MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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TO: All Interested Persons:

1. On February 6, 1992, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of a new rule pertaining to therapeutic devices.

2. The proposed new rule will read as follows:

"I THERAPEUTIC DEVICES (1) The board of occupational therapy practice defines "therapeutic devices" as that term is used in section 37-24-103(4), MCA, to mean a tool or implement used to obtain curative relief or accelerate healing. Furthermore, the board has determined that such therapeutic devices may be used by an occupational therapist in his or her treatment of the elbow, forearm and hand, once the individual occupational therapist has provided proof to the board that he or she has been taught the correct application of the device in occupational therapy school.

(2) An individual occupational therapist wishing to use therapeutic devices other than those specifically enumerated in section 37-24-103(4), MCA, must provide a signed statement from a faculty member of the occupational therapy school that he or she attended verifying that the individual successfully completed a course of study in which the use, indications, and contraindications regarding that particular type of therapeutic treatment was taught.

(3) This regulation terminates on July 1, 1993."

Auth: This rule is advisory only, but may be a correct interpretation of the law, Sec. 37-24-103, 37-24-201, MCA; IMP, Sec. 37-24-103, 37-24-202, MCA

REASON: This rule is being proposed to implement temporary language amended into section 37-24-103, MCA.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Occupational Therapy Practice, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than February 13, 1992.

4. Robert P. Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEBRA AMMONDSON, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 6, 1992.

**BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA**

In the matter of proposed amendments of Rule 8.86.301 as it relates to class I wholesale prices; and Rules 8.86.501, 8.86.503 and 8.86.504 as they relate to the quota rules	)))))	**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF RULE 8.86.301-PRICING RULES RULES 8.86.501, 8.86.503 AND 8.86.504-QUOTA RULES** **DOCKET #11-91**

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

1. On Wednesday, February 19, 1992, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at Dept. of Transportation auditorium, 2701 Prospect Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to six separate petitions submitted by: Ed McHugh, owner of Clover Leaf Dairy located in Helena, Montana; Ted Doney, Esq. on behalf of the Montana Dairymen's Association (MDA); Mike Cok, Esq. on behalf of Country Classic Dairies located in Bozeman, Montana; Geoffrey Brazier, Esq. on behalf of the Montana Jobber's Association; Jock O. Anderson, Esq. on behalf of Meadow Gold Dairies with plants located in Billings, Great Falls, and Kalispell, Montana; and Colleen Schmiedeke, a Montana producer, on behalf of herself. The board also proposes amendments on their own motion.

3. The rule as proposed to be amended by Clover Leaf Dairy provides as follows: (Full text of the rule is located at pages 8-2539 thru 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

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

(ii) The minimum drop shipment wholesale price for retail grocery stores that purchase their fluid milk without the provision of any of the services outlined in (i) shall be calculated by multiplying the minimum retail prices by a factor of eighty-three percent (83%). Distributors selling fluid milk to retail grocery stores at this price will not be allowed to provide services to retail grocery stores, other

than delivery of the fluid milk products to the back room refrigerated storage area of the retail stores and restocking when necessary. In the event the distributor or his agents provide any other service to the retail grocery store, the minimum wholesale price paid for the milk products by the retail grocery store to the distributor shall be the full service wholesale price as set forth in (i) above. Distributors selling fluid milk to retail grocery stores at this price will be allowed to make deliveries of fluid milk products no more than four (4) times per week, and each delivery must be for a minimum of $150.00. In the event a distributor or his agents provide delivery of fluid milk products more than four (4) times per week, the minimum wholesale price paid for the fluid milk products by the retail grocery store to the distributor shall be the full service wholesale price set forth in section (i) above. All fluid milk purchased by retail grocery stores pursuant to this subsection (ii) must be paid within fifteen (15) days after invoicing.

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

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

4. The rationale as proposed by Clover Leaf Dairy is to permit distributors to restock store shelves, in situations when store clerks do not restock the milk, in order to allow customers to buy the brand of milk they prefer at all times.

5. The rule as proposed to be amended by Country Classics Dairy provides as follows: (Full text of the rule is located at pages 8-2539 thru 8-2549, Administrative Rules of Montana.) (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

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

(15) Any distributor shall have ten (10) days, after notification in writing by the Department of any alleged violation of this rule, to correct the alleged violation by charging and collecting or paying the mandated price before such distributor shall be subject to other enforcement remedies. Proof of such corrections must be filed with the Department within fifteen (15) days of the violation notification."

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

6. The rationale as proposed by Country Classic Dairies is to make it possible to correct unintentional or inadvertent violations without being charged for violations and to allow

for voluntary compliance which should make enforcement of the law by the Department easier.

7. The rule as proposed to be amended by Meadow Gold Dairies provides as follows: (Full text of the rule is located at pages 8-2539 thru 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

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

(iii) The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the distributor's dock. The retail grocery store can pick up milk at the distributor's dock with its own equipment or by a contract hauler retained by and paid by the retail grocery store or can have the milk delivered by the distributor. If the distributor delivers the milk to the retail grocery store a delivery charge based upon the cost of delivery, which shall be a minimum of three and one-half percent (3.5%) of the retail grocery store's invoice. The distributor shall not provide any service of any type to retail grocery stores purchasing milk pursuant to this subsection (iii). In order for a retail store to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a minimum of ~~five hundred (500)~~ one thousand (1000) gallons of fluid milk products per ~~delivery~~ week. Delivery to a retail store means delivery to a structure in one location or street address.

(iv) remains the same.

(v) The minimum wholesale price for fluid milk purchased by wholesale grocery distribution centers will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by wholesale grocery distribution centers must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the wholesale grocery distribution center's dock or distributor's dock. A wholesale grocery distribution center must purchase a minimum of ~~seven hundred fifty (750)~~ one thousand (1000) gallons of fluid milk products per week from a distributor to be eligible to purchase fluid milk products at this pricing level. The minimum resale price to retail grocery stores will be a full service or a drop-shipment wholesale price.

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

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

8. The rationale as proposed by Meadow Gold Dairies is as follows:

a. The petitioner asserts there is no reason why the two subsections (6)(h)(iii) and (v) should not be identical to read the same volume of sales and to how that volume is measured.

b. There is no reason not to raise the minimum volume of sales to more accurately reflect the volume at which volume discount prices can be justified.

9. The rule as proposed to be amended by the Montana Jobber's Association provides as follows: (Full text of the rule is located at pages 8-2539 thru 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES"

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

(iii) The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's plant dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's plant dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the plant distributor's dock. The retail grocery store can pick up milk at the distributor's plant dock with its own equipment or by a contract hauler retained by and paid by the retail grocery store or can have the milk delivered by the distributor. If the distributor delivers the milk to the retail grocery store a delivery charge based upon the cost of delivery, which shall be a minimum of three and one-half percent (3.5%) of the retail grocery store's invoice. The distributor shall not provide any service of any type to retail grocery stores purchasing milk pursuant to this subsection (iii). In order for a single retail store facility to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a minimum of ~~five hundred (500)~~ one thousand (1000) gallons of fluid milk products per ~~delivery~~ week. Delivery to a retail store means delivery to a structure in one specific location or street address.

(iv) remains the same.

(v) The minimum wholesale price for fluid milk purchased by wholesale grocery distribution centers will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by wholesale grocery distribution centers must be paid for within

fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the wholesale grocery distribution center's dock or distributor's dock. A separate wholesale grocery distribution center facility must purchase a minimum of ~~seven hundred fifty (750)~~ one thousand (1000) gallons of fluid milk products per week from a distributor to be eligible to purchase fluid milk products at this pricing level. The minimum resale price to retail grocery stores will be a full service or a drop-shipment wholesale price. Delivery to a wholesale grocery distribution center means delivery to a structure in one specific location or street address.

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

(15) Any distributor shall have ten (10) days, after notification in writing by the Department of any alleged violation of this rule, to correct the alleged violation by charging and collecting or paying the mandated price before such distributor shall be subject to other enforcement remedies. Proof of such corrections must be filed with the Department within fifteen (15) days of the violation notification, provided that, when the distributor fails to correct the alleged violation within the time allowed and when more than five similar violations by the same distributor occur within a municipality during a one-month period, it shall be presumed that the violations were intentional."

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

10. The rationale as proposed by the Montana Jobber's Association is as follows:

a. The amendment as proposed by Country Classic appears to be too open-ended and could be viewed as an invitation to violate. This proposed language as amended will make clear that repeated or intentional violations will not be permitted.

b. There is concern in the industry over the interpretation of ARM 8.86.301(6)(h)(iii) and (v) in its present form and with the proposed amendments. It is unclear whether "dock" refers to plant dock, or warehouse dock or store dock. There is also concern whether a corporate chain, such as Buttreys, Albertsons, Circle K, etc. qualifies as a store under the rule in its present form, and as amended. If it does, then a few sales to stores belonging to a corporate chain would automatically qualify all member stores for discounts. This proposed qualifying language clarifies those rule provisions and protects jobbers in population centers from a tremendous competitive advantage otherwise available to major distributors.

11. The rule as proposed to be amended by the Board of Milk Control provides as follows: (Full text of the rule is located at pages 8-2539 thru 8-2549, Administrative Rules of

Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES
(1)-(6)(h) remains the same.
(i) The minimum full service wholesale price for retail grocery stores will be calculated by multiplying the minimum retail prices by a factor of eighty-seven percent (87%). The minimum wholesale prices charged to retail grocery stores by distributors and paid by retail grocery stores to distributors shall be at this price if the distributor provides any ordering services, ~~shelf-stocking services~~, outdated product credit services, or retail price marking services to the retail grocery store. All fluid milk purchased by retail grocery stores pursuant to this subsection (i) must be paid within fifteen (15) days after invoicing.
(ii)-(14)(b) remains the same."

or the rule as proposed to be amended by the Board provides as follows: (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES
(1)-(6) remains the same.
(h) Special wholesale prices for retail grocery stores will be based on the provisions contained in subsections (i), (ii), ~~(iii) and (iv)~~ and (iii) below.
~~(i) The minimum full-service wholesale price for retail grocery stores will be calculated by multiplying the minimum retail prices by a factor of eighty-seven percent (87%). The minimum wholesale prices charged to retail grocery stores by distributors and paid by retail grocery stores to distributors shall be at this price if the distributor provides any ordering services, shelf-stocking services, outdated product credit services, or retail price marking services to the retail grocery store. All fluid milk purchased by retail grocery stores pursuant to this subsection (i) must be paid within fifteen (15) days after invoicing.~~
~~(ii)~~(i) The minimum ~~drop shipment~~ delivered wholesale price for retail grocery stores ~~that purchase their fluid milk without the provision of any of the services outlined in (i)~~ shall be calculated by multiplying the minimum retail prices by a factor of eighty-three percent (83%). ~~Distributors selling fluid milk to retail grocery stores at this price will not be allowed to provide services to retail grocery stores, other than delivery of the fluid milk products to the back room refrigerated storage area of the retail stores. In the event the distributor or his agents provide any other service to the retail grocery store, the minimum wholesale price paid for the milk products by the retail grocery store to the distributor shall be the full service wholesale price as set~~

~~forth in (i) above. Distributors selling fluid milk to retail grocery stores at this price will be allowed to make deliveries of fluid milk products no more than four (4) times per week, and each delivery must be for a minimum of $150.00. In the event a distributor or his agents provide delivery of fluid milk products more than four (4) times per week, the minimum wholesale price paid for the fluid milk products by the retail grocery store to the distributor shall be the full service wholesale price set forth in section (i) above.~~ All fluid milk purchased by retail grocery stores pursuant to this subsection ~~(ii)~~(i) must be paid within fifteen (15) days after invoicing.

~~(iii)~~(ii) The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the distributor's dock. The retail grocery store can pick up milk at the distributor's dock with its own equipment or by a contract hauler retained by and paid by the retail grocery store or can have the milk delivered by the distributor. If the distributor delivers the milk to the retail grocery store a delivery charge based upon the cost of delivery, which shall be a minimum of three and one-half percent (3.5%) of the retail grocery store's invoice. The distributor shall not provide any service of any type to retail grocery stores purchasing milk pursuant to this subsection ~~(iii)~~(ii). In order for a retail store to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a minimum of five hundred (500) gallons of fluid milk products per delivery.

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

~~(v)~~(iv) The minimum wholesale price for fluid milk purchased by wholesale grocery distribution centers will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by wholesale grocery distribution centers must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the wholesale grocery distribution center's

dock or distributor's dock. A wholesale grocery distribution center must purchase a minimum of seven hundred fifty (750) gallons of fluid milk products per week from a distributor to be eligible to purchase fluid milk products at this pricing level. The minimum resale price to retail grocery stores will be ~~a full service or a drop shipment~~ at the delivered wholesale price.

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

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

12. The rationale as proposed by the Board is to provide alternatives to the action being proposed in paragraph 3 above. The proposal in paragraph 3 is too vague to be enforceable. There are rule violations in this area and a concern by the Board that distributors may not be able to keep their milk on the cooler shelves. By proposing these specific language changes, the Board maintains the flexibility necessary to properly address the situation.

13. The rule as proposed to be amended by the Montana Dairymen's Association (MDA) provides as follows: (Full text of the rule is located at pages 8-2555 thru 8-2567, Administrative Rules of Montana.) (new matter underlined, deleted matter interlined)

"8.86.501 QUOTA DEFINITIONS

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

(i) **"New eligible producer"** is an eligible producer who:

(a) has not ceased production of milk and disposed of any quota during the five-year period preceding his re-entry into the market;

(b) has not previously participated in the Montana quota system under these rules as a producer, as an immediate family member of a producer, as a general or limited partner of a partnership which was a producer, as a stockholder in a corporation which was a producer, or has otherwise not held any financial interest in any entity which was a producer; or

(c) has not been a licensed producer within the five-year period preceding re-entry into the market."

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

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

~~month divided by the number of days in that sixth month.~~

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

"8.86.503 NEW PRODUCERS--PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA MILK. (1) A new eligible producer is entitled to receive the quota price for his milk sales to a pool plant for each month in accordance with the following schedule:

MONTHS	PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA
April through August	20%
All other months	35%

This assignment is not an assignment of actual quota to such new eligible producer, and no quota will be owned by a producer assigned under this rule. However, it is a part of the total quota milk calculated under these rules.

(2) When the new eligible producer acquires quota by purchase or otherwise, or acquires quota pursuant to 8.86.505, the percentage of milk sales assigned to quota price under this rule shall be decreased accordingly so that the total quota equals the applicable percentage in paragraph (1) above. A producer who acquires quota by purchase or otherwise which exceeds the applicable percentage in paragraph (1) is not eligible to receive an assignment of quota pursuant to this rule.

(3) The percentage of milk sales assigned to quota price under this rule to any one new eligible producer may not exceed 35% of the average monthly production of producers in Montana for the current month."

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

14. The rationale as proposed by MDA is to clarify and/or make more workable the quota rule which provides for the assignment of quota milk to a new producer, and to prevent abuse of the rule. These amendments are intended to provide that any assignment of quota milk to a new producer will be treated as quota not owned by that producer. They are also intended to clearly identify who is a bona fide new producer, how that assignment relates to quota acquired by other means, and to specify the maximum amount of quota milk which may be assigned under this provision.

15. The rule as proposed to be amended by Colleen Schmiedeke provides as follows: (Full text of the rule is located at pages 8-2555 thru 8-2567, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.504 TRANSFER OF QUOTA

(1)-(i) remains the same.

~~(j) A producer who was assigned quota under ARM 8.86.502(9) may not transfer his quota for three years after the assignment of such quota, unless such transfer is an intrafamily quota transfer as defined in paragraph (f) above. However, he may transfer his quota if the transfer includes the sale of the herd and production facilities. Subject to the judgment of the producer quota commitee, the purchaser must be substantially standing in the shoes of the seller and continuing the production operation without interruption. In such cases, the three year transfer restriction of this rule shall continue to apply to the new owner(s).~~"

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

16. The rationale as proposed by Colleen Schmeideke is to permit a small number of Montana dairy farmers located in western Montana to transfer their quota the same as any other dairy farmer under the plan. The proposed change is necessary because the current rules are discriminatory and it creates severe hardship for certain dairy farmers who must sell their dairies because of illness or death. The status quo of other producer's income will be maintained with the proposed change.

17. Persons known to have a possible interest in these six proposals and the Board's own motion are producers, distributors, jobbers and retailers.

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

a. Cost factors of stocking store coolers and shelves.

b. Cost factors in distributing milk, which shall include among other things the price paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in the state.

c. The cost factors in retailing milk which shall include among other things that part of general administrative costs which may be properly allocated to the handling of milk, equipment of all types required to market milk, and cost of wages in this state.

d. Possible impact of the proposed changes upon individual producers.

e. Possible impact on the supply of milk in the state if the proposals are not adopted.

19. The Board takes official notice that processors and jobbers have been and are continuing to service shelves in violation of ARM 8.86.301(6)(h)(ii). Based on information provided and ongoing investigations, there appear to be considerable more violations than what are being detected.

20. Interested persons may participate and present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than February 17, 1992.

21. Mr. Clyde Peterson, Esq., Dept. of Justice, Legal Services Division, 3rd Floor--Justice Bldg., 215 N. Sanders Ave, Helena, MT 59620-1401, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

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

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

Certified to the Secretary of State January 6, 1992.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule for the administration of the 1992 Federal Community Development Block Grant Program	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A NEW RULE PERTAINING TO THE ADMINISTRATION OF THE 1992 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On February 11, 1992, at 1:30 p.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1992 Federal Community Development Block Grant (CDBG) program.

2. The proposed adoption will read as follows:

"RULE I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1992 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1992 Application Guidelines and the Montana Community Development Block Grant Program, February 1992 Grant Administration Manual published by it as rules for the administration of the 1992 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,
(b) requirements for applicants,
(c) procedures for evaluating applications,
(d) procedures for local project start up,
(e) environmental review of project activities,
(f) procurement of goods and services,
(g) financial management,
(h) protection of civil rights,
(i) fair labor standards,
(j) acquisition of property and relocation of persons displaced thereby,
(k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood revitalization, and economic development projects,
(l) project audits,
(m) public relations, and
(n) project monitoring.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

3. It is reasonably necessary to adopt the rule because the federal regulations governing the states' administration of the 1992 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than February 13, 1992.

5. Richard M. Weddle, attorney, will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE
DIVISION

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 6, 1992.

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Amendment of Rules 23.14.101, 23.14.201 through 23.14.206 and 23.14.301 through 23.14.306 relating to Montana Board of Crime Control Grant Procedures	))))))	NOTICE OF PROPOSED AMENDMENT OF RULES 23.14.101, 23.14.201 THROUGH 23.14.206 AND 23.14.301 THROUGH 23.14.306

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 17, 1992, the Board of Crime Control proposes to amend the following rules.

2. The proposed amendments will read as follows:

23.14.101 BOARD OF CRIME CONTROL FUNCTIONS (1) ~~This~~ The board is comprised of members engaged in, affiliated with or related to law enforcement, public safety and criminal justice in the state of Montana.

(2) The statutes relating to the board ~~of crime control~~ are contained in 44-4-301 M.C.A., ~~and~~ 2-15-2006 M.C.A, 15-25-122 M.C.A., 53-9-101 M.C.A., 7-32-303 M.C.A. and Title 41 Chapter 5 M.C.A. (Youth Court Act).

(3) Remains the same.

(4) It is the responsibility of the board ~~of crime control~~ to administer the provisions of the ~~Justice System Improvement Act of 1979 (P.L. 96-157~~ Omnibus Crime Control And Safe Streets Act of 1968 (P.L. 90-351) as amended by P.L. 91-644, 93-415, 94-430, 94-503, 96-157, 98-473, 99-570, 100-690, and 101-647, the Victims of Crime Assistance Act and the Drug Free Schools and Communities Act. Under these provisions, ~~it is the duty of the state planning agency to~~ the board may:

(a) ~~D~~develop a comprehensive statewide plan defining needs and problems and outlining priorities for the improvement of ~~law enforcement~~ the criminal and juvenile justice system throughout the state.

(b) ~~D~~develop and ~~correlate~~ coordinate police, courts and corrections programs and projects for the state and units of general local government.

(c) ~~B~~be responsible for administering planning grants ~~administration~~ in the funding and implementation of state and local ~~action~~ justice programs.

(5) The board's ~~of crime control~~ organizational chart which follows is also a portion of this rule.

(6) Information regarding ~~law enforcement assistance administration (LEAA)~~ justice planning and ~~action~~ grant administration may be acquired by contacting the board's ~~of crime control~~ office at the Scott Hart Building, 303 North Roberts, Helena, Montana.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.201 INCORPORATION OF MODEL RULES (1) The board ~~of crime control~~ adopts the attorney general's model procedural rules one (1) through twenty-eight (28) and all subsequent amendments to the model procedural rules, and incorporates herein those rules by reference.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.202 MAINTENANCE OF POLICY AND PROCEDURE MANUAL FOR INTERNAL MANAGEMENT (1) The policies and procedures which are adopted by the board ~~of crime control~~ for its internal management and which do not ~~e~~affect private rights ~~or procedures available to the public,~~ shall be maintained in a "policy and procedure manual" which shall be available to the public at the office of the board.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.203 APPLICATIONS FOR FINANCIAL ASSISTANCE

(1) Remains the same.

(2) The following rules of procedure are applicable for all subgrant requests and applications for financial assistance which are directed to the board ~~of crime control~~.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.204 REQUEST TO REVIEW (1) If action is ~~taken by~~ recommended to the board which terminates, alters, or rejects a subgrant or application for financial assistance, the applicant has the right to request review of the ~~decision~~ recommendation within fifteen days of receipt of the notice of ~~decision~~ the recommendation.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.205 HEARING (1) If a request for a review of a ~~decision~~ recommendation is made, the board shall, within 30 days of receipt of the request, hold a hearing, at which a delegation of not more than three members of the requesting unit may present such additional information as may be deemed appropriate and pertinent to the matter involved. In its discretion, the board may invite discussion or comments from others knowledgeable in the matter being appealed.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.206 FINAL DETERMINATION (1) The board shall send to the applicant~~,~~ and ~~others as deemed appropriate~~ interested parties its written final determination ~~pursuant to such hearing~~ within 30 days of the hearing.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.301 MATCHING RATIOS (1) Prescribed ratios of federal participation in funding of ~~action~~ programs are ~~either 75% or 50% federal share depending~~ dependent ~~on~~ upon the type of program or project ~~and 90% federal share for planning programs~~ and shall be announced in any solicitation for subgrant applications.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.302 MATCHING REQUIREMENTS (1) ~~It is required of all applicants or units of local government that at least 40 per centum of the non-federal funding of the cost of any program or project to be funded by a grant shall be of money appropriated in the aggregate, by state or individual unit of government, for the purpose of the shared funding of such programs and projects.~~ Matching funds must be "hard match" (cash) unless otherwise specified by federal regulation.

(2) Federal funds and income earned by the project are not allowed to be used as match except in the case of anti-drug abuse forfeitures.

(3) Remains the same.

~~(4) Cash matching funds are required to all equipment purchases -- no "soft" or "in-kind" match is allowed.~~

~~(5)~~(4) In-kind, or "soft match", services must relate directly to the project described in the application. Records of in-kind services must be kept by the applicant agency as required by law. ~~Documents signed by the contributor should be obtained for applicant agency's files after awarded projects are completed.~~

~~(6)~~(5) If an entity other than the applicant agency is to contribute the local matching portion, a document of intent from said agency must accompany the application.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.303 BUDGET REQUIREMENTS (1) ~~According to the Omnibus Crime Control and Safe Streets Act of 1968, law enforcement assistance administration (LEAA) guidelines, the following items are unallowable expenditures: refreshments, entertainment, contributions, bad debts, contingencies, fines and penalties, and interest charges.~~ Expenses that are unallowable under federal law are described in federal guidelines such as the Office of Justice Programs M7100.1D and Education Department General Administrative Regulations (EDGAR). An announcement for solicitation of subgrant applications will describe such expenses for applicants.

~~(2) The state board of crime control has rules against the funding of automobiles, paint or signs for vehicles, small equipment purchases, office equipment and search and rescue equipment.~~

~~(3)~~(2) The ~~state board of crime control has ruled that~~ Federal funds ~~will~~ may not be allocated for routine maintenance and/or repair of existing jail or detention facilities.

~~(4)~~(3) All funds granted to a district court and/or a county attorney's office shall be ~~accounted~~ considered as local funds provided that the funds in fact pass through the county in which the respective offices of the subgrantee ~~lie~~ are located.

~~(5)~~(4) Travel allowances must be in accordance with ~~sections 2-18-501, 502, and 503 M.C.A~~ prevailing state rates unless an alternative travel allowance schedule is approved by the board upon the request of a subgrantee. Fund requests for travel may not be for amounts greater ~~cannot be more~~ than the least expensive mode of travel.

~~(6) Foster home projects must conform with section 41-5-901 M.C.A.~~

~~(7)~~(5) Any excess cost over the federal contribution under one grant agreement ~~is unallowable~~ may not be paid under another grant agreement.

~~(8)~~(6) Expenditures other than those listed on the original grant application budget are subject to refund and/or penalty. Variances may be allowed if requested in advance and written authorization is received from the board ~~of crime control~~.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.304 GENERAL REQUIREMENTS (1) ~~"After-the-fact" funding requests will be denied. That is~~ rRequests ~~of~~ for federal funds made after indebtedness has been incurred by the applicant agency will be denied.

~~(2) Applications requesting federal funds in excess of $10,000 require a first and second reading before the board will consider it for award. A representative of the agency should be present at the time of the second reading.~~

~~(3)~~(2) Federal funds are not assured until an award letter signed by a representative of the board has been received by the applicant agency. The signed award letter, returned to the ~~state planning agency~~ board, constitutes a binding contract between the applicant agency and the board ~~of crime control~~.

~~(4)~~(3) Applications which do not comply with the above statements shall be returned to the applicant agency for corrections or amendment prior to presentation to the board ~~of crime control~~.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.305 APPLICANTS AGREEMENT (1) Any grant received by an applicant shall be subject to the grant conditions and other policies, regulations and rules issued by the U.S. department of justice, U.S. department of education or other federal grantor agency, for the administration of grant projects ~~under P.L. 96-~~

~~157~~, including, but not limited to, the following:

(a) ~~Law enforcement assistance administration (LEAA)~~ ~~f~~Funds awarded are to be expended only for the purposes and activities covered by the applicant's approved plan and budget;

(b) Remains the same;

(c) Appropriate grant records and accounts will be maintained and made available for audit as proscribed by the U.S. department of justice, U.S. department of education or other federal grantor agency;

(d) ~~The grantee shall assume the costs of improvements funded after a reasonable period of federal assistance.~~ Reports from subgrantees as proscribed by the board are due 20 days after the end of each quarter on October 20, January 20, April 20 and July 20. The board may cancel any award to a subgrantee if such reports are twice delinquent.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

23.14.306 NON-SUPPLANTING REQUIREMENT (1) ~~It is required of the applicant~~ Funds normally devoted to programs and activities designed to meet the needs of criminal justice will not be diminished in any way as a result of a grant award of federal funds.

(2) ~~It is further required of the applicant to agree that t~~The project for which assistance is being requested ~~will~~ must be in addition to, and not a substitute for, criminal justice services previously provided without federal assistance.

AUTH: 44-4-301 MCA. IMP: 44-4-301 MCA.

3. These rules are proposed to be amended because federal law, regulations and guidelines regarding the administration of various grant programs have significantly changed since the rules were last amended. Therefore the rules are being brought into conformance with federal requirements.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Edwin L. Hall, Administrator, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than February 14, 1992.

5. If a person who is directly affected by the proposed amendment wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Edwin L. Hall, Administrator, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than February 14, 1992.

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

an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 44.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Administrator

By: Edwin L. Hall
EDWIN L. HALL, Administrator
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 12/24/91

Judy Browning
Rule Reviewer

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Amendment of Rules 23.14.402 through 23.14.404 relating to Peace Officers Standards and Training	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES 23.14.402 THROUGH 23.14.404

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 17, 1992, the Board of Crime Control proposes to amend the following rules.

2. The proposed amendments will read as follows:

23.14.402 MINIMUM STANDARDS FOR THE EMPLOYMENT OF PEACE OFFICERS ~~(1) The objectives of the Montana peace officers standards and training advisory council are to raise the level of competence of state and local law enforcement offices by promulgating, through the board of crime control, regulations establishing minimum standards for the selection, professional development, and training of such officers. Law enforcement is of such a nature as to require education and training of a professional character to insure the fair and equal application of law enforcement throughout the state of Montana.~~

~~(2)~~(1) ~~Every d~~Deputy sheriffs, undersheriffs, police officers, highway patrol~~men~~ officers, fish and game wardens, campus security officers and airport police officers must meet the employment, education and certification standards of section 7-32-303 MCA.

(2) Tribal fish and game wardens and tribal police officers may meet the employment, education and certification standards of section 7-32-303, MCA.

AUTH: 44-4-301 MCA. IMP: 7-32-303 and 7-32-4112 MCA.

23.14.403 REQUIREMENTS FOR PEACE OFFICERS HIRED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS REGULATION (1) ~~Requirements for~~ A peace officers hired after the effective date of this regulation ~~are~~ must:

(a) ~~Each applicant must~~ meet the minimum employment, education and certification standards as promulgated by the board of crime control and as required by section 7-32-303, MCA;

(b) ~~Each applicant shall~~ attest that he subscribes to the law enforcement code of ethics;

(c) ~~T~~to be eligible for the award of certificate, ~~each applicant must~~ be a full-time, or part-time, paid and sworn peace officer employed by a law enforcement agency as defined by the board of crime control; and

(d) ~~Each applicant shall~~ have completed the designated combinations of education, training and experience as computed by the point system established by the POST advisory council.

~~(2) Requirements for officers hired before the effective date of this regulation.~~

(a)(2) A peace officers already serving under a permanent appointment prior to the effective date of this regulation shall not be required to meet any of the requirements for certification as a condition of tenure or continued employment; nor shall failure to fulfill such requirements make him ineligible for any promotional examination or consideration for promotion for which he otherwise would be eligible.

(3) A reserve officer, as defined in section 7-32-201(5), MCA, is neither required to obtain nor eligible for a basic certificate.

AUTH: 44-4-301 MCA. IMP: 44-4-301 and 7-32-303 MCA.

23.14.404 GENERAL REQUIREMENTS FOR CERTIFICATION

(1) through (5)(b)(i) remain the same.

(ii) No training points may be claimed for the basic course ~~does not count for training points~~. ~~Any training at the recruit level which exceeds the basic course as defined by the POST advisory council will count for training points.~~

(iii) through (6)(c) remain the same.

AUTH: 44-4-301 MCA. IMP: 44-4-301, 44-11-301 through 44-11-305 MCA.

3. These rules are proposed to be amended to bring them into conformance with the Opinions of the Attorney General and recommendations of the Peace Officers Standards and Training Council.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Edwin L. Hall, Administrator, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than February 14, 1992.

5. If a person who is directly affected by the proposed amendment wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Edwin L. Hall, Administrator, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than February 14, 1992.

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

Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Administrator

By: Edwin L Hall

EDWIN L. HALL, Administrator
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 12/24/91

Jack Browning

Rule Reviewer

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

In the matter of the amendment and repeal of rules governing unemployment insurance	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL OF UNEMPLOYMENT INSURANCE RULES, TITLE 24, CHAPTER 11, PARTS 1, 3, 4, 6, 7, AND 8.

TO: All Interested Persons:

1. On February 7, 1992, at 9:00 a.m. a public hearing will be held in the SRS Auditorium, Helena, Montana to consider the proposed amendment and repeal of rules governing the administration of unemployment insurance for the State of Montana.

2. The proposed amended and repealed rules will read as follows:

24.11.333 SELF-EMPLOYMENT APPEALS---NECESSARY PARTIES---DECISIONS BINDING FOR TAX PURPOSES This rule can be found on page 24-623 and 24-624 of the Administrative Rules.

AUTH: 39-51-302, MCA IMP, Section 31, Ch. 373, L. 1991
Reason: This rule is being repealed because the law has been repealed.

24.11.101 DIVISION ORGANIZATION --- BUREAU ADDRESSES

(1) through (3) remains the same.

(4) The department's local job service offices also handle many unemployment insurance matters. There are 24 job service offices located throughout the state, with the following addresses and phone numbers:

Address	Phone number
Anaconda Job Service Office 307 East Park Anaconda, MT 59711	563-3444
Billings East Job Service Office 624 N. 24th St. Billings, MT 59101	248-7371
Billings West Job Service Office 1425 Broadwater Ave. Suite E Billings, MT 59102	259-5529
Bozeman Job Service Office 121 North Willson Bozeman, MT 59715	586-5455

	Butte Job Service Office 206 W. Granite Butte, MT 59703	782-0417
	Cut Bank Job Service Office 20 South Central Cut Bank, MT 59427	873-2191
*	Dillon Job Service Office 730 N. Montana P. O. Box 1300 Dillon, MT 59725	683-4259
*	Flathead Job Service Office 427 First Ave. E. Kalispell, MT 59901	752-5627
	Glasgow Job Service Office 238 Second Ave. So. Glasgow, MT 59230	228-9369
	Glendive Job Service Office 211 South Kendrick Avenue Glendive, MT 59330	365-3314
	Great Falls Job Service Office 1018 Seventh Street South Great Falls, MT 59405	761-1730
	Hamilton Job Service Office 333 Main Street Hamilton, MT 59840	363-1822
	Havre Job Service Office 416 First Street Havre, MT 59501	265-5847
*	Helena Job Service Office 715 Front Street Helena, MT 59601	449-6006
	Lewistown Job Service Office 300 1st Ave. N. Lewistown, MT 59457	538-8701
*	Lincoln County Job Service Office 317 Mineral Ave. Libby, MT 59923	293-6282
	Livingston Job Service Office 228 South Main Livingston, MT 59047	222-0520

Miles City Job Service Office 12 North 10th Street Miles City, MT 59301	232-1316
Missoula Job Service Office 539 S. Third St. W. Missoula, MT 59806	728-7060
Polson Job Service Office 417 Main Street Polson, MT 59860	883-5261
Shelby Job Service Office 402 First Street South Shelby, MT 59474	434-5161
Sidney Job Service Office 120 South Central Sidney, MT 59270	482-1204
Thompson Falls Job Service Office 608 Main Street Thompson Falls, MT 59873	827-3472
* Wolf Point Job Service Office 217 3rd Avenue South Wolf Point, MT 59201	653-1720

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 2-4-201 MCA)

Reason: Rule 24.11.101 is amended to reflect the current addresses and phone numbers of the local job service offices.

24.11.442 INITIAL MONETARY DETERMINATION---WAGES---REVISIONS (1) After filing a claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages ~~and weeks of work~~ to qualify for benefits.

(2) The initial monetary determination informs the claimant of:

(a) and (b) remain the same.

~~(c) the number of weeks worked in the base period;~~

~~(d) the average weekly wage;~~

~~(e)~~(c) the potential amount of benefits the claimant may receive in the benefit year; and

~~(f)~~(d) the effective date of the claim.

(3) remains the same.

(4) Generally, only wages actually or constructively paid determine the amount of wages in the claimant's base period. Wages are constructively paid if they are credited to the employee's account or set apart for an employee so that they may be drawn upon by the employee at any time, although not actually in the employee's possession. However, unpaid wages may be

considered if a claimant:

(a) completes an affidavit stating:

(i) the name and address of any employer from whom wages are due;

(ii) the amount of unpaid wages ~~and number of weeks of work~~; and

(iii) the reasons why the wages have not been paid; and

(b) remains the same.

(5) The following payments are wages assignable in the following manner:

(a) Payments based upon length of employment or paid upon termination of the employment with a base period employer will be treated as follows: The portion of pay attributable to the base period will be prorated within the base period, if the period of employment for which the payment is issued includes weeks preceding the base period or ending after the base period. No pay will be assigned to the base period past the date of separation. However, if the accumulated pay is $300 or less, the pay will be attributed to quarter in which separation occurred. Such payments include:

(i) accumulated vacation or sick pay made upon termination of employment;

(ii) bonus payments;

(iii) wages in lieu of notice, for termination, dismissal pay, severance and separation, or other similar payments.

(ab) Payments made for vacation taken by the claimant are attributable to the period covered by the payment. ~~Payments of accumulated vacation pay made upon termination of employment are attributable to the period in which the vacation pay is earned.~~

~~(b) Bonus payments are attributable to the week in which the bonus payment is paid.~~

~~(c) Wages in lieu of notice, for termination, dismissal pay, severance and separation, or other similar payments are attributable to the week in which the claimant's separation from employment occurs.~~

(dc) Payments made for back pay are attributable to the period of time under dispute and are assigned to the period specified by the back pay award.

(ed) Payments made for a holiday are attributable to the week in which the holiday occurs.

(~~fe~~) ~~Payments of accumulated sick pay made upon termination of employment are attributable to the period from the beginning date of the base period to the effective date of the claim.~~ Weeks of sick leave taken by the claimant are attributable to the period of employment when the sick leave is taken.

(6) Except as provided in this rule, the initial monetary determination is final unless a claimant requests revision of the determination within 10 days after the determination was mailed. Upon request of the department, the claimant may be required to provide proof of earnings ~~and weeks worked~~, such as check stubs, W-2 forms, or statements from employers.

(7) & (8) remains the same.

(Auth: Sec. 39-51-302, MCA; IMP Sec. 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA)

Reason: Rule 24.11.442 is amended pursuant to House Bill 726, 1991 Legislative session, to initiate a uniform treatment of various "lump sum" payments.

24.11.451 SIX-WEEK RULE (1) Except as provided in subsection (3), the department reviews each separation from employment that occurred during the six weeks immediately preceding the effective date of the claim to establish whether the claimant is eligible for benefits. If the claimant was not ~~employed~~ separated from employment during this six-week period, the department reviews the claimant's most recent separation from employment.

(2) remains the same.

(3) If the department finds that the claimant ~~committed~~ was discharged for an act of gross misconduct, as defined in 39-51-201(12), MCA:

(a) committed at any time from the beginning of the claimant's base period to the effective date of the claim, the 52-week disqualification in of section 39-51-2303(2), MCA, controls the eligibility determination and is applied forward from the ~~date of the claimant's discharge for the act of gross misconduct~~ effective date of the claim, or;

(b) committed at any time from the effective date of the claim to the end of the benefit year, the 52-week disqualification of section 39-51-2303(2), MCA, controls the eligibility determination and is applied forward from the date of the act of gross misconduct leading to the discharge.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-2301 through 2304, MCA)

Reason: Rule 24.11.451 is amended to clarify the situations in which this rule would be implemented when the Department determines a claimant was separated for gross misconduct.

24.11.458 SELF EMPLOYMENT (1) ~~The test of whether a claimant is self employed and thereby disqualified from benefits under 39-51-2308, MCA, is based on whether the claimant is available for~~ Self employment is not disqualifying provided that the claimant is available for, actively seeking and willing to accept other work as required by 39-51-2104, MCA.

(2) If self-employment is casual in nature and the claimant is available to accept suitable work in the general labor market, then ~~self-employment is not a claimant's principal occupation and~~ a claimant will not be disqualified from receipt of benefits. The claimant is required to seek work and must be

willing to accept suitable employment.

(3) A claimant's ~~principal occupation is self-employment~~ will be disqualified under 39-51-2104, MCA if the claimant:

(a) is not available for suitable work because the claimant intends to make self-employment a full-time occupation; or

(b) is available for suitable work for a temporary period and only until the claimant returns to self-employment.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-2104, 39-51-2304, MCA)

Reason: Rule 24.11.458 is amended to comply with provisions of House Bill 726, 1991 Legislature.

24.11.468 FRAUDULENT OVERPAYMENTS (1) through (5) remains the same.

(6) The penalty referred to in 39-51-3201 (1)(b) will be 33% of the fraudulently obtained benefits. Restitution will be an amount equal to the fraudulently obtained benefits plus the penalty. Benefits will not be used to offset the penalty.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-3201, 39-51-3202, 39-51-3203, MCA)

Reason: Rule 24.11.468 is amended to comply with provisions of House Bill 726, 1991 Legislature.

24.11.605 DEFINITIONS The following definitions apply to subchapters 6, 7, and 8, of these rules:

(1) Remains the same.

(2) "Contribution rate schedule" is the schedule setting the range of contribution rates that may be assigned to employers in each calendar year. The contribution rate schedule is the ratio of the trust fund balance as of ~~December 31~~ October 31 to the total wages in employment for each year, ending ~~September 30~~ June 30. See section 39-51-1218, MCA.

(3) and (4) remains the same.

(Auth: 39-51-302, MCA; IMP, Sec. 39-51-1103, 39-51-1213, MCA)

Reason: Rule 24.11.605 is amended to comply with provision of House Bill 726, 1991 Legislature.

24.11.606 EXPERIENCE-RATED EMPLOYERS (1) An experience-rated employer is a private employer whose ~~tax~~ contribution rate is based on the experience rating record of each business operated by the employer and the rate classification assigned to the employer under the contribution rate schedule.

(2) through (3)(b) remains the same.

(3)(c) Experience-rated employers are divided into three categories: eligible, ~~unrated~~ new, and deficit employers. Each category is defined in section 39-5~~1~~1-1121, MCA.

(4) On or before April 1 of each year, the department mails rate notices to employers. The type of notice depends upon whether the employer is an eligible employer, deficit employer, new ~~unrated~~ employer, or an employer with past due reports and/or taxes ~~or reports~~, penalties and interest.

(5) Remains the same.

(6) New ~~Unrated~~ employers who do not have delinquent accounts are sent a rate notice with the following information:

(a) the tax rates for the current year; and

(b) the taxable wage base for the current year.

(7) (a) Deficit employers with past due reports and/or taxes, penalties and interest ~~taxes or reports~~ are sent a rate notice assigneding the maximum contribution rate effective for the current year. Eligible employers with past due reports and/or taxes, penalties and interest ~~or reports~~ are sent a rate notice assigneding the maximum eligible ~~rate for unrated~~ employers rate for the current year. New employers with past due reports and/or taxes, penalties and interest are sent a rate notice assigning the maximum new employer rate for the current year.

(b) If all past due reports and/or taxes, penalties and interest ~~or reports~~ are satisfied within 30 days of the date of mailing the rate notice, the employer's deficit, ~~or~~ eligible, or new computed contribution rate is reinstated. The department sends the employer a new contribution rate notice stating the same information as eligible, deficit or new employers who do not have delinquent accounts.

(8) Remains the same.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-1121, 39-51-1123, and 39-51-1213, MCA)

Reason: Rule 24.11.606 is to comply with provisions of House Bill 726, 1991 Legislature.

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS---CHARGEABLE EMPLOYERS (1) (a) Beginning with initial claims filed on or after October 1, 1989, benefit payments are charged to each employer who paid wages to the claimant during the base period. The charge will be based on the percentage of wages the employer paid to the claimant during the base period. For example; if the claimant earned 10 percent of the base period wages working for an employer, that employer would be chargeable for 10 percent of the benefits drawn by the claimant.

(b) If more than one separation or severance of employment exists from the same base period employer, charges or relief of charges will be based on the reason for the most recent

separation or severance of employment occurring prior to the effective date of the claim. Any separation or severance of employment occurring after the effective date of a claim will not result in relief of charges on that claim, but may on a subsequent claim, if the reason for separation or severance of employment allows relief of charge.

(c) The Department's determination concerning a separation or severance of employment from a base period employer, which subjects the claimant to possible disqualification under provisions of section 39-51-2302, 2303, 2305 MCA, will determine if that employer's account will be charged.

(d) A "severance of employment" occurs when an employing unit ceases paying wages, as defined in 39-51-201(18) MCA, even though the work duties may not cease; provided the employing unit is not subject to 39-51-1219 MCA.

(2) A "reduction in hours or wages" as used in 39-51-1214, MCA, is determined to have occurred if:

(a) the hours of employment are reduced by one hour or more per week; or

(b) the gross earnings are reduced by $1.00 or more per week.

(3)~~(2)~~ (a) When a claimant files a claim for benefits, the department mails a "Potential Benefit Charge Notice" to the chargeable employer. This notice tells the employer that the benefits paid to the claimant will be charged to the employer's account unless the employer shows that the claimant was fired for misconduct or quit without good cause attributable to employment. The explanation of the separation must contain specific details of the separation, including copies of any supporting documents.

(b) As provided in section 39-51-1214, MCA, the department reviews the information submitted by the employer and issues a determination notice stating whether or not the employer should be charged for the claimant's benefits.

(c) An employer has ten (10) calendar days from the date of the notice to respond to the "Potential Benefit Charge Notice" and/or "Notice of Claim Filing & Potential Benefit Charge". If an employer fails to show good cause for delay in responding to either notice, the employer response will not be considered timely and will not be used in the department's determination.

(d) If the basis for the request for relief of charges would have justified such relief, but the employer fails to provide separation information with the time limits of the notice, such charges will not be relieved.

~~(c)~~(e) The employer may appeal the department's decision within 10 days of mailing the determination as provided in section 39-51-2402, MCA.

(4)~~(3)~~ Within 60 days of the end of each calendar quarter, the department mails to the employer a statement of benefits charged to the employer's account. This statement is the "Quarterly Statement of Benefits Paid" and is for

informational purposes only since any appeal must be made from the "Potential Benefit Charge Notice" and shows:

(a) the claimant's name and social security number;

(b) the date on which the charges were effective; and

(c) the amount of benefits charged to the employer's account.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-1214, MCA)

Reason: Rule 24.11.613 is amended to clarify the Department's adjudication process involving the charging of benefits to an employer's account.

24.11.701 RECORDS TO BE KEPT BY EMPLOYER (1) through (vii) (B) remains the same.

(C) if the employee is paid on a piece rate or other variable pay basis; and

~~(viii) the number of weeks, as defined in section 39-51-201, MCA, in each calendar quarter during which the employee performed services for the employer or was due wages from the employer. If a calendar quarter ends in the middle of a week, the week is counted in the calendar quarter that contains at least four days of that week.~~

(2) Remains the same.

(Auth: Sec. 39-51-603, MCA; IMP, Sec. 39-51-301, 39-51-302, MCA)

Reason: Rule 24.11.701 is amended to comply with provisions of House Bill 726, 1991 Legislature.

24.11.702 QUARTERLY REPORTS BY EMPLOYERS (1) and (2) remains the same.

(3) The quarterly reports ~~are due as shown below~~ must be postmarked by the following dates:

Quarter	Months Covered	Due Date
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

(4) Remains the same.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-603, MCA)

Reason: Rule 24.11.702 is amended to make uniform a requirement that quarterly reports are deemed submitted as of date mailed.

24.11.808 WAGES (1) through (ii) (A) remains the same.

(B) the total amount of the payments; ~~and~~

~~(C) the number of weeks of work attributable to the~~

payments.

(f) through (i) remains the same.

(Auth: Sec. 39-51-302, MCA; IMP, Sec. 39-51-1103, MCA)

Reason: Rule 24.11.808 is amended to comply with provisions of House Bill 726, 1991 Legislature.

3. Interested parties may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Administrator, Unemployment Insurance Division, Department of Labor and Industry, P. O. Box 1728, Helena, MT 59624, no later than Thursday, February 13, 1992.

4. Claren Neal, Attorney, has been designated to preside over and conduct the hearing.

DEPARTMENT OF LABOR AND INDUSTRY
UNEMPLOYMENT INSURANCE DIVISION

BY: _____
William E. O'Leary,
Rule Reviewer

_____
Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State, January 6, 1992.

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

In the matter of the adoption of a new rule relating to purchasing out-of-state law enforcement service by Highway Patrol Officers	))))	CORRECTED NOTICE OF THE ADOPTION OF A RULE RELATING TO PURCHASING SERVICE IN THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM

TO: All Interested Persons.

1. On November 14, 1991, the Public Employees' Retirement Board published notice of the amendment and adoption of rules concerning Montana's retirement systems in the Montana Administrative Register, issue number 21, page 2216.

2. The Notice of Adoption erroneously numbered NEW RULE I as ARM 2.43.433. Since a previously adopted rule of the board has already been assigned this number, the number for this newly adopted rule must be changed.

3. The correct number for NEW RULE I is:

ARM 2.43.438 HIGHWAY PATROL OFFICERS' OUT-OF-STATE LAW ENFORCEMENT SERVICE

4. All other portions of the November 14, 1991 Notice of Adoption are correct.

Dal Smilie,
Chief Legal Counsel
Rule Reviewer

Lawrence P. Nachtsheim,
Administrator, Public Employees'
Retirement Division
(for) Public Employees'
Retirement Board

Certified to the Secretary of State on December 31, 1991

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees	)	NOTICE OF AMENDMENT OF 8.16.405 FEE SCHEDULE, 8.16.606 FEE SCHEDULE AND 8.17.501 FEE SCHEDULE

TO: All Interested Persons:

1. On November 14, 1991, the Board of Dentistry published a notice of public hearing at page 2182, 1991 Montana Administrative Register, issue number 21. The public hearing was held on December 5, 1991, at 10:00 a.m., in the Rimini Room of the Park Plaza Hotel, Helena, Montana.

2. The Board did not adopt the proposed amendment to ARM 8.16.606. The Board has amended ARM 8.16.405 and 8.17.501 as proposed but with the following changes:

"8.16.405 FEE SCHEDULE (1) through (3) will remain the same as proposed.

(4) Active renewal, in-state	~~$78.00~~	$83.00
(5) Inactive renewal, out-of-state	~~78.00~~	83.00

(6) through (9) will remain the same as proposed."

Auth: Sec. 37-1-134, 37-4-205, MCA; IMP, Sec. 37-4-307, MCA

"8.17.501 FEE SCHEDULE (1) through (5) will remain the same as proposed.

(6) License renewal by March 1 of each year	~~$390.00~~	50.00

(7) will remain the same as proposed."

Auth: Sec. 37-1-134, 37-29-201, 37-29-304, MCA; IMP, Sec. 37-29-304, MCA

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

8.16.405

COMMENT: Representatives of the Montana Dental Hygienists Association testified in opposition to the proposed amendments. They suggested that the Board restructure the licensing formula by dividing the total number of licensees into the total amount of revenue needed to be generated to maintain the Board of Dentistry, which they claim generated a base fee of $47.03 per licensee. In addition, they urged that the $25,000 required to maintain the Professional Assistance Program be levied against the licenses of dentists only since the Professional Assistance Program will not treat any person other than a dentist or medical doctor. They urged that the fee for dentists should therefore be placed at $79.13.

RESPONSE: The Board acknowledged receipt of the verbal comments made at the Board hearing and the letter submitted at that same time. The Board considered this proposal in combination with a

later proposal submitted by the Denturists Association in reaching a compromise fee arrangement.

8.17.501

COMMENT: Representatives of the Denturists Association of Montana spoke in opposition to the proposed fee which would have placed the license renewal fee for denturists at $390.00 per year. The denturists presented an alternative plan similar to that of the dental hygienists by which they urged that denturists and dental hygienists pay a renewal fee of $53.00 per year while dentists would pay a renewal fee of $86.00 per year. The Denturists' Association recommended the higher fee for dentists because of their potential for participation in the Professional Assistance Program.

RESPONSE: The Board acknowledged receipt of this comment and considered it in light of the proposal from the dental hygienists as well. The Board decided to split the difference between the proposal submitted by dental hygienists and by the denturists regarding the fee for dental hygienists and denturists. This resulted in a $50 fee for those two occupations which is identical to what dental hygienists currently pay under ARM 8.16.606. The Board decided to place a surcharge on dentists' renewals to fund the Professional Assistance Program and voted to raise the dentists' renewal fee to $83.00.

GENERAL COMMENT: Representatives of the two associations also stated the need for equitable distribution of costs between all members of the professions regulated by the Board of Dentistry on a per capita basis into the Board not distinguished by the profession or occupation.

RESPONSE: The Board acknowledged receipt of the comment.

BOARD OF DENTISTRY
WAYNE L. HANSEN, DDS, PRESIDENT

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 6, 1992.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to definitions related to general requirements for all investments in mortgages and loans; requirements for all residential, commercial, multi-family, federally guaranteed loans, and economic development linked deposit programs	) NOTICE OF AMENDMENT OF 8.97.1301, 8.97.1403, 8.97.1405, 8.97.1407, 8.97.1408, 8.97.1410, 8.97.1411 and 8.97.1412 PERTAINING TO INVESTMENTS BY THE MONTANA BOARD OF INVESTMENTS

TO: All Interested Persons:

1. On May 30, 1991, the Board of Investments published a notice of public hearing to consider the proposed amendment of the above-stated rules at page 772, 1991 Montana Administrative Register, issue number 10. On August 15, 1991, at page 1379, 1991 Montana Administrative Register, issue number 15, another notice was published indicating an extension of the public comment date. This notice was published because a number of individuals and organizations requested another opportunity to share their written data, views or arguments with the Board.

2. The Board has amended ARM 8.97.1405, 8.97.1407, 8.97.1410, 8.97.1411 and 8.97.1412 exactly as proposed.

The Board amended ARM 8.97.1403 as proposed but would like to note that the title of the chart should read "Lower of Cost or Appraisal". The words "Cost or Appraisal" were inadvertently omitted in the original proposal.

The Board has amended ARM 8.97.1301 and 8.97.1408 as proposed but with the following changes:

"8.97.1301 DEFINITIONS (1) through (13) will remain the same as proposed.

(a) is a state or federally-chartered bank, savings and loan association, credit union, mortgage company, mortgage serving company, development credit corporation, investment company, trust company, savings institution, small business investment company, INSURANCE COMPANIES, PUBLIC AND PRIVATE PENSION FUNDS, CREDIT AND FINANCE COMPANIES, SPECIALIZED FINANCIERS, SOPHISTICATED INSTITUTIONAL INVESTORS, or qualified Montana capital company, AND

(b) through (38) will remain the same as proposed."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1503, 17-6-201, 17-6-302, MCA

"8.97.1408 FEDERALLY GUARANTEED LOAN PROGRAMS - GENERAL REQUIREMENTS (1) will remain the same as proposed.

(2) EXCEPT AS PROVIDED BY LAW, the board will only purchase an offering at par."

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

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

ARM 8.97.1301(13)(a) and (b)

Proponents

COMMENTS: Mr. Even Barrett testified on behalf of the Butte Local Development Corporation. Mr. Barrett testified that he believed that the Board's programs to participate as "financial institutions" in financing economic development and job creation projects in Montana is a creative effort and represents some of the "best economic development programs in the country." He testified that the definition of "financial institutions" as contained in the existing rule, and the requirement that the financial institution maintain a Montana office, presented obstacles to the utilization of the Board's programs. Mr. Barrett also submitted written testimony in support of his position.

Specifically, Mr. Barrett testified in support of the proposed rule which deletes the requirement for an in-state office (ARM 8.97.1301(13)(b)). Secondly, Mr. Barrett testified that the definition of "financial institutions" in ARM 8.97.1301(13)(a) should also be expanded to include "public and private pension funds, credit and finance companies, specialized financiers, and sophisticated institutional investors."

Mr. John Morrison, Jr., testified in support of the proposed rules on behalf of Morrison-Maierle. Mr. Morrison's testimony supported the proposed rule change to add "insurance companies" to the list of acceptable financial institutions and to eliminate the requirement that "financial institutions" maintain an office in Montana. Mr. Morrison stated that the definition of "financial institutions" should be as broad as possible so as to increase participation in the Board's programs.

Mr. Dick Anderson testified in support of the rule on behalf of Pan Western Corporation. Mr. Anderson testified at the hearing in addition to submitting written testimony. Mr. Anderson testified that the definition of "financial institutions" should be broadened and that the requirement that a financial institution maintain an office in Montana be deleted.

Mr. William Anderson, President of Baco Technical, Inc., submitted written testimony in support of the Board's rule. Mr. Anderson testified that he supports a rule change that adds "insurance companies" to the list of acceptable

"financial institutions" which can participate in the Board's programs and also testified in support of the proposed change to eliminate the requirement that the financial institution maintain an office in the state.

The Streeter Brothers Mortgage Corporation, of Billings, Montana, submitted written testimony in support of the rules as proposed.

Opponents

COMMENTS: Mr. E. Dean Retz and Mr. Phillip B. Johnson testified in opposition to the Board's proposed amendments to ARM 8.97.1301(a) and (b), on behalf of the Montana Banker's Association (MBA). Both of these gentlemen appeared at the hearing, stated their opposition, and requested that the testimony of Mr. John Cadby, submitted to the Board at the hearing held on the above-referenced rules on July 2, 1991, be placed again into the record. This request was granted.

In his testimony, Mr. John Cadby, Executive Vice President of the MBA, testified in opposition to ARM 8.97.1301(13)(a) and (b). He stated that the MBA opposed the amendments on the grounds that: a financial institution which does not maintain an office in Montana by definition, does not have employees or property in the state, and therefore does not pay taxes thereon; a financial institution which does not maintain an office in Montana, unlike a financial institution with an office in Montana, is not contributing to the economic development of the state of Montana. Therefore, to allow eligibility to such institutions goes contrary to the purpose of the law, which is aimed at economic development; and that the requirement that a financial institution maintain an office in the state of Montana is aimed at avoiding difficulties involved in dealing with and obtaining jurisdiction over an institution which does not maintain an office within the state of Montana.

ARM 8.97.1403

COMMENT: It was brought to the attention of staff that part of the title to the chart in ARM 8.97.1403, was inadvertently omitted from the notice. The insertion of the language "Cost or Appraisal" into the title corrects this error.

ARM 8.97.1408(2)

COMMENT: Mr. Bob Pancich, of the Board of Investments staff, submitted a proposed housekeeping amendment to ARM 8.97.1408(2) pertaining to "Federally Guaranteed Loan Programs - General Requirements," and asked that the rule be amended to insert the language "except as provided by law."

RESPONSES: After having read the hearing officer's report and discussing the proposed amendments at their meeting of October 23, 1991, the Board voted to adopt the rules as proposed, with

the exception of accepting Mr. Barrett's and Mr. Pancich's proposed changes as described above.

As to the comments specifically received on ARM 8.97.1301(13)(a) and (b), the Board concluded that its programs should be made as widely available as possible and should not be restricted by limiting the eligible participants to only a few financial institutions. The Board also concluded that if loan proceeds would in fact be applied towards a project in Montana and create new jobs in the state, the requirement for maintaining an office in Montana is an unnecessary burden to a participating financial institution. Finally, the Board concluded that since it still possessed authority to approve all individual financial institutions and loans, the goals of the program would not be jeopardized by the proposed amendments.

4. No other comments or testimony were received.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 16, 1991.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of new rules pertaining to development loans to Microbusiness Development Corporations and loans to microbusinesses	)))))	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO THE MICROBUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. On November 14, 1991, the Business Development Division published a notice of public hearing on the proposed adoption of new rules pertaining to the Microbusiness Finance Program, at page 2188, 1991 Montana Administrative Register, issue number 21.

2. The Division adopted the rules exactly as proposed. The rules will be numbered ARM 8.99.501 through 8.99.511.

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

COMMENT: A member of the Human Resource Development Council of Bozeman commented that existing, previously made, business loans (prior to MBDC certification) be permitted to serve as matching contributions in the same manner as a letter of credit serves in regard to a microbusiness loan guarantee program.

RESPONSE: The Division cannot adopt this request. Statute specifies that matching funds required to obtain development funds be provided in cash.

BUSINESS DEVELOPMENT DIVISION

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Accreditation Standards Procedures	))))	NOTICE OF ADOPTION OF ARM 10.55.601, ACCREDITATION STANDARDS PROCEDURES

To: All Interested Persons

1. On August 15, 1991, the Board of Public Education published a notice of proposed amendment concerning ARM 10.55.601, Accreditation Standards: Procedures on page 1383 - 1384 of the 1991 Montana Administrative Register, Issue number 15.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held on September 18, 1991, ten persons testified as proponents and 20 persons testified as opponents. There were 279 written comments received prior to September 21, 1991, the date on which the Board closed the hearing record.

4. The reason for the change in the rule was amended as follows: Proponents of this rule change gave the following reasons for their support of the proposed amendments to the rule to allow districts to defer implementation of some of the accreditation standards: 1) While the standards as written are sound, the financial situation in some school districts will prevent the implementation of some standards. 2) The Legislature and the Governor did not raise the Foundation Program schedule amounts for this biennium. 3) Some school districts are prevented from raising the funds needed to implement the standards by statutory caps on the amount of revenue that can be raised by local levies. 4) Some school districts that must build facilities to meet classroom size requirements are unable to sell school bonds at reasonable rates because of unfavorable reports by bond counsel.

5. The reasons given by the opponents of the rule change may be summarized as follows: 1) Present class loads in classrooms in kindergarten through third grade do not allow teachers to give the kind of individual assistance that children of this age require. 2) Librarians and centralized library services are necessary at all levels because students need to be

taught good library habits beginning early in their school experience. 3) Elementary counselors are needed in order to address the effects of childhood trauma such as divorce and child abuse and to prevent the kinds of problems that may develop as children mature. 4) Despite the cost of the new standards, the needs of children should be the paramount consideration. 5) Allowing districts to delay the implementation of some of the standards would provide the vehicle for an indefinite postponement of these standards.

6. A majority of the Board felt that, while many concerns expressed by the opponents were valid, the financial realities and other difficulties faced by some school districts may preclude the implementation of the listed standards on the schedule originally adopted by the Board. A majority of the Board were convinced that the proposed amendment would not be used by a significant number of districts, that are able to implement the standards on schedule, to postpone those standards.

Bill Thomas

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Wayne S. Buchanan

Certified to the Secretary of State January 6, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.14.102 pertaining to definitions; 11.14.316 and 11.14.414 pertaining to health care requirements for children in group and family day care homes; 11.14.501 pertaining to physical examination of infants in day care facilities; and 11.14.502 pertaining to the use of non-disposable diapers in day care facilities.	NOTICE OF AMENDMENT OF RULES 11.14.102 PERTAINING TO DEFINITIONS; 11.14.316 AND 11.14.414 PERTAINING TO HEALTH CARE REQUIREMENTS FOR CHILDREN IN GROUP AND FAMILY DAY CARE HOMES; 11.14.501 PERTAINING TO PHYSICAL EXAMINATION OF INFANTS IN DAY CARE FACILITIES; AND 11.14.502 PERTAINING TO THE USE OF NON-DISPOSABLE DIAPERS IN DAY CARE FACILITIES.

TO: All Interested Persons

1. On August 29, 1991, the Department of Family Services published notice at page 1534 of the 1991 Montana Administrative Register, issue no. 16, of the proposed amendment of ARM 11.14.102 pertaining to the definition of "day care facility," "related by blood or marriage," "family and group day care homes," "supplemental parental care," and "school age child"; ARM 11.14.316 and 11.14.414 pertaining to health care requirements in day care facilities; ARM 11.14.501 pertaining to physical examination of infants in day care facilities; and ARM 11.14.502 pertaining to the use of non-disposable diapers in day care facilities.

2. The department has amended ARM 11.14.102 as proposed. The proposed amendments to ARM 11.14.316, and ARM 11.14.414, have not been adopted. The proposed incorporation of the Department of Health and Environmental Sciences rules on immunization and health care requirements has generated controversy which necessitates further inter-departmental review of the proposed amendments to ARM 11.14.316 and ARM 11.14.414. ARM 11.14.501, and ARM 11.14.502, are amended as proposed, but with the following changes from the text of the proposed notice of amendment previously referred to, (new language capitalized and underlined, deleted language interlined) as follows:

11.14.501 ~~FACILITIES~~FAMILY AND GROUP DAY CARE HOMES CARING FOR INFANTS, DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS~~PHYSICAL EXAMINATION~~ (1) A written statement by a physician or county health nurse concerning any special needs of each infant and documenting that the infant's presence in a day care facility poses no unusual health risk TO THE INFANT OR TO OTHER CHILDREN IN THE FACILITY must be obtained and kept on file

by the provider prior to residence or enrollment of THE~~such~~ infant in the day care facility.

11.14.502 DAY CARE FACILITIES CARING FOR INFANTS, DIAPERING AND TOILET TRAINING (1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the infant's family may be used. If non-disposable diapers are used, the facility may launder the diapers using a germicidal process approved by the state or local health department. IN THE ABSENCE OF SUCH A PROCESS, THE FACILITY MAY NOT Llaunder NON-DISPOSABLE DIAPERS OF ENROLLED CHILDREN.

Subsections (2) through (8) remain the same.

COMMENT: The Department of Health and Environmental Sciences (DHES) requested that the provisions in ARM 11.14.316 and ARM 11.14.414 describing the easiest procedure for documentation of immunization be deleted and replaced with a reference to the procedure set out in ARM 16.24.413. DHES commented that the provision allowing parents to possess blank immunization forms should be deleted because it may enable falsification of records. DHES also commented that the proposed new language incorrectly refers to DHES "local offices". DHES has no local offices. DHES recommended that the Department of Family Services, (DFS) require parents and providers to utilize the existing procedure in ARM 16.24.413. DHES also commented that this procedure was to be updated and improved in the near future.

RESPONSE: DFS will consider adopting by incorporation the immunization and health care requirements at a later date.

COMMENT: DHES commented that the amendment to ARM 11.14.502 should incorporate ARM 16.24.410 for requirements on use of non-disposable diapers. DHES pointed out that such an incorporation would make the rules of the two agencies consistent on use of non-disposable diapers. DHES also stated that the language, "the facility may launder the diapers using a germicidal process approved by the state or local health department," should be deleted. DHES is considering amending ARM 16.24.410 to disallow any on-site laundering of non-disposable diapers.

RESPONSE: The language of the proposed amended version of ARM 11.14.502 is mandated by SB 168. However, in this notice DFS has added language making it clear that the laundering of the soiled diapers of children enrolled at family and group day care homes may only occur as approved by local or state health authorities.

COMMENT: Immunization requirements are necessary to protect children present in day care facilities, especially very young children. Parents refusing to immunize their children endanger not only the health of their own children, but also the health

of children whose immunizations are incomplete or who may be susceptible to disease for other reasons. Any amendment should disallow an exemption for religious reasons because health concerns demand that all children in day care be immunized. Exemptions from immunizations allowed in schools should not apply to day care facilities because younger children are at a higher risk for serious illness from communicable disease.

RESPONSE: The department agrees that rules should require vaccinations for children in day care, and intends to again propose adoption of DHES immunization requirements. In the meantime, the present immunization requirements for family and group day care homes shall remain in effect.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, January 6, 1992.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the transfer of part of the organization and function of the Department of Revenue to the Department of Transportation	)	NOTICE OF TRANSFER OF ARM 42.27.101 THROUGH 42.27.605 RELATING TO MOTOR FUEL TAX DIVISION--GASOLINE TAX AND ARM 42.28.101 THROUGH 42.28.502 RELATING TO MOTOR FUEL TAX DIVISION--OTHER FUELS

TO: All Interested Persons.

1. On July 1, 1991, the Motor Fuel Tax Division of the Department of Revenue was transferred to the Department of Transportation pursuant to 1991 Montana Laws, chapter 512 and Executive Order No. 11-91. See also section 2-15-2501, MCA.

2. This transfer of the Motor Fuel Tax Division to the Department of Transportation makes necessary the transfer of the administrative rules pertaining to that division. The rules will be assigned the following numbers under the Department of Transportation title:

OLD	NEW	
42.27.101	18.9.101	Determination of When Gasoline Distributed
42.27.102	18.9.102	Distributor's Bond
42.27.103	18.9.103	Distributor's Statements
42.27.104	18.9.104	Distributor's Records
42.27.105	18.9.105	Distributor's Invoice
42.27.106	18.9.106	Invoice Error
42.27.107	18.9.107	Multi-distributor Invoice Requirements
42.27.108	18.9.108	Wholesale Distributor
42.27.109	18.9.109	Wholesale Distributor's Obligations
42.27.110	18.9.110	Annual License, License Fees, and License Renewal
42.27.111	18.9.111	Gasohol Blenders

42.27.116	18.9.116	Incidence of the Gasoline Tax
42.27.117	18.9.117	Distributors - Bad Debt Credit
42.27.118	18.9.118	Prepayment of Motor Fuel Taxes
42.27.201	18.9.201	Intrastate Gasoline Deliveries
42.27.202	18.9.202	Export Deliveries
42.27.203	18.9.203	Import Deliveries
42.27.204	18.9.204	Blending Stocks
42.27.205	18.9.205	Exemption - U.S. and Other States
42.27.211	18.9.211	United States Exemption Certificates
42.27.301	18.9.301	Refund Gasoline Seller's Permit
42.27.302	18.9.302	Seller's Invoice
42.27.303	18.9.303	Filing Invoices
42.27.304	18.9.304	Power Take-offs
42.27.305	18.9.305	Auxiliary Engines
42.27.311	18.9.311	Lost or Destroyed Gasoline
42.27.312	18.9.312	Gasoline Lost from Storage
42.27.321	18.9.321	Processing Claims for Refunds
42.27.401	18.9.401	Treatment of Gasohol
42.27.402	18.9.402	Agricultural Products
42.27.403	18.9.403	Ethanol Content
42.27.501	18.9.501	Alcohol Distributors
42.27.601	18.9.601	Intent
42.27.602	18.9.602	Definitions
42.27.603	18.9.603	Processing the Tax Incentive Payment
42.27.604	18.9.604	Payment of Alcohol Tax Incentive
42.27.605	18.9.605	Offsets
42.28.101	18.10.101	Payment of Tax

42.28.102	18.10.102	Determination of User
42.28.103	18.10.103	Determination of Public Roads and Highways
42.28.104	18.10.104	Liability for Use on Government Maintained Roads
42.28.105	18.10.105	What Constitutes Special Fuel
42.28.121	18.10.121	Quarterly Reports - Tax Payment
42.28.122	18.10.122	Special Fuel User Tax Bonds - Problem Account
42.28.123	18.10.123	Supporting Documentation For Bad Debt Credit
42.28.201	18.10.201	Certain Federally Owned Roads
42.28.202	18.10.202	Off-road Usage
42.28.203	18.10.203	Stationary and Auxiliary Engines
42.28.301	18.10.301	Permit Required
42.28.302	18.10.302	Permit Details
42.28.303	18.10.303	Special Fuel User's Registration Card
42.28.311	18.10.311	Temporary Operation
42.28.312	18.10.312	Compliance Bonds
42.28.313	18.10.313	Termination of Permits
42.28.314	18.10.314	Confiscation of Certain Permit Copies
42.28.321	18.10.321	Required Records - Audits
42.28.322	18.10.322	Records When Bulk Storage Involved
42.28.323	18.10.323	Trip and Fuel Consumption Records
42.28.324	18.10.324	Failure to Maintain Records
42.28.401	18.10.401	Special Fuel Dealer License
42.28.402	18.10.402	Monthly Report
42.28.403	18.10.403	Dealer Records - Audit
42.28.404	18.10.404	Dealer Invoices

42.28.405	18.10.405	Special Fuel Dealer Tax Returns
42.28.406	18.10.406	Cardtrol Compliance and Administration
42.28.407	18.10.407	Statement for Keylock Cardtrol Reporting
42.28.408	18.10.408	Special Fuel Dealer's Bond
42.28.501	18.10.501	Payment of Tax for LPG Propelled Vehicles
42.28.502	18.10.502	Definition of Liquified Petroleum Gas

3. The history of each rule will remain the same insofar as the authority and implementation. Section 15-70-104, MCA, provides the rulemaking authority. 1991 Montana Laws, chapter 512, section 12 transfers the rulemaking authority from the Department of Revenue to the Department of Transportation.

JOHN ROTHWELL, Director
Department of Transportation

Lyle J Manley, Rule Reviewer

Certified to the Secretary of State January 6, , 1992.

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

In The Matter of Proposed New Rule to Reject Permit Applications for Consumptive Uses and to Modify Permits for Nonconsumptive Uses in Towhead Gulch Basin	)))))	NOTICE OF ADOPTION OF ARM 36.12.1015 TOWHEAD GULCH BASIN CLOSURE

To All Interested Persons:

1. On September 12, 1991, the Department of Natural Resources and Conservation published a notice of public hearing on the proposed new rules to reject or modify permit applications in the Towhead Gulch Basin at page 1670, 1991 Montana Administrative Register, Issue No. 17. A correction notice was published to identify the time for the hearing on October 17, 1991, at page 1918, 1991 Montana Administrative Register, Issue No. 19. Notices were also published on September 12, 19 and 26, 1991, in the Independent Record of Helena, Montana. Notices were mailed on September 5, 1991, to each individual water user of record in the Towhead Gulch Basin. On October 29, 1991, at 7:00 P.M., the public hearing was held at the Lee Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

2. The Department has adopted the following Rule as proposed with the following changes:

[RULE I] 36.12.1015 TOWHEAD GULCH BASIN CLOSURE (1) Towhead Gulch basin means the Towhead Gulch drainage area, a tributary of the Missouri River at Upper Holter Lake, located in hydrologic basin 41I in Lewis and Clark County, Montana. The entire Towhead Gulch drainage, from its headwaters in Section 33, Township 14 north, Range 3 west, MPM to its confluence with the Missouri River, including Beartooth Creek, ~~McLeod Gulch, Rattlesnake Gulch~~, and all unnamed tributaries are contained in the closure area. Excluded from the basin closure are Rattlesnake Gulch, McLeod Gulch, and their unnamed tributaries.

(2) The department shall reject applications for surface water permits in Towhead Gulch, Beartooth Creek, ~~McLeod Gulch, Rattlesnake Gulch~~, and their unnamed tributaries for any diversions, including infiltration galleries, for consumptive uses during any time of the year.

~~(3) The Department shall reject applications for surface water permits in Beartooth Creek and its tributaries for any diversions, including infiltration galleries, for consumptive uses during the period from June 1 to October 31.~~

~~(4)~~(3) Applications for nonconsumptive purposes shall be received and processed. Any permit granted for nonconsumptive uses shall be modified or conditioned to provide that there will be no decrease in the source of supply, no disruption in the stream conditions below the point of return, and no adverse effect to prior appropriators within the reach of stream between the point of diversion and the point of return.

The applicant for a nonconsumptive use shall prove by substantial credible evidence its ability to meet the conditions imposed by this rule.

~~(5) These rules apply to all surface water within the Tewhead Gulch basin.~~

(~~6~~)(4) Emergency appropriations of water as defined in ARM 36.12.101(6) and 36.12.105 shall be exempt from these rules.

(~~7~~)(5) These rules apply only to applications received by the Department after the date of adoption of these rules.

(~~8~~)(6) The department may, if it determines changed circumstances justify it, reopen the basin to additional appropriations and amend these rules accordingly after public notice and hearing.

AUTH: 85-2-112 and 85-2-319, MCA; IMP: 85-2-319, MCA

3. The Department has thoroughly considered all comments received. These comments and the Department's responses are as follows.

COMMENT: The Department should require a higher degree of proof to accept nonconsumptive applications than "substantial credible evidence". The suggested language was either "conclusive showing" or "clear and convincing evidence".

RESPONSE: While the Department does have the authority to set the burden of proof where it feels necessary, it is necessary to be consistent in closure proceedings. In all other rules adopted on basin closures substantial credible evidence has been the evidentiary standard adopted. There is no compelling reason to have a different burden of proof in this basin. The wording in this rule will remain consistent. No modification of the rule is made.

COMMENT: Commentors stated they feel Beartooth Creek should be closed to new applications for year round use.

RESPONSE: Beartooth Creek, also referred to as Sperry Creek, is an ungaged stream. The average flows of the creek came from a formula that accounts for the general location of the drainage, the drainage area, and the average precipitation. The calculated average flow was apportioned to each month based on experience with other streams. There were no measurements of any kind made on Beartooth Creek and the flows were only observed two or three times.

Since this type of analysis is not site specific, the testimony of local landowners was given more weight. Local observations over the course of many years indicated water was available for stock only in limited quantities during the non-irrigation season. If stock water is not available in the required amounts from November 1 to May 31, then Beartooth Creek should be closed to diversion during that period also. The rule has been modified to close Beartooth Creek to all new

permit applications for consumptive use during anytime of the year.

COMMENT: The Department should not be closing the Towhead basin to the historical water use.

RESPONSE: This rule does not take away, modify, or limit any water right that anyone may have acquired on any drainage within those basins or sub-basins of Towhead Gulch. The rule only rejects future permit applications that may come before the Department of Natural Resources and Conservation. No modification of the rule is made.

COMMENT: Commentor does not wish to see Towhead Gulch or Beartooth Creek closed without further study, for which they would pay.

RESPONSE: The Towhead Gulch mainstream has been studied and water measurements taken once a week for a year. Based on this study and the petition, it is very unlikely there is ever any water available to be appropriated. If a person or group wishes to conduct a study or have a study done at their own expense, they most certainly can do so. Depending on the findings of the study, they may petition the Department to reopen the Towhead Gulch basin. This rule does not prohibit them from doing so. No modification of the rule is made.

COMMENT: Towhead Gulch should not be closed because they may need to take water from the creek for fire suppression. Fires in this area have been historically happening in the last three or four years.

RESPONSE: ARM 36.12.101(6) and 36.12.105 allows temporary emergency appropriations. Fire suppression is included in the definition of a temporary emergency appropriation. No modification of the rule is made.

COMMENT: Commentors suggested that they did not feel Rattlesnake Gulch nor McLeod Gulch should be included as part of the Towhead Gulch basin closure.

RESPONSE: After reviewing the water rights of record and the maps presented with the petition, the Department agrees with the commentors. If Rattlesnake Gulch and McLeod Gulch are left out of the closure it would have no effect on the petitioner. It also appears that at least 90% of the properties of Rattlesnake Gulch and McLeod Gulch are owned either by Sieben Ranch Co. or Hilger Hereford Ranch. They both expressed that they did not want either Rattlesnake Gulch or McLeod Gulch included in the closure of Towhead Gulch. The rule will be modified to exclude Rattlesnake Gulch and McLeod Gulch and their tributaries from the basin closure.

COMMENT: The Towhead Gulch petition requested that the basin be closed to all nonconsumptive and consumptive uses alike with only one exception, that being instream stock watering use.

RESPONSE: Stock watering is a consumptive use of water. The basin closure is for consumptive uses of water. No

information has been presented to justify treating one class of consumptive use different from the other classes of consumptive uses. The adverse affect is the same regardless of the consumptive use. The basin is closed to all new consumptive uses. No modification of the rule is required.

4. No other written or oral comments or testimony were received.

Donald D. MacIntyre
Chief Legal Counsel
Rules Reviewer

Karen Barclay, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State, January 3, 1992

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

In the Matter of Amendment of) Rule 38.4.120 Regarding Waiver) of Monies Due to Railroad.)	NOTICE OF AMENDMENT OF RULE REGARDING WAIVER OF MONIES DUE TO RAILROADS

TO: All Interested Persons

1. On November 14, 1991 the Department of Public Service Regulation published notice of the proposal identified in the above titles at page 2203, issue number 21 of the 1991 Montana Administrative Register. The amendment pertains to waiver of collection of amounts claimed due to the railroad, changing the amount from $2,000 to $25,000 as the threshold requirement for the railroad to file a petition of waiver with the Department.

2. The Department has adopted Rule 38.4.120 as proposed.

3. The Department received no commentary on the proposed amendment.

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 6, 1992.

Reviewed By

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

In the Matter of Amendment of Rules Regarding Telecommunications Service Standards.	CORRECTED NOTICE OF AMENDMENT (Forbearance)

TO: All Interested Persons

1. On December 26, 1991 the Department of Public Service Regulation published notice of the adoption identified in the above titles at page 2631, issue number 24 of the 1991 Montana Administrative Register.

2. The notice of amendment of Rule 38.5.2715 incorrectly indicated that the Commission may by order defer action on a forbearance application for up to five days. In response to a comment identifying a discrepancy between the ten-day rule for Commission action set forth in Rule 38.5.2715 and the 15-day requirement set forth in Section 69-3-808(3), MCA, Rule 38.5.2715 was modified to require action within 15 days. In order to be consistent with this modification, that portion of the Rule allowing the Commission to defer action for five days should have been deleted. The rule will therefore read as follows:

38.5.2715 FORBEARANCE (1) through (3) No changes

~~(3)~~ (4) The commission shall approve or deny the application within ~~ten~~ 15 days of receipt of the completed application. If the commission takes no action within ~~ten~~ 15 days, the application is granted. ~~The commission may by order defer action for up to five days.~~ AUTH: Secs. 69-3-822 and 69-3-103, MCA; IMP, Sec. 69-3-808, MCA

3. A corrected replacement page for the corrected notice of amendment has been submitted to the Secretary of State.

Howard L. Ellis
HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 7, 1992.

Ron A. McKay
Reviewed by

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the Amendment of ARM 44.5.101 through 44.5.110 amending corporation filing fees, and adoption of new rule 44.5.102 regarding license fee and adoption of new rule 44.5.111 regarding forms.	))))))	NOTICE OF ADOPTION OF AMENDMENT TO RULES 44.5.101 through 44.5.110 CORPORATION FILING FEES, AND ADOPTION OF NEW RULES I (44.5.102) LICENSE FEES and II (44.5.111) FORMS.

TO: All Interested Persons:

1. On October 31st, 1991 the Secretary of State published a notice of the proposed adoption of the above stated new rules 44.5.102, 44.5.111 and amendments 44.5.101 through 44.5.110 at page 2019 of the 1991 Montana Administrative Register issue no. 20.

2. The department has adopted the rules and amendments as proposed: 44.5.101, 44.5.104, 44.5.105, 44.5.108, 44.5.110.

3. The department is adopting the rules as proposed with the following changes:

44.5.103 FEES FOR FILING DOCUMENTS - NONPROFIT CORPORATIONS
(1) through (23) remain the same.
(Auth: Sec. 35-2-1107, MCA; IMP, Sec. ~~35-1-1103~~ 35-2-1103, MCA.)

44.5.102 (NEW RULE I) LICENSE FEE FOR DOMESTIC OR FOREIGN PROFIT CORPORATIONS BASED ON AUTHORIZED SHARES.
(1) (a) remains the same .
(1) (f) over ~~1,000,001~~ 1,000,000 shares.....1,000
(1) (e) through (2) remain the same.

44.5.111 (NEW RULE II) FORMS.
(1) (a) remains the same.
(1) (b) If the name is not acceptable the corporation must adopt ~~the name listed~~ an assumed business name for use in Montana.
(1) (c) through (4) (k) remain the same.
(4) (l) Election of a nonprofit corporation to be a public benefit, mutual benefit or religious corporation (effective in 1995).

4. Comments were received:

COMMENT: From Professor Steve Bahls, of the University of Montana School of Law.

I. License fee for domestic or foreign profit corporation based on authorized shares: should (f) state "over 1,000,000 shares....1,000.

II. Forms. 1(b) needs to be modified to clarify what the name listed means. It should be a fictitious name adopted by the corporations board of directors.

(4) should be effective in 1995 and not before.

RESPONSE: Comment incorporated into revisions to the proposed rule as above 44.5.102 and 44.5.111.

COMMENT: From Valencia Lane of the Montana Legislative Council.

Change statute in 44.5.103 to the correct statute 35-2-1103, MCA.

Recommendations on the heading of the adoption.

RESPONSE: Comments were incorporated into the revisions to the proposed rules as above in the heading and rule 44.5.103.

MIKE COONEY
Secretary of State

GARTH JACOBSON
Rule Reviewer

Dated this 6th day of January.

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

In the matter of the amendment of Rules 46.25.101 and 46.25.731 pertaining to general relief assistance extension of benefits	))))	NOTICE OF THE AMENDMENT OF RULES 46.25.101 AND 46.25.731 PERTAINING TO GENERAL RELIEF ASSISTANCE EXTENSION OF BENEFITS

TO: All Interested Persons

1. On November 27, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.25.101 and 46.25.731 pertaining to general relief assistance extension of benefits at page 2254 of the 1991 Montana Administrative Register, issue number 22.

2. The Department has amended Rules 46.25.101 and 46.25.731 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 6, 1992.

VOLUME NO. 44 OPINION NO. 22

BANKS AND BANKING - Appropriate institutions and investments for deposit of public money by local governing bodies;
COUNTIES - Permitted types of investments for county money;
PUBLIC FUNDS - Appropriate institutions and investments for deposit of public money by local governing bodies;
SECURITIES - Permitted types of investments for county money;
MONTANA CODE ANNOTATED - Sections 7-6-202, 7-6-202(2);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 25 (1987);
UNITED STATES CODE - 15 U.S.C. §§ 80a-1 to 80a-64.

HELD: Pursuant to section 7-6-202, MCA, a local government may not invest public money in a mutual fund that invests in securities guaranteed, but not issued, by agencies of the United States.

December 20, 1991

John C. McKeon
Phillips County Attorney
P.O. Box 1279
Malta MT 59538

Dear Mr. McKeon:

You have requested my opinion concerning the following question:

> May public funds be invested pursuant to section 7-6-202(2), MCA, in an open-end investment company, or mutual fund, that invests primarily in mortgage-backed securities issued or guaranteed by agencies of the United States and where the fund's custodian takes delivery of the collateral?

You indicate that the Phillips County Treasurer has made investments in the Franklin Adjustable United States Government Securities Fund. The prospectus of this fund indicates that it is organized by the Franklin Investors Securities Trust which is an open-end management investment company, or mutual fund, and the fund is registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 to 80a-64. The prospectus and correspondence from the Franklin Trust indicate that the Adjustable United States Government Securities Fund invests in securities "issued or fully guaranteed" by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and the Small Business Administration. For purposes of this opinion and based upon the prospectus and "Fund Summary" of the Franklin Adjustable United States Government Securities Fund, I have assumed that while Franklin's portfolio

may be comprised entirely of federally-guaranteed instruments, some of those instruments are privately-issued securities that are neither direct obligations of the United States government nor securities issued by agencies of the United States. You question the propriety of the investment of Phillips County in this particular mutual fund in light of the statutory language of section 7-6-202, MCA.

My response to your question requires an examination of the relevant statute, its legislative history, and a prior opinion of this office.

Section 7-6-202, MCA, places limitations upon the types of securities which may be purchased by a local government with public money not necessary for immediate public use. This statute was the focus of a 1987 Attorney General's Opinion which interpreted in some detail specific limitations placed upon the investment authority of local governments. 42 Op. Att'y Gen. No. 25 at 99 (1987). Although this opinion was partially overruled by the 1989 Legislature's amendment of section 7-6-202, MCA, it controls the resolution of your present inquiry.

In 1987, at the time of the former opinion request, section 7-6-202, MCA, stated in full:

> **Investment of public money in direct obligations of the United States.** Said local governing body is hereby authorized to invest such public money not necessary for immediate use by such county, city, or town in direct obligations of the United States government and securities issued by agencies of the United States.

In 42 Op. Att'y Gen. No. 25, Attorney General Mike Greely addressed several questions concerning investment limitations, two of which are relevant to the present analysis. First, the Attorney General determined that the statute's express authorization to invest in "direct obligations" and "securities issued by agencies" of the United States precluded a county treasurer from investing in mutual funds. While a mutual fund may be limited in its holdings to investments in which the treasurer could directly invest under section 7-6-202, MCA (1987), the actual security purchased is an interest in an investment company. Id. Second, Attorney General Greely recognized that mortgage-backed certificates, although guaranteed by agencies of the United States, such as GNMA, are issued by a private party, generally a financial institution that possesses a pool of mortgages. Consequently, it was held that these certificates are not securities issued by agencies of the United States and thus were not permissible investments under section 7-6-202, MCA (1987).

The holding of the 1987 opinion concerning investment in mutual funds was affected when the 1989 Legislature amended section

7-6-202, MCA, to permit the investment of public money in certain mutual funds. House Bill 431 amended the statute to read as follows:

> 7-6-202. Investment of public money in direct obligations of the United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in direct obligations of the United States government and securities issued by agencies of the United States.
>
> (2) The local governing body may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:
>
> (a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and
>
> (b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

The intent that can be gleaned from the legislative history accompanying House Bill 431 is best summarized by the following passages from an exhibit submitted by a codrafter of the bill:

> This legislation has two goals, to clarify the law and to allow an entity to invest indirectly in government obligations through a mutual fund where an entity is now authorized by state law to invest directly in government obligations.
>
> ....
>
> This bill extends to entities, the flexibility in investing monies to obtain the same security and return as obtainable by an investment in Government securities, avoiding inconveniences which exist in the purchase of Government securities.

Minutes, Senate Business and Industry Committee Hearing, March 3, 1989, Exhibit 1 at 1-2. This and other references in the legislative history to the prior statutory investment authority of local governments lead me to conclude that the intent was to permit indirect investment, through mutual funds, in those obligations of the federal government previously authorized:

direct obligations of the United States government and securities issued by agencies of the United States. Thus, the purchase of securities of a mutual fund with a portfolio consisting exclusively of direct obligations of the United States government and securities issued by agencies of the United States, including those obtained through repurchase agreements that are fully collateralized by United States government obligations, is contemplated by section 7-6-202, MCA.

Based upon the foregoing, I conclude that pursuant to section 7-6-202, MCA, a local government may invest public money in a mutual fund that invests, or obtains through repurchase agreements fully collateralized by the United States government, direct obligations of the United States and securities issued by agencies of the United States. A local government may not, however, invest public money in a mutual fund that invests in government obligations or securities that are guaranteed, but not issued, by agencies of the United States.

THEREFORE, IT IS MY OPINION:

> Pursuant to section 7-6-202, MCA, a local government may not invest public money in a mutual fund that invests in securities guaranteed, but not issued, by agencies of the United States.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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

IN THE MATTER of VERN REUM, dba TIRES-R-US, Petition for Declaratory Ruling on the Applicability of Montana Motor Carrier Laws to Motor Vehicle Transportation of Used Tires and Rims for Sale, Recycling, and Storage at a Landfill Disposal Site.	)	TRANSPORTATION DIVISION DOCKET NO. T-9688 DECLARATORY RULING

INTRODUCTION

1. On September 5, 1991 the Montana Public Service Commission (PSC) issued a Preliminary Declaratory Ruling (preliminary ruling) in the above-entitled matter. The preliminary ruling is attached as Appendix "A" and, by this reference, incorporated herein in its entirety. The preliminary ruling describes the facts, question of law, and preliminary analysis relevant to this Declaratory Ruling.

2. The preliminary ruling answers several questions presented by Vern Reum, dba Tires-R-Us (Reum). Its principal holding, and the only one remaining relevant for further discussion, establishes that "the 'primary business test' is applicable to salvage, recycling, and garbage operations, when, as in all other applications, the transportation element is properly categorized as 'incidental'." See, Attachment "A," p. 7, para. 1.

3. The preliminary ruling decided several elements of the proper determination on Reum's transportation being "incidental" -- Reum has a real nontransportation business and the transportation appears to be in the scope of this business. The only element of the test that could not be determined under the facts then presented was whether the transportation element was subordinate to the nontransportation elements. See, id., p. 6, para. 15. An answer to this question will satisfy the third element of "incidental" (being clearly subordinate) and also enable the PSC to determine if the appearance that the transportation is "in the scope of" is also true.

4. In this regard, the preliminary ruling holds that "the question of law, insofar as it deals with the 'primary business test,' cannot be answered specifically as to Reum's operations until further information is obtained." See, id., p. 7, para. 16. For this reason the PSC directed its staff to obtain further information from Reum and provide an opportunity for interested persons to comment on the information received.

5. On October 1, 1991 staff issued a Staff Inquiry to Reum. On October 21, 1991 Reum filed a response. Reum's Response contains additional given facts for the purpose of this Declaratory Ruling. On October 25, 1991 staff issued a Notice of Opportunity for Further Comment to interested persons. On November 13, 1991 Wee Haul Garbage, Inc. (Wee Haul) filed com-

ments. On December 3, 1991 Browning-Ferris Industries of Montana, Inc. (BFI), filed comments. Reum has filed letters replying to Wee Haul and BFI.

Analysis

6. Reum's response to the PSC's staff inquiry constitutes given facts for the purpose of this Declaratory Ruling. It was requested to permit the PSC to apply the law expressed in the preliminary ruling to Reum's operations. As indicated in the preliminary ruling the remaining analysis bears on whether Reum's transportation activities are incidental (specifically, the "subordinate to" element of being "incidental") to his salvage, recycling, and garbage activities.

7. Reum has an initial investment of $13,000 in equipment (two trucks and one trailer) used for the transportation of used tires and wheels. The present value of this equipment is estimated at $11,000. Reum's annual transportation payroll is $3,120. His other transportation operating expenses total $10,937.20 annually. His annual gross revenue from the transportation element of his operations is $8,320.

8. Reum has an initial investment of $94,150 in real property (land and buildings) and equipment (tools, compressors, inflator, buffers, slicer, trucks and trailers). The present value of all of this is estimated at $133,550. Reum's annual nontransportation payroll is $36,200. His other nontranportation operating expenses total $29,992.84 annually. His annual gross revenue from the nontransportation elements of his operations is $66,080.

9. Comparing Reum's transportation and nontransportation aspects, it is clear that Reum's principal business investment and operation costs and revenue are in nontransportation functions. In fact, transportation is a small part of Reum's operations -- comparatively, less than ten percent of investment, less than 25 percent of operating expenses, and less than 15 percent of gross revenues. The PSC determines that Reum's transportation operations are subordinate to his nontransportation operations.

10. Wee Haul's and BFI's comments bear on Reum's operations being an unrealistic and unprofitable recycling business, disguising his true profitable venture -- a garbage business. This, however, makes no difference. This ruling bears on Reum's operations in total. In total, Reum's operations are recycling, salvage, and garbage. This ruling is not confined to the recycling aspects of Reum's business operations.

Declaratory Ruling

11. Under the facts presented and analyzed in the Preliminary Declaratory Ruling (Attachment "A") and this Declaratory Ruling, having been advised of all premises and having considered the same, the PSC determines as follows. Reum is engaged in a used tire and wheel recycling, salvage and disposal business. The business operation of recycling, salvage and dispos-

al is his principal business. Reum's transportation of used tires and wheels from various tire businesses to Reum's facility in Polson, Montana, for a fee, is incidental to this principal business. This transportation by Reum is unregulated private carriage as being an incident to the conduct of a nontransportation business under the primary business test.

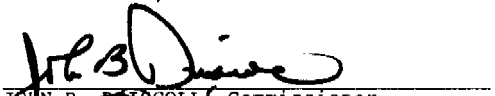
Done and Dated this 17th day of December, 1991 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner



JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1991. This table includes those rules adopted during the period October 1, 1991 through December 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 September 30, 1991, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1991 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

2.21.306 and other rules - Work Cite Closure During A Localized Disaster or Emergency, p. 2209, 994
2.21.1801 and other rules - Leave Administration for Salaried Employees, p. 876
2.21.6607 and other rules - Record Keeping, p. 2516
(Public Employees' Retirement Board)
I-III Annual Retirement Benefit Adjustments for Montana Residents, p. 1888, 2402
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