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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to outfitter applications and renewals, guide or professional guide licenses and qualifications, safety provisions and unprofessional conduct	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO THE OUTFITTING INDUSTRY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 3, 1997, the Board of Outfitters proposes to amend rules pertaining to the outfitting industry.

2. The proposed amendment of ARM 8.39.505, 8.39.508, 8.39.514, 8.39.515, 8.39.704 and 8.39.709 will read as follows: (new matter underlined, deleted matter interlined)

"8.39.505 LICENSURE--OUTFITTER APPLICATION (1) through (2)(a) will remain the same.

(b) an operations plan application form which shall be considered under the guidelines of 37-47-304(2), MCA, and ARM ~~8.39.512~~ 8.39.604.

(3) will remain the same."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-304, 37-47-307, MCA

REASON: This rule is being amended to delete an incorrect citation and replace it with the correct cite.

"8.39.508 LICENSURE--RENEWAL (1) and (1)(a) will remain the same.

(b) a copy of the licensee's current basic first aid ~~or cardiopulmonary resuscitation~~ card (outfitters, guides~~,~~ and professional guides);

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

Auth: Sec. 37-1-101, 37-1-131, 37-47-201, MCA; IMP, Sec. 37-1-101, 37-47-201, 37-47-302, 37-47-303, 37-47-304, 37-47-306, 37-47-307, 37-47-312, MCA

"8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

(1) will remain the same.

(2) A new, first time applicant who has not previously been licensed with the Montana board of outfitters must submit proof of current basic first aid ~~or cardiopulmonary resuscitation~~ certification no later than 90 days after the date of application.

(3) A new applicant who has previously been licensed with the Montana board of outfitters must submit proof of current

basic first aid ~~or cardiopulmonary resuscitation~~ certification with his or her application.

(4) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-301, 37-47-307, MCA

"8.39.515 LICENSURE - GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS (1) and (1)(a) will remain the same.

(b) knowledge of ~~game and~~ hunting and fishing techniques to provide the particular services ~~advertised~~ contracted to the client by the endorsing outfitter; and~~,~~

(c) through (3) will remain the same."

Auth: Sec. 37-1-131, 37-47-101, 37-47-201, MCA; IMP, Sec. 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: The proposed amendment will allow a guide who specializes in only one type of service, such as fishing, to comply with the requirements for guide or professional guide qualifications. The current language requires a guide applicant to be knowledgeable and capable of providing all the services the endorsing outfitter advertises. It fails to recognize that some guides are only willing to provide limited guiding services.

"8.39.704 SAFETY PROVISIONS (1) Outfitters are required to hold a current basic first aid ~~or cardiopulmonary resuscitation~~ card at all times licensed.

(2) Except for the one-time, 90-day exemption provided for new, first-time applicants in ARM 8.39.514(2), guides and professional guides are required to hold a current basic first aid ~~or cardiopulmonary resuscitation~~ card at all times licensed.

(3) through (5) will remain the same."

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

"8.39.709 STANDARDS FOR OUTFITTERS, GUIDES, AND PROFESSIONAL GUIDES - UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) through (1)(m) will remain the same.

(n) not employ or retain a new, first-time licensed guide or professional guide after the 90th day following the date of the guide's or professional guide's application for licensure without first confirming that the guide or professional guide has current basic first aid ~~or cardiopulmonary resuscitation~~ certification;

(o) not employ or retain a previously licensed guide or professional guide without first confirming that the guide or professional guide has current basic first aid ~~or cardiopulmonary resuscitation~~ certification; or

(p) through (3)(o) will remain the same."

Auth: Sec. 37-1-319, 37-47-201, 37-47-341, MCA; IMP, Sec. 37-47-201, 37-1-312, 37-47-341, MCA

REASON: The amendments to ARM 8.39.508, 8.39.514, 8.39.704 and 8.39.709 deleting the requirement for outfitters, guides and

professional guides to possess a cardiopulmonary resuscitation card (CPR) are being proposed, as the Board feels the first aid card requirement sufficiently demonstrates the amount of training needed in this area.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Outfitters, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 2, 1997.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Outfitters, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 2, 1997.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 260 based on the 2590 licensees in Montana.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 21, 1997.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees and continuing education and the adoption of a new rule pertaining to renewals	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO FEES AND CONTINUING EDUCATION AND THE ADOPTION OF A NEW RULE PERTAINING TO RENEWAL OF LICENSE

TO: All Interested Persons:

1. On August 25, 1997, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to fees, continuing education and renewal of licenses.

2. The Board is proposing two alternative forms of amendments to ARM 8.58.411 and 8.58.415A as follows: (new matter underlined, deleted matter interlined)

"8.58.411 FEE SCHEDULE (1) through (4) will remain the same.

(5)	For each original resident broker's license.....	~~65~~	130
(6)	For each annual renewal of a resident broker's license.....	~~60~~	120
(7)	For each original non-resident broker's license.....	~~65~~	130
(8)	For each annual renewal of a non-resident broker's license.....	~~60~~	120
(9)	For each original salesman's license	~~35~~	70
(10)	For each annual renewal of salesman's license.....	~~30~~	60
~~(11)~~	~~For each additional office or place of business, an annual fee.....~~	~~30~~	

(12) through (25) will remain the same, but will be renumbered (11) through (24)."

Auth: Sec. 37-1-131, 37-1-134, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-1-134, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-310, 37-51-311, MCA

"8.58.411 FEE SCHEDULE (1) through (4) will remain the same.

(5)	For each original resident broker's license.....	~~65~~	260
(6)	For each annual renewal of a resident broker's license.....	~~60~~	240
(7)	For each original non-resident broker's license.....	~~65~~	260

(8) For each annual renewal of a non-resident broker's license..... ~~60~~ 240
(9) For each original salesman's license ~~35~~ 140
(10) For each annual renewal of salesman's license..... ~~30~~ 120
~~(11) For each additional office or place of business, an annual fee..... 30~~
(12) through (25) will remain the same, but will be renumbered (11) through (24)."

Auth: Sec. 37-1-131, 37-1-134, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-1-134, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-310, 37-51-311, MCA

"8.58.415A CONTINUING REAL ESTATE EDUCATION (1) Each licensee is required to complete a minimum of ~~12~~ 24 hours of continuing real estate education for every ~~year~~ renewal period beginning January 1, ~~1996~~ 1998.

(2) will remain the same.

(3) By October 1 of each even year, the board shall prescribe topics in which the ~~12~~ hours of education must be obtained. A minimum of ~~three~~ six hours must come from mandatory topics determined by the board and ~~nine~~ 18 hours may come from elective topics approved by the board.

~~(4) No more than six hours of elective topics may be carried over. No mandatory hours may be carried over to any other year.~~

(5) will remain the same, but will be renumbered (4).

~~(6)~~(5) Proof of successful completion must be submitted to the board with the licensee's renewal application at the conclusion of every ~~year~~ renewal period.

(7) - (11) will remain the same, but will be renumbered (6) - (10)."

Auth: Sec. 37-1-319, 37-1-131, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-1-319, 37-51-202, 37-51-203, 37-51-204, MCA

"8.58.415A CONTINUING REAL ESTATE EDUCATION (1) Each licensee is required to complete a minimum of ~~12~~ 48 hours of continuing real estate education for every ~~year~~ renewal period beginning January 1, ~~1996~~ 1998.

(2) will remain the same.

(3) By October 1 of each even year, the board shall prescribe topics in which the ~~12~~ hours of education must be obtained. A minimum of ~~three~~ 12 hours must come from mandatory topics determined by the board and ~~nine~~ 36 hours may come from elective topics approved by the board.

~~(4) No more than six hours of elective topics may be carried over. No mandatory hours may be carried over to any other year.~~

(5) will remain the same, but will be renumbered (4).

~~(6)~~(5) Proof of successful completion must be submitted to the board with the licensee's renewal application at the conclusion of every ~~year~~ renewal period.

(7) - (11) will remain the same, but will be renumbered (6) - (10)."

Auth: Sec. 37-1-319, 37-1-131, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-1-319, 37-51-202, 37-51-203, 37-51-204, MCA

3. The Board is proposing two alternatives of a new rule which will read as follows:

"I RENEWAL (1) Beginning with the renewal of December 31, 1997, one-half of the licensees will renew for a period of one year with an expiration date of December 31, 1998. One-half of the licensees will renew for a period of two years with an expiration date of December 31, 1999. Following this initial renewal period, each licensee will renew for a period of two years by December 31 of their expiration year."

Auth: Sec. 37-51-203, MCA; IMP, Sec. 37-51-310, MCA

"I RENEWAL (1) Beginning with the renewal of December 31, 1997, one-half of the licensees will renew for a period of two years with an expiration date of December 31, 1999. One-half of the licensees will renew for a period of four years with an expiration date of December 31, 2001. Following this initial renewal period, each licensee will renew for a period of four years by December 31 of their expiration year."

Auth: Sec. 37-51-203, MCA; IMP, Sec. 37-51-310, MCA

REASON: The Board of Realty Regulation is proposing these amendments to stagger the renewal dates. The purpose of the amendments is to eliminate the severe bottleneck experienced each year when all licensees are required to renew annually. The board is publishing two alternatives of the rules to obtain public comment for each alternative. One alternative requires a renewal period of two years with half of the licensees renewing each year. The other alternative would require a four year renewal with half of the licensees renewing in two years and the other half renewing two years later.

The corresponding rule amendments to the fee schedule and continuing education are proposed to coincide with the alternative renewal dates.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., August 15, 1996, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1699; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Grace Berger.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Realty Regulation, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., September 2, 1997.

6. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 21, 1997.

BEFORE THE HARD-ROCK MINING IMPACT BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rule pertaining to the administration of the Hard-Rock Mining Impact Act	NOTICE OF PROPOSED AMENDMENT OF ARM 8.104.203A PERTAINING TO THE ADMINISTRATION OF THE HARD-ROCK MINING IMPACT ACT

NO PUBLIC HEARING CONTEMPLATED

1. On September 3, 1997, the Board proposes to amend the above-stated rule. On June 2, 1997, the Hard-Rock Mining Impact Board published notice of proposed repeal of ARM 8.104.203A at page 981, 1997 Montana Administrative Register, issue no. 11. Based on a comment received from the staff of the Administrative Code Committee, the Board has decided to amend the rule instead of repealing it.

2. The Board is proposing to amend ARM 8.104.203A. This amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.104.203A DEFINITIONS (1) For purposes of these rules, the term "impact, or impacted area" means the geographic or jurisdictional area or areas of the affected or potentially affected local government units identified in an impact plan ~~or in an amendment to an impact plan~~."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: With the proposed amendment the terms "impact area" and "impacted area" would encompass all affected and potentially affected units of local government, as identified in the impact plan. This change will bring these definitions in conformity with the definitions that have been used historically in the preparation of impact plans. The change would also allow approved impact plans to provide the information anticipated by the statute that governs the State's allocation of metal mines license tax revenue to counties.

3. Interested person may submit their data, views or arguments concerning the proposed amendment in writing to the Hard-Rock Mining Impact Board, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-4482, to be received no later than 5:00 p.m., September 2, 1997.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Hard-Rock Mining Impact Board, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-4482, to be received no later than 5:00 p.m., September 2, 1997.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the

proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of local government entities that could be affected by the development of hard-rock mines.

HARD-ROCK MINING IMPACT BOARD

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 21, 1997.

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendments of rules 32.24.504, 32.24.505 and 32.24.506 as they relate to quota rules; and the adoption of new rule I as it relates to quota rules.	)	NOTICE OF PROPOSED AMENDMENT AND ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED
	)	DOCKET #1-97

TO: All Interested Persons:

1. On September 8, 1997, the board of milk control proposes to amend rules 32.24.504, 32.24.505 and 32.24.506; and to adopt new rule I. The proposed change is in response to a petition submitted by Dan Daugherty, on behalf of the producer committee, and the milk control bureau.

2. The rules as proposed to be amended provide as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

32.24.504 TRANSFER OF QUOTA

(1)-(1)(a) Remains the same.

(b) The milk control bureau must be notified in writing by the proposed quota transferor at least 10 days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred. The producer must also notify his pool plant of his transfer. The bureau will notify the ~~quota~~ producer committee of any proposed transfers.

(1)(c)-(e) Remains the same.

(1)(f)-(g) Remains the same but renumbered (2) and (3).

(1)(g)(i)-(ii) Remains the same but renumbered (3)(a) and (b).

(1)(h) Remains the same but renumbered (4).

~~(i)~~(5) An entire transfer of quota to a producer who does not hold quota shall be effective on the date of the transfer of the herd and ~~farm~~ milk production facility. In the event the transferor is not substantially standing in the shoes of the seller, then the transfer can only take effect on the first day of the month. In either case the request for transfer must be received by mail or in person in the bureau office 10 days prior to the date the transfer is to take effect.

(6) A herd is defined as a number equal to 50% of the milking string and dry string combined. (For these purposes, a dry string would mean cows that have completed 1 lactation.)

(7) Milk production facilities are the barn, milking equipment, and a minimum amount of property to maintain a dry lot operation (such as feeders, sheds, corrals, and lots).

(8) Retirement of an eligible producer is a one-time opportunity. If an eligible producer retires and then re-enters the dairy business, this rule will not apply again. An eligible producer may retire and be exempt from the 10% penalty with a minimum of 15 continuous years in a dairy farm operation.

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

32.24.505 READJUSTMENT OF QUOTA (1) ~~No additional quota will be issued until there is less than 16.5% in class III quota milk.~~ If the Montana market needs exceed the current established total quota then additional quota will be added into the quota system. Market needs are defined to exceed current total quota when there is less than 16.5% in class III quota milk. ~~If the quota to be assigned is less than 5/10 of 1% of the quota held by all eligible producers, the entire quota pounds to be assigned shall be carried over until the following year and combined with any other quota for assignment at that time.~~

(2) The quota accumulated in the unassigned quota pool will be re-assigned pro rata to all eligible producers when the unassigned quota pool is equal to or greater than 2,000 pounds.

~~(a)~~(3) For application of either (1) or (2) on ~~On~~ or before the first day of April each year ~~where~~ when applicable, the administrator shall calculate ~~each eligible producer's~~ the additional quota to be assigned to each eligible producer in accordance ~~with~~ with the following computations:

~~(i)~~(a) compute the total pounds of class I and ~~class~~ II milk of all pool plants during the ~~twelve month period ending February 28 immediately~~ preceding calendar year (January 1 through December 31);

~~(ii)~~(b) from the calendar year 1 year prior to the preceding calendar year subtract the total pounds of class I and II milk from the ~~previous twelve month period from the~~ result obtained in ~~(i)~~(3)(a);

~~(iii)~~(c) divide any positive figure resulting from the computation in ~~(ii)~~(3)(b) by ~~365~~ total days in the year;

~~(iv)~~(d) determine the total pounds of quota that has been forfeited ~~during the preceding 12 month period pursuant to ARM 32.24.502 and 32.24.504 hereof or for any other reason~~ and accumulated prior to this calculation either by initial determination, loss of quota, or 10% penalties on transfer of quota; and

~~(v) combine the pounds determined pursuant to (1)(a)(iii) and (iv) hereof with any pounds carried over from~~

~~the previous year;~~

(1)(a)(vi) Remains the same but renumbered (3)(e).

(1)(b)-(c) Remains the same but renumbered (4) and (5).

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

32.24.506 PRODUCER COMMITTEE

(1)-(7) Remains the same.

~~(8) After quotas are first issued under this plan and after quotas are issued under each succeeding quota readjustment, any eligible producer may request review on the following grounds:~~

~~(a) he was not issued a quota;~~

~~(b) his production history quota is not appropriate because of unusual conditions during the base earning period, such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk;~~

~~(c) he lost or might lose quota because justifiably or excusably off market for thirty or more consecutive days;~~

~~(d) he lost or might lose quota because of under delivery;~~

~~(e) inability to transfer quota.~~

~~(9) Loss of milk production due to inability to obtain adequate labor to maintain milk production will not be considered a ground for hardship adjustment.~~

~~(10) The request for review shall be filed with the producer committee and the board of milk control not later than forty five days after notice of the quota issued or not later than forty five days after the occurrence of the alleged hardship. The request shall set forth:~~

~~(a) the conditions that caused the alleged hardship or inequity;~~

~~(b) the extent of relief or adjustment requested;~~

~~(c) the basis upon which the amount of relief or adjustment requested should be computed; and~~

~~(d) the reasons why relief or adjustment should be granted.~~

~~(11) With respect for request for review of production history, quota, forfeiture of quota, or other related problems, the producer committee may grant or adjust production history quota on average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of quota, restore forfeited quota or reduce average daily producer milk deliveries where appropriate.~~

~~(12) Producer committee decisions shall be final subject to appeal to the board of milk control. Notice of appeal shall be filed within fifteen days after written notification of the decision of the producer committee. In the event an action by the producer committee is in violation of the plan, the administrator shall bring it to the attention of the aggrieved party.~~

~~(13) When an aggrieved person files an appeal to the~~

~~board from a decision of the quota committee, the appeal will be heard as follows:~~

~~(a) The aggrieved party will be given the opportunity to make an oral presentation and submit written justification in support of reversal or modification of the quota committee's decision.~~

~~(b) Members of the quota committee will be given the opportunity to make an oral presentation and submit written material in opposition to reversal or modification of the quota committee's decision.~~

~~(c) The decision of the board will be based on the record of the quota committee hearing as supplemented by oral argument and written submissions to the board. However, the hearing before the board will not be a trial de novo. New material that could not reasonably be submitted to the quota committee will be accepted if it relates to the grounds set forth in (13)(d) hereof.~~

~~(d) In ruling on the appeal from the quota committee decision the board will not overrule or modify the decision of the quota committee unless:~~

~~(i) there was collusion affecting the committee members decision; or~~

~~(ii) the board determines that actual bias or prejudice on the part of one or more committee members affected the decision; or~~

~~(iii) the committee decision was the result of an incorrect interpretation of a statute or rule applicable to the decision; or~~

~~(iv) the committee decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.~~

~~(e) On review of a quota committee's decision, the board shall not substitute its judgment (second guess) for that of the quota committee as to the weight of the evidence on question of fact.~~

~~(f) The board of milk control shall hear an appeal at their next scheduled regular board meeting or within 90 days of its filing at bureau offices.~~

~~(14) The administrator shall maintain records of all requests of the producer committee and the disposition thereof. Such files shall be open for inspection by any interested persons during the regular office hours of the Montana milk control bureau.~~

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

3. From rule 32.24.506 the deleted sections (8) through (14) are incorporated into rule I with added or deleted matter. The rule as proposed to be adopted provides as follows:

RULE I REQUEST FOR REVIEW, HARDSHIP AND APPEALS

(1) After quotas are first issued under this plan and after quotas are issued under each succeeding quota readjustment, any eligible producer may request review from the producer committee on the following grounds:

(a) he was not issued a quota;

(b) his production history quota is not appropriate because of unusual conditions during the base earning period, such as loss of buildings, herds, or other facilities as the result of fire, floods, storms, official quarantine, disease, pesticide residue or condemnation of milk;

(c) he lost or might lose quota because justifiably or excusably off market for 30 or more consecutive days;

(d) he lost or might lose quota because of under delivery; or

(e) inability to transfer quota.

(2) Hardship is defined as an act of nature such as fire, flood, or detrimental health of an eligible producer.

(a) Terminally ill or progressive degenerative illness or permanent disability may be used as grounds for hardship consideration.

(b) Hardship consideration may waive the rule on a quota transfer with 10% forfeiture or on continuing the production operation without interruption (ARM 32.24.504).

(c) Loss of milk production due to inability to obtain adequate labor to maintain milk production will not be considered a ground for hardship adjustment.

(3) A producer may make a request for review, which shall be filed with the milk control bureau (who will then forward the request to the producer committee and the board of milk control) not later than 45 days after notice of the quota issued, or not later than 45 days after the occurrence of the alleged hardship. The request shall set forth:

(a) the conditions that caused the alleged hardship or inequity;

(b) the extent of relief or adjustment requested;

(c) the basis upon which the amount of relief or adjustment requested should be computed; and

(d) the reasons why relief or adjustment should be granted.

(4) With respect for a producer's request for review of production history, quota, forfeiture of quota, or other related problems, the producer committee may grant or adjust production history quota on average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of quota, restore forfeited quota or reduce average daily producer milk deliveries where appropriate.

(5) Producer committee decisions shall be final subject to appeal to the board of milk control.

(a) A producer shall file a notice of appeal within 15 days after written notification of the decision of the producer committee.

(b) In the event an action by the producer committee is in violation of the plan, the administrator shall bring it to the attention of the aggrieved party.

(6) The board of milk control shall hear an appeal at their next scheduled regular board meeting or within 90 days of its filing at the bureau's office.

(7) When an aggrieved person files an appeal to the board of milk control from a decision of the producer committee, the appeal will be heard as follows:

(a) The aggrieved party will be given the opportunity to make an oral presentation and submit written justification in support of reversal or modification of the producer committee's decision.

(b) Members of the producer committee will be given the opportunity to make an oral presentation and submit written material in opposition to reversal or modification of the producer committee's decision.

(c) The decision of the board of milk control will be based on the record of the producer committee hearing as supplemented by oral argument and written submissions to the board. However, the hearing before the board will not be a trial de novo. New material that could not reasonably be submitted to the producer committee will be accepted if it relates to the grounds set forth in (8) hereof.

(8) In ruling on the appeal from the producer committee's decision the board of milk control will not overrule or modify the decision of the producer committee unless:

(a) there was collusion affecting the producer committee's decision;

(b) the board of milk control determines that actual bias or prejudice on the part of one or more producer committee members affected the decision;

(c) the producer committee's decision was the result of an incorrect interpretation of a statute or rule applicable to the decision; or

(d) the producer committee's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

(9) On review of a producer committee's decision, the board of milk control shall not substitute its judgment (second guess) for that of the producer committee as to the weight of the evidence on question of fact.

(10) An appeal that the board of milk control overturns (the producer committee's decision) is final and does not have to be approved by the producer committee. The board of milk control will instruct the administrator how to handle the transaction.

(11) The administrator shall maintain records of all requests of the producer committee and the disposition thereof. Such files shall be open for inspection by any interested persons during the regular office hours of the Montana milk control bureau.

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

4. The proposed amendments and adoption of the new rule are necessary for the following reasons:

a. To clarify and/or make more workable certain provisions which govern the quota, pooling, utilization and marketing rules in rules 32.24.504 through 32.24.506.

b. To implement a retirement clause so that an eligible producer may be exempt from the 10% penalty imposed on the transfer of his daily quota.

c. To define what constitutes a "herd" and "milk production facilities." This will allow the producer committee to decide whether an eligible producer should be exempt from the 10% penalty imposed on transfer of daily quota.

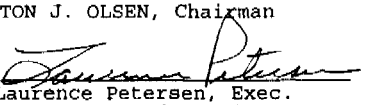
d. To define hardship. This will allow the producer committee to determine whether an eligible producer has grounds for hardship.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments and/or adoption of the new rule in writing to the Milk Control Bureau, 301 N. Roberts St. - RM 236, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than September 4, 1997.

6. If a person who is directly affected by the proposed amendments and/or adoption of the new rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau, 301 N. Roberts St. - RM 236, PO Box 202001, Helena, MT 59620-2001. A written request for hearing must be received no later than September 4, 1997.

7. If the agency receives requests for a public hearing on the proposed amendments and/or adoption of the new rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not 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 17 persons based on an estimate of licensed resident and nonresident producers and in-state distributors.

BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: 
Laurence Petersen, Exec.
Officer, Board of Livestock
Department of Livestock

By: 
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State July 21, 1997.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of rules 20.14.302 and 20.14.308 pertaining to voluntary admissions to Montana State Hospital	)))))	NOTICE OF PUBLIC HEARING OF PROPOSED AMENDMENT

TO: All Interested Persons

1. On August 26, 1997, at 2:00 p.m., a public hearing will be held in the Auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 20.14.302 and 20.14.308 pertaining to voluntary admissions to Montana State Hospital.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 15, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

20.14.302 DEFINITIONS (1) ~~(2)~~ "Applicant" means a person at least 18 years of age who is seeking voluntary admission to Montana state hospital.

~~(6) Center means a comprehensive community mental health center as described in 53-21-201 MCA.~~

(2) ~~(1)~~ "Department" means the department of ~~corrections~~ public health and human services.

(3) ~~(8)~~ "Designee" means a person ~~employed by the center,~~ who is appointed by the director to act on his/her behalf for the purposes of this chapter.

(4) ~~(7)~~ "Director" means the ~~person appointed by a regional mental health corporation board to administer a comprehensive mental health center~~ executive director or chief executive officer of the managed care organization.

(5) ~~(3)~~ "Hospital" means Montana state hospital~~, warm springs campus~~.

(6) ~~(5) Region means a mental health region as described in 53-21-204 MCA.~~"Managed care organization" means Montana

community partners or another organization under contract with the state of Montana for management of the state's publicly funded mental health services.

(7) ~~(2)~~ "Professional person" means a medical doctor or a person who has been certified as a professional person by the department pursuant to 53-21-106, MCA.

(8) ~~(4)~~ "Superintendent" means the superintendent or chief executive officer of Montana state hospital.

~~(10) Community Support Program (CSP) employee means a center staff person whose primary work responsibilities involve the region's provision of support services, including but not limited to, day treatment, case management, residential, and crisis services to adults with severe disabling mental illness.~~

AUTH: Sec. 53-21-111 and 53-1-203, MCA
IMP: Sec. 53-21-111, MCA

20.14.308 PARAMETERS FOR VOLUNTARY ADMISSION TO MONTANA STATE HOSPITAL (1) remains the same.

(2) Montana state hospital will be considered the least restrictive and most appropriate placement for an individual who:

(a) ~~I~~is violent and assaultive as a result of a mental ~~illness~~ disorder and is unable to be served in local outpatient programs or inpatient facilities;

(b) ~~I~~is so suicidal as to require 1:1 attention over extended periods of time and is unable to be served in mental health center programs, other local outpatient programs, or local inpatient facilities;

(c) ~~I~~is so disorganized by a mental ~~illness~~ disorder that the individual is unable to appropriately care for a medical condition which places the individual in a life threatening situation, other than the mental ~~illness~~ disorder, ~~which places the individual in a life threatening situation,~~; or

(d) ~~I~~is suffering from an acute exacerbation of mental ~~illness~~ disorder which renders the individual unable, even with intensive supports, to maintain a level of functioning which is sufficiently high so as to allow the individual to remain in the community, and which would predictably require more than 14 days of inpatient care to stabilize.

(3) and (4) remain the same.

AUTH: Sec. 53-21-111, MCA
IMP: Sec. 53-21-111, MCA

3. The proposed changes to ARM 20.14.302 and 20.14.308 are necessary because they will: 1) shift the responsibility for voluntary admission screening activity from Community Mental Health Centers to the Managed Care Organization (MCO) and thereby assure the availability of screening designees; and 2) encourage compliance with 53-21-101, MCA by providing incentives to assure that persons are not voluntarily admitted to Montana

State Hospital if adequate treatment is available in a less restrictive setting.

Under the current rule, voluntary admission screening designees are employees of Community Mental Health Centers (CMHCs) and are appointed by the CMHC director.

With the recent change to managed mental health care, there is no assurance that CMHCs will continue to exist. Making the MCO responsible for identifying screening designees will assure that a responsible entity exists. Since the MCO is responsible for payment of hospital bed days utilized by individuals eligible for managed mental health care, the rule change will also give the MCO an incentive to provide services in a less restrictive community based setting if such services are adequate and available.

4. Interested persons 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 Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than September 2, 1997.

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

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 21, 1997.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.12.5003, 46.12.5004 and 46.12.5007 pertaining to passport to health program	))))	NOTICE OF PUBLIC HEARING OF PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On August 26, 1997, at 3:30 p.m., a public hearing will be held in the auditorium, of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.5003, 46.12.5004 and 46.12.5007 pertaining to passport to health program.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 5, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.5003 PASSPORT TO HEALTH PROGRAM: ELIGIBILITY

(1) The department may require a medicaid recipient in any of the following medicaid eligibility groups to enroll and participate in the passport to health program, unless exempted from participation as provided in (2):

(a) ~~aid to families with dependent children (AFDC) including participants in the FAIM project~~ families achieving independence in Montana (FAIM);

~~(b) AFDC related including participants in the FAIM project;~~

~~(c)~~ (b) supplemental security income (SSI); or

~~(d)~~ (c) SSI-related~~; or~~

~~(e) home and community services for persons with developmental disabilities~~.

(2) through (2)(h) remain the same.

(i) ~~is already enrolled in a managed care program under~~ has a private insurance program;

(2)(j) through (2)(n) remain the same.

(3) A non-pregnant, medicaid recipient 21 years of age or

older and eligible for medicaid as a participant in the FAIM welfare demonstration project as required at ARM 46.18.101, et seq. must enroll in an HMO unless an HMO is not available or the available HMO's are at capacity.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-116 and 53-6-117, MCA

46.12.5004 PASSPORT TO HEALTH PROGRAM: ENROLLMENT IN THE PROGRAM (1) remains the same.

(2) The recipient required to enroll in the program must select a primary care provider within 30 days of being notified of the enrollment requirement. ~~A second notice is sent to a recipient who does not choose a primary care provider within 30 days stating that if the recipient does not make a selection, the department chooses a primary care provider for the recipient.~~

(3) If the recipient does not choose a provider within 30 days of the ~~second~~ notification, the department may designate a primary care provider for the recipient.

(4) through (6) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-116, MCA

46.12.5007 PASSPORT TO HEALTH PROGRAM: SERVICES

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

(ii) ~~hospital~~ emergency room, ~~and~~ surgery, ~~services~~ physical therapy, occupational therapy, speech therapy, and home health services delivered as outpatient hospital services as defined in ARM 46.12.506;

(1)(a)(iii) through (1)(a)(ix) remain the same.

(x) public health departments as defined in ARM 46.12.570; ~~and~~

(xi) organ transplantation services as defined in ARM 46.12.583~~.~~; and

(xii) outpatient physical therapy services as defined in ARM 46.12.525;

(xiii) occupational therapy services as defined in ARM 46.12.545;

(xiv) speech therapy services as defined in ARM 46.12.530; and

(xv) home health services as defined in ARM 46.12.550.

(1)(b) through (2)(b) remain the same.

~~(c) outpatient physical therapy services as defined in ARM 46.12.525;~~

~~(d) speech therapy services as defined in ARM 46.12.530;~~

~~(e)~~(c) audiology services as defined in ARM 46.12.535;

~~(f)~~(d) hearing aid services as defined in ARM 46.12.540;

~~(g) occupational therapy services as defined in ARM 46.12.545;~~

~~(h) home health services as defined in ARM 46.12.550;~~

(2)(i) through (2)(ac) remain the same in text but are renumbered (2)(e) through (2)(y).

~~(ad)~~ (z) case management services as defined in ARM ~~46.12.1903, 46.12.1916, 46.12.1935~~ 46.12.1901 et seq. or as provided in ARM 46.20.103 through 46.20.126;

(2)(ae) through (2)(ah) remain the same in text but are renumbered (2)(aa) through (2)(ad). (3) and (4) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-116, MCA

3. The Passport to Health managed care program is operated under a so-called 1915(b) waiver agreement with the federal Health Care Financing Administration (HCFA). The period covered by waiver agreement is two years. States desiring to implement Medicaid managed care must submit a request to the federal government for the waiver of certain federal statutory provisions governing the implementation of a medicaid program by a state. In the request, a state must document its assurances that managed care will not reduce the access to or quality of care provided in fee-for-service Medicaid or increase the cost of services. Montana has submitted its third waiver request which is for the period of July 29, 1997 through July 28, 1999. The proposed changes to the rules are generally necessary to conform them with the changes being implemented through the recently submitted 1915(b) waiver request.

The proposed change to ARM 46.12.5003, replacing the term AFDC with the name of the new welfare reform program, Families Achieving Independence in Montana (FAIM), will conform the language of the rule with the nominative change in the provision of welfare services. The proposed change to the rule, removing the reference to a managed care program, will clarify that the medicaid Passport To Health program is not responsible for any services provided to a person by a third party insurer regardless of whether that insurer provides coverage through an HMO or not. The current language results in the medicaid managed care program assuming liability in circumstances where, as a payor of last resort, it should not have any liability.

The proposed change to ARM 46.12.5004, removing the provision for second notice in the selection of a primary care provider, will provide for more timely completion of enrollment in the program. Currently, if the person doesn't chose a provider, it can take up to 4 months for a person to be assigned, thus negating the benefit of the initial outreach done. With mandatory assignment of a Passport To Health provider by the Department, entry into the program will be completed sooner and will result in administrative efficiencies and cost-savings for

the Department. The proposed change, deleting the inclusion of home and community services as an exempted category, will remove a redundancy in rule provisions because the persons receiving those services are eligible for medicaid as persons who are SSI or SSI-related and there is other language in the rule providing for the exemption of those persons. The proposed change, modifying the term "medicaid recipient" in subsection (3) with "non-pregnant" and "21 years of age or older", will conform the term with the eligibility criteria for the portion of the medicaid population required under the federal waiver to participate in medicaid managed care based on their eligibility for the FAIM program.

The changes to ARM 46.12.5007, providing additional services to be managed through the primary care provider, will conform with the expansion under the federal waiver of the list of services which require Passport to Health authorization. The services being added to the list are physical therapy, occupational therapy, speech therapy, and home health. Through survey of and discussion with providers, associations et al., the Department has determined that it is important for the primary care provider, who is responsible for the overall management of an enrollee's physical health care, to manage and coordinate these ancillary services in order to benefit the health of the person.

4. The Department is proposing for the retroactive implementation of the proposed rule changes in order to conform with the implementation date to be provided by the waiver granted by HCFA. The department proposes for the amendment to be applied retroactively to August 1, 1997.

5. Interested persons 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 2, 1997.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 21, 1997.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rules 44.10.327 and 44.10.411 pertaining to reporting of contributions or expenditures by incidental political committees	))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On August 27, 1997, at 9 a.m., a public hearing will be held in Room 104 of the State Capitol Building, Helena, Montana, to consider the proposed amendment of rules 44.10.327 and 44.10.411 pertaining to reporting of contributions and expenditures by incidental political committees.

2. The rules as proposed to be amended appear as follows (new material is underlined; material to be deleted is interlined):

44.10.327 POLITICAL COMMITTEE, TYPES (1) For purposes of Title 13, chapters 35 and 37, MCA, and these rules, political committees shall be of three types:

(a) ~~Principal~~ principal campaign committee~~.~~;

(b) ~~Independent~~ independent committee~~.~~; and

(c) ~~Incidental~~ incidental committee.

(2) These types of political committees are defined as follows:

(a) A principal campaign committee is a political committee ~~which~~ that is specifically organized to support or oppose a particular candidate or issue.

(b) An independent committee is a political committee ~~which~~ that is not specifically organized to support or oppose any particular candidate or issue but one ~~which~~ that is organized for the primary purpose of supporting or opposing various candidates and/or issues ~~over a continuing period of time. For example, political party committees are independent committees~~.

(c) An incidental committee is ~~an independent~~ a political committee ~~which~~ that is not specifically organized or maintained for the primary purpose of influencing elections but ~~which~~ that may incidentally become a political committee by ~~reason of~~ making a contribution or expenditure to support or oppose a candidate and/or issue. ~~For example, a business firm or a partnership which makes an expenditure to support or oppose an issue is an incidental committee.~~

(3) "Primary purpose" shall be determined based upon such criteria as allocation of budget, staff or members' activity, and the statement of purpose or goals of the individuals or person.

AUTH: 13-37-114, MCA; IMP: 13-1-101(12) and 13-37-226, MCA.

REASON: The proposed amendments include some minor grammatical changes and also clarify the definitions of the three types of political committees recognized by the Commissioner. The Commissioner determined that more precise definitions of the terms are necessary.

44.10.411 INCIDENTAL POLITICAL COMMITTEE, FILING SCHEDULE, REPORTS ~~(1) An incidental political committee shall file reports according to the schedule set forth in section 13-37-226(4)(a) and (b), MCA, except that it shall only file reports for the reporting periods in which it makes contributions or expenditures for the purpose of directly or indirectly influencing the result of an election.~~

~~(2) If an incidental committee makes a contribution or expenditure in connection with an election after the closing date of books for the post-election report, it shall file a report within 20 days after the date of that contribution or expenditure. But if the election was a primary election and the committee will participate in the general, it shall, instead, file the pre-general report.~~

~~(3) An incidental political committee shall report contributions received and expenditures made to or on behalf of a candidate, issue, or political committee or to influence the results of an election in accordance with the requirements of ARM 44.10.511 and 44.10.531, with the following differences:~~

~~(a) If the incidental political committee is a firm, partnership, or other business entity, it need not report the original sources of the contributions so long as they were received in the normal course of business and were not gained, expressly or implicitly, for the purpose of being used, directly or indirectly, to influence an election.~~

~~(b) If the incidental political committee is an organization which has as its principal source of income the collection of dues, fees, subscriptions, or other sources of funds of a uniform amount from every member, it need not report the individual sources of the funds, unless the result of the following calculation equals more than $25 per person. Multiply the amount of the individual dues gained in a year, or whatever the period of membership paid for covers, whichever is greater, by the percentage of the total resources of the committee for the same period allocated to the influencing of elections; or~~

~~(c) If the incidental political committee is an organization which has as its principal source of income the collection of dues, fees, subscriptions, or other sources of funds of varying amounts from members, it must report the sources of the income of $25 or more from each person or the committee may utilize the formula set forth in subsection (3)(b) of this rule.~~

~~(d) The terms "contribution" and "expenditure" do not include non-partisan activity of an incidental political committee which is designed to educate or to encourage individuals to register to vote, or to vote, and which does not favor any particular candidate, party, issue, or political committee.~~

(1) Except as provided in (2), following notification by the commissioner, an incidental committee shall file a

statement of organization and periodic reports according to the schedule set forth in 13-37-226(2)(a) through (f), MCA.

(2) Except as provided in (2)(a), following notification by the commissioner, an incidental committee that makes contributions or expenditures to a state district candidate, to a local candidate or issue, or to a political committee that is specifically organized to support or oppose a state district candidate or a local candidate or issue, shall file a statement of organization and periodic reports according to the schedule set forth in 13-37-226(3)(a) through (c), MCA.

(a) An incidental committee that makes contributions or expenditures not exceeding $500 to a local candidate or issue or to a political committee that is specifically organized to support or oppose a local candidate or issue does not have to file periodic reports of contributions and/or expenditures, but must file a statement of organization.

(b) For purposes of (2), a "local candidate or issue" includes those referenced in 13-37-226(4), MCA, but does not include those referenced in 13-37-206, MCA.

(3) An incidental committee that makes contributions or expenditures in connection with a statewide issue or a candidate for a statewide office or a state district office must file the reports required by (1) even if its contributions or expenditures do not exceed $500.

(4) Nothing in this rule or in the statutes governing reporting of contributions and expenditures relieves any candidate or political committee (including an incidental committee) of the responsibility to timely, accurately, and fully report contributions and/or expenditures.

AUTH: 13-37-114, MCA; IMP: 13-37-226(6), MCA

REASON: The proposed amendments are necessary to clarify the reporting requirements for incidental committees.

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 Ed Argenbright, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, and must be received no later than September 2, 1997.

4. Jim Scheier has been designated to preside over and conduct the hearing.

JIM SCHEIER, Rule Reviewer

ED ARGENBRIGHT, Commissioner

Certified to the Secretary of State, July 21, 1997.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 6.6.8301, concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed.	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On February 24, 1997, the classification review committee published a notice of proposed amendment of rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability. The notice was published at page 369 of the 1997 Montana Administrative Register, issue number 4. Persons affected by the proposed amendment requested a public hearing, and on April 21, 1997, the classification review committee published a notice of public hearing on the proposed amendment of rule 6.6.8301. The notice of public hearing was published at page 664 of the 1997 Montana Administrative Register, issue number 8.

2. The classification review committee has amended the rule as proposed, updating the reference to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the manual were accepted as proposed, with the exception that the proposed collapse of codes 8861 and 9110 to establish code 8837 was rejected.

3. A public hearing on the proposed rule was held on June 5, 1997. The following persons attended the hearing and commented on the proposed rules: Rhoda Miller, Regional Services/MAIDS; Joe Mathews, State of Montana Disability Services Division; Mile Kelly, Flathead Industries; Sylvia Danforth, DEAP; Ardis Stockton, RRS; Richard Beger, Western States Insurance; Wallace Melcher, Helena Industries; Brian Bell, COR Enterprises, Inc.; Pat McCutcheon, Montana International; Christine Valivkady, CDC Ms/w; Roger Sweareager, Mission Motel Enterprises; Steve Kalgaard, Montana International; Kathy Smith, Family Outreach; Ray Barnicoat, Montana Association of Counties; Amy Taub, Spring Meadow Resources; Rob Tallon, Reach, Inc.; Sandi Mansdotter, Family Outreach; Robin Castle, Quality Life Concepts, Inc.; and Fran Gardee, Missoula Development Services Corp. No additional written comments were received. The committee has fully and thoroughly considered all comments received respecting the proposed rule and responds as follows:

COMMENTS: The comments received at the hearing all opposed

the proposed collapse of two codes (8861 and 9110) that currently differentiate between professional versus non-professional employees for charitable or welfare organizations that are engaged in, among other things, collecting and reconditioning used merchandise, including the sales of such merchandise in stores operated by these organizations. The proposal would have established a new code (8837), loss cost and rating values that would have included both professional and nonprofessional employees.

RESPONSE: The committee concurs with the comments, and declines to collapse the two codes. At the hearing, the committee concluded that a joint sub-committee consisting of committee and industry members should be formed to consider the concerns that led to the initial request to collapse the two codes. The committee invited individuals at the hearing to participate, and three individuals stated interest in being represented on such a sub-committee.

CHRISTY WEIKART, CHAIRPERSON
CLASSIFICATION REVIEW COMMITTEE

By: Christy Weikart
Christy Weikart
Chairperson

By: Gary L. Spaeth
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on the 18th of July, 1997.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to examinations, fees and temporary licenses	)))	NOTICE OF AMENDMENT OF 8.42.402 EXAMINATIONS, 8.42.403 FEES AND 8.42.405 TEMPORARY LICENSES

TO: All Interested Persons:

1. On May 19, 1997, the Board of Physical Therapy Examiners published a notice of proposed amendment of the above-stated rules at page 852, 1997 Montana Administrative Register, issue number 10.

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

3. No comments or testimony were received.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEFF PALLISTER, 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, July 21, 1997.

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

In the matter of the amendment of a rule pertaining to continuing education	NOTICE OF AMENDMENT OF 8.57.411 CONTINUING EDUCATION

TO: All Interested Persons:

1. On March 24, 1997, the Board of Real Estate Appraisers published a notice of proposed amendment of the above-stated rule at page 532, 1997 Montana Administrative Register, issue number 6.

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

3. No comments or testimony were received.

BOARD OF REAL ESTATE APPRAISERS
A. FARRELL ROSE, 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, July 21, 1997.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to General Requirements for All Investments in Mortgages and Loans	))))	NOTICE OF AMENDMENT OF RULES PERTAINING TO GENERAL REQUIREMENTS FOR ALL INVESTMENTS IN MORTGAGES AND LOANS

TO: All Interested Persons:

1. On May 19, 1997, the Board of Investments published a notice of public hearing on the proposed amendment of rules pertaining to general requirements for all investments in mortgages and loans at page 859, 1997 Montana Administrative Register, issue number 10.

2. The Board has amended ARM 8.97.1301, 8.97.1302, 8.97.1303, 8.97.1305, 8.97.1401, 8.97.1403, 8.97.1405, 8.97.1410, 8.97.1411, 8.97.1412, 8.97.1413, 8.97.1414, 8.97.1501, 8.97.1502 and 8.97.1503 exactly as proposed. The Board amended ARM 8.97.1402 and 8.97.1404 as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.97.1402 APPRAISALS (1) through (4)(b) will remain the same as proposed.

(c) Complete summary appraisal report under USPAP Standards Rule 2-2(b) will be required for commercial and multi-family (over 12 units) loans under $250,000 unless the loan-to-value is 50% or less of the project cost (up to $1 million) as defined under ARM 8.97.1411(2);

(d) Complete summary appraisal report under USPAP Standards Rule 2-2(a) will be required for commercial and multi-family loans $250,000 and over unless the loan-to-value is 50% or less of the project cost (up to $1 million) as defined under ARM 8.97.1411(2);

(e) through (7)(t) will remain the same as proposed."

"8.97.1404 CONVENTIONAL LOAN PROGRAM - PURPOSE AND LOAN RESTRICTIONS (1) through (6)(f) will remain the same as proposed."

Auth: Sec. 17-6-201, MCA; IMPLIED, Sec. 17-6-201, ~~17-6-624~~, 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 are as follows:

COMMENT NO. 1: Thomas E. Butorac, Vice President, First Interstate Bank of Commerce, Missoula Office commented on 8.97.1402 and 8.97.1502(3). Mr. Butorac's concern is primarily the cost to the borrower for an appraisal on SBA 504 loans where the SBA has more risk, as a result of their second mortgage, than the bank/Board of Investments. The cost in

Missoula for: 1) Self-contained Appraisal [8.97.1402(4)(d)] is $3,800-$4,000; 2) A Summary Appraisal [8.97.1402(4)(c)] is $3,000-$3,200; and 3) For a Restricted Appraisal is $1,500-$2,000.

RESPONSE: Since SBA 504 loans can represent a second position ranging from 25% to 40% of the project cost, it makes it difficult to adopt a rule using only SBA 504 loans for a lower appraisal standard. However, the Board may want to consider some of Mr. Butorac's approach by setting a Loan-to-Value of 50% as determined by ARM 8.97.1411(2) for all commercial loans based on a maximum project cost of $1 million or increase the dollar benchmark from $250,000 to $500,000. Staff concern is the quality of the appraisal and not the cost; thus a restricted appraisal format would not be acceptable under any scenario. In response to the above testimony the board voted to amend ARM 8.97.1402(4) as shown above.

COMMENT NO. 2: Mr. Butorac disagreed with the concept to increase the interest rate on the board's portion of the loan when jobs are eliminated because it would leave the state open for a law suit.

RESPONSE: The board's attorney feels the proposed rule change is defensible and the board adopts the proposed rule.

COMMENT NO. 3: Maggie S. Anderson, Vice President and Mike Polkowski, President, First Security Bank, West Yellowstone, Montana commented on 8.97.1301(20), 8.97.1401(1)(c)(ii) and 8.97.1410(10)(b) writing that they were strongly opposed to implementation of the proposed rule prohibiting loans to insiders being sold to the board.

RESPONSE: As proposed, a loan to an executive officer as defined under Regulation O may not be sold to the board by the bank employing the executive officer. However, executive officers of banks are able to obtain financing of their homes through a correspondent bank or affiliated bank or any other bank which, in turn, can sell the loan to the board. The reason for the rule is to eliminate the appearances of impropriety or conflict of interest, which is the heart of the issue with SBA and RBS (formerly FmHA) who have similar prohibitions.

COMMENT NO. 4: Jerry Sullivan, President, Flint Creek Valley Bank, Philipsburg, Montana, verbally requested that the board not adopt the rules regarding insiders, 8.97.1301(20), 8.97.1401(1)(c)(ii) and 8.97.1410(10)(b), because small banks have difficulty attracting or keeping good directors who are typically the best customers of the bank.

RESPONSE: Staff believes that the insider is able to obtain financing through a correspondent bank or affiliated bank or any other bank which, in turn, can sell the loan to the board. The insiders bank has no control over the credit sold to the board which is consistent with federal agencies utilizing the same prohibition. Mr. Sullivan fears that the correspondent bank may try to steal his customer as a result of

this rule change. In response to testimony a motion was made to delete from the proposed rules 8.97.1401(1)(c)(ii) and 8.97.1410(10)(b). Staff was instructed to bring this issue back to the board after more research has been done indicating a need for the rule. Staff was instructed to respond at the October 31, 1997 meeting.

COMMENT NO. 5: Two comments were received in support of the amendments.

RESPONSE: The board acknowledged the comments.

BOARD OF INVESTMENTS

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

Annie M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 21, 1997.

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

In the matter of the adoption of 11 new rules related to the workers' compensation administrative assessment	) NOTICE OF ADOPTION OF ELEVEN NEW RULES)))

TO ALL INTERESTED PERSONS:

1. On February 24, 1997, at pages 380 through 395 of the 1997 Montana Administrative Register, Issue No. 4, the Department published notice of a public hearing to consider the proposed adoption of new rules I through XI, relating to the workers' compensation administrative assessment.

2. On March 21, 1997, at 10:00 a.m., a public hearing was held in the first floor conference room, Room No. 104 of the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey, Helena, Montana, to consider the adoption of rules related to the workers' compensation administrative assessment. No member of the public appeared at that hearing.

3. On April 21, 1997, at pages 686 through 687 of the 1997 Montana Administrative Register, Issue No. 8, the Department published notice of an additional public hearing to consider the proposed adoption of new rules I through XI, relating to the workers' compensation administrative assessment.

4. On May 16, 1997, at 10:00 a.m., an additional public hearing was held in the first floor conference room, Room No. 104 of the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey, Helena, Montana, to consider the adoption of rules related to the workers' compensation administrative assessment. Members of the public spoke at the hearing and presented written comments. Additional written comments were received prior to the closing date of May 21, 1997.

5. After consideration of the comments received, the Department of Labor and Industry has adopted one new rule exactly as proposed:

RULE III [24.29.909] RECALCULATION OF ADMINISTRATIVE ASSESSMENTS MADE IN FISCAL YEARS 1992 - 1995.

6. After consideration of the comments received, the Department of Labor and Industry has adopted the new rules exactly as proposed, but with the following changes: (new material underlined, deleted material stricken)

RULE I [24.29.901] DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) and (2) Remain the same.

(3) "Associated entity" means a governmental body, other than the department, which has statutory duties related to workers' compensation and occupational disease matters, occupational safety acts, and from July 1, 1995 through April 24, 1997 boiler inspections, and which is funded by the administrative assessment. The Workers' Compensation Court is an example of an "associated entity". The term does not include the state fund or the self-insurers guaranty fund, or any other entity not funded in whole or in part by the administrative assessment.

(4) through (11) Remain the same.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE II [24.29.904] ADMINISTRATIVE ASSESSMENT METHODOLOGY IN GENERAL (1) The administrative assessment is calculated annually, and is based on the current year's budget for all programs funded by the administrative assessment. The budgeted ~~costs~~ expenditures are allocated to each individual plan on the same basis as actual ~~costs~~ expenditures were allocated to that plan in the previous year.

(2) The previous year's administrative assessment income, on a plan-by-plan basis, is compared to the total actual plan-by-plan ~~costs~~ expenditures of the previous year. Any difference between the income from an individual plan's administrative assessment and the actual ~~costs~~ expenditures for the plan in the previous year is carried forward as an adjustment to the administrative assessment in the current year.

(3) When an allocation is based on the number of items (such as claims filed, orders sought, files reviewed, disputes heard), the allocation is made in the ratio of number of those items generated by each plan to the total number of items generated by all plans. As an example, if the mediation program heard 100 disputes involving Plan 1 claims, 150 disputes involving Plan 2 claims, and 250 disputes involving Plan 3 claims in a year, the allocation would be 20% to Plan 1, 30% to Plan 2, and 50% to Plan 3.

(3) and (4) Remain the same, but are renumbered (4) and (5).

~~(5)~~ (6) Plan No. 1 members' share shall be ~~based on~~ levied against the preceding calendar year's gross annual payroll by determining the total gross annual payroll for all Plan No. 1 members, determining each plan member's prorata share thereof, and then using that proportion to determine the amount due from each Plan No. 1 member. Plan No. 2 members' share shall be ~~based on~~ levied against the preceding calendar year gross annual direct premiums collected in Montana on workers' compensation policies of Plan No. 2 insurers by determining the total gross annual premium for all Plan No. 2 insurers, determining each insurer's prorata share thereof, and then using that proportion to determine the amount due from each Plan No. 2 member. Plan No. 3 is one member. Therefore the amount calculated is the amount due from Plan No. 3.

(6) Remains the same, but is renumbered (7).

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE IV [24.29.912] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1992 (1) This rule provides for a methodology of allocating the ~~actual~~ 1991 actual ~~costs~~ expenditures and 1992 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1992.

(2) through (8) Remain the same.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE V [24.29.913] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1993 (1) This rule provides for a methodology of allocating the ~~actual~~ 1992 actual ~~costs~~ expenditures and 1993 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs in order to calculate the administrative assessment for 1993.

(2) through (8) Remain the same.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE VI [24.29.914] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1994 (1) This rule provides for a methodology of allocating the ~~actual~~ 1993 actual ~~costs~~ expenditures and 1994 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1994.

(2) through (4) Remain the same.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the same allocation as in (6)(a) for actual ~~costs~~ expenditures, and in (6)(b) for budgeted ~~costs~~ expenditures, for the special projects program;

(b) through (l) Remain the same.

(m) the same allocation as in (6)(a) for actual ~~costs~~ expenditures and in (6)(b) for budgeted ~~costs~~ expenditures, for the management information system program.

(6) In 1994, because of internal reorganization of the department, the department made a distinction between ~~actual~~ 1993 actual expenditures and ~~budgeted~~ 1994 budgeted expenditures for administration and clerical support for the insurance compliance programs.

(a) and (b) Remain the same.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) through (d) Remain the same.

(e) the same allocation as in (6)(a) for actual ~~costs~~ expenditures and in (6)(b) for budgeted ~~costs~~ expenditures, for the Safety Culture Act implementation program; and

(f) Remains the same.

(8) Remains the same.
AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE VII [24.29.915] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1995 (1) This rule provides for a methodology of allocating the 1994 actual ~~costs~~ expenditures and 1995 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1995.

(2) through (7) Remain the same.
AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE VIII [24.29.916] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1996 (1) This rule provides for a methodology of allocating the ~~actual~~ 1995 actual ~~costs~~ expenditures and ~~budgeted~~ 1996 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1996.

(2) through (5) Remain the same.

(6) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) through (c) Remain the same.

(d) (8)(b) through (8)(d), except (8)(d) only for 1995 actual ~~costs~~ expenditures, not 1996 budgeted ~~costs~~ expenditures, because the program was transferred to the department of commerce.

(7) and (8) Remain the same.
AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE IX [24.29.917] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1997 (1) This rule provides for a methodology of allocating the 1996 actual ~~costs~~ expenditures and 1997 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1997.

(2) through (6) Remain the same.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety bureau programs:

(a) through (c) Remain the same.

(d) the number of hours worked from July 1, 1996, through April 24, 1997, for the boiler inspection program administered by the department of commerce; and

(e) Remains the same.

(8) Remains the same.
AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE X [24.29.918] ASSESSMENT METHODOLOGY FOR FISCAL YEARS ~~BEGINNING~~ 1998 and 1999 (1) This rule provides for a methodology of allocating the immediately preceding year's actual expenditures and the current year's budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for ~~fiscal~~ years ~~beginning~~ 1998 and 1999.

(2) through (4) Remain the same.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in the previous year, for the independent contractor exemption program; and

~~(c) the amount of premium written during the previous calendar year for Plan No. 2 and the amount of premium written during the previous fiscal year for Plan No. 3, for the trade group determination program;~~

~~(d) the number of active employers in the previous year, for administration of the underinsured employers' fund program; and~~

~~(e)~~ (c) the weighted average of the expenditures in (5)(a) ~~through (5)(d)~~ and (5)(b), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(6) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) and (b) Remain the same.

(c) the number of field hours worked, for the mining inspection program; and

(d) ~~the number of hours worked, for the boiler inspection program administered by the department of commerce; and~~

~~(e)~~ the same allocation as in (7), for the Safety Culture Act implementation program.

(7) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (2)(a) and (2)(b);

(b) (4)(b) through (4)(e);

(c) (5)(a) ~~through (5)(d)~~ and (5)(b); and

(d) (6)(b) and (6)(c).

(8) For 1998, a credit totaling $3.5 million will be applied to offset the insurer's liability for the assessment as follows:

(a) Plan No. 1, $490,000;

(b) Plan No. 2, $612,500; and

(c) Plan No. 3, $2,397,500.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE XI [24.29.941] ASSESSMENTS OTHER THAN ADMINISTRATIVE ASSESSMENT (1) In addition to the administrative assessment, the department may levy other assessments on the plans as permitted by law.

(a) As provided by 39-71-902, MCA, for years 1992 through 1997, the department may assess each insurer an amount not to exceed 5% of compensation paid in the preceding fiscal year by each Plan No. 1 self-insurer, Plan No. 2 private insurer, or Plan No. 3, the state fund, for the purpose of funding the subsequent injury fund. The assessment will not be made when there is a surplus above and beyond projected liabilities and administrative ~~costs~~ expenditures necessary to fund the liabilities and administrative ~~costs~~ expenditures of the subsequent injury fund based on the most current actuarial study.

(b) As provided by 39-71-1004, MCA, the department may make an assessment of not more than 1% of compensation paid by each Plan No. 1 self-insurer, Plan No. 2 private insurer, or Plan No. 3, the state fund, for the purpose of funding the industrial accident rehabilitation account.

(c) Beginning January 1, 1998, assessments for the subsequent injury fund will be made as provided by 39-71-915, MCA.

(2) The department may combine the billing for any or all of the other assessments described in this rule with the billing for the administrative assessment.

(3) Payment of the bill for the assessments described in (1)(a) and (b) is due 30 days from the date of the bill.

AUTH: 39-71-203, MCA IMP: 39-71-902 and 39-71-1004, MCA

7. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Commenters stated that the proposed rules "do not comply" with Judge McCarter's ruling in WCC No. 9309-6893, Montana Schools Group v. Department of Labor and Industry (decided June 16, 1995) [hereinafter referred to as "the Court's ruling"], as evidenced by the fact that the Department does not require all of its staff to keep time records on a plan-by-plan basis. Related comments said that an industry advisory group had recommended that the Department track time on a plan-by-plan basis.

Response 1: The Department disagrees with the commenter's interpretation of the Court's ruling. The Department workers' compensation and occupational safety program has generally not organized itself in a "vertically integrated" fashion whereby one or more staffers perform multiple functions solely for a single plan. Instead, the Department's workers' compensation functions are "horizontally integrated" whereby staffers generally handle a single function, regardless of which plan is involved. The Department also notes that it has duties and responsibilities outside the scope of workers' compensation

and occupational safety, which influence its organization and structure.

The Department concludes that given its limited budget and staff, it is generally more efficient to be "horizontally integrated". One alternative technique considered by the Department would require sorting the workload by plan for each staffer, in order to allow that staffer to spend a discrete amount of time on a function for a particular plan, and then move on to the same function by another plan, and so forth. Such a system of sorting workload on a plan-by-plan basis would, in the Department's judgment, serve to decrease productivity in many of the programs in question. The Department notes, however, that for some programs, such as Self Insurance - Plan No. 1, Carrier Compliance - Plan No. 2, the Department has concluded that "vertical integration" is a reasonable alternative, and that program staff perform work solely attributable to a single plan. The Department made the organizational change to reflect that decision beginning in fiscal year 1994.

Another alternative, also considered and rejected by the Department as decreasing productivity, is to require all personnel to record the amount of time (in small increments) spent on a given matter on a plan-by-plan basis. A data entry operator, for instance, would, in the Department's judgment, spend as much or more time making time records as performing data entry. Likewise, while some functions can be tracked in a way that is directly attributable to a given plan, others (such as management or supervision) affect a number of programs or functions that serve all the plans. Another example is the medical regulations program, which establishes allowable fees for medical services furnished by health care providers. While staff could track time spent responding to provider and insurer inquiries on a plan-by-plan basis, the basic fee setting process is applicable to all three plans. However, in some of the safety programs (such as on-site inspections, boiler safety inspections, and mining inspections) where field work is involved, the Department has concluded that having staff track time on an "hours worked" basis, by plan, is reasonable and efficient. The Department bases that conclusion on the fact that because field work is typically performed in significant, discrete projects (only one facility can be inspected at a time by a single inspector), tracking by hours is not unduly cumbersome and does not require a disproportionate effort in comparison to the accuracy achieved and the time spent in recording the hours. Where the Department believes it to be reasonable and efficient, a program uses a time-tracking system.

In addition, the Department has been told by a number of insurers, including members of an insurance industry advisory group, that they would not be willing to pay the increased costs that would be incurred by more detailed time record keeping.

The Department believes that its tracking of "direct costs identifiable to a program", as defined in RULE II (7), is consistent with the requirements of law and the Court's ruling. The Department concludes that the proposed methodology is appropriate, given the staffing and budget constraints to which the Department is subject.

Comment 2: Several commenters stated that the proposed rules do not clearly identify what are "direct costs" and "indirect costs".

Response 2: The Department believes that the history of the workers' compensation administrative assessment is relevant to the understanding of the various terms used in 39-71-201, MCA. There has been a provision for paying the costs of administering the Workers' Compensation Act since 1915, when Montana adopted workers' compensation laws. See Section 2(m) and section 23, Chapter 96, Laws of 1915 [later codified as sections 2831 and 2963, respectively, of the Rev. C. of Mont. (1921)]. Prior to 1973, workers' compensation claims were adjudicated by the Industrial Accident Board, or IAB. The IAB also served as the administrative and regulatory body for the Workmen's Compensation Act, as it was then known. The IAB was expressly granted authority to hire such staff as was necessary to perform such duties as imposed by law or by the IAB. See sections 2(i) and (j), Chap. 96, L. of 1915 [secs. 2828 and 2829, R.C.M. (1921)].

In 1957, the Legislature changed the funding procedure for the IAB from a general fund appropriation to an assessment system whereby all insurers (Plans No. 1, 2 and 3) provided the bulk of the funding for the administration of the Workmen's Compensation Act and the various related occupational safety laws. See Chap. 176, L. of 1957, [codified at 92-116, R.C.M.]. In 1963, there were minor wording changes made as part of the restructuring of state treasury and general and special revenue accounts. See Chap. 147, L. of 1963.

In 1973 and 1975, however, there were a number of sweeping changes made to the Workmen's Compensation Act. In 1973, the Workmen's Compensation Act was made mandatory for virtually all categories of work, rather than being mandatory for "hazardous employments" and optional for all "non-hazardous employments". Medical benefits were instituted "without limit as to time or dollar amount", replacing the rather limited medical benefits previously available to injured workers. Then, in response to the discovery and exposure of a number of fraudulent practices, the IAB was dissolved in 1975. The IAB was replaced by the Division of Workmen's Compensation (later to become the Division of Workers' Compensation, and also referred to simply as "the Division"). The Division had two major components: the first was the regulatory function that oversaw the operations of all workers' compensation insurers (Plan 1 self-insurers, Plan 2 private insurers, and Plan 3, the State Compensation Insurance Fund) and also operated a number of safety programs; the second

was the operation of the State Compensation Insurance Fund, the insurer of last resort. In addition, the Division performed budget, accounting, personnel, and related functions for all of its components. Thus, the Division performed two basic duties: that of regulatory oversight, the other of providing insurance via the State Fund. The Division's "wearing of two hats" continued through 1989, when in response to a number of factors (including judicial questioning of the propriety of being both a regulatory agency and an insurance provider), the Legislature separated the regulatory functions from the insurance-providing functions. Effective January 1, 1990, the Legislature dissolved the Division of Workers' Compensation and transferred the regulatory duties [including safety functions] to the Department of Labor and Industry, and made the insurance-providing function a "stand alone" operation known as the State Compensation Mutual Insurance Fund.

The 1973 Legislature, as part of its re-write of the workers' compensation laws, also passed Chapter 253, Laws of 1973, which repealed 92-116, R.C.M. (1947), and enacted 92-116.1, R.C.M. (1973), the immediate predecessor of today's 39-71-201, MCA. It was in this context of the IAB's (soon to become the Division's) handling two distinct functions (the regulatory functions versus providing insurance coverage via the State Fund) that the distinction between "direct costs" and "indirect costs" was made, and the language of 92-116.1, R.C.M. was enacted. When the Division was established, it was appropriate to identify the "direct costs" of operating the regulatory functions, as opposed to the "direct costs" of operating the State Fund, and the "indirect costs" of the common overhead costs (such as accounting functions and office rent). Now, however, since January 1, 1990, (when the former Division of Workers' Compensation ceased existence) the statutory language referring to "direct costs" and "indirect costs" is somewhat anachronistic. The direct costs of the regulatory functions (including occupational safety) are still separate from the direct costs of the insurance coverage function of the State Fund. Thus, the Department concludes that its definition of "direct costs attributable to a program" is appropriate and consistent with the meaning and use in 39-71-201, MCA. To the extent that the commenters believe that there is a legislative intent for the Department to be organized so as to optimize the segregation of direct costs on a plan-by-plan basis (as opposed to segregation of regulatory function costs versus insurance-providing function costs), the Department disagrees, and finds no historic or other evidence to support commenter's position. See also the response to Comment 1.

Comment 3: A commenter questioned whether the Department has time records for any of its employees, and suggested that failure to have such time records violates the Court's ruling.

Response 3: The Department has time records showing what hours each employee worked in a given time period. There generally are not records that identify what work was done for

which plan, other than is noted in the rules. The Department employees which are assigned solely to performing activities funded by the assessment have historically not kept records of work time on a plan-by-plan basis, except where noted in the rules. Because the Department does not have contemporaneous records of time worked, on a plan-by-plan basis, the Department does not have any basis upon which to recalculate the assessment allocations on an "hours worked" methodology.

As stated in the response to Comment 1, the Department has concluded that detailed record keeping is not appropriate given the way it is organized and staffed. The Department disagrees with the commenter's underlying premise that the Court's ruling requires keeping time records on a plan-by-plan basis.

Comment 4: A commenter stated that the assessment could only be used to fund actions required by Title 39, chapter 71, MCA.

Response 4: Section 39-71-201(1), MCA, specifically provides that the assessment also funds the Occupational Disease Act (found in Title 39, chapter 72, MCA) and the various workplace safety programs administered by the Department (including those in Title 50, chapters 71, 72, and 73, MCA).

Comment 5: A commenter stated that the rules fail to describe the specific statutory authority for including any given function in the assessment mechanism.

Response 5: The Department concludes that the statutory language in 39-71-201, MCA, stating that the assessment is to fund "all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department ... must administer" provides sufficient authority for the inclusion of the various programs identified in the rules as the implementing authority. However, the Department also refers the commenter to 39-71-205, 39-71-206, 39-71-209, and 39-71-2902, MCA, for additional specific statutory citations regarding the various programs and functions the Department administers and funds via the assessment.

Comment 6: Commenters objected to having to pay for the cost of rulemaking and any litigation regarding the rules.

Response 6: Section 39-71-201(1), MCA, provides that all costs of administering the Workers' Compensation and Occupational Disease Acts and the various safety acts which the Department administers are to be funded through the assessment. In light of the Court's ruling, it is necessary to undertake rulemaking to implement the assessment statute. The Department has concluded that the cost of rulemaking is part of the cost of administering the programs. Likewise, legal costs associated with the Department's general administration of the Workers' Compensation and Occupational Disease Acts are part of the administration of the programs.

Comment 7: A commenter suggested adding the subsequent injury fund to the list of entities not included in the definition of "associated entity".

Response 7: The Department notes that the definition expressly excludes "any other entity not funded in whole or in part by the administrative assessment." As provided by 39-71-201, MCA, (1993) neither the subsequent injury fund or the uninsured employers' fund are funded by the administrative assessment. The Department notes that prior to fiscal year 1994, however, the administrative costs of the subsequent injury fund ("the SIF") were paid via the assessment. Because of changes enacted by the 1993 Legislature, only starting in fiscal year 1994 could the SIF administrative costs be paid out of the SIF itself. The Department concludes that the definition's catch-all clause is sufficient, and need not repeat statutory language.

Comment 8: A commenter stated that the identification of the boiler inspection and licensing program as being included in the definition of the term "associated entity" should be deleted from RULE I because of the passage of Senate Bill 290 (Chap. 385, Laws of 1997).

Response 8: The Department concludes that the term should remain in the rules, because of the applicability of the definition to the rules in general, and not just a particular time period. The Department, however, has amended the definition to reflect the time period during which the boiler inspection and licensing program was funded via the assessment, but administered by the Department of Commerce.

Comment 9: A commenter stated that pursuant to 39-71-534, MCA, the underinsured employers' fund ("the UIEF") was to be self-funded, and objected to the inclusion of costs associated with the UIEF as part of the assessment.

Response 9: The Department disagrees with the commenter's conclusion that the UIEF is not properly part of the assessment. The UIEF was to place such money as it recovered from employers that were "underinsured" into a special fund that was to be used first to administer and enforce the UIEF statutes, with any surplus to be transferred to the uninsured employers' fund ("the UEF"). The Legislature, however, did not provide any special source of funding for the start-up of the UIEF. Likewise, no general fund money was ever appropriated for the operation of the UIEF. In the fiscal note to the bill that created the UIEF (1993 Senate Bill 381), the Department stated that the UIEF operational costs would be funded via the administrative assessment. The Department also notes that although there is specific language in 39-71-201(1), MCA, which excludes the cost of operating the UEF and the subsequent injury fund from inclusion in the assessment, the Legislature did not place any such restrictions on funding the operations of the UIEF.

Comment 10: A commenter suggested that the Department describe the programs funded by the assessment in RULE II,

rather than in RULES IV through X.

Response 10: The Department disagrees with the suggestion because of the way that the Legislature has added, changed, or removed programs or functions that are administered by the Department and funded through the assessment. For instance, the database system program required by 39-71-225, MCA, did not come into existence until the beginning of fiscal year 1994. Likewise, the boiler licensing and inspection program was transferred to the Department of Commerce starting in fiscal year 1996, but was not removed from the assessment prior to the adoption of Senate Bill 290 (Chap. 385, Laws of 1997). Accordingly, the rules have identified the programs included in the assessment on a year-by-year basis.

Comment 11: Commenters stated that the proposed rules do not take into account the provisions of Senate Bill 290 (Chapter 385, Laws of 1997).

Response 11: The Department agrees. The rules were drafted and noticed for public hearing prior to the adoption of Senate Bill 290. The Department has amended RULES I, IX and X accordingly.

Comment 12: Commenters stated that the proposed rules do not take into account the provisions of Senate Bill 62 (Chap. 122, Laws of 1997) or Senate Bill 375 (Chap. 284, Laws of 1997).

Response 12: The Department agrees. The rules were drafted and noticed for public hearing prior to the adoption of Senate Bill 62 or Senate Bill 375. The Department has amended RULES X and XI accordingly.

Comment 13: Commenters disagreed with some of the provisions of RULE III regarding the recalculation of assessments and which insurers were eligible, stating that the proposed rule violates the Court's ruling.

Response 13: The Department has concluded that RULE III is consistent with the Court's ruling. The Department disagrees with the commenter's narrow reading of the ruling as limiting the effect of recalculation to merely a refund, or the expansive reading of the ruling that could support granting rights to those insurers which failed to exhaust their administrative remedies. If the ruling is held to mean that the Department must recalculate every insurer's assessment going back to 1992, the Department does not believe that a court would limit the recalculation to only those insurers where a refund or credit is due, without also allowing the recalculation to also require greater payment from some other insurers.

Comment 14: Commenters objected to the lack of specificity in RULE III regarding the source of funds to make refunds. Commenters also objected to having any portion of their assessment used for refund purposes.

Response 14: The Department does not plan to fund the cost of any refunds via an increased assessment upon other insurers. The Department anticipates that it will be able to find funds

within the Department's budget to cover the cost of the refunds or credits. However, if the cost of the refunds is significantly greater than expected, the Department may have to seek an additional appropriation from the Legislature, or obtain some other funding source. Likewise, if there is a determination that the Department must recalculate prior years' assessments for all insurers in all the plans, the Department anticipates that there will be some cost-shifting among the plans as a result of the recalculation.

Comment 15: A commenter stated that although RULE I(11) defines "year" as meaning "fiscal year", there is also a need to have a definition for a calendar year.

Response 15: The Department uses the term "calendar year" to specify the period of January 1 through December 31; the use of the term "year" by itself denotes the fiscal year, as defined in RULE I. However, for the purposes of clarity, the catchphrases of the rules make specific reference to "fiscal year" so that a person looking at the table of contents for the rules will be aware of the distinction. The Department concludes that a definition of "calendar year" is unnecessary.

Comment 16: A commenter objects to the fact that the term "actual costs" is not defined, suggesting that the term "actual expenditures" may be more accurate.

Response 16: The Department agrees with the comment that the term "actual expenditures" is more accurate, and has amended the rules accordingly. The Department has also amended the rules to refer to "budgeted expenditures" rather than "budgeted costs", and added conforming language to RULE X.

Comment 17: A commenter stated that although RULE II(1) says the assessment is "based on" the current year's budget, it is probably more accurate to say that the assessment is actually levied in an amount sufficient to fund the budgeted costs.

Response 17: The Department agrees that the term "levied against" is the phrase used in 39-71-201(1)(c), MCA, and is appropriate to use in RULE II(5), and has amended the rule accordingly. However, the Department believes that "based on" is an appropriate term to use to describe the process used in computing the final values that the Department uses in determining the amount of the assessment, and which is then used to make the levy against the various plan members.

Comment 18: A commenter stated that the term "based on" is not defined in the rules. The commenter also noted that 39-71-201, MCA, instead uses the phrase "levied against", and stated that because neither term is self-executing, the terms should be defined. The commenter also offered a definition for the term "levied against".

Response 18: The Department concludes that the term "based on" has an adequately plain meaning without specific definition. The Department construes the term "based on" as the process of identifying the factors or values that are used in establishing

the amount of the assessment or the allocation of costs/expenditures among the plans. The comment regarding the phrase "levied against" is well taken, and the Department has amended RULE II accordingly.

Comment 19: Commenters stated that the proposed rules are flawed because they do not change the underlying methodology of allocating costs from the way the Department has historically allocated costs in the administrative assessment, in defiance of the Court's ruling.

Response 19: The Department disagrees with the premise of the commenters that the underlying methodology used by the Department in the rules is either flawed or improper under 39-71-201, MCA, and the Court's ruling. The Court expressly found that the assessment statute, 39-71-201, MCA, does not violate the Equal Protection Clauses of either the Montana or United States constitutions, and that the Department's historical methods of measuring activity were not "patently arbitrary or unreasonable." The Court did find that the Department must undertake formal rulemaking to formulate the details by which the assessment is calculated, and consider any alternatives proposed by the public who comment on the proposed rules. By proposing rules, accepting comments from the public, re-drafting the rules, again holding public hearings on the re-drafted rules and accepting comments, and by then weighing the arguments for and against the proposed rules, the Department has undertaken the formal rulemaking procedure required by the Court's ruling and the provisions of the Montana Administrative Procedure Act.

Comment 20: A commenter stated that the basis upon which allocations are made is not expressed in the rules.

Response 20: The basis for allocation is described by program, by year, in the rules. However, in order to clarify how the allocation is applied, the Department has amended RULE II to include an explanation of the allocation process and an example of the application of that process.

Comment 21: A commenter suggested that the proposed rules have a "sunset" provision included.

Response 21: There is no statutory authorization in the Montana Administrative Procedure Act for including a "sunset" provision in rules. On the contrary, the proposed repeal of rules is subject to the same notice and comment requirements for the proposed adoption or amendment of rules. The Department notes, however, that most of the rules apply only to specific years. The Department anticipates that some of the rules will be amended and others repealed in response to recent legislation and the passage of time.

Comment 22: Commenters stated that the proposed rules lack sufficiently detailed information regarding the activities of the various programs funded via the assessment. One commenter suggested that every function be described in rule, and that the Department allow public comment on any decisions regarding

proposed changes to those functions.

Response 22: The Department believes that the proposed rules provide for an adequate level of detail so as to let insurers understand the components of the assessment. The Department uses the term "program" to mean a general area of activities or responsibilities, and uses the term "function" to refer to specific tasks undertaken to fulfill the objectives of the program.

The Department concludes that detailing every function in the rules would be cumbersome and unwieldy, and could slow or even limit the Department's ability to perform its regulatory functions when faced with novel situations or problems. The Department also concludes that it might be unable to fulfill new statutory duties imposed by the Legislature, or required as a result of court decisions, if it could not carry out those duties until the rule (or rules) were amended.

However, in order to address the commenters' concerns, the Department provides the following information generally regarding the essential functions of the programs funded by the assessment. The Department notes, however, that while the following descriptions provide greater detail about the functions of the various programs, the descriptions do not provide an exhaustive list of activities or functions of the programs. The programs funded via the assessment are (or have been):

1. Workers' Compensation Court. The Workers' Compensation Court was created by the Legislature in 1975 to provide an efficient and effective forum for the resolution of disputes between the insurer/employer and the injured worker, or a worker disabled as a result of an occupational disease. The Workers' Compensation Court has exclusive jurisdiction over many issues arising under the Workers' Compensation Act, Section 39-71-101, MCA, et seq, and the Occupational Disease Act, Section 39-72-102, MCA, et seq. The Workers' Compensation Court conducts trials in matters over which it has original jurisdiction. It is also responsible for the judicial review of decisions issued by the Department of Labor and Industry pursuant to the two Acts. Decisions of the Workers' Compensation Court are appealable directly to the Montana Supreme Court.

2. Hearings/Legal. The Hearings Bureau provides impartial administrative contested case hearings for the Workers' Compensation and Occupational Disease Acts. Cases include appeals of occupational disease panel decisions, rehabilitation decisions, termination date of workers' compensation benefits, and the award of attorney fees in workers' compensation cases. The Legal Bureau provides legal assistance on issues relating to the Workers' Compensation Act, Occupational Disease Act, and various occupational safety acts. Assistance includes drafting rules, reviewing and drafting legislation, researching and responding to requests for legal opinions. In addition, the

Legal Bureau represents the Department's interests regarding its regulatory duties for the two Acts and the various safety acts, at administrative hearings, the Workers' Compensation Court, District Court and the Supreme Court. These matters include challenges to the interpretation or validity of the Department rules, and constitutional challenges.

3. Administration and Clerical Support. Administration and Clerical Support are those centralized activities that serve the Employment Relations Division. Included are automation activities such as programming, network administration and computer support, fiscal management, desktop publishing and word processing, public conference costs, publication costs, telephone and reception support, and other collective services. Workers' Compensation is one of the sections of law administered by the Division. All sections of law administered by the Employment Relations Division share in the cost of supporting administrative services.

During fiscal year 1992 there were 9 programs associated with this cost object, consisting of: Claims Management, Files Management, Accident Cataloging, Rehabilitation-DLI, Medical Regulation, Self Insurance Plan I, Policy Compliance Plan II, Mediation, and Subsequent Injury administration.

During fiscal year 1993 there were 10 programs associated with this cost object, consisting of: Claims Management, Files Management, Accident Cataloging, Rehabilitation-DLI, Medical Regulation, Self Insurance Plan I, Policy Compliance Plan II, Mediation, Independent Contractor, and Subsequent Injury administration.

During fiscal year 1994 there were 12 programs associated with this cost object, consisting of: Claims Management, Files Management, Data Analysis, Rehabilitation-DLI, Medical Regulation, Self Insurance Plan I, Policy Compliance Plan II, Mediation, Independent Contractor, Subsequent Injury administration, Trade Group Determination and Underinsured Employer program.

During fiscal year 1995 there were 16 programs associated with this cost object, consisting of: Claims Management, Files Management, Data Analysis, Rehabilitation-DLI, Medical Regulation, Self Insurance Plan I, Policy Compliance Plan II, Mediation, Independent Contractor, Subsequent Injury administration, Trade Group Determination, Underinsured Employer program, Occupational Safety Statistics, Onsite Safety Consultation, Mining Inspection and Training, and Boiler & Crane Inspection program.

During fiscal year 1996 there were 13 programs associated with this cost object, consisting of: Claims Management, Data Analysis, Rehabilitation-DLI, Mediation, Medical Regulation, Self Insurance Plan I, Carrier Compliance Plan II, Independent

Contractor, Trade Group Determination, Underinsured Employers' Fund, Mandatory Inspection, On-site Consultation match, Mining Inspection and Training.

During fiscal year 1997 there were 12 programs associated with this cost object, consisting of: Claims Management, Data Analysis, Rehabilitation-DLI, Mediation, Medical Regulation, Self Insurance Plan I, Carrier Compliance Plan II, Independent Contractor, Trade Group Determination, Underinsured Employers' Fund, Mandatory Inspection and On-site Consultation, Mining Inspection and Training.

4. Special Projects. This category was first accounted for separately in fiscal year 1995. The Division currently identifies two activities as special projects. The first activity is the biennial publication of the Blue Book, a compilation of statutes, administrative rules and annotations affecting the Workers' Compensation and Occupational Disease Acts. The Department's publication of the Blue Book is authorized by 39-71-209, MCA. The second activity is coordinating various ad-hoc studies or commissions established by the Legislature or the Governor, such as the Governor's Task Force on Workers' Compensation. The Governor's Task Force on Workers' Compensation was established by Senate Bill 290 (Chap. 385, L. of 1997).

5. Claims Management. The Claims Management Unit regulates insurer and claimant compliance with the laws governing wage loss, medical benefits and rehabilitation services due an injured employee or an employee suffering from an occupational disease. The regulatory function is accomplished in accordance with the Workers' Compensation and Occupational Disease Acts, case law, and administrative rules. This unit regulates Plan No. 1 self-insurers, Plan No. 2 private insurance carriers, and the Plan No. 3 State Compensation Insurance Fund. The Claims Management Unit performs the statutory duties of the Department to regulate all aspects of claims, including the settlement process. These functions have been part of the Claims Management program throughout the time period in question.

6. Files Management. The files management program organized, maintained, stored and retrieved the physical copies of duplicate claim files that were kept by the Division up until fiscal year 1996, when implementation of the workers' compensation data base ("WCAP") made it possible to eliminate the need to maintain paper copies of claim files.

7. Data Analysis. This unit is responsible for the initial electronic record of injured workers' claims. This involves keying into the data base system all information received by hard copy, locating and correcting errors in information received, locating employers' coverage, releasing prior claims information and providing a phone hotline to

respond to medical providers' questions about where to send medical bills. Records kept by this unit are available to monitor the entire system and to help individuals carry out their responsibilities to claimants, insurers and others.

Prior to fiscal year 1994, the Accident Cataloging Section entered all Plan No. 1 and Plan No. 2 workers' compensation claims on the old "DB02" database system. This unit also entered all policy information received from Plan 2 carriers. This included new policies, cancellations and reinstatements. The medical provider hot line operator was also part of the Accident Cataloging Section.

The Data Analysis Unit ("DAU") replaced the Accident Cataloging Section in December 1994. From December 1994 to May 1995 DAU continued to enter Plan No. 1 and No. 2 claims on DB02. In summer 1995, Plan No. 2 policy coverage information was no longer entered into DB02. Insurers were instructed to send all policy information to the National Council of Compensation Insurers. When the workers' compensation database (WCAP) system came up in May of 1995, DAU stopped entering claims on DB02 and began entering them on the WCAP system. The assessment is still based on the number of new claims entered. The DAU also resolves discrepancies on claim and policy information that is entered manually or on information received through the Electronic Data Interface (EDI). The medical provider hot line operator is still assigned to the DAU.

8. Rehabilitation - DLI. In fiscal year 1992, the Department separately accounted for the ERD staff who served on the rehabilitation panels as the panel chair.

9. Rehabilitation Panels - DLI. Each 3-member rehabilitation panel consists of staff from ERD, the Job Service, and Department of Public Health and Human Services (formerly the Department of Social and Rehabilitation Services) who determine and recommend the appropriate return to work status for injured workers as soon as possible after an injury occurs. This process assures compliance with all vocational rehabilitation statutes and allows authorization of expenditure of funds for rehabilitation of injured workers. The panel process affected injuries occurring between 7/1/87 and 6/30/91 and panel activity is diminishing as these cases are resolved. The Employment Relations Division contracts with Job Service staff to provide workers' compensation and job service expertise for the panel. In fiscal year 1992, the Job Service staffer was accounted for separately from the ERD staff; thereafter all Department of Labor staff costs were aggregated. Beginning in the 1997 assessment, this function is no longer reported separately, and the costs are included as part of the Claims Management function.

10. Rehabilitation Panels - DPHHS/SRS. There are no costs in the 1997 assessment from DPHHS for rehabilitation panels.

However, prior to fiscal year 1997, DPHHS (and its predecessor, SRS) incurred costs associated with staffing its member(s) on the rehabilitation panels.

11. Mediation. The purpose of the Workers' Compensation Mediation Unit is to provide equitable and reasonable resolution of claim disputes before filing with the Workers' Compensation Court. The mediation process allows resolution of cases on an informal basis and at minimal cost to the parties involved. Mediation of most disputes is mandatory for claims occurring on or after July 1, 1987.

12. Management Information System. The workers' compensation data base ("WCAP") is a computerized data gathering system mandated by the 1993 Legislature and first appearing in the 1994 assessment. The Department was directed to develop a workers' compensation data base system to generate management information about Montana's workers' compensation system. The data base system collects and compiles information from insurers, employers, claimants, adjusters, rehabilitation providers, and the legal profession. Data collected provides management information to the legislative and executive branches for making policy and management decisions. The Department has integrated WCAP with the basic business systems of the Department's Workers' Compensation and Occupational Disease Act functions.

13. Claims Assistance Bureau Administration. This unit provides administration, support and coordination for the Workers' Compensation Mediation Unit, the MIS Unit, the Data Analysis Unit, and the Claims Unit.

14. Medical Regulation. The Medical Regulation Unit is responsible for developing, implementing and monitoring medical cost containment strategies, including fee schedules used to set the amount that insurers are required to reimburse non-hospital providers, and discount factors used to reimburse hospital providers. The unit provides training to users of this information, and assists in settling disputes between insurers and medical providers. The unit is also responsible for certifying managed care organizations. From 1993 through 1997, the medical regulations unit also worked to develop utilization and treatment standards used for the treatment of injured workers.

15. Self Insurance - Plan I. The Plan I Unit is responsible for self insurance issues, including private, public, individual and group self-insurers. The Plan I Unit assures employers applying for permission to self insure have: financial solvency and the ability to pay claims; adequate security deposit levels; and security deposits in a form allowing for the immediate availability of proceeds in the event of employer financial insolvency.

In the fiscal year 1992 and 1993 assessments the Plan I and Plan II functions were combined and shown as Policy Compliance. In fiscal year 1994 the activities were separated into Policy Compliance - Plan I and Policy Compliance - Plan II so that workload associated with each plan could be assessed directly. The names of these functions were changed to Self Insurance - Plan I and Carrier Compliance - Plan II in the fiscal year 1997 assessment to more properly describe the activity occurring in these areas.

16. Carrier Compliance - Plan II. The Plan II Unit authorizes private insurance companies to write workers' compensation insurance, monitors compliance with filing requirements, sets security deposit requirements (prior to July 1, 1997), and ensures that deposits are in a form that allows for the immediate availability of proceeds in the event of insurer insolvency. The unit tracks the company adjusting claims for the insurer and monitors compliance with the in-state adjuster rule. The unit also processes extraterritorial applications.

In the fiscal year 1992 and 1993 assessments the Plan I and Plan II functions were combined and shown as Policy Compliance. In fiscal year 1994 the activities were separated into Policy Compliance - Plan I and Policy Compliance - Plan II so that workload associated with each plan could be assessed directly. The names of these functions were changed to Self Insurance - Plan I and Carrier Compliance - Plan II in the fiscal year 1997 assessment to more properly describe the activity occurring in these areas.

17. Independent Contractor Exemptions. The independent contractor exemption process includes assisting individuals with completing the exemption application, processing the applications, and issuing exemptions and denial letters. The funding source for this activity was changed by the 1995 Legislature from assessment funds to an application fee. Fiscal year 1996 represents the first year the new application fees were collected for this activity, and the 1997 assessment reflects that the exemption process was completely supported by fees rather than administrative assessment. Although the independent contractor exemption renewal functions are now supported by a user fee, any shortfall in fee revenue is funded via the assessment. Fees generated in excess of expenditures for a given year are carried over to the following year to offset program costs.

This activity was combined with the Policy Compliance function in the fiscal year 1992 assessment. Since that time it has been accounted for as a separate function in the administrative assessment report.

18. Trade Group Determinations. Legislation in 1993 required the Department to begin processing applications and

certifying employers wishing to insure as a group in order to obtain premium discounts with either the State Fund or private insurance carriers. The Department's role in certifying these groups was removed by the 1997 Legislature, effective beginning fiscal year 1998.

19. Underinsured Employers' Fund. The Underinsured Employers' Fund (UIEF) was established in fiscal year 1994 to ensure employers properly report to workers' compensation insurance carriers the type of work their employees perform so proper premium is paid. The fund uses the money collected in fines and penalties to offset the cost of administering the fund. Any surplus in the fund will be transferred to the Uninsured Employers' Fund (UEF). The assessment to each plan is based on the number of employers enrolled in each plan. Beginning in fiscal year 1998 the UIEF was terminated and these program responsibilities were removed from assessment funding and incorporated into the UEF program, which is not funded via the administrative assessment.

20. Regulation Bureau Administration. The Workers' Compensation Regulation Bureau Administration provides the management and support for the Medical Regulations Unit, the Self Insurance - Plan I Unit, the Carrier Compliance - Plan II Unit, the Independent Contractor Exemption function, the Trade Group Determination function, and the Underinsured Employers' Fund. In addition, attorney fee regulation is accomplished by Regulation Bureau administration staff. Time spent in non-workers' compensation functions (Subsequent Injury Fund and Silicosis) is charged to the appropriate program. The assessment to each plan for workers' compensation functions is based on the weighted dollar average of all the functions administered by the bureau. Authority for funding these functions via the assessment is 39-71-201(2), MCA. The cost associated with administration of the Regulation Bureau were first shown separately in the fiscal year 1996 assessment. Previous to that assessment the costs of administration were included in each of the individual functional areas comprising the Bureau.

21. Subsequent Injury Fund. The administrative expenses of operating the Subsequent Injury Fund (SIF) were charged in the fiscal year 1992 and 1993 assessments. Legislation was enacted in 1993 that allowed administrative expenses to be paid out of the Fund. The SIF is a program designed to provide an incentive for employers to hire individuals with vocational handicaps. The Regulation Bureau administers the Fund, certifies individuals and reimburses insurers for qualifying expenses.

22. Occupational Safety Statistics. In cooperation with the U. S. Bureau of Labor Statistics, this unit develops statistical data on occupational injuries and illnesses in the work place from a survey of Montana private sector employers.

Statistical data is also developed through a census of occupational injury deaths occurring in the state. The collection of this data is required under the Occupational Safety and Health Act of 1970 (Public Law 91-596). These functions are performed by Department pursuant to Sections 50-71-106 and 50-71-107, MCA.

23. Mandatory Inspection and On-Site Consultation. This program incorporates all activities such as inspections, testing, training, investigations, travel and paperwork for six field staff and administrative support staff. Also included is the On-Site Consultation function which is funded 90% by federal funds and 10% by assessment funds (required match).

The identifier for this program has been changed several times during these assessment periods in an attempt to more accurately define the work that is being done. The label was changed in the fiscal year 1994 assessment from Loss Control to Loss Control & On-Site Consultation. It was obvious in listening to various parties that they were somewhat confused by this function label, so the identifier was changed to Mandatory Inspections, as it is funded 100% by the assessment. The On-Site Consultation moniker also caused confusion because many thought the program was funded totally by the assessment, so for the fiscal year 1997 assessment it was labeled as the On-Site Consultation Match. Only 10% of the program was funded by the assessment, a required match of the 90% grant funds from OSHA. In 1997 the functions were also broken out into the separate line items in response to a request from insurers. The mandatory inspection and on-site consultation functions are performed by the Department pursuant to Section 50-71-106, MCA.

24. Mining Inspection and Mine Training. The Mining Unit, comprised of three mine inspectors and administrative support staff, perform mine inspections, testing, training, travel, accident and fatality investigations and related paperwork. The mining inspections are funded 100% by the assessment. In addition, the unit receives a federal grant for a mine safety training officer, who is supported by 80% federal funds and 20% assessment funding (required match). In fiscal year 1997 the functions were broken out into the separate line items in response to a request from insurers. The program is operated by the Department pursuant to Title 50, chapters 72 and 73, MCA.

25. Supplemental Data Systems. This function (which was combined with the data analysis program in 1994) performed the type of accident coding, based on information submitted on the workers' compensation forms for the employer's first report of injury. The accident coding was used as part the data used by the occupational safety statistics program.

26. Administration (safety bureau). In fiscal years 1992 and 1993, expenditures for administrative functions related to the operations of the Safety Bureau were aggregated and

identified separately from the underlying programs. Since then, the proportionate amount of administrative expenditures are included in the individual programs operated by the Safety Bureau.

27. Boiler Inspection and Licensing. During fiscal years 1992 through 1995, the Safety Bureau inspected boilers throughout Montana and licensed boiler operators, pursuant to Title 50, chapter 74, MCA. The statutory fees collected by the program where used to offset the costs of operating the program, thus reducing the amount of funding required from the assessment.

28. Boiler Inspections - Department of Commerce. On July 1, 1995, this function was transferred from the Department of Labor and Industry to the Department of Commerce, Building Codes Bureau. The fiscal year 1996 expenditures relate to the inspections of boilers. Assessments are based on travel, inspections and all directly related preparation and report time, including field activities of three boiler inspectors and administrative support staff. Inspection fees collected are deducted to reduce the assessment needed for this activity. The assessment to each plan is based on the number of hours worked for each plan. The fiscal year 1997 budgets are established by the Department of Commerce and inspection fee revenue (new since July 1, 1995) will be deducted to reduce the assessment needed for this activity. The program is funded through April 24, 1997, by the assessment. (See Chap. 385, Laws of 1997, section 1.)

29. Safety Culture Act. Implementation of this function has been assigned to the Safety Bureau pursuant to 1993 legislation, as part of the solution to the problems of the workers' compensation system. Due to the nature of the work, all funding for the Department's role in providing education and outreach is received from the assessment.

8. The new rules are effective August 5, 1997.

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 21, 1997.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of 11.5.1002 pertaining to day care rates	)))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 19, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rule 11.5.1002 pertaining to day care rates at page 879 of the 1997 Montana Administrative Register, issue number 10.

2. The Department has amended rule 11.5.1002 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The state Welfare Advisory Committee should be kept informed of these and future child care program changes. A monthly or quarterly update to the Welfare Advisory Committee regarding changes in child care is suggested. The Welfare Advisory Committee should be kept informed of any change in the number of providers across the state.

RESPONSE: Child care staff attended the last statewide Welfare Advisory Committee and provided a brief report regarding the changes in child care resulting from the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (PRWORA). Additionally, a staff member of the Welfare Advisory Committee, also is a member of the Child Care and Development Fund Advisory Council and regularly brings child care fund information to the Welfare Advisory Committee. Regular attendance in the future by the child care staff at the Welfare Advisory Committee meetings is being arranged and changes in the child care provider numbers will also be provided.

COMMENT #2: A survey should be conducted to determine if there is a difference by county in the rates child care providers charge. The Department should not wait too long to look at child care rates or to delay in changing them to reflect the true local market rates. If this is not done timely, the Department could be wasting child care funds that will later be needed and it is unlikely in the future that more general funds for child care will be found. Child care provider payment rates should be more reflective of actual local market rates in Montana communities, rather than like Medicaid, a flawed federally driven system.

RESPONSE: The Montana Automated Child Care System (MACCS) market rate survey report is being re-formatted to collect child

care provider payment rate data by county. This survey is anticipated to be conducted this fall. If the survey finds that the market rate differs by county, MACCS will be enhanced as soon as possible to pay providers different rates depending in which county they live.

4. The proposed changes will apply to services provided on or after July 1, 1997.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 21, 1997.

VOLUME NO. 47 OPINION NO. 6

CITIES AND TOWNS - Property in city subject to city and county tax levy for joint city-county library;
COUNTIES - Property in city subject to city and county tax levy for joint city-county library;
INTERGOVERNMENTAL COOPERATION - City and county agreement that property in city subject to city and county tax levy;
LIBRARIES - Property in city subject to city and county tax levy for joint city-county library;
MONTANA CODE ANNOTATED - Sections 7-14-2501(2), 15-10-402, 22-1-303, -304, -313, -316, -316(2), (3);
OPINIONS OF ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 19 (1996)

HELD: A city and a county may enter into an agreement to operate a joint city-county library under which both the city and the county may levy taxes on property located in the city.

July 10, 1997

Mr. Bruce Becker
Livingston City Attorney
203 South Main
P.O. Box 1113
Livingston, MT 59047-1113

Ms. Tara DePuy
Park County Attorney
414 East Callender
Livingston, MT 59047

Dear Mr. Becker and Ms. DePuy:

You have requested my opinion on a question which I have phrased as follows:

> If a city and a county operate a joint library pursuant to Mont. Code Ann. § 22-1-316, are both the city and the county authorized to levy taxes on property within the city to operate the joint city-county library?

The City of Livingston owned and operated a city library which was funded by the 7-mill levy authorized by Mont. Code Ann. § 22-1-304. Several years ago, the city entered into an agreement with Park County pursuant to Mont. Code Ann. § 22-1-316 to operate a joint city-county library. Prior to the enactment of Initiative 105 (Mont. Code Ann. § 15-10-402), the county had levied 2.5 mills of the 5 mills authorized by § 22-1-304. Under the terms of the library agreement, the 2.5 mills levied by the county were levied only on county property located outside of the city.

You state that the current mills being levied by both units of local government do not meet the library's current operating expenses. The existing library agreement is about to expire and you are renegotiating a new one. A proposal has been made to eliminate the contractual provision which precludes the county from levying 2.5 mills on county property within the city. In that event, the city property would be subject to both the county and city levies to support the same library. You ask whether imposing both levies on the city property results in impermissible double taxation.

Double taxation occurs when "the same property or person is taxed twice for the same purpose for the same taxing period by the same taxing authority." Lake Havasu City v. Mohave County, 675 P.2d 1371, 1381 (Ariz. Ct. App. 1983); see also 84 C.J.S. §§ 39, 40. Under this definition, there is no double taxation when two different local government entities impose a tax. With respect to your question, there could be no double taxation because the county and the city are two separate taxing jurisdictions.

McQuillin defines double taxation differently, highlighting a concern for uniformity within a taxing district:

> In order for double taxation to exist, both taxes must be imposed for the same purpose, upon part only of the property of a particular taxing district, and if all property in a given district is taxed under valid

> levies the result is the same as if a single levy for the total amount were imposed.

McQuillin, Municipal Corporations § 44.23, at 106. Thus, under McQuillin's definition, double taxation would arise only if part of a taxing jurisdiction sustained a double burden for taxes. Such a definition recognizes uniformity and equity within a taxing jurisdiction. This definition is also not applicable to your question, however, because the board of trustees for a joint city-county library cannot be considered a separate and distinct taxing jurisdiction. See 46 Op. Att'y Gen. No. 19 (1996).

Neither the United States Constitution nor the Montana Constitution prohibits taxation by two different taxing jurisdictions for the same service. Article VIII, section 3 of the Montana Constitution provides that the State shall appraise, assess and equalize the valuation of all property to be taxed in the manner provided by law. While this provision has been characterized as requiring "uniformity of taxation among like taxpayers on like property," Department of Rev. v. Puget Sound Power & Light, 179 Mont. 255, 587 P.2d 1282 (1978), it is apparent that this statement refers to the uniform valuation of property within a classification. Department of Rev. v. State Tax Appeal Bd., 188 Mont. 244, 613 P.2d 691, 693 (1980) (constitutional and statutory requirements for equalization or uniformity within a legislative classification cannot be questioned).

I have not discovered any Montana cases which prohibit the taxation by two different taxing jurisdictions to support the same service. In State ex rel. Siegfried v. Carbon County, 108 Mont. 510, 92 P.2d 301 (1939), the City of Red Lodge had imposed a levy for county road and street maintenance and the county had similarly imposed such a levy. Under the express terms of the controlling statute, Rev. Codes Mont. (1935) § 1617, if the city had imposed such a levy it was exempt from payment of the county levy. A similar exemption exists today in Mont. Code Ann. § 7-14-2501(2), which states that a county road levy does not apply to incorporated cities and towns which by ordinance provide for a levy of a like tax.

In Siegfried, a special levy was authorized over and above the standard county levy and the question was whether the city residents could be subject to this additional levy. The court recognized that it is the legislature which determines what property benefits from taxation and which may exempt city property in whole or in part from county-wide taxation. 92 P.2d at 304. As there was no legislative exemption for city residents with respect to the special levy, the levy was not

considered improper double taxation. Thus, the city residents were liable for the city's road levy, as well as the county-wide road levy. The Siegfried court stated that the requirement for uniform and just taxation is met when the rate of assessment and taxation is uniform and just throughout a taxing district. 92 P.2d at 304; see also Kucharski v. White, 247 N.E.2d 428 (Ill. 1969) ("The fact that there are levies by different public authorities having practically similar powers exercised within parts of the same territory does not in and of itself constitute lack of uniformity in taxation.").

The legislature has given local governments great flexibility with respect to apportionment of expenses and funding for support of library services. A county or a city may separately establish its own public library. Mont. Code Ann. § 22-1-303. To support a county library, the county may levy a special tax not to exceed 5 mills on all property in the county. To support the city library, the city may levy a tax not to exceed 7 mills on property in the city. Certainly, if Park County maintained a county library separate from the Livingston city library, there is no question that the statutory scheme allows property in the city to be taxed twice for provision of library services. See also City of Ormond Beach v. County of Volusia, 383 So. 2d 671 (Fla. 1980). This does not mean that the city *must* support both a county library and a city library. Montana Code Annotated § 22-1-313 expressly allows a city to become exempt from the county levy upon notification that the city no longer wishes to maintain the county library.

A city and county may also join, as you have, to establish and maintain a joint city-county library. No parameters, other than maximum mill levies, have been set by the legislature with respect to the funding of such a joint enterprise. The expenses of the joint city-county library are apportioned between the city and the county "on such a basis as shall be agreed upon" in the contract establishing the joint library. Mont. Code Ann. § 22-1-316(2). Most importantly, Mont. Code Ann. § 22-1-316(3) provides:

> The governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

This provision expressly allows both the city and the county having entered into a joint city-county library agreement to levy a tax as provided in Mont. Code Ann. § 22-1-304. There is no statutory exemption from the county levy for property located in the city.

In short, I have found no authority which would prohibit the county from levying 2.5 mills upon property county-wide. This is not to say that the city must agree to such a provision in the new contract. The city has the option to run its own library under § 22-1-313 and be exempt from any county levy. Also, the city and the county have broad discretion in negotiating the apportionment of expenses and funding for provision of library services.

THEREFORE, IT IS MY OPINION:

A city and a county may enter into an agreement to operate a joint city-county library under which both the city and the county may levy taxes on property located in the city.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/elg/dm

VOLUME NO. 47 OPINION NO. 7

BONDS - Determining proper source for shortfall on general obligation bonds;
PUBLIC FUNDS - General fund pledged as security for bonds;
STATE AGENCIES - Determining proper source for shortfall on general obligation bonds;
MONTANA CODE ANNOTATED - Sections 1-2-101, -102, 17-2-108(1), 17-5-402(2), -414 to -416, -423, -424, -802, -802(2), 17-7-304, 67-1-301(3), (4), (4)(a)(i), -302(4);

HELD: The state general fund is the proper source for payment of a shortfall to bondholders with respect to long-range building program bonds issued to create the airport loan program.

July 18, 1997

Mr. Marvin Dye, Director
Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 209726
Helena, MT 59620-9726

Dear Mr. Dye:

You have requested my opinion on the following question, which I have rephrased as follows:

Is the general fund or a special revenue fund defined in Mont. Code Ann. § 67-1-301(4) responsible for payment of bonds issued under the long-range building program when the bond proceeds were appropriated for use by the airport loan improvement program?

In 1983, the legislature established an airport loan program in order to provide matching funds for the federal Airport and Airway Improvement Act of 1982. Montana Code Annotated § 67-1-301(3) (1983) provided that there would be deposited in a special revenue fund to the credit of the Department of Administration an amount not to exceed the matching amount necessary to participate in the federal act. This special revenue fund would be composed of proceeds from the sale of bonds under the long-range building program as well as any repayments made on the loans.

House Bill 900, 1983 Mont. Laws, was an appropriation bill that allocated $1.3 million in long-range building bond proceeds to airport improvements. Section 9 of House Bill 900 specifically addressed payment on the bonds and provided, "[T]here is appropriated from the general fund to the Department of Administration an amount sufficient to pay all interest and

principal due and owing on bonds issued and sold pursuant to House Bill 558." House Bill 558 was codified as Mont. Code Ann. §§ 17-5-414 to -416 and granted the board of examiners authority to issue and sell long-range building program bonds in the manner prescribed by Mont. Code Ann. title 17, chapter 5, part 8. Title 17, chapter 5, part 8 generally described the issuance of general obligation bonds by the State of Montana and provided in § 17-5-802(2) (1983) that the full faith and credit of the state was pledged for payment of all bonds and notes issued pursuant to that part. Section 17-5-802 further provided that all principal, interest and redemption premium, if any, becoming due during a fiscal year "must be included in the state budget for such year and sufficient revenues must be appropriated for payment thereof from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for payment thereof."

The bonds issued under the long-range building program contained a security clause that mirrored the statutory language in which the full faith and credit and taxing powers of the state were pledged for payment of the principal and interest on the bonds. The clause further acknowledged that the budget for any fiscal year must include sufficient revenues for payment of the interest and principal on the bonds.

In its appropriation to other programs of proceeds from the account containing the proceeds of the long-range building fund, section 9 of House Bill 900 provided:

> [T]he department of administration is hereby irrevocably instructed to provide for payment of principal, interest, and redemption premium on such bonds, if any, from the money in the general fund and, if the general fund is not sufficient for such purpose, to provide for payment thereof from any other funds of the state legally available for payment thereof.

The statewide airport improvement program received $1.3 million in long-range building bond proceeds under section 5 of House Bill 900.

A special revenue account, credited to the Department of Administration, was established for the bond proceeds. Mont. Code Ann. § 67-1-301(3) (1983). The Department of Administration was authorized to provide loans to local and state government agencies for airport improvement projects not to exceed the amount required as a sponsor's share for projects authorized under the federal Airport and Airway Improvement Act of 1982. All repayments on the loans were also to be credited to this special revenue account. The loans were to bear an interest rate intended to fully retire the long-range building bonds issued under the authorization provided by the 48th Montana Legislature. Mont. Code Ann. §§ 17-5-414 to -416

(1983). An amount equal to 1% of the loans was allocated from the special revenue fund for administrative purposes.

You have provided me with a memorandum of understanding, executed in October 1983, between the Department of Administration and the Department of Commerce describing each agency's duties and responsibilities under the new airport loan program. The memorandum essentially mirrors the legislation, providing that the Department of Administration would maintain overall responsibility for the fund while the Department of Commerce would be responsible for issuing loans, repayment of which was intended to fully retire the long-range building bonds.

Prior to establishment of the program for airport improvement loans, another special revenue fund existed which was created through a tax of one cent per gallon on aviation fuel. The money from this tax was deposited to the credit of the Department of Commerce "for the sole purpose of carrying out its functions pertaining to aeronautics." Mont. Code Ann. § 67-1-302(4) (1983).

In 1985, the legislature continued the airport loan improvement program. Section 1, chapter 676, 1985 Mont. Laws, appropriated $1.7 million from the long-range building program account to provide loans for the sponsor's share of airport improvement projects under the federal act. This appropriation was "contingent upon the authorization and sale of general obligation bonds by the 49th Legislature and the Board of Examiners." Id. You have provided me with another memorandum of understanding between the Department of Administration and the Department of Commerce, executed in June 1985, which is substantially similar to the memorandum executed in 1983. The aeronautics program was transferred to the Department of Transportation in 1991.

In 1987, the airport loan program was extended another two years. The legislature provided, however, that the program would end on June 10, 1989. 1987 Mont. Laws, ch. 4; Mont. Code Ann. § 67-1-301(4) (temp.). Additionally, the Department of Administration proposed an amendment to the program which provided:

> When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the bond proceeds.

The Department of Administration proposed this amendment because only $200,000 of the $1.7 million of bond proceeds that had been appropriated in 1985 had been used for loans. The department proposed that the unexpended bond proceeds and interest on the bond proceeds be invested and the income used to retire the

debt. Otherwise, reasoned the department, under § 17-7-304 the excess funds would revert to the long-range building program and would be available for reappropriation. If the funds were reappropriated to another agency and the agency did not retire the debt, the department recognized, "the general fund would be forced to assume the remaining debt payments." Mins., Sen. Local Gov't Comm., Feb. 5, 1987, Hearing on HB 159, Ex. 1. Thus, the legislation was designed to protect the general fund in case there was a shortfall on reappropriation of the funds.

Your inquiry arises because as the bond retirement occurred, a deficit was nonetheless created between the bond payments and the repayment on the loans. You state that several factors appear to have combined to create this shortfall. Not all of the available bond proceeds were loaned, thereby reducing the loan and interest payments. The proceeds were invested in a short-term investment pool at an interest rate that was less than the bond rate. Lastly, some loans were prepaid with no penalty. As a result, approximately $110,000 beyond the balance of the special revenue account was necessary to fully retire the bonds.

I am told that this shortfall has already been paid out of the general fund by the Department of Administration. Nonetheless, an audit was performed by the Legislative Auditor's Office which reviewed the special revenue accounts of the program at the end of fiscal year 1994-95. The report of the audit recommended that the special revenue accounts of the Aeronautics Division be responsible for the shortfall. The two special revenue accounts referenced in the audit report were the Aeronautics Division account, which was established pursuant to a one-cent tax on aviation fuel as currently defined in Mont. Code Ann. § 67-1-301(4)(a)(i), and an account established through a one-cent aviation fuel tax that allowed for loans to local governments. In 1993, the legislature had replaced the airport loan program in which the money for the loans was derived from bond proceeds with a program in which the money for lending was derived from a one-cent fuel tax. Mont. Code Ann. § 67-1-301(4)(b). The Legislative Auditor's Office suggested that either special revenue fund should be used to pay for the shortfall on the bonds issued for the airport loan program.

Your question is whether the general fund or the aeronautics special revenue funds are responsible for the shortfall. As discussed below, I conclude that the general fund was responsible, because the bonds were issued as general obligation bonds and there was no provision for reimbursement to the general fund from the special revenue funds.

The source of payment of bonds is determined from the applicable laws and from the provisions of the bond instruments themselves. McQuillin, Municipal Corporations § 43.128 (1981 ed.). Here, the bond instrument and the appropriation of bond proceeds both clearly show that the general fund was the proper source for

payment on the bond shortfall. In House Bill 900, the 1983 legislature expressly stated that the Department of Administration was "irrevocably instructed to provide for payment of principal, interest, and redemption premium on such bonds, if any, from money in the general fund." The bonds that were issued were long-range building program bonds for which the full faith and credit of the state was pledged. Mont. Code Ann. § 17-5-402(2). Under the specific authorizations for issuance of the bonds used for the airport loan program, Mont. Code Ann. §§ 17-5-414, -423, the bonds were issued pursuant to title 17, chapter 5, part 8. Montana Code Annotated § 17-5-802 pledges the full faith and credit and taxing powers of the state, and requires the budget to include sufficient funds for payment of the bond principal and interest from the general fund. The bond instruments themselves, for the 1983 and 1985 bond issuances, pledged the state general fund as security for the bonds. The applicable law and bond instruments therefore expressly provided that the general fund would be ultimately responsible for bond payments.

In 1987, the Department of Administration recognized this and attempted to protect the general fund from a shortfall by having the legislature authorize the investment of excess bond proceeds and use of the income to pay for retirement of the bonds. Mont. Code Ann. § 67-1-301(3) (temp. 1995). This attempt ultimately failed, however, because the income on the investment of excess bond proceeds together with the loan payments was not sufficient to cover the bond obligations. A deficit occurred and the general fund became obligated.

This is not to say that the legislature could not direct that a special revenue fund be primarily responsible for the payment on the bonds. Generally, under § 17-2-108(1), every state entity is required to "apply expenditures against appropriate nongeneral fund money whenever possible before using general fund appropriations." If there is a special revenue fund that should be applied to an expense, it must be used before the general fund. It is presumably based upon this principle that the audit report suggested that the aeronautics special revenue funds be accountable for the shortfall.

There are specific situations where special funds have been expressly pledged for retirement of long-range building bonds. Sections 17-5-416 and -424 provide for the Department of Fish, Wildlife, and Parks to repay to the state treasurer the principal and interest paid on long-range bonds. Sections 17-5-421 and -425 provide for the repayment of principal and interest on the bonds by the Board of Regents. Such provisions are conspicuously absent with respect to bond proceeds allocated to the airport loan program. It is not my prerogative to read such a requirement into the laws. Mont. Code Ann. §§ 1-2-101, -102.

Although the legislature established a different loan program in 1993 with imposition of a one-cent tax on aviation fuel, Mont.

Code Ann. § 67-1-301(4)(a)(ii), neither the statutory language of that provision nor the legislative history of the new loan program suggests that proceeds from that special tax were to be used for payment of bond proceeds under the previous loan program.

THEREFORE, IT IS MY OPINION:

The state general fund is the proper source for payment of a shortfall to bondholders with respect to long-range building program bonds issued to create the airport loan program.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/elg/dm

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 March 31, 1997. This table includes those rules adopted during the period April 1, 1997 through June 30, 1997 and any proposed rule action that was 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 March 31, 1997, 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 1996 and 1997 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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