MONTANA ADMINISTRATIVE REGISTER

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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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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 DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of existing rule and adoption of a new rule pertaining to the designation of noxious weeds	NOTICE OF PROPOSED AMENDMENT OF ARM 4.5.201; 4.5.202; 4.5.203; AND ADOPTION OF NEW RULE I

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 30, 1991 the Department of Agriculture proposes to amend ARM 4.5.201, 4.5.202, 4.5.203 relating to the designation of noxious weeds and adopt a new rule relating to category 3 noxious weeds.

2. The rules as proposed to be amended provide as follows: (New matter underlined, deleted matter interlined)

4.5.201 DESIGNATION OF NOXIOUS WEEDS (1) The department designates certain exotic plants listed in these rules as statewide noxious weeds under the County Weed Control Act 7-22-2101 (5), MCA. All counties must implement management standards for these noxious weeds consistent with weed management criteria developed under 7-22-2109 (2) (b) of the Act. The department established ~~two~~ three categories of noxious weeds.

AUTH: 7-22-2101, MCA IMP: 7-22-2101, MCA

4.5.202 CATEGORY 1 (1) Category 1 noxious weeds are weeds that are currently established and generally widespread in many counties of the state. Management criteria ~~for control of these weeds is necessary in all counties to~~ includes awareness and education, containment ~~or~~ and suppression of existing infestations ~~or~~ and ~~to~~ prevention~~, through eradication or other appropriate measures,~~ of new infestations ~~of these weeds~~. ~~All of t~~These weeds are capable of rapid spread and render land unfit or greatly limit ~~the~~ beneficial uses.

(2) The following are designated as category 1 noxious weeds:

(a) Canada thistle (Cirsium arvense)
(b) Field bindweed (Convolvulus arvensis)
(c) ~~Whitetop~~ Hoary cress (Cardaria draba)
(d) Leafy spurge (Euphorbia esula)
(e) Russian knapweed (Centaurea repens)
(f) Spotted knapweed (Centaurea maculosa)
(g) Diffuse knapweed (Centaurea diffusa)
(h) Dalmatian toadflax (Linaria dalmatica)
(i) St. Johnswort (Hypericum perforatum)

AUTH: 7-22-2101, MCA IMP: 7-22-2101, MCA

4.5.203 CATEGORY 2 (1) Category 2 noxious weeds ~~are weeds that have not been detected in the state of Montana or~~ have recently been introduced into the state ~~of Montana~~ or are rapidly spreading from their current infestation sites. These weeds ~~have the potential for~~ are capable of rapid spread and invasion of lands, ~~thereby~~ rendering ~~them~~ lands unfit for beneficial uses. ~~County planning to prevent the spread or introduction of these weeds is necessary.~~ Management criteria includes ~~for detection and immediate action to eradicate or contain these weeds is necessary in all counties~~ awareness and education, monitoring and containment of known infestations and eradication where possible.

(2) The following are designated as category 2 noxious weeds:

(a) Dyers Woad (Isatis tinctoria)

(b) ~~Yellow Starthistle (Centaurea solstitialis)~~Purple loosestrife (Lythrum salicaria)

(c) ~~Common Crupina (Crupina vulgaris)~~Sulfur (erect) cinquefoil (Potentilla erecta)

~~(d) Rush Skeletonweed (Chondrilla juncea)~~

AUTH: 7-22-2101 MCA; IMP: 7-22-2101, MCA

RULE I CATEGORY 3 (1) Category 3 noxious weeds have not been detected in the state or may be found only in small, scattered, localized infestations. Management criteria includes awareness and education, early detection and immediate action to eradicate infestations. These weeds are known pests in nearby states and are capable of rapid spread and render land unfit for beneficial uses.

(2) The following are designated as category 3 noxious weeds:

(a) Yellow Starthistle (Centaurea solstitialis)

(c) Common Crupina (Crupina vulgaris)

(d) Rush Skeletonweed (Chondrilla juncea)

Auth: 80-7-802 MCA; Imp: 7-22-2101, MCA

3. The reason for the proposed rules is to allow for a more accurate description of the impacts and management methods of noxious weed species by adding category 3 and revising category 2. Species have been added by request of the county weed districts and state agricultural and conservation groups.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment & adoption in writing to Gary Gingery, Administrator, EMD, Department of Agriculture, Capitol Station, Helena, Montana 59620-0201, no later than March 30, 1991.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Department of Agriculture, no later than March 28, 1991.

6. If the Department receives request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any 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 and mailed to all interested persons.

By: Everett M Snortland

EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, February 19, 1991.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure - qualifications, licensure - examinations and conduct	)))))))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.39.502 LICENSURE -- OUTFITTER QUALIFICATIONS, 8.39.503 LICENSURE -- OUTFITTER EXAMINATION AND 8.39.701 CONDUCT--STANDARDS OF OUTFITTER AND PROFESSIONAL GUIDE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 30, 1991, the Board of Outfitters proposes to amend the above-stated rules.

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

"8.39.502 LICENSURE -- OUTFITTER QUALIFICATIONS (1) through (4) will remain the same.

(5) The board may waive the experience requirement of an applicant for an outfitter license provided that:

(a) the applicant owns an outfitting business;

(b) the business has previously had an approved operations plan on file with the board; and

(c) the applicant has worked with a properly licensed outfitter in operating the business owned by the applicant, for not less than twelve months."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-304, MCA

REASON: To enact a rule that will allow the board to waive the experience requirement if certain conditions are met.

"8.39.503 LICENSURE -- OUTFITTER EXAMINATION

(1) Application to take the outfitter examination shall be by completed license application accompanied by the required fee no later than ~~seven~~ thirty days prior to the examination date.

(2) through (4) will remain the same."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-305, MCA

REASON: To allow the board more time to process the exam application before the outfitter's exam is given.

"8.39.701 CONDUCT--STANDARDS OF OUTFITTER AND PROFESSIONAL GUIDE (1) through (1)(q) will remain the same.

(r) produce their current license at the demand of a representative of the board."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-301, MCA

REASON: This amendment is being proposed because the investigators in the field need to be able to determine if an outfitter has a valid license.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Outfitters, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 28, 1991.

4. If a person who is directly affected by the proposed amendments 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 Outfitters, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 28, 1991.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 200 based on the 2000 licensees in Montana.

BOARD OF OUTFITTERS
RONALD CURTISS, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State February 19, 1991.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of rule 8.86.301 as it relates to jobber prices	)	NOTICE OF PROPOSED AMENDMENT OF RULE 8.86.301 PRICING RULES
	)	NO PUBLIC HEARING CONTEMPLATED
	)	DOCKET #6-91

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

1. On Monday, April 15, 1991, the Board of Milk Control proposes to amend ARM 8.86.301(6)(i). The amendment is at the request of Larry J. Hochhalter, president, Montana Milk Jobbers Association. The proposed change is needed to provide adequate financial returns to jobbers so as to avoid affecting service to wholesale customers.

2. The rule as proposed to be amended would read as follows: (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1-(6)(h)(iii) remains the same.

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

(i) Minimum jobber prices will be calculated by multiplying the difference between the applicable wholesale price and raw product cost times a factor of 55.597% with the resulting answer being added to the current raw product cost. The jobber prices calculated will be the minimum jobber prices."

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

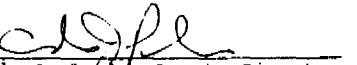
3. The purpose for the jobbers request to amend ARM 8.86.301(6)(i) is to permit jobbers to purchase milk at prices that provide an adequate financial return in order for jobbers to provide service to all wholesale customers.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1520 East Sixth Avenue - Rm. 50, Helena, MT 59620-0512, no later than March 28, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the above address no later than March 28, 1991.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty-five (25), whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be nine (9) persons based on an estimate of five (5) licensed Montana distributors, twenty-three (23) out-of-state distributors, and sixty-six jobbers.

MONTANA DEPARTMENT OF COMMERCE

By: 

Andy J. Poole, Deputy Director
Montana Department of Commerce

Certified to the Secretary of State February 19, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Basic Education Program: Junior High and Grades 7 and 8 Budgeted at High School Rates	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.55.903, BASIC EDUCATION PROGRAM: JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES

TO: All Interested Persons

1. On March 22, 1991, at 1:30 P.M., or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the amendment of ARM 10.55.903, Basic Education Program: Junior High and Grades 7 and 8 Budgeted at High School Rates.

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

10.55.903 BASIC EDUCATION PROGRAM: JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) through (2) (c) remain the same.

(d) science: 1 unit each year ~~in junior high and grades 7-8~~ as a broad based science approach incorporating physical science and life science disciplines in junior high and grades 7-8;

(e) health enhancement: 1/2 unit each year in junior high and grades 7-8; (Eff. 7/1/89)

~~(f) visual arts: 1/2 unit each year in junior high and grades 7-8;~~

~~(g) music: 1/2 unit each year in junior high and grades 7-8;~~

~~(h) vocational/practical arts: 1/2 unit each year in junior high and grades 7-8; (Eff. 7/1/89)~~

~~(i) beginning 7/1/94, in addition, students shall have the opportunity to take a second language, 1/2 unit each year in junior high and grades 7-8.~~

(3) study areas further identified as meeting the learner goals shall include the subjects below and maintain them in balance:

(a) visual arts;

(b) music;

(c) vocational/practical arts; (Eff. 7/1/89)

(d) beginning 7/1/94, students shall have the opportunity to take a second language. (Eff. 7/1/94)

AUTH: Sec. 20-2-114
IMP: Sec. 20-2-121

3. The board is proposing this amendment to allow greater flexibility.

4. Interested parties may submit their data, views or arguments either orally or in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620, no later than March 30, 1991.

5. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Wayne G Buchanan

Certified to the Secretary of State February 15, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action, and Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Suspend or Revoke Teacher or Specialist Certificate	))))))))	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.601, REQUEST TO SUSPEND OR REVOKE A TEACHER OR SPECIALIST CERTIFICATE: PRELIMINARY ACTION, AND ARM 10.57.602, NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT SUBSTANTIAL REASON EXISTS TO SUSPEND OR REVOKE TEACHER OR SPECIALIST CERTIFICATE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 9, 1991, the Board of Public Education proposes to amend A.R.M. 10.57.601, Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action, and A.R.M. 10.57.602, Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Suspend or Revoke Teacher or Specialist Certificate.

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

10.57.601 REQUEST TO SUSPEND OR REVOKE A TEACHER OR SPECIALIST CERTIFICATE: PRELIMINARY ACTION

(1) through (2) remain the same.

(3) Upon receipt of such request, the board of public education shall implement an investigation to determine whether or not a substantial reason to hold a hearing for suspension or revocation of the teacher or specialist certificate exists. This investigation shall include notifying the affected teacher or specialist of the charges against him by certified mail and allowing him ten days to respond to those charges. After receiving response, the board may request further information from either party to ensure the preliminary investigation properly reflects the facts and position of each party.

(4) through (4)(c) remain the same.

AUTH: Sec. 20-4-102

IMP: Sec. 20-4-110

10.57.602 NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT SUBSTANTIAL REASON EXISTS TO HOLD A HEARING TO SUSPEND OR REVOKE TEACHER OR SPECIALIST CERTIFICATE (1) On the basis of the preliminary investigation, the board of public education shall determine whether or not a substantial reason exists to hold a hearing to suspend or revoke the teacher or specialist certificate.

(a) If the board determines that no substantial reason exists to hold a hearing to suspend or revoke the teacher or specialist certificate, the matter is ended.

(b) If the board determines that there is substantial reason to hold a hearing to suspend or revoke the teacher or specialist certificate, the board shall provide notice by certified mail not less than 30 days prior to the date of the hearing of the pending action to the teacher or specialist. Such notice shall include:

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

1(c) through 1(f) remain the same.

AUTH: Sec. 20-4-102

IMP: Sec. 20-4-110

3. These amendments have been proposed for the purpose of bringing the rules into compliance with the statute Sec. 20-4-110(4).

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than March 30, 1991.

5. If a person who is directly affected by the proposed amendments wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than March 30, 1991.

6. If the Board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,159 as there are 21,590 persons presently holding teacher or specialist certificates.

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Wayne F. Buchanan

Certified to the Secretary of State February 15, 1991.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 12.6.901 pertaining to Water Safety Regulations	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 12.6.901 ESTABLISHING A NO-WAKE RESTRICTION ON HYALITE RESERVOIR

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On April 1, 1991 the Montana Fish and Game Commission proposes to amend 12.6.901 to establish a no-wake restriction on Hyalite Reservoir.

2. The proposed rule will read as follows:

12.6.901 WATER SAFETY REGULATIONS (1)(a) through (1)(b)(ii) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County through Flathead County remain the same.

Gallatin County: (A) on all of Hyalite Reservoir.

Hill County through (2) remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA
IMP: 87-1-303, 23-1-106(1), MCA

3. This rule is being amended to establish a no-wake regulation on Hyalite Reservoir to conform with Forest Service regulations adopted in June, 1990.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than March 28, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than March 28, 1991.

6. If the agency receives requests for a public hearing on the proposed amendment 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 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.

Errol T. Galt, Chairman
Montana Fish and Game
Commission

Certified to the Secretary of State February 19, 1991.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed amendments of 36.21.403 concerning requirements for water well contractors, 36.21.634 concerning definitions, 36.21.645 concerning plastic casing, 36.21.650 concerning casing perforations, 36.21.651 concerning movement of casing after grouting, 36.21.654 - 36.21.657, 36.21.659 concerning sealing, 36.21.661 concerning temporary capping, 36.21.662 concerning disinfection of the well, 36.21.670 abandonment, 36.21.677 concerning placement of concrete or cement, 36.21.701 concerning verification of experience for monitoring well constructor applicants, 36.21.702 concerning application approval, 36.21.801 concerning definitions, 36.21.806 installation of seals, 36.21.810 concerning abandonment, and the proposed adoption of new rules concerning casing depth, verification of equivalent education and experience for monitoring well constructors, and types of wells requiring abandonment.	) NOTICE OF THE PROPOSED AMENDMENT OF 36.21.403 REQUIREMENTS FOR CURRENT LICENSED WATER WELL CONTRACTORS, 36.21.634 DEFINITIONS, 36.21.645 PLASTIC CASING, 36.21.650 CASING PERFORATIONS, 36.21.651 MOVEMENT OF CASING AFTER GROUTING, 36.21.654 - 36.21.657, 36.21.659 SEALING OF WELLS, 36.21.661 TEMPORARY CAPPING, 36.21.662 DISINFECTION, 36.21.670 PERMANENT ABANDONMENT, 36.21.677 METHOD OF PLACEMENT OF CONCRETE OR CEMENT GROUT, 36.21.701 VERIFICATION OF EXPERIENCE, 36.21.701 APPLICATION APPROVAL AND EXAMINATION, 36.21.801 DEFINITIONS, 36.21.806 INSTALLATION OF SEALS, 36.21.810 ABANDONMENT, AND PROPOSED ADOPTION OF NEW RULES - CASING DEPTH, VERIFICATION OF EQUIVALENT EDUCATION AND EXPERIENCE, AND TYPES OF WELLS REQUIRING ABANDONMENT NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On March 30, 1991, the Board of Water Well Contractors proposes to amend and adopt the above-stated rules.

2. The proposed amendment to 36.21.403 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 36-393.12, Administrative Rules of Montana)

"36.21.403 REQUIREMENTS FOR CURRENT WATER WELL CONTRACTORS (1) ~~For purposes of implementing the two licensure system (contractor and driller), these water well contractors who are currently licensed must notify the board office by the June 30, 1986 renewal deadline as to whether they wish to renew the license as a contractor or driller.~~ Each drill rig shall have a sign showing the company or

contractor name and license number in letters 3 inches high.

(2) ..."

Auth: 37-43-202, MCA Imp: 37-43-302, 305, MCA

3. The rule is proposed to be amended as subsection (1) was placed into effect when the statute changed to add driller's licenses. This subsection no longer applies. The section on drill rig signs was inadvertently dropped several years ago. It is important that signs be on the rig to assist persons doing routine inspection work, field office managers or the board's program specialist.

4. The amendment of 36.21.634 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-393.36 - 36-393.39, Administrative Rules of Montana)

"36.21.634 DEFINITIONS For purposes of this chapter, the following terms shall apply:

(1) "Abandoned water well"

(a) "permanent" means a well whose use has been permanently discontinued~~,or which is in such disrepair that its continued use for the purpose of obtaining ground water is impractical or may be a health hazard~~.

(b) "temporary" means a well from which a drilling rig has been removed from the well site prior to completing or altering the well.

(2) ...

(4) "Aquifer" means any ~~underground~~ geological ~~structure or~~ formation which is capable of yielding water or is capable of recharge.

(a) Any discrete water bearing unit with a specific water chemistry, temperature, or hydrostatic head shall be considered a separate aquifer.

(5) ...

(6) "Bentonite" means a highly plastic, highly absorbent, colloidal clay composed ~~largely~~ primarily of swelling sodium ~~mineral~~ montmorillonite.

(7) ....

(14) "Confining formation" means a body of impermeable or distinctly less permeable material ~~stratigraphically~~ adjacent to one or more aquifers.

(15) ...

(16) "Construction of water wells" means all acts necessary to obtain ground water by wells, including the contracting for and excavation of the well, installation of casing,~~grout~~ sealing material, screens, and developing and testing, whether in the installation of a new well or the alteration of an existing well. The term does not include the installation of permanent pumps and pumping equipment.

(17) ...

(20) "Drawdown" means the extent of lowering of the water level in a well when pumping is in progress or when water is discharging from a flowing well. Drawdown is the difference~~, measured in feet,~~ between the static water level and the pumping level.

(21) ...

(22) "~~Grout~~ Sealing material" means neat cement, ~~or~~ heavy bentonite water slurry, bentonite chips and bentonite clay grout. Heavy bentonite water slurry when used as ~~grout~~ sealing material shall be of sufficient viscosity to require a time of at least 70 seconds to discharge one quart of the material through an American Petroleum Institute (API) marsh funnel viscometer. Bentonite water slurry shall weigh not less than nine pounds per gallon. ~~It must be fresh bentonite with no additives or polymers.~~

(a) ...

(23) "Monitoring well" means a well that will be used for pollutant recovery or the monitoring of ground water quality, groundwater levels, or flow direction, but whose primary purpose is not ~~to be used as a means of~~ withdrawingal or acquisition of groundwater ~~for purposes other than water quality sampling or pump testing~~.

(24) ..."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

5. Current rules only allowed the use of bentonite slurry and cement grout. The change to "sealing material" throughout the rules will allow the use of bentonite chips and pellets. It has been shown that bentonite chips and pellets are effective sealing materials and in some cases may work better than a bentonite slurry. The addition of subsection (4)(a) defines what is considered a separate aquifer. This eliminates any question as to what is a separate aquifer for purposes of implementing ARM 36.21.650, which concerns casing perforations. The change in subsection (22) removing the last sentence is due to the fact that bentonite slurry weighing 9 pounds per gallon cannot be pumped without additives. Other changes are proposed to clarify the definitions.

6. The proposed amendment of 36.21.645 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.43 - 36-393.44, Administrative Rules of Montana)

"36.21.645 PLASTIC CASING (1) All plastic casing shall be installed only in an oversized drill hole without driving. Wells cased with plastic shall have steel casing extending a minimum of 18 feet below the surface and 18 inches above the ground surface. Plastic casing to be used must be specifically designed for water well construction and bears NSF approval. Methods of installation shall be:

(a) ...

(2) Thermoplastic well casing shall conform with American Society for Testing and Materials Specification F480-81 or latest revision as follows:

(a) ...

(d) all casing five inches [12.7 centimeters] and larger shall be tested for impact resistance and shall meet or exceed IC-1 impact classification according to section 6.5 and table 6 of American Society for Testing and Materials Specification

F408;
(e) ..."
Auth: 37-43-202, MCA Imp: 37-43-202, MCA

7. The rule is proposed to be amended to make it clear that plastic casing to be used in a well must be designed as well casing. There have been instances of sewer pipe being used as well casing.

8. The proposed amendment of ARM 36.21.650 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.45 - 36-393.46, Administrative Rules of Montana)

"36.21.650 CASING PERFORATIONS (1) Perforations above the lowest expected static water level shall not be permitted. Wells may be completed with perforations as follows:
(a) ...
(b) perforated inner casing, either torch-cut, millslotted or punched. Such inner casing may be of steel, plastic or other suitable corrosion-resistant material, but if other than steel, a full evaluation of the structural stability of the inner casing must be made prior to its placement. They may be used in a natural development or gravel packed type of construction. Where appropriate, the top of the inner casing shall be fitted with suitable packers or ~~grout~~ sealing material and sealed to the well casing.
(2) ..."
Auth: 37-43-202, MCA Imp: 37-43-202, MCA

9. The rule amendment is proposed to allow for changes in grouting material.

10. The proposed amendment of 36.21.651 changes the catchphrase only and will read as follows: (deleted matter interlined)

"36.21.651 MOVEMENT OF CASING AFTER ~~GROUTING~~ SEALING (1) In no case shall the permanent well casing be moved or driven following the placement and initial set of the cement grout."
Auth: 37-43-202, MCA Imp: 37-43-202, MCA

11. The amendment is proposed to change the word grouting to sealing material. (See paragraph 5.)

12. The proposed amendment of ARM 36.21.654 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.43 - 36-393.44, Administrative Rules of Montana)

"36.21.654 SEALING OF CASING - GENERAL (1) In constructing, developing, redeveloping or conditioning a well, care shall be taken to preserve the natural barriers to ground-water movement between aquifers and to seal aquifers or strata penetrated during drilling operations which might impair water quality or result in cascading water. All sealing shall be permanent and prevent possible downward movement of surface waters in the annular space around the

well casing. Sealing shall be accomplished to prevent the upward movement of artesian waters within the annular space around the well casing that could result in the waste of ground water. The sealing shall restrict the movement of ground water either upward or downward from zones that have been cased out of the well because of poor quality. When cement grout is used in sealing, it shall be set in place 72 hours before additional drilling takes place, unless special additives are mixed with the ~~grout~~ sealing material that will cause it to adequately set in a shorter period of time. All ~~grouting~~ sealing shall be performed by adding the mixture from the bottom of the space to be ~~grouted~~ sealed toward the surface in one continuous operation. The minimum ~~grout~~ sealing material thickness shall be 3 inches.

(a) three inches of ~~grout~~ sealing material shall mean 1 1/2 inches of ~~grout~~ sealing material around the outside of the casing on all sides.

(2) When casing diameter is reduced, a minimum of 4 feet of overlap shall be required and the bottom of the annular space between the casings shall be sealed with a suitable packer; the remainder of the annular space will be pressure ~~grouted~~ sealed with ~~bentonite or neat cement~~ an appropriate sealing material.

(3) All new wells shall be sealed to a minimum depth of 18 feet with ~~grout~~ appropriate sealing material with the exception of those wells addressed in subsection (4) of this rule.

(4) ..."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

13. The amendment is proposed to allow the use of other sealing materials, such as bentonite pellets and chips. (See paragraph 5.)

14. The proposed amendment of 36.21.655 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.47 - 36-393.48, Administrative Rules of Montana)

"36.21.655 DESIGN AND CONSTRUCTION - SEALING OF CONSOLIDATED FORMATIONS In drilled wells that penetrate an aquifer either within or overlain by a consolidated formation, sealing of the casing shall conform with one of the following procedures:

(1) An upper drill hole at least 4 inches greater in diameter than the nominal size of the permanent well casing shall extend from land surface to at least 5 feet into sound, uncreviced, consolidated rock, but in no instance shall said upper drill hole extend less than 18 feet below land surface.

(a) Unperforated permanent casing shall be installed to extend to this same depth and the lower part of the casing shall be sealed into the rock formation with cement grout. The remainder of the annular space to land surface shall be filled with ~~cement grout or bentonite clay grout~~ an appropriate sealing material (see Figure 2A at the end of this chapter).

(b) ...

(2) An upper drill hole at least 4 inches greater in diameter than the nominal size of the permanent casing shall extend from land surface to a depth of at least 18 feet. An unperforated permanent casing shall be installed so that it extends at least 5 feet into sound, uncreviced, rock formation.

(a) ...

(b) The annular space between the rock formation and the permanent casing shall be tightly sealed with cement grout. The remainder of the annular space to land surface shall then be filled with ~~cement grout or bentonite clay grout~~ appropriate sealing material (see figure 2B at the end of this chapter).

(3) ..."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

15. The amendment is proposed to allow the use of bentonite pellets or chips. The contractor will be expected to use his judgement on what method will provide the best seal. (See paragraph 5.)

16. The proposed amendment of 36.21.656 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.48 - 36-393.49, Administrative Rules of Montana)

"36.21.656 SEALING OF UNCONSOLIDATED FORMATIONS WITHOUT SIGNIFICANT CLAY BEDS (1) ...

(2) The annular space between the upper drill hole and the well casing shall be kept at least one-half full with bentonite slurry throughout the driving of the permanent casing into the aquifer. After the permanent casing is set in its final position, the remaining annular space shall be filled to land surface with ~~cement grout or bentonite clay grout~~ appropriate sealing material (see figure 3A at the end of this chapter).

(3) If the oversized drill hole is extended to the same depth as the permanent casing, a suitable bridge shall be installed between the casing and the drill hole at a position directly above the production aquifer. The remaining annular space shall be completely filled and sealed to land surface with ~~cement grout or bentonite clay grout~~ appropriate sealing material (see figure 3B at the end of this chapter).

(a) A suitable bridge is one that prevents ~~grout~~ sealing material from dropping into the producing formations and reducing the output of the well.

(4) If temporary casing is used to maintain the oversized drill hole, the annular space shall be kept full with ~~cement grout or bentonite clay grout~~ appropriate sealing material as the temporary casing is being withdrawn.

(5) For drilling with cable tool rigs, see ARM 36.21.654."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

17. Again, the amendment is proposed to allow the use of

bentonite pellets or chips. The contractor will be expected to use his judgement on what method will provide the best seal. (See paragraph 5.)

18. A new diagram relating to ARM 36.21.656 and 36.21.657 is being proposed and will appear as follows: (The current figure is located at page 36-393.60, Administrative Rules of Montana.)

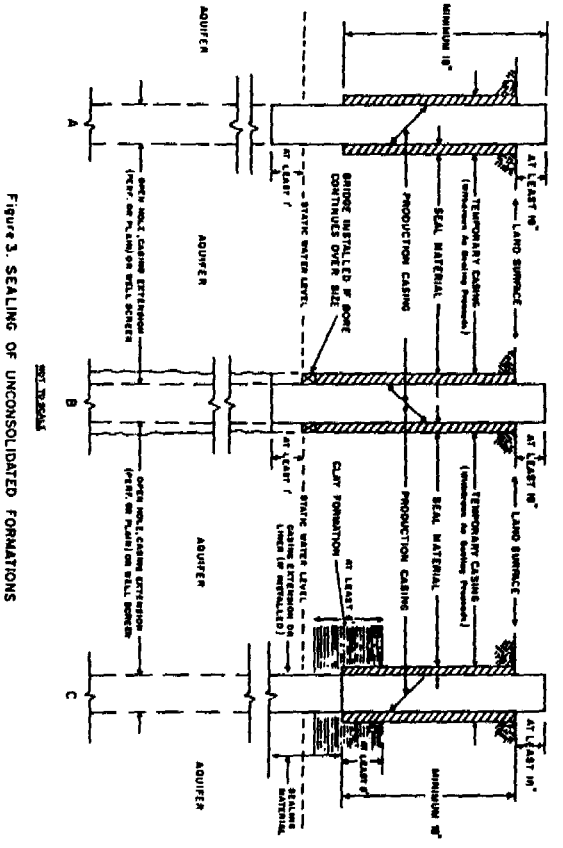


Figure 3. SEALING OF UNCONSOLIDATED FORMATIONS

19. The new Figure 3 is proposed as it will more accurately reflect the construction requirements set out in ARM 36.21.656 and 36.21.657. The full text of these two rules is located at pages 36-393.48 and 36-393.49.

20. The proposed amendment of ARM 36.21.659 will read as follows: (New matter underlined, deleted matter interlined)

"36.21.659 SEALING OF ARTIFICIAL GRAVEL PACKED WELLS, PERMANENT SURFACE CASING NOT INSTALLED (1) An upper drill hole having a diameter of at least 4 inches greater than the outside diameter of the production casing shall be drilled to extend from land surface into a clay or other formation of low permeability overlying the water-bearing zone. The annular space to this depth shall be filled with ~~cement grout or bentonite clay grout~~ sealing material. If the clay or other impermeable formation is at or near land surface, the upper drill hole and unperforated production casing shall extend to a minimum depth of 18 feet below land surface, provided that the casing does not pass through the impermeable zone. A suitable bridge shall be installed in the annular space between the gravel pack and ~~cement grout seal~~ the sealing material. A gravel fill pipe may be installed for injecting gravel prior to sealing the top of the gravel pack (see ARM 36.21.656(3)(a) for definition of a suitable bridge). Special care shall be taken to insure that the seal is watertight around the injection pipe. The injection pipe shall be capped with a watertight seal or plug (see figure 4A at the end of this chapter).

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

21. The amendment is proposed to allow the use of bentonite pellets or chips. The contractor will be expected to use his judgement on what method will provide the best seal. (See paragraph 5.)

22. The proposed amendment of 36.21.661 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at page 36-393.51, Administrative Rules of Montana)

"36.21.661 TEMPORARY CAPPING (1) ...

(3) Temporarily abandoned wells shall be grouted and sealed to comply with ARM 36.21.654 through 36.21.660, whichever is applicable, before the drill rig is removed from the site.

~~(3)~~ (4) Temporarily abandoned wells shall have an access port as per ARM 36.21.665."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

23. The amendment is proposed to insure that temporarily abandoned wells do not provide an avenue for contamination. Some wells may be "temporarily" abandoned for a period of a year or more and deepened at a later date. If these wells are not grouted, they could provide access for surface water to run down the side of the casing to the bottom of the hole.

24. The proposed amendment to 36.21.662 will read as

follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at page 36-393.51, Administrative Rules of Montana)

"36.21.662 DISINFECTION (1) ...

(3) The contractor shall clean and disinfect the drilling equipment after drilling in an area of known or suspected contamination or areas of iron bacteria problems."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

25. Because some water well contractors install both water wells and monitoring wells, this rule amendment is proposed to prevent the contractor from drilling a monitoring well in a questionable environment and moving on to the next site, which could be another monitoring well or a water well. In either case, hazardous materials could be introduced into the next well, producing false readings for the monitoring well and in the case of the water well the possibility of an aquifer contamination.

26. The proposed amendment of ARM 36.21.670 will read as follows: (New matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.54 - 36-393.55, Administrative Rules of Montana)

"36.21.670 PERMANENT ABANDONMENT (1) ...

(2) Abandoned wells must be completely filled with concrete or ~~grout~~ other sealing material to within the last ~~3~~ 6 feet of the surface. Six feet to 3 feet from the surface will be filled in with bentonite. The last 3 feet shall be filled in with naturally occurring soils.

(3) A properly abandoned well will not produce water nor serve as a channel for movement of groundwater.

(current subsections (3) and (4) remain the same, but are renumbered."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

27. The amendment is proposed to allow the use of bentonite pellets and chips, which in some cases may provide a more effective method of sealing the well. The change to require bentonite from 3 feet to six feet below land surface, is to address shrinkage of cement grout when plugging a well. The bentonite should fill in any cracks around the cement and provide a watertight seal. The proposed addition of subsection (3) makes it clear that a properly abandoned well must be completely plugged so that it will not produce or allow water movement.

28. The proposed amendment of 36.21.677 will read as follows: (new matter underlined, deleted matter interlined)

"36.21.677 METHOD OF PLACEMENT OF CONCRETE OR CEMENT GROUT (1) Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or required sealing interval and placed progressively to ~~3~~ 6 feet from the top of the well. From 6 feet to 3 feet bentonite shall be added. The upper 3 feet

shall be restored to its natural state. All such sealing materials shall be placed by the use of a grout pipe, tremie, or by dump bailer in order to avoid segregation or dilution of the sealing materials."

Auth: 37-43-202 (3), MCA; Imp: 37-43-202 (3), MCA

29. The amendment is proposed to correspond to the proposed changes in 36.21.670, which provides for the addition of bentonite to allow for shrinkage of the cement or concrete and to fill in any possible gaps around the cement or concrete.

30. The proposed amendment of ARM 36.21.701 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 36-393.71, Administrative Rules of Montana)

"36.21.701 VERIFICATION OF EXPERIENCE (1) ~~Section 16, chapter 538, Laws of 1987, provided for initial licensure as a monitoring well constructor. Prior to May 31, 1988,~~ Verification of one year of experience ~~in the past 4 years~~ shall consist of:

(a) ..."

Auth: 37-43-202, MCA Imp: 37-43-202, 305, MCA

31. The proposed amendment eliminates reference to individuals who applied for monitoring well constructor licenses prior to May 31, 1988. It is no longer in effect and may be misleading to new applicants.

32. The proposed amendment of 36.21.702 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 36.393.71, Administrative Rules of Montana)

"36.21.702 APPLICATION APPROVAL AND EXAMINATION

(1) Applications accompanied by proper verification and fees will be reviewed ~~at regularly scheduled meetings of the board of water well contractors~~ and acted upon in a timely manner.

(2) After approval ~~by the board~~, applicants may take the examinations at the board office in Helena or the department of natural resources and conservation water ~~rights bureau~~ resources division field offices in Billings, Bozeman, Glasgow, Havre, Kalispell, Lewistown, Miles City, or Missoula.

(3) ...

Auth: 37-43-202, MCA Imp: 37-43-303, 305, MCA

33. The amendment is proposed as the Board's program specialist approves the majority of applications submitted. The Board reviews only those on which there is a question regarding verification.

34. The proposed amendment of 36.21.801 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-393.77 - 36-393.81)

"36.21.801 DEFINITIONS The following definitions shall apply for monitoring well construction:

(1) "Abandoned well" means a well whose use has been permanently discontinued~~, or which is in such disrepair that its continued use for the purpose of monitoring groundwater is impractical. Wells which have not been monitored for more than three years shall be deemed abandoned unless written permission is obtained from the board to maintain the well. A properly abandoned well will not produce water nor serve as a channel for movement of water~~.

(2) ...

(3) "Aquifer" means any ~~underground~~ geological ~~structure or~~ formation which is capable of yielding ~~transmitting~~ water or is capable of recharge ~~in usable amounts~~.

(4) ...

(5) "Bentonite" means a highly plastic, highly absorbent colloidal clay composed ~~largely~~ primarily of swelling sodium montmorillonite~~, meeting API bentonite specifications (API specification 13A---Section 4)~~.

(6) ...

(20) "~~Grout~~ Sealing material" means an impervious or low permeable inorganic material used for the purpose of preventing interaquifer contamination and/or surface water infiltration. The term includes:

(a) ...

(21) "~~Grouting~~ Sealing" means the operation by which ~~grout~~ seal material is placed in the borehole.

(22) ...

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

35. The proposed amendments will provide conformity between definitions shown in the water well construction standards section and those in the monitoring well construction standards to avoid confusion between the two. "Sealing material" is again changed to allow the use of bentonite pellets or chips. (See paragraph 5.) The amendment of the abandonment definition eliminates a portion of the definition and moves the last two sentences to ARM 36.21.810.

36. The proposed amendment of 36.21.806 will read as follows: (new matter underlined, deleted matter interlined) (Full text of the rule is located at pages 36-393.82 and 36-393.83, Administrative Rules of Montana)

"36.21.806 INSTALLATION OF SEALS (1) In installing and developing a monitoring well, care shall be taken to preserve the natural barriers to ground-water movement between aquifers. All ~~grouting~~ sealing shall be performed by adding the mixture from the bottom of the space to be ~~grouted~~ sealed toward the surface in one continuous operation, except for driven wells.

(2) The minimum sealing material ~~grout~~ thickness shall be one and one-half inches around the outside of the casing on all sides, except for driven wells.

(3) ...."

Auth. 37-43-202, MCA Imp: 37-43-202, MCA

37. The proposed change will allow the use of bentonite pellets or chips. (See paragraph 5.)

38. The proposed amendment of 36.21.810 will read as follows: (new matter underlined, deleted matter interlined. (full text of the rule is located at page 36-393.85, Administrative Rules of Montana)

"36.21.810 ABANDONMENT (1) Wells which have not been monitored for more than three years shall be deemed abandoned unless written permission is obtained from the board to maintain the well.

~~(1)~~-(2) Monitoring wells, that have outlived their useful purpose shall be abandoned by one of the following methods:

(a) If the casing and screen are left in place, the casing and screen shall be ~~grouted~~ sealed from the bottom up using a pump and hose or tremie pipe to conduct the ~~grout~~ sealing material to the bottom of the well or by filling the casing and screen with bentonite pellets or chips. Metal casings shall be cut off three feet below the ground surface and the last three feet backfilled with naturally occurring soils;

(i) It is recommended that in all cases where possible the casing be pulled.

(b) If the casing and/or screen are removed, the hole shall be filled with ~~grout~~ sealing material, ~~or~~ concrete, or bentonite pellets or chips from the bottom up, as the casing and/or screen is removed. From six feet to three feet from the surface, bentonite shall be added to the well. The last three feet shall be filled with naturally occurring soils.

(c) The ~~grout~~ sealing material shall be bentonite pellets or chips, bentonite clay grout, neat cement grout, or concrete. They may contain nonbiodegradeable fluidizing admixtures, provided they will not contaminate the ground water. ~~Grouts~~ Sealing material which settle shall be topped to provide a continuous column of grout to within three feet of the surface; or

(d) other methods for abandonment with prior board approval.

~~(2)~~ (3) For flowing wells, the abandonment procedures outlined in ARM 36.21.671 shall apply.

(4) A properly abandoned well will not produce water nor serve as a channel for movement of water."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

39. Again, the proposed amendment will allow the use of bentonite pellets or chips, which in some cases will provide a better seal than cement or bentonite slurry. The addition of (1)(a)(i) which refers to the casing being pulled whenever possible, is because the well plugging will be more effective with the casing out of the hole, although in some instances, it may be impossible to pull the casing. The change in the material to be used at the top 6 feet of the hole allows the use of bentonite from 6 to 3 feet below ground surface. This

will take into account shrinkage of the cement in those instances when it is used. New subsections (1) and (4) are the two sentences which were moved from the definition rule 36.21.801. These two sentences refer to types of wells that require abandonment, rather than definitions.

40. The proposed new rules under sub-chapter 6 will read as follows:

"I. CASING DEPTH (1) All wells shall be completely cased to the bottom of the usable drill hole and sealed in accordance with ARM 36.21.654 through 36.21.660, whichever is applicable."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

"II TYPES OF WELLS REQUIRING ABANDONMENT (1) Wells requiring permanent abandonment include, but are not limited to those:

(a) whose use has been permanently discontinued, or

(b) which is in such disrepair that its continued use for the purpose of obtaining groundwater is impractical or may be a health hazard, or

(c) whose existence allows intermixing of waters which have different temperature, quality, or hydrostatic pressure, which contributes to significant degradation and loss of the water source, or

(d) a well in the process of being drilled which is rendered unusable because of driller error and for which drilling must be discontinued.

(i) The responsibility for abandoning this type of well belongs to the contractor or driller drilling the well."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

The proposed new rule under Sub-chapter 7 will read as follows:

"III. VERIFICATION OF EQUIVALENT EDUCATION AND EXPERIENCE (1) Equivalent education pursuant to section 37-43-305 (4) (f), MCA, shall be:

(a) college course work or equivalent professional education classes equal to or exceeding 9 semester credits at an accredited college or university, directly pertaining to groundwater or well installation technology and 6 months experience.

(b) other combinations of education and experience, as approved on a case by case basis."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

41. The proposed adoption of Rule I is to prevent a pump from being installed in a uncased hole. Occasionally, a contractor will drill open hole and install a pump in the open hole area. The formation can cave around the pump, locking it in the well.

The addition of Rule II defines what types of water wells must be abandoned. Parts of the proposed rule were contained in the definition section of the rules. Because those

portions actually related to what type of well should be abandoned, it was felt it would be clearer to adopt a new rule which spelled out clearly what type of wells must be abandoned. Subsections (4) and (4)(a) have been included to clarify that when a well must be abandoned because of driller error, for example a crooked hole in which a pump cannot be placed, it must be properly abandoned and the responsibility for abandonment rests with the contractor hired to do the drilling.

The addition of Rule III spells out what is meant by equivalent education and experience for monitoring well applicants. Because 37-43-305 (4)(f), MCA, does allow for licensure based on equivalent education and experience, outlining specific requirements will assist an applicant who may not have the experience required, but who does have what may be considered equivalent education and experience.

42. Interested parties may present their data, views, and arguments concerning the proposed adoption in writing to the Board of Water Well Contractors, 1520 East Sixth Avenue, Helena, Montana 59620, no later than March 28, 1991.

43. If a person who is directly affected by the proposed adoption 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 written comments he has to the Board of Water Well Contractors, 1520 East Sixth Avenue, Helena, Montana 59620 no later than March 29, 1991.

44. If the board 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 agency or subdivision; 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.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY: Wesley Lindsay
BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, February 19, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.401 relating to low income property tax reduction	NOTICE OF PROPOSED AMENDMENT of ARM 42.19.401 relating to low income property tax reduction

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 26, 1991, the Department of Revenue proposes to amend ARM 42.19.401 relating to low income property tax reduction.

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

42.19.401 LOW INCOME PROPERTY TAX REDUCTION (1) through (4) remain the same.

(5) Business income is that income reported as net profit or loss on schedule C ~~line 5~~, or schedule F, ~~line 12~~, of the federal income tax return~~, or the income reported on state income tax return form CLT line 11, or the income reported on federal corporation tax return form 1120 line 11, whichever is greater~~.

3. The department's authority to amend this rule is found at 15-1-201, MCA and implements 15-6-134 and 15-6-151 MCA.

4. ARM 42.19.401 is proposed to be amended to allow net business income to be used instead of gross business income in determining qualifications for Class 4 low income property tax reduction. This change should allow more taxpayers to qualify for the reduction.

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

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

no later than March 29, 1991.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than March 29, 1991.

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

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State February 19, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.423; 42.20.426; 42.20.429; 42.20.438; 42.20.450; 42.20.453; 42.20.468; and REPEAL of ARM 42.20.426; and ADOPTION of Rules I and II for Property Tax - Sales Assessment Ratio Study.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.20.423; 42.20.426; 42.20.429; 42.20.438; 42.20.450; 42.20.453; 42.20.468; and REPEAL of ARM 42.20.426; and PROPOSED ADOPTION OF Rules I and II for Property Tax - Sales Assessment Ratio Study.

TO: All Interested Persons:

1. On the dates and at the times listed below the department will conduct public hearings to consider the repeal, amendments and adoption of rules for property tax - sales assessment ratio study:

Great Falls, Montana, at the Paris Gibson Middle School Cafeteria, 2400 Central Avenue, at 7:00 p.m., on Wednesday, March 20, 1991;

Missoula, Montana, at the City Hall Council Chambers, 435 Ryman, at 3:00 p.m., on Thursday, March 21, 1991;

Bozeman, Montana, at the Community Room, 3rd Floor, 311 West Main, at 7:00 p.m., on Friday, March 22, 1991;

Kalispell, Montana, at the Winchester Room, Outlaw Inn, at 7:00 p.m., on Monday, March 25, 1991;

Butte, Montana, at the Convention Center, Copper King Inn, at 7:00 p.m., on Tuesday, March 26, 1991; and

Helena, Montana, at the SRS Auditorium, 111 Sanders Street, at 1:00 p.m., on Wednesday, March 27, 1991.

2. The proposed amendments are as follows:

42.20.423 DATA USED TO ESTIMATE SALES ASSESSMENT RATIOS (1) For purposes of conducting the sales assessment ratio studies for commercial properties required under 15-7-111 MCA, the department will use valid, arm's length sales recorded during the three years preceding the tax year for which the results are to apply. For residential properties, the department will use valid, arm's length sales from the preceding 12 month period of November to November except if there are insufficient sales. In cases of insufficient sales, the department will use the following:

(a) Twelve months sales, if the results for the 12 month period are less than 5 percentage points different than the results for the 3 year period ~~as calculated in ARM 42.20.426~~; or

(b) Three years sales using the procedure described in ARM 42.20.426, if the results for the 12 month period are greater than 5 percentage points different than the results for the 3 year period ~~as calculated in ARM 42.20.426~~.

(2) Sales of properties with sales assessment ratios of less than 50% or greater than 200%; or which have undergone reconstruction, have been remodeled or are newly constructed during the period between the appraisal and sales dates are not

considered to be valid sales for purposes of estimating the sales assessment ratios. (AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.429 CRITERIA FOR REDUCING OR INCREASING PROPERTY VALUE (1) When a stratified sales assessment ratio study conducted under 15-7-111(4) MCA, establishes an assessment level of greater than 105% for residential ~~or commercial~~ property, the department shall independently adjust residential ~~or commercial~~ property values in those identified sales assessment areas to 105%. If an established assessment level ~~of~~ is less than 95% and equal to or greater than 80% ~~is established~~, the department shall adjust property values to the 95% level. No adjustment will be made in those cases where an assessment level is between 105% and 95%.

(2) The following procedure will be implemented if an assessment level of less than 80% is established:

(a) For tax year 1991, if the result of the sales assessment ratio study on residential property for tax year 1990 shows for any area an assessment level of less than 80%, then the department shall perform a selective reappraisal of residential property in the area. The reappraisal shall be performed using a computer assisted mass appraisal system based on the market approach to value, using comparable sales of similar property. If insufficient sales are available for market modeling or if data selection criteria are unacceptable for market modeling, then the department shall reappraise the property using the cost approach to value.

(b) For tax year 1992, if the result of the sales assessment ratio study on residential property for tax year 1991 shows for any area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20% rounded to the nearest 1/10 of 1% and an adjustment multiplier of 1.01 or greater, then the department shall perform a selective reappraisal of the residential property in the area. The reappraisal shall be performed using the same criteria provided in (2) (a).

(c) For tax year 1993, if the result of the sales assessment ratio study on residential property for tax year 1992 shows for any area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20% rounded to the nearest 1/10 of 1% and an adjustment multiplier of 1.01 or greater, then the department shall perform a selective reappraisal of the residential property in the area. The reappraisal shall be performed using the same criteria provided in (2) (a).

(d) For those areas subject to reappraisal under the provisions of (2) (a) for tax year 1992, the department shall compare the sales assessment ratio study performed in 1991 to the 1991 assessed value to determine whether the area will be subject to further selective reappraisal. If that comparison of residential property shows for the area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20% rounded to the

nearest 1/10 of 1% and an adjustment multiplier of 1.01 or greater, then the department shall complete another selective reappraisal of residential property in the area. The reappraisal shall be performed using the same criteria provided in (2) (a).

(e) When selective reappraisal is implemented within an area, there will be no sales assessment adjustments made to residential property values within that area for that tax year.

(3) When a stratified sales assessment ratio study conducted under 15-7-111(4) MCA, establishes an assessment level of greater than 105% for commercial property, the department shall independently adjust commercial property values in those identified sales assessment areas to 105%. If an assessment level of less than 95% is established, the department shall adjust commercial property values to the 95% level. No adjustment will be made in those areas where an assessment level is between 105% and 95%.

~~(2)~~ (4) The department shall make percentage adjustments rounded to the nearest whole number to coincide with the estimated assessment level from the following table: the tables remain the same. (AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.438 DESIGNATED AREAS - RESIDENTIAL For purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, the sales assessment areas for residential property are:

(1) through (8) remain the same.

(9) Area 3.0:

(a) Rural North Gallatin County - the exterior borders of Gallatin County except the areas described in 3.1, 3.2, ~~and~~ 3.3, and 3.4.

(10) Area 3.1:

(a) remains the same.

(b) Bozeman Fringe and Canyon Area - Area General Description.

(i) Beginning at the northeast corner of Township 1 North, Range 7 East, proceed in a westerly direction along section line to the northeast corner of Township 1 North, Range 6 East, then south along section to Base line, then along baseline to the northwest corner of Range 5 East, then south 6 miles to the southwest corner of Township 1 South, proceed west 1 mile to Jackrabbit Lane, then south 3 miles, then east 1 mile, then proceed south to the southwest corner of Township 3 South, Range 5 East, then west to the Madison County/Gallatin County line, then south along line to Idaho Border, then east along Idaho Border to Yellowstone Park Boundary, then north along county line to northeast corner of Township 3 South, Range 6 East, then east to Park County line, then north along Park County/Gallatin County line to point of beginning, but excluding Area 3.3 and 3.4 area.

(11) and (12) remain the same.

(13) Area 3.4:

(a) Big Sky Area - Area Legal Description.

(i) Township 6 South, Range 3 East

(A) All sections and portions of sections located in Gallatin County.

(ii) All of sections 19, 29, and 30, Township 6 South, Range 3 East located in Madison County.

(b) Area 3.4 - Area General Description.

(i) Beginning at the northeast corner of Township 6 South, Range 3 East, then west 4 miles to the county line, then south 4 miles, then west 1 mile, then north 1 mile, then west 1 mile, then south 2 miles, then east 2 miles, then south 1 mile, then east 4 miles, then north to the point of beginning.

~~(13)~~ (14) Area 4.0:

(a) remains the same.

~~(14)~~ (15) Area 5.0:

(a) remains the same.

~~(15)~~ (16) Area 5.1:

(a) and (b) remain the same.

~~(16)~~ (17) Area 6.0:

(a) remains the same.

~~(17)~~ (18) Area 7.0:

(a) Northwest Madison County - All of Madison County except for the area described in 7.1 and 3.4.

~~(18)~~ (19) Area 7.1:

(a) Madison County Southeast - Area Legal Description.

(i) through (x) remains the same.

(xi) Township 6 South, Range 3 East.

(A) All of sections 5, 6, 7, 8, 17, 18, ~~19,~~ 20, ~~29, 30,~~ 31 and 32.

(xii) through (lix) remain the same.

(b) Madison County Southeast - Area General Description.

(i) Beginning at the intersection between the Township 3 South and Township 4 South line and the eastern border of Madison county, then west to the intersection of that township line with the Range 2 West and Range 3 West line, then south to a point where the Range 2 West and Range 3 West line intersects Township 5 South and Township 6 South township line, then east to a point mid-way on Township 6 South, Range 2 West, then south through that township, then west to the southwest corner of said township, then south along the western line of Township 7 South, Range 2 West, then west to the southwest corner of Township 7 South, Range 3 West, then south to the southwest corner of Township 9 South, Range 3 West, then west to the western border of Madison County, then continuing south and in a counter-clockwise direction, along the Madison County border to the point of beginning. Excepting therefrom, section 19, 29 and 30 of Township 6 South, Range 3 East also known as The Big Sky Area.

~~(19)~~ (20) Area 8.0:

(a) remains the same.

~~(20)~~ (21) Area 8.1:

(a) and (b) remain the same.

~~(21)~~ (22) Area 8.2:

(a) and (b) remain the same.

~~(22)~~ (23) Area 8.3:

(a) and (b) remain the same.

~~(23)~~ (24) Area 9.0:
(a) remains the same.
~~(24)~~ (25) Area 9.1:
(a) and (b) remain the same.
~~(25)~~ (26) Area 10.0:
(a) remains the same.
~~(26)~~ (27) Area 11.0:
(a) remains the same.
~~(27)~~ (28) Area 11.1:
(a) and (b) remain the same.
~~(28)~~ (29) Area 11.2:
(a) and (b) remain the same.
~~(29)~~ (30) Area 11.3:
(a) and (b) remain the same.
~~(30)~~ (31) Area 11.4:
(a) and (b) remain the same.
~~(31)~~ (32) Area 11.5:
(a) and (b) remain the same.
~~(32)~~ (33) Area 11.6:
(a) and (b) remain the same.
~~(33)~~ (34) Area 12.0:
(a) and (b) remain the same.
~~(34)~~ (35) Area 13.0:
(a) remains the same.
~~(35)~~ (36) Area 13.1:
(a) and (b) remain the same.
~~(36)~~ (37) Area 13.2:
(a) and (b) remain the same.
~~(37)~~ (38) Area 14.0:
(a) through (h) remain the same.
~~(38)~~ (39) Area 15.0:
(a) through (g) remain the same.
~~(39)~~ (40) Area 16.~~1~~ 0:
(a) through (d) remain the same.
~~(40)~~ (41) Area 17.0:
(a) and (b) remain the same.
~~(41)~~ (42) Area 18.0:
(a) through (e) remain the same.
~~(42)~~ (43) Area 19.0:
(a) through (f) remain the same.
~~(43)~~ (44) Area 19.1:
(a) and (b) remain the same.
~~(44)~~ (45) Area 20:
(a) through (h) remain the same.
~~(45)~~ (46) Area 20.1:
(a) and (b) remain the same.
~~(46)~~ (47) Area 21:
(a) remains the same.
~~(47)~~ (48) Area 22:
(a) remains the same. (AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.450 DIVISION OF PROPERTY INTO STRATUM (1) For purposes of conducting sales assessment ratio studies, the term

"stratum" is defined to be:

(a) all residential land and improvements including noncommercial condominiums, and all agricultural 1 - acre homesites and improvements within a designated area; and

(b) all commercial land and improvements including commercial condominiums within a designated area.

(2) For the purposes of conducting sales assessment ratio studies, the term "commercial condominium" means any condominium used for commercial purposes not including time-share or other condominiums used for residential purposes. (AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.453 TREATMENT OF CERTAIN PROPERTIES (1) For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, ~~residential~~ noncommercial condominiums are considered residential properties.

(2) For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, duplexes, apartment houses, ~~and~~ other multi-family structures and commercial condominiums will be treated as commercial properties.

(3) ~~For the purposes of applying any percentage adjustments as a result of the sales assessment ratio study required by 15-7-111, MCA, personal property mobile homes (tax class 12) will be considered as residential properties.~~ Sales of personal property mobile homes will be excluded from the sales assessment ratio study. ~~For the current tax year, personal property mobile homes will be adjusted in accordance with the results of the prior year sales assessment ratio studies.~~ Personal property mobile homes will not receive any percentage adjustments as a result of the sales assessment ratio study required by 15-7-111, MCA.

(4) For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA~~,~~:

(a) all industrial properties are considered commercial properties~~,~~; and

(b) the term "commercial condominium" means any condominium used for commercial purposes not including time-share or other condominiums used for residential purposes. (AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.468 PERCENTAGE ADJUSTMENTS FOR THE ~~1990~~ 1991 TAX YEAR (1) The following table reflects the sales assessment ratios and the adjustment multipliers (percentage adjustments converted to decimal form) as calculated in conformance with the provisions of 15-7-111 MCA, ~~and ARM 42.20.426,~~ for each of the areas specified in ARM 42.20.438 Designated Areas - Residential.

(a) Residential area results for tax year ~~1990~~ 1991:

		Sales Assessment Ratio	Adjustment Multipliers
Area No. 1	Carbon County	.9802	1.00
Area No. 2	Rural Cascade County	.9130	1.05
Area No. 2.1	Downtown Great Falls	.7412	1.30
Area No. 2.2	Great Falls East	.7303	1.32
Area No. 2.3	Great Falls South	.8017	1.20
Area No. 2.4	Great Falls Southwest	.8734	1.09
Area No. 2.5	Great Falls West	.8938	1.07
Area No. 2.6	Great Falls Northwest	.8381	1.14
Area No. 3	Remainder of Gallatin	.9272	1.03
Area No. 3.1	Bozeman Fringe and Canyon	.8107	1.18
Area No. 3.2	West & East rural Gallatin	.8978	1.06
Area No. 3.3	Bozeman	.8492	1.13
Area No. 4	Jefferson County	.8492	1.13
Area No. 5	Rural Lewis and Clark	1.0107	1.00
Area No. 5.1	Urban Helena	.9584	1.00
Area No. 6	Lincoln County	.9744	1.00
Area No. 7	Northwest Madison County	.9530	1.00
Area No. 7.1	Southeast Madison County	.8407	1.14
Area No. 8	Rural Missoula County	.9057	1.05
Area No. 8.1	Eastern Urban Missoula	.9520	1.00
Area No. 8.2	Central Urban Missoula	.9694	1.00
Area No. 8.3	Western Urban Missoula	.9579	1.00
Area No. 9	Remainder of Silver Bow County	.9294	1.03
Area No. 9.1	Butte Flats and Westside	.8403	1.14
Area No. 10	Stillwater County	1.0165	1.00
Area No. 11	Rural Yellowstone County	1.0848	.97
Area No. 11.1	Billings Lockwood	1.1818	.90
Area No. 11.2	Billings South Side	1.2409	.86
Area No. 11.3	Billings South West Side	1.0855	.97
Area No. 11.4	Billings West Side	1.0661	.99
Area No. 11.5	Billings Heights	1.0913	.97
Area No. 11.6	Laurel	1.0894	.97
Area No. 12	Mineral and Sanders	.9538	1.00
Area No. 13	Rural Flathead County	.8775	1.09
Area No. 13.1	Kalispell Area	.9205	1.04
Area No. 13.2	Columbia Falls	.9799	1.00
Area No. 14	Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Treasure and Wheatland	.9705	1.00
Area No. 15	Beaverhead, Broadwater, Deer Lodge, Granite, Meagher, Park and Powell	.9529	1.00
Area No. 16.1	Blaine, Glacier, Phillips and Roosevelt	1.0250	1.00
Area No. 17	Big Horn and Rosebud	.9173	1.04
Area No. 18	Dawson, Fallon, Powder River, Richland and Wibaux	1937	.89
Area No. 19	Chouteau, rural Hill,	.9891	1.00

~~Liberty, Pondera, Teton and Toole~~

~~Area No. 19.1~~	~~Greater Havre~~	~~1.0063~~	~~1.00~~
~~Area No. 20~~	~~Carter, rural Custer, Daniels, Garfield, McCone, Prairie, Sheridan and Valley~~	~~1.0639~~	~~.99~~
~~Area No. 20.1~~	~~Miles City~~	~~1.1209~~	~~.94~~
~~Area No. 21~~	~~Lake County~~	~~.9678~~	~~1.00~~
~~Area No. 22~~	~~Ravalli County~~	~~.9131~~	~~1.05~~

~~(b) Commercial area results for tax year 1990.~~

		~~Sales Assessment Ratio~~	~~Adjustment Multipliers~~
~~Area No. 100~~	~~Silver Bow, and Lewis and Clark Counties~~	~~.9243~~	~~1.03~~
~~Area No. 200~~	~~Cascade County~~	~~1.0218~~	~~1.00~~
~~Area No. 300~~	~~Yellowstone County~~	~~1.3543~~	~~.79~~
~~Area No. 400~~	~~Missoula County~~	~~.9743~~	~~1.00~~
~~Area No. 500~~	~~Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lake, Lincoln, Meagher, Mineral, Park, Powell, Ravalli and Sanders~~	~~.9525~~	~~1.00~~
~~Area No. 600~~	~~Gallatin and Madison~~	~~.9728~~	~~1.00~~
~~Area No. 700~~	~~Flathead County~~	~~1.0039~~	~~1.00~~
~~Area No. 800~~	~~All other counties~~	~~1.1317~~	~~.93~~

		Sales Assessment Ratio	Adjustment Multipliers
Area No. 1.0	Carbon County	.9330	1.02
Area No. 2.0	Rural Cascade County	.9351	1.02
Area No. 2.1	Downtown Great Falls	.8002	1.20
Area No. 2.2	Great Falls East	.8949	1.07
Area No. 2.3	Great Falls South	.9200	1.04
Area No. 2.4	Great Falls Southwest	.9221	1.03
Area No. 2.5	Great Falls West	.9354	1.02
Area No. 2.6	Great Falls Northwest	.9406	1.01
Area No. 3.0	Remainder of Gallatin	.8903	1.07
Area No. 3.1	Bozeman Fringe and Canyon	.9179	1.04
Area No. 3.2	West & East rural Gallatin	.9291	1.03
Area No. 3.3	Bozeman	.8867	1.06
Area No. 3.4	Big Sky Area	.8522	1.12
Area No. 4.0	Jefferson County	1.1168	0.95
Area No. 5.0	Rural Lewis and Clark	.9168	1.04
Area No. 5.1	Urban Helena	.9138	1.04
Area No. 6.0	Lincoln County	1.0173	1.00
Area No. 7.0	Northwest Madison County	.9940	1.00
Area No. 7.1	Southeast Madison County	1.0637	0.99

Area No. 8.0	Rural Missoula County	.8798	1.09
Area No. 8.1	Eastern Urban Missoula	.8916	1.07
Area No. 8.2	Central Urban Missoula	.9386	1.02
Area No. 8.3	Western Urban Missoula	.8889	1.07
Area No. 9.0	Remainder of Silver Bow County	.9302	1.03
Area No. 9.1	Butte Flats and Westside	.9414	1.01
Area No. 10.0	Stillwater County	.9561	1.00
Area No. 11.0	Rural Yellowstone County	1.0147	1.00
Area No. 11.1	Billings Lockwood	1.0130	1.00
Area No. 11.2	Billings South Side	.9598	1.00
Area No. 11.3	Billings South West Side	.9916	1.00
Area No. 11.4	Billings West Side	1.0167	1.00
Area No. 11.5	Billings Heights	1.0094	1.00
Area No. 11.6	Laurel	1.0351	1.00
Area No. 12.0	Mineral and Sanders	.9422	1.01
Area No. 13.0	Rural Flathead County	.8547	1.12
Area No. 13.1	Kalispell Area	.8891	1.07
Area No. 13.2	Columbia Falls	.9118	1.05
Area No. 14.0	Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Treasure and Wheatland	1.0151	1.00
Area No. 15.0	Beaverhead, Broadwater, Deer Lodge, Granite, Meagher, Park and Powell	.9553	1.00
Area No. 16.0	Blaine, Glacier, Phillips and Roosevelt	1.0476	1.00
Area No. 17.0	Big Horn and Rosebud	1.0164	1.00
Area No. 18.0	Dawson, Fallon, Powder River, Richland and Wibaux	1.0665	0.99
Area No. 19.0	Chouteau, rural Hill, Liberty, Pondera, Teton and Toole	.9807	1.00
Area No. 19.1	Greater Havre	.9677	1.00
Area No. 20.0	Carter, rural Custer, Daniels, Garfield, McCone, Prairie, Sheridan and Valley	1.0804	0.98
Area No. 20.1	Miles City	1.0852	0.97
Area No. 21.0	Lake County	.9150	1.04
Area No. 22.0	Ravalli County	.9694	1.00

(b) Commercial area results for tax year 1991:

		Sales Assessment Ratio	Adjustment Multipliers
Area No. 100	Silver Bow, and Lewis and Clark Counties	.9717	1.00
Area No. 200	Cascade County	1.0508	1.00
Area No. 300	Yellowstone County	1.0152	1.00

Area No. 400	Missoula County	.9546	1.00
Area No. 500	Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lake, Lincoln, Meagher, Mineral, Park, Powell, Ravalli and Sanders	.9471	1.01
Area No. 600	Gallatin and Madison	.9502	1.00
Area No. 700	Flathead County	1.0190	1.00
Area No. 800	All other counties	1.0912	0.97

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

3. The rule to be repealed, ARM 42.20.426 can be reviewed at page 42-2076 of the ARM. (AUTH: Sec. 15-1-201, MCA; IMP: 15-7-111, MCA.)

4. The new rules proposed to be adopted are as follows:

RULE I CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property adjusted by the sales assessment ratio study, the department may consider the actual selling price of the property as evidence of the market value of the property. For the actual selling price to be considered in lieu of the sales ratio adjusted value, a taxpayer or his/her agent must meet the following requirements:

(a) Must make application on a property adjustment form (AB-26) to the department of revenue, property assessment division, appraisal office, located in the county where the property is situated;

(b) In order to be considered, the property adjustment form (AB-26) must be filed by April 1 of the current tax year or 15 days after receipt of a valuation notice, whichever is later. For tax year 1991 only, the application deadline will be May 6 or within 15 days after receipt of a valuation notice, whichever is later;

(c) The sale must have taken place no later than 12 months prior to November 1 of the immediately preceding tax year and prior to April 1 of the current tax year or 15 days after receipt of a valuation notice for the current tax year, whichever is later;

(d) The sale must be substantiated by an accurately completed and filed realty transfer certificate;

(e) Must complete and sign a sales verification form including sales price;

(f) Must provide a signed affidavit completed by at least one party or person who is not a participating party (buyer or seller) in the transaction that identifies the conditions, terms and sales price of the property;

(g) Must provide an executed buy/sell agreement as supporting documentation;

(h) Must provide a minimum of three comparable sales of similar property to support the market value under consideration; and

(i) The actual selling price must be trended to the value that is consistent with the base year adopted by the department

in its administrative rules, Title 42, Chapter 18.

(2) For the actual selling price to be considered in lieu of the sales ratio adjusted value, the department of revenue must:

(a) Analyze and maintain the information and requirements in (1), (a) through (i), as a part of the file supporting the value placed on the property for tax purposes;

(b) Verify the subject sale as a valid arms length transaction as defined in ARM 42.20.435 and as further defined in 15-8-111 (2)(a), MCA;

(c) Verify the comparable sales as valid arms length transaction as defined in ARM 42.20.435 and as further defined in 15-8-111 (2)(a), MCA;

(d) Conduct physical on site reviews of the subject property; and

(e) Conduct physical on site reviews of the comparable properties being used to support the sale value of the subject property.

(3) After making a determination regarding use of the actual selling price as market value for tax purposes, the department of revenue must return the form (AB-26) to the taxpayer stating clearly the reasons for accepting or rejecting the application.

(a) If the application is accepted, the actual selling price shall become the current year valuation for assessment and taxation purposes. The department must trend the actual selling price to base year values using the inverse of each year's sales assessment ratio percentage adjustments. Subsequent years' sales assessment ratio percentage adjustments shall be applied against the current value determined by the department.

(4) When a tax appeal board decision indicates that the actual selling price is market value for the property under appeal and the department files no further appeal within the time prescribed by law, the actual selling price shall become the current year valuation for assessment and taxation purposes. The department shall trend the actual selling price to base year values using the inverse of each year's sales assessment ratio percentage adjustments. The result will be a new base year value. Subsequent years' sales assessment percentage adjustments shall be applied against the current year value determined by the tax appeal board. (AUTH: 15-1-201, MCA; IMP: 15-7-111 and 15-8-111, MCA.)

RULE II CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property adjusted by the sales assessment ratio study, the department may consider independent appraisals of the property as evidence of the market value of the property. For an independent appraisal to be considered in lieu of the sales ratio adjusted value, the taxpayer or his/her agent must meet the following requirements:

(a) Prior to July 1, 1993, must submit a signed original long form narrative appraisal, performed by a licensed appraiser if a state licensing program is in effect, or an appraiser who

has been certified by a nationally recognized appraisal society or institute if a state licensing program is not in effect, to the department of revenue, property assessment division, appraisal office, located in the county where the property is situated;

(b) After July 1, 1993, must submit a signed, original long-form narrative appraisal, performed by a licensed appraiser after a state licensing program is in effect, to the department of revenue, property assessment division, appraisal office, located in the county where the property is located;

(c) The appraisal required in (a) or (b) must have been completed no later than 12 months prior to November 1 of the immediately preceding tax year and prior to April 1 of the current tax year or 15 days after receipt of a valuation notice for the current tax year, whichever is later;

(d) Must submit a property adjustment form (AB-26) to the department of revenue, property assessment division, appraisal office, located in the county where the property is situated; and

(e) In order to be considered, must file the property adjustment form (AB-26) and the original long form narrative appraisal by April 1 of the current tax year or within 15 days after receipt of a valuation notice whichever is later. For tax year 1991 only, the application deadline will be May 4 or within 15 days of receipt of a valuation notice, whichever is later.

(2) For the independent appraisal to be considered in lieu of the sales ratio adjusted value, the department of revenue must:

(a) Maintain the information and requirements in (1)(a) through (e), as a part of the file supporting the value placed on the property for tax purposes;

(b) Conduct on site reviews of the subject property verifying the property characteristics of the subject property;

(c) Verify the comparable sales used in the independent appraisal as valid arms length transactions as defined in ARM 42.20.435 and as further defined in 15-8-111 (2)(a), MCA; and

(d) Conduct on site reviews of the comparable properties being used to support the value of the subject property in the appraisal.

(3) After making a determination regarding use of the independent appraisal value as market value for tax purposes, the department of revenue must return the form (AB-26) to the taxpayer stating clearly the reasons for accepting or rejecting the application.

(a) If the application is accepted, the independent appraisal value shall become the current year valuation for assessment and taxation purposes. The department must trend the independent appraisal value to base year values using the inverse of each year's sales assessment ratio percentage adjustments. Subsequent years' sales assessment ratio percentage adjustments shall be applied against the current value determined by the department.

(4) When a tax appeal board decision indicates that the independent appraisal value is market value for the property

under appeal and the department files no further appeal within the time prescribed by law, the independent appraisal value shall become the current year valuation for assessment and taxation purposes. The department shall trend the independent appraisal value to base year values using the inverse of each year's sales assessment ratio percentage adjustments. The result will be a new base year value. Subsequent years' sales assessment percentage adjustments shall be applied against the current year value determined by the tax appeal board. (AUTH: 15-1-201, MCA; IMP: 15-7-111 and 15-8-111, MCA.)

5. The amendments are meant to implement the provisions of the department sponsored bill HB 703. The amendments apply different procedures for residential and commercial property. They require selective reappraisal under certain conditions. If all conditions are not met, there is no selective reappraisal and the appropriate percentage adjustment is applied against the properties.

The amendments to ARM 42.20.438 reflect the geographic boundaries of the sales assessment ratio areas in Gallatin County and Madison County. In Gallatin County the Big Sky area is removed from area 3.1. In Madison County the Big Sky area would now become a part of the Big Sky area in Gallatin County.

The amendments to ARM 42.20.450 reflects residential condominiums included with residential land and improvements for purposes of conducting sales assessment ratio studies.

Amendments to ARM 42.20.453 cover the sales of personal property mobile homes which are excluded from the sales assessment ratio studies. Personal property mobiles homes will also not receive any percentage adjustment as a result of the ratio studies.

Changes to ARM 42.20.468 reflect the new areas and provide space for the final sales assessment ratios and adjustment multipliers.

6. ARM 42.20.426 is proposed to be repealed because imposing the 3-year time adjustment imparts an artificially imposed bias in the time trend when previous sales assessment adjustments have been used to adjust appraisal values in one of the years.

7. The proposed new rules identify the general methodology the department will employ. Rule I provides a process whereby a taxpayer may request that an actual selling price be used as the current year market value for tax purposes. It requires the taxpayer to provide certain information within a specified deadline. It provides a mechanism for trending the actual selling price to the base year value if the actual selling price is accepted. It also specifies that subsequent years' percentage adjustments will be applied against that current value. Appeal board decisions that result in the acceptance of the actual selling price as the market value for the property under appeal are required to meet those same trending and subsequent year adjustment provisions.

Rule II provides a process whereby a taxpayer may request that an independent appraisal value be used as the current year market value for tax purposes. It requires the taxpayer to provide a narrative appraisal that was completed by a licensed appraiser if a state licensing program exists or an appraiser certified by a nationally recognized appraisal society or institute if there is no state licensing program. It requires the taxpayer to provide the required information by a specified deadline. It provides a mechanism for trending the independent appraisal value to the base year value if the independent appraisal value is accepted. It also specifies that subsequent years' percentage adjustments will be applied against that current value. Appeal board decisions that result in the acceptance of the independent appraisal value as the market value for the property under appeal are required to meet those same trending and subsequent year adjustment provisions.

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

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

no later than April 12, 1991.

9. Cleo Anderson, Paralegal, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State February 19, 1991.

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

In the matter of the proposed adoption of rules pertaining to pricing of noncompetitive or volatile lines	))))	NOTICE OF ADOPTION OF ARM 6.6.3201 THROUGH ARM 6.6.3206 (RULES I THROUGH VI)

TO: All Interested persons:

1. On November 29, 1990, the State Auditor and Commissioner of Insurance, Department of Insurance (department) published a notice of public hearing on the proposed adoption of the above-stated rules at page 2067 of the 1990 Montana Administrative Register, issue number 22.

2. Oral comment was taken at the public hearing held on December 19, 1990, at 9:00 a.m. in Room 160 of the Mitchell Building, 126 North Sanders, Helena, Montana. The hearing, which was tape-recorded and transcribed, was attended by seven persons. Four individuals offered oral testimony. The department received written comment from the Montana Legislative Council's Administrative Code Committee and from three persons. The tape of the hearing, a transcript of that tape, the written comments received, and the report of the hearing officer are on file in the law library of the department.

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

6.6.3201 RULE I PURPOSE AND SCOPE (1) The purpose of these rules is to set forth procedures for the evaluation of various lines of insurance to determine whether they are noncompetitive or volatile pursuant to Title 33-16-231, et seq., MCA.

(2) These rules apply to all lines of insurance described in 33-16-103, MCA, which the commissioner of insurance has cause to believe are, or which have been designated as, noncompetitive or volatile. Specific rules applying to an individual line of insurance designated as noncompetitive or volatile, including but not limited to reasonable development factors and trend adjustment, may be enacted as necessary.

COMMENT: Comment was received which objected to the purpose and scope as stated in Rule I on the basis that the proposed rules suspend or modify Montana's competitive rating law. The intent of 33-16-231, et seq., MCA, is to enhance the insurance commissioner's statutory ability "to determine whether rates for such lines are excessive, inadequate, or unfairly discriminatory."

RESPONSE: Section 33-16-232, MCA, entitled "Purpose" provides, in pertinent part, that "Sections 33-16-231 through 33-16-236 are intended to ensure that rates for policies insuring exposures in Montana are based as much as possible on claims resulting from exposures in Montana and that they are

not excessive, inadequate, or unfairly discriminatory. It is further intended that 33-16-231 through 33-16-236 provide authorization and procedures for insurers to combine experience for a particular policy in this state with experience for similar policies elsewhere in Montana or in other states to obtain statistics that are sufficiently stable for loss projection purposes." (Emphasis added). The rules are designed to determine whether or not a line should be declared noncompetitive or volatile; gather Montana data both to determine if a line should be declared noncompetitive or volatile and to evaluate a line that has been so declared; and gather information from other states for lines declared to be noncompetitive or volatile to identify states for combination of experience. If an effective rate is to be withdrawn, the procedures in the balance of Title 33, chapter 16, MCA, will control. The rule is adopted as proposed.

AUTH: 33-1-313, 33-16-234, MCA IMP: 33-16-231 through 33-16-236, MCA

6.6.3202 RULE II DEFINITIONS (1) For the purposes of these rules, the terms "volatile" and "noncompetitive" shall have the meanings provided under 33-16-233, MCA.

(2) "Cause to believe" means a reasonable suspicion that:

(a) In the case of a noncompetitive line, a reasonable degree of competition does not exist and only a small number of insurers are willing to transact the line in Montana, based on:

(i) The monitoring of consumer complaints regarding nonavailability of coverage; or

(ii) The withdrawal of insurers from the Montana insurance market.

(b) In the case of a volatile line, the line has a low volume of claims in Montana, as evidenced by:

(i) The monitoring of consumer complaints regarding premium increases;

(ii) The monitoring of the variability in rates among insurers, as evidenced by their rate filings; or

(iii) The magnitudes of rate increases of insurers generally, as evidenced by their rate filings.

(3) "Commissioner" means the commissioner of insurance.

(4) "Line of insurance" or "line" means: a particular policy and all policies substantially similar.

~~(a) That which is designated in the insurer's annual statement for statutory reporting purposes;~~

~~(b) A specific type of policy or insurance contract; or~~

~~(c) That which is necessary for the purpose of implementation of 33-16-231 et seq., MCA.~~

COMMENT: Comments were received in objection to sections (1), (2), and subsections (2)(a), (2)(a)(i) and (2)(a)(ii). Comment was presented to the effect that indications of "cause to believe" associates unrelated issues and that they do not address the issue of availability of coverages within a line of insurance.

RESPONSE: The department can use its expertise to determine if a consumer complaint raises an issue of

availability or some other concern such as pricing. A larger than usual volume of complaints can be an indication that availability of a line of coverage is low. The indication relates directly to another factor of insurers withdrawing from the market, which has a bearing on whether only a small number of insurers are willing to transact business in a line of insurance in Montana. The subsections are adopted as proposed.

COMMENT: Rule II(2)(b)(i), Rule II(2)(b)(ii), and Rule II(2)(b)(iii) were objected to on the basis of no connection to volatility.

RESPONSE: Consumer complaints can be an indication of the volume of claims. Wide variability in rates among insurers of the same line can be indicative of substantially different data bases of claims experiences, which would be expected when the line as a whole has a low volume of claims. The filing of substantial changes of rates indicates a relatively small database used to set rates, of which claims are a large component. The subsections are adopted as proposed.

COMMENT: Rule II(4) was objected to on the basis that "line of insurance" or "line" was not defined and that the rule seems to contemplate a narrow definition.

RESPONSE: All the language of proposed Rule II(4)(a), II(4)(b), and II(4)(c) is deleted in favor of language broadening the definition. Insert in II(4) after the colon: "a particular policy and all policies substantially similar."

AUTH: 33-1-313, 33-16-234, MCA IMP: 33-16-231 through 33-16-236, MCA

6.6.3203 RULE III EVALUATION OF A LINE - NONCOMPETITIVE (1) In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant factors of available competition in the insurance market practices and the practical opportunities available to consumers in the market to obtain pricing and other consumer information and to compare and obtain insurance from competing insurers. Such factors may include, but are not limited to, the following:

(a) The size and number of insurers actually engaged in the market.

(b) The probability for entry of insurers generally in the market segment and the difficulty of entry as to high (c) The price variance on premiums offered in the market.

(c) (d) The availability of consumer information concerning the product and sales outlets or other sales mechanisms.

(e) The effects of insurers and the provided consumer information

(f) Consumer complaints regarding the market general line.

(2) In evaluating a line of insurance which the commissioner has cause to believe is noncompetitive, he shall conduct a survey of each insurer authorized to transact that line of insurance in Montana to determine:

(a) Under what circumstances the insurer would be willing to transact that line of insurance;

(b) Whether those circumstances exist in the Montana insurance market;

(c) If not, in what respect and to what magnitude the current market in Montana for that line of insurance is deficient or unsatisfactory; and

(d) What changes in the Montana insurance market would be necessary to make the insurer a viable competitor for that line of insurance.

(3) ~~The commissioner shall make every effort to encourage a healthy, competitive market for that line of business. To the extent possible,~~ The commissioner may consider the circumstances necessary to promote a healthy, competitive market, as indicated in part by the insurer's survey responses in subsection (2) above~~, shall be created or allowed~~. The commissioner may create or allow the circumstances necessary to promote a healthy competitive market prior to declaring the line of business to be noncompetitive.

(4) The commissioner shall declare the line of business to be noncompetitive when ~~efforts to create a competitive market for that line of business have failed or~~ it appears to the commissioner ~~, in the discretionary opinion of the commissioner, a monopoly exists or~~ that only a small number of insurers are willing to transact the line in Montana based upon the factors considered in Rule III(1) and the results of the survey in Rule III(2) above.

(5) A line of insurance shall not be considered noncompetitive solely on the basis that there are fewer insurers willing to transact that line of insurance than another line of insurance which has already been designated noncompetitive.

COMMENT: Comments were received in objection to Rule III on the basis that the contemplated economic analysis to determine whether or not a line is noncompetitive is incomplete and a hearing should be held to receive evidence before a declaration is made that a line is noncompetitive.

RESPONSE: The term "noncompetitive" contemplates a determination whether consumers in Montana have a practical opportunity to "shop around" for policies offered by different insurers. Rule III(1) is modified as follows: "relevant factors of workable competition pertaining to the insurance market structure, market performance, and market conduct, and" is deleted. Rules III(1)(b), III(1)(e), and III(1)(f) are omitted in their entirety. The remaining subsections are renumbered to reflect the changes. In Rule III(3), "The commissioner shall make every effort to encourage a healthy, competitive market for that line of business. To the extent possible," is deleted from Rule III(3). In its place, the following language is inserted: "The commissioner may consider". The comma following "above" in line 5 of Rule III(3) is deleted and a period is inserted. The words "shall be created or allowed" in line 6 of subsection III(3) are deleted and language is inserted to state that "The commissioner may create or allow the circumstances necessary to promote a healthy competitive market". "[E]fforts to create a competitive market for that line of business have failed or when, in the discretionary opinion of the commissioner, a

monopolistic or oligopolistic environment exists or is inevitable for that line of insurance in Montana" at lines two through six of Rule III(4) are deleted and the following language is inserted: "it appears to the commissioner that only a small number of insurers are willing to transact the line in Montana based upon the factors considered in Rule III(1) and the results of the survey in Rule III(2) above." Rule III(5) is adopted as proposed.

AUTH: 33-1-313, 33-16-234, MCA IMP: 33-16-231 through 33-16-236, MCA

6.6.3204 RULE IV EVALUATION OF A LINE - VOLATILE (1) In evaluating a line of insurance which the commissioner has cause to believe is volatile, he shall require that each insurer who has issued policies for that line of insurance submit information on each Montana claim incurred or reported to the insurer in the past five years. Such information shall include the insurer's estimate of the incurred cost of the claim as of each calendar year-end, since the date the claim was reported to the insurer. Such information shall be submitted on forms specified by the commissioner, and shall be held strictly confidential and not available to the public. In lieu of submission of the required information to the commissioner, such information may be submitted to an appropriate rating or advisory organization designated by the commissioner.

(2) The commissioner, or the designated rating or advisory organization, shall evaluate the insurer's submissions to determine whether Montana claim statistics are sufficiently stable for ratemaking purposes. In making such determination, classical credibility procedures shall be applied, to establish a full credibility number of claims, such that there would be an ~~90%~~ 80% probability that next year's total claim costs will be within ~~10%~~ 20% of the expected amount.

(3) The commissioner shall declare the line of insurance to be volatile if the average number of claims expected to be incurred in the subsequent calendar year does not equal or exceed the full credibility number of claims determined in subsection (2) above.

(4) A line of insurance shall not be considered volatile solely on the basis that there are fewer claims for that line of insurance than for another line of insurance which has already been designated as volatile.

COMMENT: Comments were received in objection to Rule IV on the basis that the information required to be submitted by insurers is burdensome and expensive. Interested parties recommend that the commissioner use the statistical information plan of the Insurance Service Office (ISO) to initially evaluate the lines that the commissioner is concerned may be volatile. If, upon review of the ISO data, the line appears to be volatile, the commissioner should hold a hearing where all interested parties could present data, including insurers that do not report to ISO. Comments were to the effect that the information required is proprietary in nature, and that public

disclosure of the insurer's evaluation of pending claims would adversely affect resolution of the claims. One interested party urged that "low volume of claims" be defined to mean less than 10 claims.

RESPONSE: The very purpose of the underlying statutes would be frustrated if insurers were not required to submit data on claims in Montana. A sufficient compilation of claims data must be made in order to apply statistical methodology to determine if the claims are sufficiently stable for ratemaking purposes. The department now receives the statistical information plans of ISO. The department believes that those plans may not, in all cases, be sufficient to develop a belief about whether a line is volatile. Rule IV(4) requires a hearing before declaring a line to be volatile, which conforms to the statute. The information can be collected generically, without reference to litigation or party identification. The commissioner has authority to withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest. Defining "a small number of claims" to be less than a specified number does not account for variability in claim sizes. To determine accuracy of a rate, number of claims, and variability in claim sizes must be considered in conjunction. The period following "commissioner" in line 10 of Rule IV(1) is deleted and the following language is inserted: ", and shall be held strictly confidential and not available to the public. In lieu of submission of the required information to the commissioner, such information may be submitted to an appropriate rating or advisory organization designated by the commissioner." Following "commissioner" in line 1 of Rule IV(2), insert ", or the designated rating or advisory organization,". In Rule IV(2), 90% is changed to 80% and 10% is changed to 20%. These changes will reduce the measurement criteria used in evaluating whether a line is volatile. The department needs an objective measurement criteria in evaluating whether a line has a low volume of claims in Montana. In Rule IV(3) following "claims" in line 2, insert "expected to be". Following "incurred" in line 2 of Rule IV(3) insert "in the subsequent calendar year". The rest of Rule IV is adopted as proposed.

AUTH: 33-1-313, 33-16-234, MCA IMP: 33-16-231 through 33-16-236, MCA

6.6.3205 RULE V DATA REPORTING REQUIREMENTS (1) If a line of insurance is designated to be noncompetitive or volatile:

(a) The commissioner shall require each insurer authorized to write that line of insurance in Montana to submit on an annual basis its loss, expense, premium, and exposure statistics for that line of insurance for each of the past five years, on forms specified by the commissioner and applicable to that line of insurance. Such submission shall provide the required information separately for each state in which the

insurer has issued policies for that line of insurance in the past five years. The commissioner may waive this requirement for specific states for a particular insurer where that insurer's market share for the line is minimal.

(2) The commissioner shall, upon receipt of the information required to be submitted pursuant to subsection (1) above, evaluate the submissions in light of the standards set forth in 33-16-234(3), MCA, and identify the states whose experience are necessary and appropriate for use as a complementary data base in establishing Montana rates, and shall identify those states whose experience is clearly inappropriate for such use. ~~// Use by an insurer of experience from states identified by the commissioner as inappropriate for use in establishing rates in Montana shall constitute grounds for rejection of the insurer's filing~~

(3) The commissioner may designate an appropriate rating or advisory organization to assist in the gathering and evaluation of information as required in paragraphs (1) and (2) above."

(4) Use by an insurer of experience from states identified by the commissioner as inappropriate for use in establishing rates in Montana shall constitute grounds for rejection of the insurer's filing.

(~~3~~5) The commissioner shall adopt trend factors in the form of annual rates of change in claim severity and claim frequency for that line of insurance. Use by an insurer of an annual rate of change different than the adopted rate for that line of insurance may be deemed inappropriate, in the absence of credible insurer data to the contrary.

COMMENT: Comments were received to the effect that the reporting requirements were onerous and excessive. Further, adverse comments were received on the expense associated with compliance and that it might force some insurers to cease writing the line of business.

RESPONSE: Because some insurers have a minimal market in other states (for example, less than 2%), reporting by that insurer of information from that state would add little to our evaluation. Language is added to Rule V(1)(a) to relieve the insurer of the expense and burden of reporting information which will not contribute substantially to the department's evaluation.

COMMENT: Persons stated that some of the information required to be reported is proprietary and the department lacks sufficient resources to process it.

RESPONSE: As noted above with regard to Rule IV, the information will be treated confidentially. Insurers writing business in this state profitably are not likely to withdraw from the market on the basis of the cost of providing information. Insurers losing money on lines of insurance in Montana are likely to withdraw regardless of reporting requirements. As noted above, allowance has been made for the information to be submitted to an appropriate rating or advisory organization to reduce the burden on the department. New Rule V(3) is inserted, "The commissioner may designate an appropriate rating or advisory organization to assist in the

gathering and evaluation of information as required in paragraphs (1) and (2) above." In Rule V(2), the entire last sentence is stricken and then is reinstated as new Rule V(4). Rule V(3) is renumbered Rule V(5).

COMMENT: Proposed Rule V(3) was objected to on the basis that it creates a presumption that an insurer's trend factor is inappropriate if it is different from the one promulgated by the commissioner. The commissioner does not have the authority to supplant the trend factor of the insurer.

RESPONSE: The applicability of the commissioner's trend factors is linked to the assessment of the amount and quality of data submitted by the insurer. No presumption is created, whether conclusive or rebuttable. The proposed Rule is adopted as proposed, except, as already noted, it is renumbered as Rule V(5).

AUTH: 33-1-313, 33-16-234, MCA IMP: 33-16-231 through 33-16-236, MCA

6.6.3206 RULE VI FILING REQUIREMENTS (1) Upon designating a line of insurance as noncompetitive or volatile, the commissioner may ~~withdraw approval~~ take appropriate action leading to the issuance of an order prohibiting further use of an insurer's previously approved rates for that line of insurance pursuant to 33-16-205, MCA, and require that the insurer file the rates it intends to use along with statistical support sufficient to substantiate the filing.

(2) The commissioner shall review all subsequently received filings for the designated line of insurance to ensure that:

(a) Appropriate ratemaking techniques have been applied;

(b) An appropriate complementary data base has been used to supplement the insurer's Montana experience;

(c) Appropriate trend adjustments have been used;

(d) Reasonable loss development factors, based on an appropriate data base, have been used;

(e) A reasonable expense load has been incorporated in the proposed rates, and

(f) Resultant proposed rates are reasonable for the insurance to be provided.

(3) If an insurer's filing of rates for a designated line of insurance fails to meet the requirements of subsection (5) in any respect, the commissioner shall notify the insurer of the deficiencies, and allow the insurer a reasonable time in which to correct them.

COMMENT: Rule VI was objected to by interested parties and the Montana Legislative Council's Administrative Code Committee for the reasons that it empowers the commissioner to withdraw approval of insurers' previously approved rates. This exceeds the authority of the commissioner and is contrary to Montana's competitive pricing law. A hearing is required by statute before the commissioner can revoke an effective rate.

RESPONSE: Rule VI, in particular, and the rules in general do not suspend the competitive rating law. They merely require that after the line has been declared noncompetitive or

volatile, the data upon which rates are based must be relevant to the experience of Montana. Sections 33-16-205, 33-16-206, and 33-16-211, MCA, grant the commissioner authority to revoke the rate of an insurer after a hearing. This procedure will be invoked after the finding that a line is volatile or noncompetitive, and the commissioner believes that the rate of the insurer is based on data gathered from states other than the states the commissioner has designated as appropriate. The terms "withdraw approval" are stricken from line 3 of Rule VI(1). The terms "take appropriate action leading to the issuance of an order prohibiting further use" is inserted in the same place. The rest of Rule VI is adopted as proposed.

AUTH: 33-1-313, 33-16-234, MCA IMP: 33-16-231 through 33-16-236, MCA

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 19th day of February, 1991.

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

In the matter of the amendment of Rule 46.12.3207 pertaining to transfer of resources for medical services	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.3207 PERTAINING TO TRANSFER OF RESOURCES FOR MEDICAL SERVICES

TO: All Interested Persons

1. On November 29, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3207 pertaining to transfer of resources for medical services at page 2104 of the 1990 Montana Administrative Register, issue number 22.

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

46.12.3207 TRANSFER OF RESOURCES Subsection (1) remains as proposed.

~~(a) "Non-excluded resource" means any property which would have counted in whole or in part toward the resource limit at the time of transfer.~~

Subsections (1)(b) and (1)(c) remain the same in text but will be renumbered (1)(a) and (1)(b).

(~~d~~c) "Uncompensated value" means the difference between the property's fair market value ~~of property~~ at the time of the transfer less any outstanding encumbrances on the property and ~~minus~~ the fair market value of compensation received ~~by the individual~~ in exchange for the property.

(~~e~~d) "Transfer of property" means any transfer or renunciation of a client's property. Transfers to joint tenancy or to tenancy in common are included in this definition. Transfers of or restrictions upon a client's right of access to or legal ability to dispose of property are also included in this definition, except as provided in subsection (~~7~~8)(b)(iv).

Subsection (1)(f) remains the same in text but will be renumbered (1)(e).

(~~g~~f) "Undue hardship" means any one of the conditions specified in subsection (~~7~~8)(b)(i) through (~~7~~8)(b)(v).

(~~h~~g) "Client" means applicant for or recipient of medicaid services OR SUCH A PERSON AT ANY TIME PRIOR TO APPLICATION and, where the context allows, includes any person whose resources are considered by the department in determining eligibility of the applicant or recipient.

Subsections (1)(i) and (1)(j) remain the same in text but will be renumbered (1)(h) and (1)(i).

(~~k~~j) "Home" means the client's principal place of residence, adjoining land and outbuildings.

Subsections (2) through (4) remain as proposed.

(a) ~~When a client disposes of non-excluded resources for less than fair market value within thirty (30) months before institutionalization, it is presumed that the transfer was made to establish eligibility unless the client presents clear and convincing evidence that the disposal was exclusively for some other purpose.~~ A CLIENT IS INELIGIBLE FOR THE MEDICAL SERVICES SPECIFIED IN SUBSECTION (3) FOR A PERIOD OF TIME CALCULATED IN ACCORDANCE WITH SUBSECTION (4)(b)(i) AND (ii) IF, FOR THE PURPOSE OF QUALIFYING FOR MEDICAL ASSISTANCE, THE CLIENT HAS DISPOSED OF ANY RESOURCE, INCLUDING HIS HOME, FOR LESS THAN FAIR MARKET VALUE WITHIN:

(i) THIRTY (30) MONTHS IMMEDIATELY PRIOR TO INSTITUTIONALIZATION OR AT ANY TIME THEREAFTER, IN THE CASE OF A PERSON WHO IS RECEIVING MEDICAL ASSISTANCE ON THE DATE OF INSTITUTIONALIZATION; OR

(ii) THIRTY (30) MONTHS IMMEDIATELY PRIOR TO THE DATE OF APPLICATION FOR MEDICAL ASSISTANCE OR AT ANY TIME AFTER APPLICATION, IN THE CASE OF A PERSON WHO IS NOT RECEIVING MEDICAL ASSISTANCE ON THE DATE OF INSTITUTIONALIZATION.

(b~~c~~) ~~Subsection (3)(a) does not apply where:~~ A PERSON SHALL NOT BE INELIGIBLE FOR MEDICAL ASSISTANCE BY REASON OF SUBSECTION (a) IF:

Subsections (4)(b)(i) through (4)(b)(iii) remain the same in text but will be renumbered (4)(c)(i) through (4)(c)(iii).

(iv) denial of eligibility would cause an undue hardship as defined in subsection (1)(~~g~~f).

(e~~b~~) ~~When a client transfers non-excluded resources for less than fair market value, a period of ineligibility will be imposed.~~ The period of ineligibility will begin with the month in which the resources were transferred. The number of months in such period is equal to the lesser of:

Subsections (4)(c)(i) and (4)(c)(ii) remain the same in text but will be renumbered (4)(b)(i) and (4)(b)(ii).

(d) ~~The department may recover from the client all medicaid benefits paid on the client's behalf within the ineligibility period.~~ WHEN A CLIENT, WHETHER OR NOT RECEIVING MEDICAL ASSISTANCE AT THE TIME OF INSTITUTIONALIZATION, HAS DISPOSED OF ANY RESOURCE FOR LESS THAN FAIR MARKET VALUE WITHIN THE PERIODS OF TIME DESCRIBED IN SUBSECTIONS (4)(a)(i) AND (ii), IT IS PRESUMED THAT THE TRANSFER WAS MADE FOR THE PURPOSE OF QUALIFYING FOR MEDICAL ASSISTANCE, UNLESS THE CLIENT ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE TRANSFER WAS EXCLUSIVELY FOR SOME OTHER PURPOSE.

Subsections (5) through (6)(f) remain as proposed.

(~~6~~7) In all cases in which the department determines that an applicant or recipient has transferred ~~non-excluded~~ resources to establish or maintain eligibility, regardless of the date of the transfer, the department must send a written notice to the individual, prior to a determination of eligibility or ineligibility, informing him that an uncompensated

transfer of resources has been identified, stating the value of the property transferred, and explaining the individual's right to rebut the presumption that the transfer was made to qualify for assistance.

Subsections (8) through (8)(b)(v) remain as proposed.

(~~8~~9) For purposes of evaluating all transfers, regardless of date, if the individual had some other purpose for transferring the property but establishing eligibility for public assistance was also a factor or foreseeable result of his decision to transfer, the presumption ESTABLISHED IN SUBSECTION (4)(d) is not rebutted.

AUTH: Sec. 53-2-201 and 53-2-601 MCA
IMP: Sec. 53-2-601 and 53-6-113 MCA

3. No written comments or testimony were received.

4. These additional changes have been made to make the rule conform to 42 U.S.C. 1396p, which requires states to provide a period of ineligibility when excluded resources such as the client's principal place of residence are transferred within specified periods of time in order to qualify for medical assistance. Subsection (4) has also been re-organized for greater clarity.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 14, 1991.

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

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

TO: All Interested Persons

1. On December 13, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.3801, 46.12.3802, 46.12.3803, 46.12.3804, 46.12.3805 and 46.12.3808 pertaining to the medically needy program at page 2163 of the 1990 Montana Administrative Register, issue number 23.

2. The Department has amended Rules 46.12.3801, 46.12.3802, 46.12.3803, 46.12.3805 and 46.12.3808 as proposed.

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

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) through (2) remain as proposed.

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

Subsection (3)(a) remains as proposed.

(b) ~~Such medical~~ expenses which are ~~may~~ not ~~be~~ the liability of a third party~~.~~ OTHER THAN ANOTHER PUBLIC PROGRAM OF THE STATE OF MONTANA OR ANY OF ITS POLITICAL SUBDIVISIONS;

Subsections (3)(c) through (3)(e) remain as proposed.

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

(ii) unpaid BALANCE ON OLD BILLS ~~expenses~~ incurred ~~during the three months preceding~~ PRIOR TO the retroactive BUDGET period; PROVIDED THEY ARE CURRENTLY ENFORCEABLE OBLIGATIONS, AND PAYMENTS MADE ON SUCH UNPAID BILLS DURING THE RETROACTIVE BUDGET PERIOD.

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

(i) PAID AND UNPAID EXPENSES INCURRED DURING THE three months IMMEDIATELY preceding the prospective BUDGET period; and

(ii) PAID AND UNPAID EXPENSES INCURRED DURING the prospective budget period~~,~~; AND

(iii) UNPAID BALANCE ON OLD BILLS INCURRED PRIOR TO THE THREE MONTHS IMMEDIATELY PRECEDING THE PROSPECTIVE BUDGET PERIOD, PROVIDED THEY ARE CURRENTLY ENFORCEABLE OBLIGATIONS, AND PAYMENTS MADE ON SUCH OLD BILLS DURING THE PROSPECTIVE BUDGET PERIOD.

Subsections (4) through (5) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The Montana Senior Citizens Association (MSCA) and the Montana Low Income Coalition (MLIC) objected to the proposed amendments to ARM 46.12.3804(3) with regard to the time limits it placed on medical bills which can be used to meet the incurment (spend down) requirement. They have pointed out that the proposed limitations are more restrictive than those contained in federal regulations governing the Medicaid program.

RESPONSE: We agree with MSCA and MLIC that the proposed time limitations are not consistent with federal regulations as interpreted by the Health Care Financing Administration (HCFA), because they allow only expenses incurred during the retroactive or prospective budget periods and during the three months immediately prior to the retroactive and prospective periods to be applied to the incurment. Therefore, we have amended ARM 46.12.3804 to comply with federal requirements as follows: Unpaid medical bills incurred at any time prior to the retroactive or prospective budget periods may be used to meet the incurment requirement as long as they are currently enforceable obligations and fulfill the other requirements set forth in ARM 46.12.3804(3)(a) through (c). Payments on such old bills made during the prospective or retroactive periods may also be used to meet the incurment requirement.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 14, 1991.

VOLUME NO. 44 OPINION NO. 5

CITIES AND TOWNS - Authority of self-governing city to establish capital improvement fund;
LOCAL GOVERNMENT - Authority of self-governing city to establish capital improvement fund;
MUNICIPAL CORPORATIONS - Authority of self-governing city to establish capital improvement fund;
PUBLIC FUNDS - Authority of self-governing city to establish capital improvement fund;
MONTANA CODE ANNOTATED - Sections 2-7-501 to 2-7-521, 7-1-101, 7-1-113, 7-1-114, 7-6-4134, 7-6-4231, 7-13-4307, 7-13-4325;
MONTANA CONSTITUTION - Article VIII, section 11; Article XI, section 6;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 53 (1990), 43 Op. Att'y Gen. No. 41 (1989), 42 Op. Att'y Gen. No. 120 (1988), 38 Op. Att'y Gen. No. 14 (1979), 37 Op. Att'y Gen. No. 68 (1977).

HELD: 1. The equipment reserve account in an internal service fund established by a city with self-government powers is a "capital improvement program fund" within the meaning of section 7-6-4134, MCA.

2. Under section 7-6-4134, MCA, a self-governing city may not retroactively transfer from the general fund an amount exceeding 5 percent of the money received from the all-purpose levy.

3. Equipment reserve accounts in enterprise funds must be maintained separately from other equipment reserve accounts in a capital improvement fund.

4. Section 7-6-4134, MCA, does not prohibit the transfer of funds to an equipment reserve account from sources other than the all-purpose levy fund.

February 11, 1991

Charles Brooke, Director
Department of Commerce
1424 Ninth Avenue
Helena MT 59620

Dear Mr. Brooke:

You have requested my opinion on several questions concerning a self-governing city's equipment reserve account. In particular, you ask:

1. Is an equipment reserve account within an internal service fund established by a

self-governing city a "capital improvement program fund" as defined in section 7-6-4134, MCA?

2. If so, may the city make a one-time retroactive transfer of money from its all-purpose levy revenues to the internal service fund in excess of the 5 percent limitation in section 7-6-4134, MCA?

3. May the city also transfer to the equipment reserve account from "enterprise funds" revenues generated from income-producing municipal services in order to replace equipment used in providing those services?

4. May the city transfer to the equipment reserve account funds from sources other than the all-purpose levy fund and enterprise funds in order to help replace equipment used in providing the services?

This matter arises from an audit of a self-governing city for the fiscal year ending June 30, 1989. One of the reasons for the audit was the large amount of cash reserves in the city's "internal service funds." These funds, called the "central garage internal service fund" and the "data processing internal service fund," are used for providing and maintaining adequate equipment for city departments. Prior to 1989, the main source of revenue for these funds was fees charged to other city departments for reimbursement of the support services. However, in fiscal year 1989 there was a substantial increase in the balance of the central garage fund. The balance of the fund at the end of fiscal year 1988 was $247,123, and the balance at the end of fiscal year 1989 was $4,454,369.

Pursuant to its authority in sections 2-7-501 to 521, MCA, the Department of Commerce (department) requested a supplemental report from the auditors who did the 1988-89 audit. The auditors were asked to trace the source of the $3 million increase in the central garage fund. I am assuming that the following figures from the audit are accurate: $1,363,534 came from the general fund supported by all-purpose levy revenues; $1,002,069 came from certain "special revenue funds," including the special funds established for planning, federal block grants, street maintenance district, and boulevard maintenance district; and $656,895 came from "enterprise funds" which include funds established through provision of income-producing services, including water and sewer services, the city's multi-sport complex, and city parking. The transferred funds were used to establish an "equipment reserve account" within the central garage internal service fund to provide for future equipment replacement.

These transfers caused concern in light of section 7-6-4134, MCA, which provides:

> Capital improvement program fund. An amount not to exceed 5% of the money received from and as a part of the aforesaid all-purpose levy may be placed in a separate fund, known as the capital improvement program fund, to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000, with a life expectancy of 5 years or more, provided that a capital improvement program has been formally adopted by city or town ordinance.

The city had levied 95.07 mills for its all-purpose levy for fiscal year 1989, each mill having a value of $53,612. The total all purpose levy for fiscal year 1989 was therefore $5,096,893. The city transferred from the general fund a lump sum of $1,363,534. While it is unclear from the materials you gave me how much of the general fund transfer came from all-purpose levy revenues, I am assuming for the purposes of this opinion that all of the $1,363,534 came from the levy revenues. With this assumption, nearly 30 percent of the revenues received from the all-purpose levy were transferred into the internal service funds.

Your first question is whether the internal service funds are capital improvement funds and therefore regulated by section 7-6-4134, MCA. My analysis is based on the assumption that the city transferred the funds in accordance with section 7-6-4123, MCA, which provides: "No money must be transferred from one fund to another except by ordinance or resolution of the council." If the council has failed to comply with this section, clearly the transfers were inappropriate from their inception.

The audit report concluded that the central garage fund meets the description of a capital improvement fund in section 7-6-4134, MCA. The fund includes specifically an "equipment reserve account" created expressly for the replacement and acquisition of property, plant, and equipment as described in section 7-6-4134, MCA. I must therefore concur with the report that the equipment reserve account of the central garage fund meets the description of a capital improvement fund in section 7-6-4134, MCA.

The answer to your next question requires examination of whether the city is subject to the provisions of section 7-6-4134, MCA. The city in question has adopted a self-government charter. "A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter." Mont. Const. Art. XI, § 6; § 7-1-101, MCA. As a self-governing local government unit, the city has the authority to "share powers with the state government." D & F Sanitation Service v. City of Billings, 219 Mont. 437, 713 P.2d 977, 981-82

(1986). While the shared powers concept does not leave the local government unit free from state control, the concept embodies the "'assumption that local government possesses the power, unless it has been specifically denied.'" D & F Sanitation, 713 P.2d at 982 (quoting II Mont. Const. Conv. 796-97 (1972)) (emphasis in original); 43 Op. Att'y Gen. No. 41 (1989), 43 Op. Att'y Gen. No. 53 (1990). To determine whether a self-governing city has certain powers, it is necessary to:

> 1) consult the charter and consider constitutional ramifications; 2) determine whether the exercise is prohibited under the various provisions of [Title 7, chapter 1, part 1, MCA] or other statute specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by section [7-1-113].

37 Op. Att'y Gen. No. 68 at 272, 274 (1977), 43 Op. Att'y Gen. No. 41 (1989), 43 Op. Att'y Gen. No. 53 (1990).

There is nothing in the city's charter addressing the transfer of city funds. However, two constitutional provisions broadly address the city's responsibility with respect to accountability and use of funds. "All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law." Mont. Const. Art. VIII, § 11. Further, Article VIII, section 12 requires the Legislature to "insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities." These constitutional provisions necessarily impose accountability limitations on transfer of city monies from one fund to another.

With respect to the statutory limitations on the powers of self-governing units, the second step of the analysis quoted above requires consideration of sections 7-1-111 and 7-1-112, MCA, which limit the exercise of power of self-governing units, and section 7-1-114, MCA, which lists the mandatory provisions with which a self-governing unit must comply. Neither section 7-1-111 nor section 7-1-112, MCA, addresses budgetary matters. However, section 7-1-114(g), MCA, expressly provides that a local government with self-governing powers is subject to

> [a]ny law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply[.]

Further, section 7-1-114(2), MCA, requires that "[t]hese provisions are a prohibition on the self-government unit acting other than as provided." Section 7-6-4134, MCA, by its clear terms, is a law regulating the budget procedures of a city. As

such, the 5 percent limitation in section 7-6-4134, MCA, is a mandatory provision with which a city must comply in establishing its budget.

The city suggests that the decision of State ex rel. Swart v. Molitor, 190 Mont. 515, 621 P.2d 1100 (1981), may dictate an opposite conclusion. I do not believe that Molitor controls your questions concerning the all-purpose levy revenues. In Molitor, the court concluded that the mandatory provision requiring compliance with state laws regulating planning and zoning did not apply to the fees charged by a county surveyor in examining certificates of survey. The court reasoned that a particular statutory section allowed for such review and that the remaining sections were silent with respect to prescribing a fee. 621 P.2d at 1103-04. Relying upon the shared powers concept, and because there was no statute forbidding self-government units from assessing a fee, the Court held that the fee was valid.

Here, the state statutes are not silent with respect to all-purpose levy revenues and the establishment of capital improvement funds. Section 7-6-4134, MCA, gives express direction in this area. The city, despite its status as a self-governing city, is therefore subject to section 7-6-4134, MCA, and other similar laws setting budgetary procedures. See also Billings Firefighters Local 521 v. City of Billings, 214 Mont. 481, 694 P.2d 1335 (1985) (under section 7-1-114(f), MCA, a self-governing city may not supersede statutes requiring that a city maintain a municipal fire department).

You also ask whether a retroactive transfer of more than 5 percent of the all-purpose levy revenues for fiscal year 1989 is compatible with the provisions of section 7-6-4134, MCA. The audit suggests that more than 5 percent of the all-purpose levy revenues may be transferred in fiscal year 1989 because there have not been any such transfers previously. The audit then concludes that a retroactive transfer would be allowable because the lump sum may be retroactively applied as transfers from the past six years. I cannot accept the audit's interpretation of section 7-5-4134, MCA. If such retroactive transfers were allowable, the 5 percent limitation in section 7-6-4134, MCA, would be rendered meaningless. A city could go back any number of years rationalizing the transfer of any amount to the equipment reserve account. The plain language of section 7-6-4134, MCA, prohibits a one-time retroactive transfer of funds exceeding the 5 percent limitation.

Your third question is whether equipment reserve accounts in "enterprise funds" may be transferred to the equipment reserve account in the central garage internal service fund. As you describe them, "enterprise funds" are funds generated from the provision of income-producing municipal services, such as water and sewer systems. Under section 7-13-4307, MCA, a city is authorized to accumulate such "reserves" as are necessary for

the depreciation and replacement of utility services systems. However, section 7-13-4325, MCA, defines the accounting procedures for the water and sewer enterprise funds:

> After any municipality has issued and sold revenue bonds under this part, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

This section expressly prohibits the consolidation of revenues in the enterprise funds with revenues from other sources. Under section 7-1-114(1)(g), MCA, and the above reasoning with respect to application of section 7-6-4134, MCA, the city may not "reclassify" equipment reserves maintained in the enterprise funds. As such, equipment reserve accounts for enterprise funds must be maintained separately from such accounts in the capital improvement fund.

Nonetheless, section 7-13-4325, MCA, does not preclude the payment of monies to the central garage fund for the proportional use of the equipment maintained by the garage fund. Section 7-13-4328, MCA, provides that the amount of money pledged for payment of bonds does not include the "normal, reasonable, and current expenses of operation and maintenance." Therefore, the renting or leasing of equipment administered by an internal service fund would be allowable as a necessary and reasonable expense. In Greener v. City of Great Falls, 157 Mont. 376, 485 P.2d 932 (1971), the Supreme Court upheld the use of special funds for the construction of shop and storage buildings used to house city vehicles and equipment. The amount paid from each special fund depended upon each fund's fair proportional share of vehicle maintenance cost. The Montana Supreme Court upheld the use of special funds for the construction project and stated:

> Each department clearly could expend its separate funds for maintenance and repair of its vehicles at a downtown garage operated by a private individual. It is equally clear that each department could commit its funds to construction of a separate repair facility for its own exclusive use, staffed by its own mechanic, and operated by its own personnel. In view of these considerations, we perceive no reason why each separate department cannot contribute these same funds to construction and operation of a joint use central repair facility in proportion to its anticipated use thereof. Nor do we see any reason why the source of the separate funds of the respective departments, unless otherwise obligated or prohibited, forecloses such contribution. The appropriation of a portion of such funds for construction costs of such joint use facility rests on the same authority that

> permits use of such funds to construct a separate repair facility for the exclusive use of each department.

485 P.2d at 942. While it is clear from the Greener decision that special funds may be used to purchase equipment or to construct buildings that would be used in providing the municipal services, the Greener decision does not sanction the transfer of the funds into a separate account for purposes that are not necessarily related to the proportionate use of equipment by the fund. Here, I have no facts as to what proportions would properly be allocated to which funds and therefore decline to determine whether the transfers could be considered a proper payment for proportional use of the equipment.

Your last question is whether section 7-6-4134, MCA, is a limitation on the transfer of funds from sources other than the all-purpose levy or enterprise funds. Section 7-6-4134, MCA, by its terms, places limits only on the revenues from the all-purpose levy and imposes no restrictions with respect to funds from other sources. You have not suggested that there is a state statute or administrative rule that would prohibit such transfers from other sources.

Unlike the transfers from the all-purpose levy revenues and the enterprise funds, the law is silent with respect to special revenue funds. As a general rule,

> it is within the discretion of the legislative body of a city to segregate and divide moneys belonging to the municipality into whatever separate funds its convenience or caprice may dictate for administrative purposes, as long as it does not do so contrary to statute or its charter.

McQuillin, 15 Municipal Corporations § 39.44, at 159. This general principle is, of course, limited by the constitutional provision which requires that borrowed money may only be used for purposes specified in the authorizing law. Mont. Const. Art. VIII, § 11. This constitutional provision reflects the general prohibition that special funds may not be used for another and different purpose. McQuillin, 15 Municipal Corporations § 39.50, at 191.

Section 7-1-114(g), MCA, does not apply because there is no state budgetary law addressing such transfers. If the statutes are silent and the exercise of power is not expressly prohibited, then it makes no difference that the activity in question may fall within those subject areas addressed by the mandatory provisions of section 7-1-114, MCA. Molitor, supra, 621 P.2d at 1104. Thus, as long as state statutes or rules are silent in this area, I must conclude that there is not a conflict with state laws and that such transfers are not

prohibited. See also Diefenderfer v. City of Billings, 223 Mont. 487, 726 P.2d 1362 (1986), reaffirming Molitor and recognizing the valid exercise of self-government powers when state law is silent.

You cite several previously issued Attorney General's Opinions suggesting that a self-governing city has no more authority than a city with general powers with respect to an area covered by section 7-1-114, MCA. In 38 Op. Att'y Gen. No. 14 at 51 (1979), it was recognized that local governments, whether vested with general or self-government powers, are bound by the state bonding procedures because bonding procedures come within the purview of section 7-1-114, MCA. This opinion was later characterized as stating, "Thus, with respect to the issuance of revenue bonds, local governments with self-government powers have no more powers than local governments with general government powers." 42 Op. Att'y Gen. No. 120 at 474 (1988). You rely upon this statement and subsection (2) of section 7-1-114, MCA, which prohibits a self-governing city from acting "other than as provided," to reach the conclusion that a self-governing city may not exercise any independent authority under areas covered by section 7-1-114, MCA. You suggest that a self-governing city may act only as provided by the statutes and, if statutes are silent with respect to certain actions in the mandatory areas, the silence nevertheless prevents a self-governing city from taking any action. In light of Molitor and the statutory mandate requiring that local government powers be liberally construed, I cannot agree with your suggestions. See § 7-1-106, MCA. If a statute falls within the mandatory subjects in section 7-1-114, MCA, clearly a self-governing city must comply with the statute. Here, there is no statute expressly regulating or prohibiting the transfers of funds other than all-purpose levy funds or enterprise funds.

THEREFORE, IT IS MY OPINION:

1. The equipment reserve account in an internal service fund established by a city with self-government powers is a "capital improvement program fund" within the meaning of section 7-6-4134, MCA.

2. Under section 7-6-4134, MCA, a self-governing city may not retroactively transfer from the general fund an amount exceeding 5 percent of the money received from the all-purpose levy.

3. Equipment reserve accounts in enterprise funds must be maintained separately from other equipment reserve accounts in a capital improvement fund.

4. Section 7-6-4134, MCA, does not prohibit the transfer of funds to an equipment reserve account from sources other than the all-purpose levy fund.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1990. This table includes those rules adopted during the period January 1, 1991 through March 31, 1991 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1990, this table and the table of contents of this issue of the MAR.

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