be required for certification as an advanced level of licensing. The Board will adopt 2000 hours of experience for certification as the minimum required by federal guidelines.

COMMENT: A bank employee involved in lending activity should be given credit for experience.
RESPONSE: Lending activity does not establish the same experience as appraisal activity.

COMMENT: The rules prevent an appraiser employed by a bank from establishing experience for licensure.
RESPONSE: Any appraiser engaged in "appraisal activity" as defined by ARM 8.57.401, such as review appraisals, can establish experience.

COMMENT: The rules should provide for county or regional waivers so unlicensed appraisers may be recognized for federal transactions in areas where licensed appraisers are not readily available.
RESPONSE: This is a new issue which was not proposed in the rulemaking notice and cannot be considered at this time. The board will consider this for a future notice.

COMMENT: Experience as an ad valorem tax appraiser or land acquisition appraiser should be accepted as experience under the rules.
RESPONSE: Any appraiser engaged in "appraisal activity" as defined by ARM 8.57.401, such as review appraisals, can establish experience. In the future the Board will consider the need to refine the rules for appraisers in particular practice situations.

COMMENT: Certification of an ad valorem tax appraiser under Title 15, chapter 1, MCA, should be accepted as qualification for certification under Title 37, chapter 54, MCA.
RESPONSE: This is a new issue which was not proposed in the rulemaking notice and cannot be considered at this time. The Board will consider this for a future notice.

COMMENT: Showing completion of narrative appraisal reports should not be required to establish experience since form appraisals may establish just as much experience.
RESPONSE: The term "narrative appraisal report" in ARM 8.57.401 will be amended to avoid confusion on terminology. All report formats which substantively meet the definition in this rule will be accepted to establish experience.

COMMENT: Submission of an appraisal summary log which may not be readily available should not be required to document experience.

RESPONSE: A log should be available or may be reconstructed. It is a reasonable requirement for documenting experience.

COMMENT: The Board should establish a recovery fund by rule.

RESPONSE: A recovery fund was not authorized by Montana statutes.

COMMENT: Temporary licenses should not be issued.

RESPONSE: Temporary licenses must be issued as required by section 37-54-406, MCA.

COMMENT: Comparative market analyses done by a real estate broker should be accepted as experience under the rules.

RESPONSE: As indicated in ARM 8.57.401(3)(j), comparative market analyses by a real estate broker may be accepted as experience if completed in compliance with USPAP rules 1 and 2, and demonstrating use of similar techniques as appraisers to value property; as indicated in the 8/14/91 bulletin of the Appraiser Qualifications Board of the Appraisal Foundation, page 5.

BOARD OF REAL ESTATE APPRAISERS
PAT ASAY, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
RULE REVIEWER

Certified to the Secretary of State, October 7, 1991.

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to definitions	)))	NOTICE OF AMENDMENT OF 8.61.401 DEFINITIONS

TO: All Interested Persons:

1. On June 13, 1991, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment of the above-stated rule at page 884, 1991 Montana Administrative Register, issue number 11.

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

3. No comments or testimony were received.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
R. SIMONTON, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 7, 1991.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of new rules pertaining to the Microbusiness Finance Program (8.99.401 - 8.99.403)	)))	CORRECTED NOTICE ON THE ADOPTION OF RULES PERTAINTHE TO MICROBUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. The Business Development Division published a notice of proposed adoption of rules pertaining to definitions, composition of the council and soliciting nominations for the Microbusiness Finance Program at page 579, issue 9 of the 1991 Montana Administrative Register. These new rules were adopted at page 1140, issue 13, 1991 Montana Administrative Register.

2. The statement of reasonable necessity was inadvertently omitted in both of these notices. That statement of reasonable necessity should have stated that the Microbusiness Development Act authorizes the Department of Commerce to adopt rules for the nomination of candidates for the Advisory Council. These rules also implement House Bill 477 as mandated by the 1991 Legislature.

3. Replacement pages for these rules were completed for the September 30, 1991 submission date.

BUSINESS DEVELOPMENT DIVISION

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 7, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Certification	)))	NOTICE OF AMENDMENT OF ARM 10.55.707, CERTIFICATION

To: All Interested Persons

1. On April 25, 1991, the Board of Public Education published notice of proposed amendment concerning ARM 10.55.707, Certification on pages 493-494 of the 1991 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held June 13, 1991, one person testified as a proponent and no written comments were received prior to June 23, 1991, the date on which the Board closed the hearing record.

Bill Thomas
BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

By: Wayne S. Buchanan

Certified to the Secretary of State October 7, 1991

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.5.1002 pertaining pertaining to day care rates	))))	NOTICE OF AMENDMENT OF RULE 11.5.1002 PERTAINING TO DAY CARE RATES

TO: All Interested Persons

1. On August 15, 1991, the Department of Family Services published notice of the proposed amendment of ARM 11.5.1002 pertaining to daily and hourly payment rates paid to providers for the care of children pursuant to day care programs administered by the department, including but not limited to JOBS, Title IV-A, and child protective services day care benefits. The notice appeared at page 1385 of the 1991 Montana Administrative Register, issue no. 15.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

Certified to the Secretary of State, October 7, 1991.

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

In the matter of the proposed amendment of 16.8.1601 and the repeal of 16.8.1602 regarding the certification and testing of combustion devices for tax credit purposes	)))))	NOTICE OF AMENDMENT OF RULE 16.8.1601 AND THE REPEAL OF 16.8.1602 (Air Quality - Combustion Device Tax Credit)

To: All Interested Persons

1. On August 29, 1991, the department published notice at page 1543 of the Montana Administrative Register, Issue No. 16, of the proposed amendment of 16.8.1601 which replaces existing rules concerning the certification and testing of combustion devices to determine their eligibility for favorable tax treatment, and the proposed repeal of 16.8.1602 found at page 16-271 of the Administrative Rules of Montana.

2. The department has amended the rule as proposed with the following changes, which are non-substantive amendments designed to clarify that the department does not perform the actual testing of the devices:

16.8.1601 CERTIFICATION AND TESTING STANDARDS

(1) Remains the same.

(2) Pursuant to 15-32-102(5)(A)(II), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA (1990 ed.). In determining if a pellet conversion unit meets the particulate emission rate set forth in 15-32-102(5)(A)(II), MCA, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(3) Pursuant to 15-32-102(5)(A)(III), MCA, and for the purposes of certifying the air-to-fuel ratio of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA (1990 ed.). In determining if a pellet conversion unit meets the requirements in 15-32-102(5)(A)~~(II)~~(III), MCA, concerning air-to-fuel ratio, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(4) Pursuant to 15-32-102(5)(B), MCA, and for the pur-

poses of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that burns wood or other nonfossil biomass, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA (1990 ed.).

(5)-(6) Remain the same.

3. The department has repealed rule 16.8.1602 as proposed.

4. No comments were received.

DENNIS IVERSON, Director

Certified to the Secretary of State October 7, 1991 .

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of rules dealing with monitoring groundwater at municipal solid waste landfills.	))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH XVII

(Solid & Hazardous Waste)

To: All Interested Persons

1. On July 11, 1991, the Department published notice at page 1117 of the Montana Administrative Register, Issue No. 13, to consider the adoption of the above-captioned rules, which provide uniform standards for monitoring groundwater at municipal solid waste landfills and other disposal sites that serve over 5000 persons. These rules implement 75-10-207, MCA.

2. After consideration of the comments received on the proposed rules, the department has amended the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

RULE I (16.14.701) PURPOSE (1) Remains the same.
~~(2) The authority for the department to adopt these rules is contained in section 75-10-204(5), MCA.~~

RULE II (16.14.702) DEFINITIONS Unless the context requires otherwise, in this part the following definitions apply:

(1)-(4) Remain the same.

(5) "Aquitard" means a geologic formation, group of formations, or part of a formation that is stratigraphically adjacent to one or more aquifers and through which practically no water moves. The hydraulic conductivity within the aquitard is much lower than in adjacent aquifers and is not sufficient to allow the completion of water supply wells within it. Also known as a "confining bed", "confining layer", or "confining unit".

(6)-(29) Remain the same.

(30) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste ~~and/~~or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundment, injection wells, or waste piles.

(31)-(32) Remain the same.

(33) "~~Operator~~" "Owner" means the person who owns a facility or part of a facility.

(34)-(46) Remain the same.

RULE III (16.14.703) HYDROGEOLOGICAL AND SOILS STUDY (1) All facilities designated by 75-10-207(1), MCA, are required to prepare a site specific hydrogeological and soils

report of the facility. Four copies of the report must be transmitted to the department. The report must contain sufficient data and plans to provide the department with a sound basis to determine the adequacy of the proposed groundwater monitoring system. At a minimum, the scope of each report will include the following components:

(a) The owner or operator shall conduct a program to evaluate hydrogeologic conditions at the facility. This program shall provide the following information:

(i)-(vii) Remain the same.

(viii) The quality of groundwater monitored by the groundwater monitoring well network will be analyzed and the results included with the hydrogeological report. At a minimum the parameters listed in Table 1 [ARM 16.14.706] are required for each existing monitoring well.

(ix) Remains the same.

(x) The owner or operator shall conduct a program to characterize the soil and rock units above the water table in the vicinity of the landfill. Such characterization shall include, but not be limited to, the following information:

(A)-(J) Remain the same.

(K) soil boring information must be gathered in the following manner:

(I)-(II) Remain the same.

(III) Sufficient soil borings must be done to define the soil and bedrock conditions within the areas required in section (a)(v)(C) of this rule. The initial drilling must include borings positioned throughout the site; within each geomorphic feature including ridges, knolls, depressions, and drainage swales; and within any geophysical anomalies already identified. The minimum required number of borings for this initial drilling is as follows:

0-10 acres	15 borings
11-20 acres	add one boring per additional acre
20-40 acres	add one boring per additional two acres
41 or more acres	add one boring per additional four acres

Seventy five per cent (75%) of the required number of boring may be conducted with a backhoe to a depth of ten (10) feet.

(IV)-(VI) Remain the same.

(xi) Remains the same.

(b)-(c) Remain the same.

RULE IV (16.14.704) LOCATION AND NUMBER OF MONITORING WELLS (1) Remains the same.

(2) Downgradient groundwater quality monitoring wells must be capable of detecting a release of leachate from active and closed waste disposal areas. The number and location of downgradient monitoring wells must be approved in writing by the department. At least ~~three~~ two downgradient monitoring wells are required, although the department may require more.

(3) Remains the same.

RULE V (16.14.705) MONITORING WELL CONSTRUCTION (1) All groundwater monitoring wells shall be constructed by a licensed monitoring well constructor pursuant to 37-43-302, MCA, so as to obtain representative static water level data and groundwater samples. An owner or operator may request from the department a waiver of the requirements listed in this rule for wells already constructed by the date of implementation of this rule. However, this waiver can only apply to wells previously approved by the department.

(2)-(11) Remains the same.

RULE VI (16.14.706) SAMPLING AND ANALYSIS PLAN

(1)-(10) Remain the same. Table I has been moved to this section.

RULE VII (16.14.707) REPORTING AND PLANNING REQUIREMENTS Remains the same.

RULE VIII (16.14.708) DEFINITION OF EXTENT OF CONTAMINATION (1) If an exceedance or a definitive trend towards exceedance (or a significant decrease in pH) of an enforcement standard or preventative action limit for any Table 1 [ARM 16.14.706] constituent is detected in samples from any facility groundwater monitoring wells, then the department may require the owner or operator to take one or more of the following actions:

(a)-(e) Remain the same.

(2)-(7) Remain the same.

RULE IX (16.14.709) PHASED LANDFILL CONSTRUCTION Remains the same.

RULE X (16.14.710) LATERAL LANDFILL EXPANSION Remains the same.

RULE XI (16.14.711) MONITORING DURING CLOSURE (1) The groundwater monitoring plan must include a discussion of the anticipated groundwater monitoring system and schedule of sampling for closed portions of the facility.

(2) If a facility undergoes closure prior to ~~July 1, 1992~~ January 1, 1993, the department will require a minimum of six semi-annual sampling episodes for Table 1 [ARM 16.14.706] parameters prior to approving final closure. These sampling events must occur after the last date the site received waste. If no exceedence of preventative action limits or enforcement standards occurs for any Table 1 [ARM 16.14.706] constituent, then groundwater monitoring at the closed landfill may be discontinued contingent upon written approval obtained from the department. Depending on the site-specific hydrogeology study, the department reserves the right to increase or decrease the number of groundwater sampling events required during closure approval.

RULE XII (16.14.712) POST-CLOSURE MONITORING (1) Any facility that detects Table 1 [ARM 16.14.706] constituents of a hazardous substance in groundwater at concentrations above background at the facility will be required to conduct post-closure groundwater monitoring.

(2) Any facility designated by 75-10-207, MCA, that closes on or after ~~July 1, 1991~~, January 1, 1993, is required to monitor groundwater for at least thirty years following closure. The post-closure monitoring schedule will be determined by the department.

RULE XIII (16.14.713) MONITORING WELL ABANDONMENT Remains the same.

RULE XIV (16.14.714) NO MIGRATION DEMONSTRATION Remains the same.

RULE XV (16.14.715) MONITORING WELL NETWORK MAINTENANCE Remains the same.

RULE XVI (16.14.716) DEPARTMENT APPROVAL REQUIRED

(1)-(2) Remain the same.

(3) The department shall determine, and establish through rulemaking, preventative action limits and enforcement standards for indicator parameters listed in Table 1 [ARM 16.14.706].

RULE XVII (16.14.717) INSPECTIONS Remains the same.

3. The Department has thoroughly considered the comments received on the proposed rules. The following is a summary of the comments received and the department's responses.

COMMENT: Many commentors, in both written and oral submissions suggested the population cut-off of 5,000 listed in Rule number 1 should be enlarged.

RESPONSE: Section 75-10-207, MCA establishes the population served as 5,000. The Department of Health and Environmental Sciences cannot by rule, amend a statute.

COMMENT: In Rule II many commentors noted the misuse of the terms "Operator" in subsection 33 instead of the correct term, "Owner."

RESPONSE The term in Rule II has been changed to "Owner."

COMMENT: Most comments were directed at Rule III, "Hydrogeological and Soils Study." Generally the comments indicated that the number of soil borings required by the Department of Health and Environmental Sciences was excessive and the methods of obtaining the borings unreasonable.

RESPONSE: The Department of Health and Environmental Sciences

did not change the number of borings required, but did change Rule III to indicated that 75% of the borings could be performed by a backhoe, reducing the expense to the landfill owner.

COMMENT: Many comments were directed at Rule IV, the "Location and Number of Monitoring Wells". Most commentors argued that the number of wells required was arbitrary.

RESPONSE: Subsection 2 of Rule IV has been changed. Instead of requiring three downgradient monitoring wells, the Department of Health and Environmental Sciences now will require two downgradient wells. The Department, however, retains the authority to require more wells if needed.

COMMENT: Rule V elicited questions about monitoring well construction of wells already in operation.

RESPONSE: The language of Rule V was changed to allow a waiver of the requirements of the rule for wells constructed at the time of implementation of the rule. However, the waiver is only applicable to wells, the construction of which, was approved previously by the Department of Health and Environmental Sciences.

COMMENTS: Rules XI and XII caused the same comments; that is, most commentors objected to the establishment of the closure date of landfills as July 1, 1992. Under the rule, closure must occur by that date or groundwater monitoring would be required for thirty years.

RESPONSE: Because the date of enactment of the groundwater monitoring rules has become elongated, the Department of Health and Environmental Sciences has changed the applicable date for closure of landfills to January 1, 1993.

COMMENT: Commentors noted that Rule XVI was unclear as to how the Department would determine preventative action limits and enforcement standards for the parameters listed in Table I.

RESPONSE: Language was added to Rule XVI showing that the limits and standards would be established by rule.

DENNIS IVERSON, Director

Certified to the Secretary of State October 7, 1991

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption, amendment, and repeal of rules regulating public gambling	))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL OF RULES REGULATING PUBLIC GAMBLING

TO: All Interested Persons

1. On August 15, 1991, the Department of Justice published a notice of a public hearing on the proposed adoption, amendment, and repeal of rules regulating public gambling at page 1407 of the 1991 Montana Administrative Register, Issue No. 15.

2. The hearing was held on September 5, 1991, at 9:00 a.m. in the auditorium of the Scott Hart Building in Helena, Montana.

3. The Department has adopted rules III (23.16.117), IV (23.16.118), VI (23.16.120), VII (23.16.121), VIII (23.16.206), X (23.16.505), XII (23.16.1246), XIII (23.16.1304), XIV (23.16.1305), XV (23.16.1306), XVI (23.16.1712), XVII (23.16.1713), XIX (23.16.1715), XXI (23.16.1717), XXIII (23.16.1719), XXIV (23.16.1720), XXV (23.16.1705), XXVI (23.16.1706), XXVII (23.16.209), XXVIII (23.16.2004), XXIX (23.16.2301), XXXI (23.16.2303), XXXII (23.16.2304), XXXIII (23.16.2305), XXXV (23.16.2602), XXXVI (23.16.3101), XXXVIII (23.16.3103), XL (23.16.3201), XLI (23.16.3202), XLII (23.16.3203), XLIII (23.16.3204), and XLIV (23.16.3205); amended ARM 23.16.108, 23.16.402, 23.16.403, 23.16.406, 23.16.407, 23.16.501, 23.16.508, 23.16.1201, 23.16.1202, 23.16.1206, 23.16.1209, 23.16.1211, 23.16.1216, 23.16.1218, 23.16.1224, 23.16.1225, 23.16.1228, 23.16.1232, 23.16.1237, 23.16.1240, 23.16.1701, 23.16.1702, 23.16.1703, 23.16.1704, 23.16.1808, 23.16.1823, 23.16.1901, 23.16.1911, 23.16.1916, 23.16.1924, 23.16.2402, and 23.16.2406; and repealed ARM 23.15.506 (incorrectly numbered; should have been numbered 23.16.506), 23.16.2403, and 23.16.2601 as proposed.

4. The Department adopts the remaining rules with the following changes:

23.16.101 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) through (6) remain as proposed.

(7) "Manufacturer of electronic live bingo or keno equipment" means a person who ~~assembles~~ produces from raw materials or subparts a completed ~~or uncompleted~~ piece of electronic equipment intended for use in the game of live bingo or keno. The term does not include a person who solely installs or connects electronic live bingo or keno equipment on an operator's premises.

(8) through (12) remain as proposed.

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) through (3) remain as proposed.

(4) Forms 1 through 3 and 10, as the forms read on October 1, 1991, are incorporated by reference and available from the department upon request.

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED -- DISCLOSURE FROM NONINSTITUTIONAL LENDER (1) and (2) remain as proposed.

(3) The department may require a noninstitutional lender to complete a document (form 13) authorizing examination and release of information to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. (Form 13, as the form read on October 1, 1991, is incorporated by reference and available upon request from the department.)

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT OR AUTHORIZATION

(1) through (1)(h) remain as proposed.

(i) ~~if the applicant or licensee is~~ been voluntarily or involuntarily dissolved as a corporation~~, failed to remain in good standing with the office of the Montana secretary of state~~; or

(j) and (k) remain as proposed.

RULE I (23.16.115) DEFINITIONS Unless the context requires otherwise, the following definitions apply to [rules II through VI]:

(1) "Licensed gambling operation" means a business for which a gambling operator, card room contractor, manufacturer-distributor, manufacturer of gambling devices not legal in Montana, sports tab card manufacturer, or manufacturer of electronic live bingo or keno license was obtained under Title 23, chapter 5.

(2) "Licensee" means a licensed gambling operator, card room contractor, manufacturer-distributor, manufacturer of devices not legal in Montana, sports tab card manufacturer, or manufacturer of electronic live bingo or keno equipment.

(3) through (6) remain as proposed.

RULE II (23.16.116) TRANSFER OF INTEREST AMONG LICENSEES

(1) Except as provided in subsection (5), an owner of an interest in a licensed gambling operation may not transfer any portion of his interest to another owner or group of owners of an interest in the same licensed gambling ~~license~~ operation without submitting an amended gambling license application to the department and obtaining department approval.

(2) through (4) remain as proposed.

(5) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a licensed gambling operation; or

(b) transfer of less than 5% interest in a publicly-traded corporation.

RULE V (23.16.119) PARTICIPATION IN OPERATIONS (1) Except as provided in subsection (2), a person who proposes to acquire an interest in a licensed gambling operation may not ~~take part as an employee, manager, or otherwise~~ participate in a managerial or supervisory capacity or in any capacity reflecting ownership in the conduct of the gambling operations or operation of the establishment in which the gambling operations are conducted until the transfer has been approved by the department as provided for in [rule II or III].

(2) remains as proposed.

23.16.401 APPLICATION FOR DEALER LICENSE (1) through (3) remain as proposed.

(4) The application for a dealer license is incorporated in these rules by reference as Form 4, as that form read on October 1, 1991, and may be inspected at the office of the gambling control division.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on Form 5, as that form read on October 1, 1991, which is incorporated by reference and available from the department upon request:

(1)(a) through (2) remain as proposed.

RULE IX (23.16.503) APPLICATION PROCESSING FEE (1) ~~An applicant submitting an application for~~ At the time a gambling operator license ~~on or after July 1, 1991~~ is submitted, the applicant shall pay a deposit on the license application processing fee in the following amount:

(a) $50 if the applicant is a nonprofit organization;

(b) $400 if the applicant is a sole proprietorship; or

(c) $500 if the applicant is a partnership or ~~subchapter~~ S corporation; ~~and~~

~~(d) $1,000 if the applicant is a corporation other than a subchapter S corporation~~.

(2) The applicant shall submit the ~~fee~~ deposit required under subsection (1) in the form of a check or money order ~~at the time the operator license application is submitted to the department~~.

(3) and (4) remain as proposed.

RULE XI (23.16.1245) CARD ROOM CONTRACTOR LICENSE (1) A person may obtain a card room contractor license by submitting to the department a card room contractor license application (form 9), which is ~~incorporated by reference and~~ available upon request from the department.

(2) remains as proposed.

~~(2)~~(3) If a card room contractor alters an existing agreement or enters into additional agreements after obtaining a license, he shall submit a copy of each agreement to the department within 10 days after altering or signing the agreement.

(3) is renumbered (4).

23.16.1101 CARD GAME TOURNAMENTS (1) remains as proposed.

(2) If a licensed operator with a permit for operating at least one live card game table on his premises wishes to conduct a card game tournament using more tables than the number for which he has permits, the operator shall submit an application to the department for a card game tournament permit. Form 14, the card game tournament permit application, is ~~incorporated by reference and~~ available from the department upon request. The application must include:

(2)(a) through (7) remain as proposed.

(8) A tournament may not be conducted for more than 5 consecutive days. Card games may not be conducted between the hours of 2 a.m. and 8 a.m. each day unless the hours for operating a live card game table have been extended by a city or county ordinance. An operator may conduct up to 12 card game tournaments per year.

(9) and (10) remain as proposed.

RULE XVIII (23.16.1714) PRIZES (1) through (3) remain as proposed.

(4) The total value of all prizes awarded in a sports ~~pool~~ tab game may not exceed $500. Prizes must be in cash or merchandise.

(5) through (7) remain as proposed.

RULE XX (23.16.1716) MANUFACTURER LICENSE (1) Before conducting business in this state, a manufacturer shall obtain a sports tab card manufacturer license from the department. An applicant for a license shall submit to the department:

(a) a sports tab card manufacturer license application (form 21), which is ~~incorporated by reference and~~ available upon request from the department;

(1)(b) through (2) remain as proposed.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-502, 23-5-503, MCA

RULE XXII (23.16.1718) REMITTAL OF TAX TO DEPARTMENT (1) remains as proposed.

(2) ~~Failure to~~ If the manufacturer fails to file the form ~~and~~ or remit the required tax when due, ~~will result in assessment of~~ the following penalties will be assessed:

(2)(a) through (d) remain as proposed.

23.16.1803 APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS (1) An application to permit an electronic video gambling machine must be submitted to the gambling control division of the department of justice upon forms prescribed by the department. Form 8 is a video gambling machine permit application; Form 8 is ~~incorporated by reference and is~~ available upon request from the department ~~at 2687 Airport Road, Helena, MT 59620~~. The application is not complete unless it is dated and signed by the applicant, and contains all information and statements required by the department.

(2) and (3) remain as proposed.

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) through (4) remain as proposed.

(5) ~~Late filing and payment of~~ If the operator or his designated representative fails to file the quarterly tax report or remit the required machine income tax when due, ~~will result in~~ the following ~~penalty schedule being applied~~ penalties will be assessed:

(5)(a) through (6) remain as proposed.

23.16.1827 RECORD RETENTION REQUIREMENTS (1) through (2)(b) remain as proposed.

(c) ~~the~~ weekly readings ~~from the~~ of each machine's mechanical meters ~~each time the cash area of a machine is accessed~~; and

(d) documentation of the cash count by machine ~~each time the cash area is accessed and a count is taken~~ for the same period that the mechanical meter readings were taken as required in subsection (2)(c).

(3) through (5) remain as proposed.

RULE XXX (23.16.2302) MANUFACTURER LICENSE (1) remains as proposed.

(a) an electronic live bingo or keno manufacturer license application (form 17), which is ~~incorporated by reference and~~ available upon request from the department;

(1)(b) through (2) remain as proposed.

RULE XXXIV (23.16.2306) REPORTING AND RECORD KEEPING REQUIREMENTS (1) Within 15 days following the end of each calendar quarter, a licensed manufacturer shall submit to the department a quarterly activity report (form 18), which is ~~incorporated by reference and~~ available upon request from the department.

(2) and (3) remain as proposed.

RULE XXXVII (23.16.3102) APPLICATION FOR PERMIT (1) A nonprofit organization as defined in 23-15-112, MCA, may apply to the department for a casino night permit by submitting a casino night permit application (form 11), which is ~~incorporated by reference and~~ available upon request from the department.

(2) through (4) remain as proposed.

RULE XXXIX (23.16.3104) REPORTING REQUIREMENTS (1) Within 30 days after a casino night is held, the nonprofit organization shall submit to the department a casino night report (form 12), which is ~~incorporated by reference and~~ available upon request from the department. A nonprofit organization that knowingly fails to file the report within the time required may not receive additional casino night permits.

(2) remains as proposed.

5. The Department thoroughly considered the following oral and written comments:

COMMENT: The representative from the Gaming Industry Association requested that the definition of manufacturer of electronic live bingo or keno equipment in ARM 23.16.101(7) be clarified to exclude a distributor or other agent of a manufacturer who may assemble electronic equipment on an operator's premises.

RESPONSE: The Department adopted this suggestion.

COMMENT: In reference to ARM 23.16.107(1)(i), representatives from the Montana Tavern Association and Gaming Industry Association stated that failure of a corporation to remain in good standing with the Secretary of State was an overly vague standard for denying a gambling license. They suggested that the standard be "voluntary or involuntary dissolution" of the corporation.

RESPONSE: The Department adopted this suggestion.

COMMENT: The representative from the Gaming Industry Association stated that rules II through VI (23.16.116 through 23.16.120) exceed the Department's rulemaking authority. He requested that the rules be amended to provide that the Department's approval authority extends to transfers and loans that represent a "substantial amount" of financing for the operation, such as a transfer or loan involving more than 10 percent of the operation's assets.

RESPONSE: The Department believes that the rules fall within the scope of the agency's general rulemaking authority and are essential for determining qualification for licensure under 23-5-176, MCA. The Department does not believe that it is possible to quantify the phrase "substantial amount of financing" in terms of a percentage of assets, liabilities, or other standard because even a small percentage may equate to a substantial dollar amount and/or have a substantial impact on the operation.

COMMENT: In reference to rule II (23.16.116), the representative from the Gaming Industry Association stated that a transfer of ownership interest among existing licensees should not require prior Department approval because parties to this type of transfer have already been approved through the licensure process. Moreover, the source of financing for such transfer is irrelevant unless the capital comes from a noninstitutional lender who is a stranger to the license, in which case rule III (23.16.117) applies. The representative suggested that the rule be amended to reflect only the notice requirement in 23-5-118, MCA.

RESPONSE: The Department disagrees. Without rule II (23.16.116), the Department would be unable to review the source of financing obtained by a licensee for the purpose of transferring an interest in the licensed gambling operation to another owner of an interest in the same operation. This review is necessary to ensure that the financing, even that obtained by an individual for purchase under his/her own name, is from a suitable source as required in 23-5-176, MCA. Rule III (23.16.117) applies only to the transfer of an ownership interest to a stranger to the license and does not permit the Department to review the source of financing obtained by an

existing licensee to transfer an ownership interest to another licensee.

COMMENT: The representative from the Gaming Industry Association stated that rule V (23.16.119), which prohibits a prospective buyer from participating in the business until the Department has approved the transfer of the ownership interest, duplicates ARM 23.16.508. The representative suggested that rule V either be deleted or amended to allow the operator to hire the prospective buyer as a nonmanagerial employee pending Department action.

RESPONSE: The Department does not believe that rule V (23.16.119) duplicates ARM 23.16.508. ARM 23.16.508 requires a licensee to report any change in management employees, officers, or directors within 30 days of the date of change; it does not prohibit a licensee from hiring a prospective buyer as a manager as rule V does. However, the Department agrees with the suggestion to prohibit employment of a prospective buyer in a managerial or supervisory capacity or in any capacity reflecting ownership.

COMMENT: The representative from the Gaming Industry Association suggested that the rule VI (23.16.120) be amended to require the Department to approve or deny a loan involving a substantial amount of financing from a noninstitutional source within five days of receiving notice.

RESPONSE: The Department disagrees. Given the diversity of loan arrangements, the complexity of some of these arrangements, and the limited staff available to review loans, the Department believes that imposing a five-day deadline is unrealistic.

COMMENT: In reference to rule IX (23.16.503), the representative from the Montana Tavern Association stated that a subchapter S corporation is a legal fiction that only describes a choice made by a corporation for tax treatment purposes. He suggested that the rule be amended to permit an applicant who is eligible to be designated as a subchapter S corporation to pay the $500 deposit on the application processing fee. The representative from the Montana Association of Churches suggested that payment of the $500 deposit apply to an applicant who is eligible for 1120 S corporation status.

RESPONSE: Adoption of the amendments suggested above would require the Department to examine an applicant's corporate structure and organization to verify whether the applicant is eligible for a subchapter S or 1120 S corporation designation. To eliminate the need to make this determination and to ensure that the deposit does not place a financial burden on small corporations, the Department has amended the rule to require the $500 deposit for all corporate applicants, regardless of size.

COMMENT: The representative from the Gaming Industry Association suggested that ARM 23.16.1101(5)(b) concerning card game tournaments be amended to delete the requirement that each card game in a poker or panguingue tournament be conducted by a licensed card dealer. According to the representative, the rule is contrary to the discussion about card game tournaments that occurred during the House Judiciary Subcommittee meetings.

RESPONSE: Section 23-5-308(1), MCA, provides that "[a] person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department." Likewise, 23-5-309(2), MCA, provides that "[a] live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer." Because these sections provide no exception for card game tournaments, the Department believes that card games played in a poker or panguingue tournament must be conducted by licensed dealers.

COMMENT: In reference to ARM 23.16.1240, the representative from the Gaming Industry Association suggested that the prohibition against accepting checks at a live card game table be deleted.

RESPONSE: The Department disagrees. Section 23-5-157, MCA, requires that consideration paid for the chance to participate in gambling activity (except raffles) be in cash and prohibits a check from being offered or accepted as part of the price for participating.

COMMENT: In reference to rule XXVII (23.16.209), a representative of a video gambling machine manufacturer asked whether an antique slot machine on public display during a convention needed to be enclosed in a permanently sealed case.

RESPONSE: Rule XXVII (23.16.209) governs display of illegal gambling devices as defined in 23-5-112, MCA. An antique slot machine is excluded from the statutory definition of an illegal gambling device. Therefore, an antique slot machine is not subject to the provisions of rule XXVII and need not be enclosed.

COMMENT: The representative from the Montana Tavern Association stated that the record keeping requirements in ARM 23.16.1827(2)(c) and (d) impose an inconvenience and financial hardship on small operators. He requested that subsections (2)(c) and (d) be deleted. The representative from the Gaming Industry Association also noted that these requirements imposed "significant new burdens on the operator"; he suggested amending subsection (2)(c) to require readings from the mechanical meters once per month and deleting the phrase "by machine" from subsection (2)(d). In addition, a Froid tavern owner stated that the requirements in subsections (2)(c) and (d) were burdensome.

RESPONSE: It has been the Department's experience that the mechanical meter readings recorded on video gambling machine quarterly tax reports are frequently out of balance. As a result, the meter readings cannot be used to calculate the proper amount of tax due. The Department has also found in conducting audits of tax reports that the electronic meters on some machines have malfunctioned resulting in garbled accounting tickets that cannot be used to verify the proper amount of taxes due. In addition, cash records are often maintained in terms of total income from all machines on a premises, rather than segregated according to individual machine. Because the video gambling machine tax is paid by machine, totals from all machines on a premises are of little use in determining tax liability. Therefore, to remedy these problems and ensure the

integrity of tax collections, the Department originally proposed in ARM 23.16.1827 that an operator be required to record the mechanical meter readings each time a machine's cash area was accessed and to document the cash count by machine each time the cash area was accessed and a count was taken. Because of comments received on these provisions, the Department has amended the rule to require weekly reading of the mechanical meters and documentation of the cash count by machine for the same period that the mechanical meters readings are taken. These amendments will lessen the record keeping requirements on the operator while ensuring that the Department has adequate information to verify the amount of taxes due on each machine.

COMMENT: A representative of a video gambling machine manufacturer asked whether a distributor of electronic live bingo or keno equipment could submit the quarterly activity report required in rule XXXIV (23.16.2306) on behalf of the manufacturer.

RESPONSE: Rule XXXIV (23.16.2306) requires the manufacturer to file the activity report. The Department believes that it is appropriate for the manufacturer to file the report because the manufacturer is the entity licensed by the Department. However, nothing in the rule prohibits a distributor from compiling the data required for completing the report.

6. Amendments to the rules, other than those addressed in item 5 above, were made for the following reasons:

a. ARM 23.16.102, 23.16.103, 23.16.401, and 23.16.502 were amended to include a version date in compliance with 2-4-307, MCA.

b. Rules XI (23.16.1245), 23.16.1101, XX (23.16.1716), 23.16.1803, XXX (23.16.2302), XXXIV (23.16.2306), XXXVII (23.16.3102), and XXXIX (23.16.3104) were amended to delete the phrase "incorporated by reference" because the Department determined that it was not necessary to incorporate these forms into the rules.

c. Rules I (23.16.115), II(1) (23.16.116(1)), 23.16.1101(8), XVIII (23.16.1714), XXII (23.16.1718), and 23.16.1826 were amended to correct technical errors or provide clarification.

d. Rule II(5) (23.16.116(5)) was amended to make the provisions consistent with rule III (23.16.117).

e. The additional implementation cites listed in rule XX (23.16.1716) were added at the suggestion of the attorney for the Administrative Code Committee.

Judy Browning
JUDY BROWNING
Rule Reviewer

Judy Browning
for MARC RACICOT
Attorney General

Certified to the Secretary of State October 7, 1991

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

In the matter of the amendment of ARM 36.16.117 pertaining to water reservation applications in the Upper Missouri Basin	))))	NOTICE OF THE AMENDMENT OF RULE 36.16.117 PERTAINING TO WATER RESERVATION APPLICATIONS IN THE UPPER MISSOURI BASIN

TO: ALL INTERESTED PERSONS

1. On August 24, 1991, the Board of Natural Resources and Conservation published notice of the proposal to amend ARM 36.16.117 pertaining to water reservation applications in the Upper Missouri Basin at page 1198 of the 1991 Montana Administrative Register, issue no. 14.

2. No hearing was requested and no written comments were received.

3. Therefore, the board adopts the proposed amendments to ARM 36.16.117 as proposed.

JANICE REHBERG, CHAIR
BOARD OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State Sept. 30, 1991.

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

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

TO: ALL INTERESTED PERSONS

1. On May 9, 1991, the Board of Natural Resources and Conservation published notice pertaining to the proposed adoption of new rules I (36.24.101) through X (36.24.110) relating to financial assistance available under the wastewater treatment revolving fund act at page 637 of the 1991 Montana Administrative Register, Issue no. 9.

2. No written comments or testimony were received.

3. Therefore, the board adopts the rules as proposed.

Janice B. Rehberg
JANICE REHBERG, CHAIR
BOARD OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State Sept. 30, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.116 relating to Determination of Tax Rate for Class 15 Property	NOTICE OF AMENDMENT of ARM 42.22.116 relating to Determination of Tax Rate for Class 15 Property

TO: All Interested Persons:

1. On August 15, 1991, the Department of Revenue published notice of the proposed amendment of ARM 42.22.116 relating to determination of tax rate for Class 15 property at page 1444 of the 1991 Montana Administrative Register, issue no. 15.

2. No public hearing was held. The comment period closed September 20, 1991, and no written comments were received.

3. Therefore, the Department adopts the amendments to ARM 42.22.116 as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State October 7, 1991

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.519 regarding rule reviewers for the Montana Administrative Register	)	NOTICE OF AMENDMENT OF ARM 1.2.519 RULE REVIEWERS SIGNATURE REQUIRED ON ALL NOTICES PUBLISHED IN THE MONTANA ADMINISTRATIVE REGISTER

TO: All Interested Persons.

1. On August 15, 1991, the office of the Secretary of State published a notice of proposed amendment to ARM 1.2.519 regarding rule reviewers signature on all notices published in the Montana Administrative Register at page 1446, 1991 Montana Administrative Register.

2. The Secretary of State has amended the rule as proposed with the following changes:

1.2.519 BASIC FORMAT INSTRUCTIONS (1) through (1)(l) same as proposed.

(i) The rule reviewer must sign each proposal and adoption notice published in the Montana Administrative Register, indicating that he has reviewed and approved the rules as required by 2-4-110, MCA. A stamped (facsimile) signature is not acceptable. A letter must be filed with the secretary of state and administrative code committee indicating rule reviewer appointment.

(m) remains the same.

AUTH: 2-4-201, MCA; IMP: 2-4-110, MCA;

3. The rule has been amended to note that a facsimile signature is not allowed and appointment of rule reviewer must be filed with both the secretary of state and the administrative code committee. The rule has been amended to put all signature information together therefor making it easier on agency personnel working on rules.

4. John MacMaster, Staff Attorney for the Administrative Code Committee commented that the proposal unnecessarily repeated the statute. The Secretary of State has expanded on the requirements as shown above.

5. No other comments or testimony were received.

Garth Jacobson
Rule Reviewer

MIKE COONEY
Secretary of State

Dated this 7th day of October, 1991.

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

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To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1991, this table and the table of contents of this issue of the MAR.

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