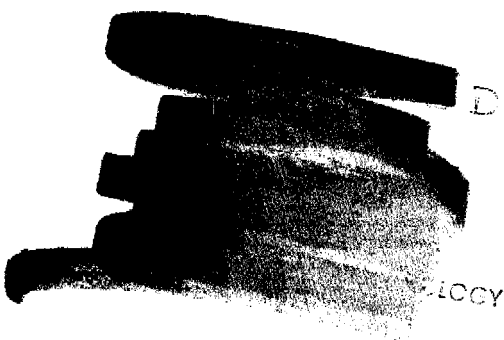


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# MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA



1982 ISSUE NO. 1  
JANUARY 14, 1982  
PAGES 1-47  
INDEX COPY



### NOTICE TO ALL MAR SUBSCRIBERS

AS OF JANUARY 1, 1982 THE MONTANA ADMINISTRATIVE REGISTER WILL HAVE A NEW FORMAT TO HELP GUIDE YOU THROUGH THE INFORMATION MAR PROVIDES FOR YOU. THE FOLLOWING IS A LISTING OF THE NEW FORMAT:

- |  |                  |
|--|------------------|
| 1. TABLE OF CONTENTS                                       | WHITE PAGES      |
| 2. NOTICE SECTION  | BUFF PAGES       |
| 3. RULE SECTION  | WHITE PAGES      |
| 4. INTERPRETATION SECTION                                  | WHITE PAGES      |
| 5. NOTICE OF FUNCTIONS OF<br>ADMINISTRATIVE CODE COMMITTEE | GREEN PAGE       |
| 6. HOW TO USE ARM AND MAR                                  | SALMON PAGE      |
| 7. MAR ACCUMULATIVE TABLE                                  | GOLDEN ROD PAGES |
| 8. CROSS REFERENCE TABLE                                   | BLUE PAGES       |
| 9. EMERGENCY RULES (WHEN LISTED)                           | PINK PAGES       |

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE MERIT SYSTEM COUNCIL  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF THE REPEAL
of rules 2.23.311, 2.23.1305	)	OF RULES ARM 2.23.311,
and 2.23.1503 and the amend-	)	2.23.1305 and 2.23.1503
ment of rules 2.23.1015,	)	AND THE AMENDMENT OF
2.23.1026 and 2.23.1027	)	RULES 2.23.1015,
	)	2.23.1026 AND 2.23.1027
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Interested Persons:

1. On February 15, 1982, the Montana Merit System Council proposes to repeal Rules ARM 2.23.311, 2.23.1305 and 2.23.1503 and to amend Rules 2.23.1015, 2.23.1026 and 2.23.1027 which pertain to the operation of the Montana Merit System.

2. The rules proposed to be repealed are on pages 2-2171, 2-2388 and 2-2419 and the rules proposed to be amended are on pages 2-2323 and 2-2329 of the Administrative Rules of Montana.

3. The rules which are proposed to be amended provide as follows:

2.23.1015 COMPETITORS TO BE PROMPTLY NOTIFIED OF RESULTS (1) ~~All competitors will be promptly notified of the results of their examinations. Upon request and identification, an eligible will be furnished information regarding his or her current position on the register.~~  
(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1026 PLACEMENT ON REGISTER (1) After examination, all persons with passing grades will be added to existing registers or placed on new registers according to their final ratings. ~~All registers will list eligibles in order of their final ratings starting with the highest.~~  
(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1027 DURATION OF REGISTER (1) Registers will be in effect for 2 1 years from the date established unless they are extended or cancelled by the chief of the merit system bureau job service or agency. ~~The chief~~ A register may be considered a register to be temporarily exhausted if fewer than five eligibles are available from it. If the chief job service or agency cancels a register within 2 1 years, ~~he or she must notify~~ all eligibles remaining on it must be notified.  
(AUTH. and IMP. Sect. 2-18-105 MCA)

4. The participating agencies and the Merit System Council are proposing these amendments governing the operation of the Montana Merit System as a result of budget reductions caused by federal spending cuts.

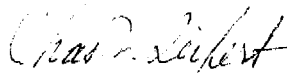
5. Interested persons may present their data, views or arguments concerning the proposed repeal and amendment of the rules in writing no later than February 12, 1982, to:

Charles Seifert, Chairman  
Montana Merit System Council  
Personnel Division  
Department of Administration  
Room 130, Mitchell Building  
Helena, Montana 59620

6. If a person who is directly affected by the proposed repeal of Rules ARM 2.23.311, 2.23.1305 and 2.23.1503 and the amendment of rules 2.23.1015, 2.23.1026 and 2.23.1027 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 that request along with any written comments he has to: Charles Seifert, Chairman, Montana Merit System Council, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than February 12, 1982.

7. If the agency receives requests for a public hearing on the proposed repeal and amendment from either 10% or 25, whichever is less, of the persons directly affected, 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 25 persons.

8. The authority of the council to make the proposed rules is based on section 2-18-105, MCA, and the rules implement section 2-18-105, MCA.

  
Charles Seifert, Chairman  
Merit System Council

Certified to the Secretary of State January 4, 1982.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PSYCHOLOGISTS

In the matter of the proposed )  
adoption of a new rule setting)  
out a fee schedule )

NOTICE OF PROPOSED ADOPTION  
OF A NEW RULE CONCERNING  
FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 13, 1982 the Board of Psychologists proposes to adopt a new rule setting fees.

2. The proposed new rule will read as follows:

"I. FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

(a) Application fee	\$50.00
(b) Examination fee	75.00
(c) Renewal fee	65.00
(d) Certificate fee	10.00"

3. The board is proposing the new rule to establish a fee schedule commensurate with costs as required by sections 37-1-134, MCA and 37-17-307, MCA.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Psychologists, 1424 9th Avenue, Helena, Montana 59620-0407 no later than February 11, 1982.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Psychologists, 1424 9th Avenue, Helena, Montana 59620-0407 no later than February 11, 1982.

6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the board to make the proposed adoption is based on section 37-17-202, MCA and implements sections 37-17-302, 303, 306, and 307 and section 37-1-134, MCA.

BOARD OF PSYCHOLOGISTS  
J. BAILEY MOLINEUX, Ph.D.  
CHAIRMAN

BY: 

ROBERT WOOD  
DEPARTMENT ATTORNEY

Certified to the Secretary of State, January 4, 1982.

BEFORE THE BOARD OF OIL  
AND GAS CONSERVATION

In the matter of the amendment)  
of Rule 36.22.602 by requiring)  
the survey plat with notice of)  
of intention to drill by a )  
registered surveyor only. )

NOTICE OF PROPOSED AMEND-  
MENT OF RULE 36.22.602,  
SURVEY PLAT WITH NOTICE  
OF INTENTION TO DRILL

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On February 25, 1982, the Board of Oil and Gas Conservation (Board) proposes to amend 36.22.602 which requires that a survey plat accompany a notice of intention to drill and which sets the requirement for such a survey plat.

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

"36.22.602 SURVEY PLAT WITH NOTICE OF INTENTION TO DRILL

Notice of intention to drill shall be accompanied by a survey plat certified by a registered surveyor, ~~engineer, or other person qualified by experience and acceptable to the Board.~~ The survey plat must show:

(1) the location of the proposed well with reference to the nearest producible oil or gas well producing from the same reservoir as the proposed well and located on the same lease or unit;

(2) the nearest lines of an established public survey; and

(3) the lands to be included in the enclosed spacing area when the well is to be drilled on a 320-acre spacing pattern."

3. The Board proposes to amend the rule to state that only a registered surveyor may certify the required survey plat because Title 37, Chapter 67, MCA, provides that only registered land surveyors may practice surveying in this state. The Board of Oil and Gas is initiating these rulemaking proceedings in response to a petition by the Montana Board of Engineers and Land Surveyors and in compliance with Section 2-4-315, MCA.

4. Interested parties may submit their data, view, or arguments concerning the proposed amendment to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than February 11, 1982.

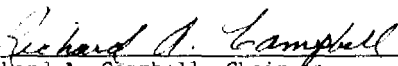
5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P.O. Box 217, 25 south Ewing, Helena, Montana 59624, no later than February 11, 1982.


6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less,



of the persons directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be at least greater than 25 persons based on the Board's determination that there are greater than 250 registered surveyors, engineers, and other persons qualified by experience and acceptable to the Board, all of whom are presently included in ARM 36.22.602.

7. The authority of the Board to make the proposed amendment is based on Section 82-11-111, MCA, and the rule implements Section 82-11-122, MCA.

  
Richard A. Campbell, Chairman  
Board of Oil and Gas Conservation

BY:   
Dee Rickman  
Assistant Administrator  
Oil and Gas Conservation Division

Certified to the Secretary of State January 4, 1982.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE

In the matter of the repeal of )	NOTICE OF REPEAL OF RULES
rules 8.8.101 board organiza- )	8.8.101 BOARD ORGANIZATION,
tion, 8.8.201 & 8.8.202 proced- )	8.8.201 & 8.8.202 PROCEDURAL
ural rules, 8.8.401 - 8.8.407 )	RULES, 8.8.401 - 8.8.407 GEN-
eral rules, 8.8.901 - 8.8. )	ERAL RULES, 8.8.901 - 8.8.907
907 boxing rules, 8.8.1701 - )	BOXING RULES, 8.8.1701 - 8.8.
8.8.1704 wrestling rules, and )	1704 WRESTLING RULES, 8.8.2401
8.8.2401 Australian tag team )	AUSTRALIAN TAG TEAM WRESTLING
wrestling )	

TO: All Interested Persons:

1. On November 25, 1981, the Department of Commerce published a notice of proposed repeal of the above stated rules at page 1536, 1981 Montana Administrative Register, issue no.22.
2. The department has repealed the rules exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the Amendments)	NOTICE OF AMENDMENT OF ARM
of ARM 8.12.601 concerning )	8.12.601 APPLICATIONS, EDUCA-
applications, educational re- )	TIONAL REQUIREMENTS, 8.12.602
quirements, 8.12.602 concerning)	RECORDATION OF LICENSE, 8.12.
recordation of license, 8.12. )	606 RENEWALS - CONTINUING
606 concerning renewals, con- )	EDUCATION REQUIREMENTS, 8.12.
tinuing education, and 8.12.609)	609 REINSTATEMENT
concerning reinstatement. )	

TO: All Interested Persons:

1. On November 25, 1981, the Board of Chiropractors published a notice of proposed amendments of ARM 8.12.601 concerning applications, educational requirements, 8.12.602 concerning recordation of license, 8.12.606 concerning renewals continuing education, and 8.12.609 concerning reinstatement at pages 1537 - 1539, 1981 Montana Administrative Register, issue number 22.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 4, 1982.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA  
BUREAU OF WEIGHTS AND MEASURES

In the matter of the amendment)  
of Rule 8.77.103 concerning ) NOTICE OF THE AMENDMENT OF  
exceptions to Handbook 44 for ) RULE 8.77.103.  
retail motor fuel dispensers. )

TO: All Interested Persons

1. On November 16, 1981 the Department of Commerce published notice of the proposed amendment of rule 8.77.103 relating to exceptions to Handbook 44 for certain retail motor fuel distributors at page 1540 of the 1981 Montana Administrative Register issue number 22.

2. The department has amended the rule with the following change:

8.77.103 FOURTH EDITION HANDBOOK 44 - SPECIFICATION,  
TOLERANCE, AND USER REQUIREMENT FOR WEIGHING DEVICES

(1) The division of weights and measures with the advice and counsel of the national bureau of standards hereby adopts the specifications, tolerances and regulations for commercial weighing and measuring devices published in National Bureau of Standards Handbook 44 - Fourth Edition, 1971 and supplements thereto, or in any publication revising or superseding Handbook 44, as the specifications, tolerances, and regulations for commercial weighing and measuring devices for the state of Montana except as follows:

(2) Wheel-load weighers.

(a) Tolerances. Section T.3.7., Handbook 44, Basic Tolerance Values for Wheel-Load Weighers, does not apply in Montana. The basic maintenance tolerance for individual wheel-load weighers used in this state shall be the same as that prescribed in Handbook 44 for axle-load weighers.

(b) User Requirements. Section UR. 3.5.2., Handbook 44, Level Condition, does not apply in Montana. In this state, when either an axle-load or a gross-load determination is being made, utilizing wheel-load weighers, the vehicle being weighed shall be in a reasonably level position with all wheels on the same plane as the load receiving element of the weighing device used in making the determination.

(3) Retail motor fuel dispensers.

(a) In the case of retail motor fuel dispensers currently pricing motor fuels on a half-gallon method or some fraction of a gallon, such dispensers may be kept in service for retail sales if the total fuel sales of the retail station involved are less than 10,000 gallons per month or 120,000 gallons per year whichever is greater.

(b) In the case where the retail station involved qualifies in subsection (a) above, when any dispenser is replaced due to wear or other reasons, all of the fuel dispensers at

the retail outlet must be replaced with retail fuel dispensers that ~~measure-the-fuel~~ compute the total dollar amount per unit measure of fuel dispensed in unit amounts such as gallons, or in the case where metric measures are used, in liters.

3. Comment: Comments to the proposed amendment were received from the representative of the Montana Independent Oil Manufacturers Association, John Braunbeck, David Rutledge of Rutledge Distributors, Inc. and Tex Pate of Exxon Oil Company appeared in favor of the proposed rule. No adverse comments were received. The change in the proposed amendment was suggested by Gary Delano, Chief, Bureau of Weights and Measures, in order to clarify the proposed amendment.

DEPARTMENT OF COMMERCE

By:

  
Robert J. Wood, General Counsel

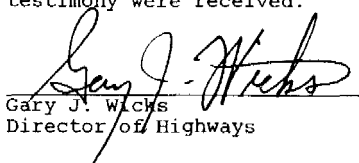
CERTIFIED to the Secretary of State this 4th day of January, 1982.

BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF THE REPEAL
of Rule 18.8.424, concerning	)	OF RULE 18.8.424,
Dealer's Demonstration Permits	)	Dealer's Demonstration
		Permits.

To: All Interested Persons:

1. On November 25, 1981, the Department of Highways published notice of a proposed repeal of Rule 18.8.424 concerning Dealer's Demonstration Permits at Pages 1561-1562 of the 1981 Montana Register, issue number 22.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.

  
\_\_\_\_\_  
Gary J. Wicks  
Director of Highways

Certified to the Secretary of State, January 4, 1982.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF RULES
Amendment of Various Rules	)	AND ADOPTION OF NEW RULES
and Adoption of New Rules	)	relating to the Montana
relating to the Montana	)	Individual Income Tax.
individual income tax and	)	(NEW RULES: 42.15.113 and
found in Title 42, Chapter	)	42.15.425)
15, of the Administrative	)	
Rules of Montana.	)	

TO: All Interested Persons;

1. On November 25, 1981, the Department of Revenue published notice of the proposed amendment of Rules 42.15.104, 42.15.111, 42.15.121, 42.15.201, 42.15.301, 42.15.302, 42.15.304, 42.15.305, 42.15.311, 42.15.312, 42.15.314, 42.15.402, 42.15.403, 42.15.404, 42.15.405, 42.15.411, 42.15.421, 42.15.431, 42.15.432, 42.15.503, 42.15.504, 42.15.511, and 42.15.512, and adoption of New Rules relating to the Montana individual income tax, at pages 1592 through 1604 of the 1981 Montana Administrative Register, issue no. 22.

2. The Department has amended the rules and adopted the new rules with the following changes (deletions interlined and additions underlined and capitalized):

42.15.104 PERMANENT PLACE OF ABODE (1) A person ~~may be domiciled outside Montana and still be~~ is a resident for purposes of this tax by reason of maintaining a "permanent place of abode" in Montana and not establishing a permanent home elsewhere.

(2) A "permanent place of abode" is a dwelling place permanently maintained in Montana, regardless of whether or not actually owned by the taxpayer, which he habitually uses as his home. A permanent place of abode need not be permanent in the sense that the party does not intend to abandon it at some future time.

Auth: 15-30-305, IMP, 15-30-101(12) 15-30-101(15).

42.15.111 MONTANA MILITARY PERSONNEL (1) Residents of Montana who enter the Armed Forces of the United States do not lose their residence or domicile in Montana solely by reason of being absent from this state in compliance with military orders. Accordingly, such persons remain subject to this tax in the same manner and to the same extent as other persons who are residents of Montana.

(2) However, effective with taxable years ending after December 31, 1974, compensation for active duty service as a member of the regular Armed Forces is exempt from tax.

(3) Residents will be considered members of the Armed

Forces on active duty when they are called to duty under Title 10, U.S.C.A. Montana National Guard members and others serving under another authority are subject to the tax.

Auth: 15-30-305, IMP, ~~15-30-101(12)~~ 15-30-101(15) and 15-30-116.

42.15.121 TAX STATUS OF INDIANS (1) The term "Indian" is construed to mean an enrolled member of an Indian tribe. An Indian's income is taxable to the same extent as that of non-Indians, subject only to the following exceptions:

(a) An Indian residing on ~~the~~ an Indian reservation ~~wherein he or she is enrolled~~ is not taxable with respect to income derived from sources within the exterior boundaries of ~~that particular~~ an Indian reservation. ~~For purposes of this paragraph, income shall be allocated and apportioned to source in accordance with the rules set forth in regulations [42-2.8(1)-68310] and ARM-42-16,1117.~~ When income is earned both on and off reservations, it shall be allocated according to the source.

(b) An Indian, regardless of residence, is not taxable with respect to income derived directly from ~~allotted~~ ALLOTTED or restricted lands held in trust by the United States for the Indian's benefit.

(2) An Indian residing outside the exterior boundaries of an Indian reservation has no special exemption other than income derived from ~~allotted~~ allotted or restricted lands, as set forth in subsection (1)(b) of this section.

Auth: 15-30-305 MCA; IMP, ~~15-30-101(12)~~ 15-30-102.

42.15.304 PARTNERSHIP RETURN (1) Persons carrying on a business in Montana in partnership are liable for tax only in their individual capacity. However, the partnership is required to file ~~the following information returns~~ a STATE Partnership Information Return of Income reporting each partner's distributive shares of profit or loss for the partnership's annual accounting period. Upon request of the department, the partnership shall furnish a copy of its United States Partnership Return of Income.

~~(a) a copy of its Federal Form 1065, "U.S. Partnership Return of Income", and~~

~~(b) Montana oard form "Partnership Information Return of Income".~~

(2) Partnership returns are due on or before the 15th day of the 4th month following the close of the partnership's annual accounting period. The returns are to be filed with the Department of Revenue, Helena, Montana, ~~59601~~ 59620.

(3) Partners must include a copy of their federal partnership Schedule K-1 when filing their individual tax return.

Auth: 15-30-305, IMP, 15-30-133.

42.15.311 INFORMATION RETURN (1) Information returns are to be made on either Federal Form 1099 or Form 1-A, which may be secured by directing a request to the Department of Revenue, Helena, Montana, ~~59601~~ 59620. ~~However, copies of Federal Form~~

1099 may be used in lieu of the Form 1-A. Upon approval from the department, computer generated tapes may be substituted for the forms.

(2) Information returns are due on or before the 15th day of April following the close of the calendar year with respect to which payments made are being reported. The returns are to be filed with the Department of Revenue, Helena, Montana ~~59601~~ 59620. The information returns are to be accompanied by STATE Form 1, which summarizes the information reported by the information agent.

Auth: 15-30-305, IMP, 15-30-301.

42.15.411 EXEMPTIONS FOR NONRESIDENTS (1) Persons who are not residents of Montana and persons who were residents of Montana for only a fractional part of the taxable year are allowed the same exemptions as allowed to taxpayers who were residents of this state for the entire taxable year. However, the exemption deduction allowable is that fractional part of the total exemption allowance which the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income. For example, assume a taxpayer is entitled to three exemptions and has a Montana adjusted gross income of \$5,000 and federal adjusted gross income of \$10,000. The value of his exemptions is ~~\$1,950~~ \$2,400 (3 exemptions times ~~\$650~~ \$800, assuming an inflation figure of 1). His allowable deduction, however, is ~~\$975~~ \$1,200 ( $\$5,000 - \$10,000 = 50\%$ ,  $50\%$  of ~~\$1,950~~ \$2,400 = ~~\$975~~ \$1,200).

(2) A nonresident estate or trust must prorate its ~~\$650~~ exemption allowance of \$800, adjusted as provided in subsection (3), as explained above for nonresident and fractional year resident individuals.

(3) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.

Auth: 15-30-305, IMP, ~~15-30-112~~ 15-30-112(6).

3. The Department received a letter from the Administrative Code Committee making the following five suggestions:

(1) In Rule 42.15.104 the section implemented should be 15-30-101(15), MCA; similarly for Rule 42.15.111 the section implemented should be 15-30-101(15).

(2) The section cited under Rule 42.15.121 as the section being implemented is incorrect.

(3) Regarding Rule 42.15.304 it is unclear whether the first reference to "a Partnership Information Return of Income" form refers to a state form or a federal form. Throughout the rules it may be helpful to state explicitly which form is required, as in Rule 42.15.311 it is clearer to state (quoting from the second paragraph) "to be accompanied by state Form 1".

(4) In Rules 42.15.402, 42.15.404, and 42.15.405 the words "separate return" are used instead of "individual return" which latter use would be much less confusing. Use of "separate return" implies that another separate return by a spouse or



dependent would be filed. Also technically, the return filed by a person claiming a spouse related exemption is not a "separate return".

(5) For Rule 42.15.411 you may want to designate the section being implemented by subsection, just as you do in the other rules. Thus instead of 15-30-112, use 15-30-112(6).

No other comments or testimony were received. The Department has implemented suggestions (1), (2), (3), and (5). In particular, the implementing MCA section for Rule 42.15.121 should be 15-30-102, MCA, rather than 15-30-101(12), MCA, as shown in the initial notice. The Department has considered suggestion (4), but has determined that it is better to leave Rules 42.15.402, 42.15.404, and 42.15.405 in their present form. The Department appreciates the apparent ambiguity in the terminology; however, the terminology has been used for several years now and is accepted by tax practitioners in the State. The Department believes that the proposed changes would create unnecessary confusion. The Department will attempt to develop better phraseology for these sections, and if suitable language can be developed, the Department will amend the rules at that time. A spelling error in Rule 42.15.121 is corrected. This error was observed after publication of the original notice.

*Ellen Feaver*  
*by Dan H. Dicks*

ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 12/28/81

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF RULES
Amendment Rules 42.16.101,	)	42.16.101, 42.16.102,
42.16.102, 42.16.103,	)	42.16.103, 42.16.104,
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42.16.1117, relating to the	)	relating to the Montana Indi-
Montana Individual Income Tax)		vidual Income Tax.

TO: All Interested Persons:

1. On November 25, 1981, the Department of Revenue published notice of the proposed amendment of Rules 42.16.101, 42.16.102, 42.16.103, 42.16.104, 42.16.105, 42.16.111, 42.16.112, 42.16.113, 42.16.115, 42.16.116, 42.16.117, 42.16.119, 42.16.1114, 42.16.1115, 42.16.1116, and 42.16.1117, relating to the Montana individual income tax, at pages 1605 through 1612 of the 1981 Montana Administrative Register, issue no. 22.

2. The Department has amended the rules with the following changes (deletions interlined and additions underlined and capitalized):

42.16.104 INTEREST ON UNPAID TAX (1)(a) In the case of taxable years which ended prior to December 31, 1962, interest accrues on the tax unpaid at the rate of 1% per month.

(b) In the case of taxable years which ended on or after December 31, 1962, but before December 31, 1968, interest accrues on the tax unpaid at the rate of 6% per annum.

(c) Effective with taxable years ending on and after December 31, 1968, if the tax or any part thereof is not paid by the 15th day of the 4th month following the close of the taxable year, whether by reason of extension granted or otherwise, interest accrues on the amount of tax unpaid at the rate of 9% per annum.

(2) In the case of ~~failure~~ failing, purposely or knowingly, to pay the tax or any part of the tax by its due date ~~with intent to evade such tax~~, interest accrues thereon at the rate of 1% per month from the 15th day of the 4th month following the close of the taxable period.

(3) Interest on any additional deficiency tax that may be assessed ~~or penalty thereon~~ shall be at the rate of 9% per annum or fraction thereof. Except as provided otherwise, interest shall accrue from when the tax was originally due to the date of payment, even if time for filing is extended.

(4) No interest accrues from the date the department is notified of a change in federal income, either by the taxpayer or the Internal Revenue ~~Service~~ SERVICE, until the date the department notifies the taxpayer of the increased tax.

Auth: 15-30-305, IMP, 15-1-206, 15-30-142, and 15-30-321.

3. No testimony or comments were received. The change in paragraph 2 above reflects the correction of a spelling error found by the Department after the notice of proposed action had been published.

*Ellen Feaver*  
*by David D. Buck*  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 12/28/81

BEFORE THE BOARD OF NATURAL RESOURCES  
AND CONSERVATION

IN THE MATTER OF THE	)	
APPLICATION OF THE NORTHERN	)	
PLAINS RESOURCE COUNCIL AND	)	
THE ROSEBUD PROTECTIVE	)	FINDINGS OF FACT,
ASSOCIATION FOR A DECLARATORY	)	CONCLUSIONS OF LAW,
RULING ON THE APPLICABILITY	)	ORDER AND NOTICE OF
OF CONDITIONS IMPOSED IN A	)	OPPORTUNITY FOR
CERTIFICATION MADE PURSUANT	)	JUDICIAL REVIEW
TO THE MAJOR FACILITY SITING	)	
ACT	)	

\* \* \* \* \*

The Montana Board of Natural Resources and Conservation (Board) met on December 11, 1981 to consider the Petition for Declaratory Ruling in the above-entitled matter. The Board, after notice, hearing and a review of the briefs filed by all parties, hereby makes a declaratory ruling as follows:

I. FINDINGS OF FACT

1. On September 3, 1981, the Northern Plains Resource Council and the Rosebud Protective Association (Petitioners) filed an Application for Declaratory Ruling under Section 2-4-501, MCA, of the Montana Administrative Procedure Act. The Petitioners' Application sought a declaratory ruling that:

(A) Condition 12(c) of the Board's Certificate of Environmental Compatability and Public Need for Colstrip 3 and 4 was applicable on the date construction of Colstrip 3 and 4 commenced; and

(B) The Colstrip 3 and 4 Applicant, the Montana Power Company (Montana Power) and the other four members of the power consortium, had violated condition 12(c) and that

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construction of Colstrip 3 and 4 is therefore unlawful.

2. Petitioners' Application for Declaratory Ruling was supported by the affidavit Mr. Nick Golder.

3. The following parties appeared and were represented by counsel in the above-entitled matter:

(A) Petitioners and their counsel of record, Mr. Andy Patten.

(B) Montana Power and its counsel of record, Mr. John L. Peterson and Mr. Ed Bartlett.

(C) The Department of Natural Resources and Conservation (Department) and its counsel of record, Mr. Donald D. MacIntyre.

4. The Board met on November 6, 1981 to consider the procedural sufficiency of Petitioners' Application for Declaratory Ruling. All parties appeared and were represented by counsel at the November 6, 1981 hearing. By an Order and Notice of Hearing dated November 12, 1981 the Board directed all parties to file briefs addressing the following:

(A) Whether condition 12(c) of the Board's Certificate of Environmental Compatibility and Public Need for Colstrip 3 and 4 was applicable beginning on the date construction of Colstrip 3 and 4 commenced; and

(B) If condition 12(c) is presently applicable to the surge ponds, whether the Petitioners' allegations concerning violations of condition 12(c) must be considered exclusively under Section 75-20-404, MCA, of the Major Facility Siting Act or whether the Board may determine

whether condition 12(c) has been violated under a petition for declaratory ruling, Section 2-4-501, MCA, of the Montana Administrative Procedure Act.

5. The Board further determined in its November 12, 1981 Order and Notice of Hearing that any consideration of Petitioners' allegations that condition 12(c) had been violated would be deferred until the issues described in paragraphs 4(A) and 4(B) of this Order had been decided.

6. Condition 12(c) of the Board's Certificate of Environmental Compatibility and Public Need for Colstrip 3 and 4 reads as follows:

That the seepage from the existing surge pond and any enlarged or additional surge ponds be monitored, as specified by the State Board of Health and Environmental Sciences, and that every feasible engineering means be taken by the Applicants to minimize such seepage.

7. The Board also adopted the following conclusion of law concerning the surge ponds at Colstrip:

12(a) That the Applicants take what measures are necessary through the enlargement of existing ponds or the construction of additional surge pond facilities so as to ensure a fifty (50) day supply of water at all times, for the operation of the four Colstrip units.

8. The Board adopted the following finding of fact concerning the existing surge pond at Colstrip:

62. That seepage from the surge pond is expected to be approximately 112 gpm (citations omitted).

9. The Board adopted the following finding of fact concerning the monitoring of surge ponds at Colstrip:

70. That seepage from the surge ponds will be monitored by observation wells which will be constructed at appropriate sites around said ponds (citations omitted).

10. In certifying compliance with Montana's air and water quality laws, the Board of Health and Environmental Sciences (BHES) adopted the following conclusion of law, which was incorporated in the Board's certification of Colstrip 3 and 4:

6. All ponds, surge ponds, settling ponds and impoundments shall be properly sealed. They shall be monitored for seepage, including the installation of test wells to determine the extent of ground water pollution, and the necessities of correction therefor.

11. The BHES also made the following finding of fact concerning the existing surge pond at Colstrip:

XXX

The surge pond is located approximately one mile northwest of the plants and comprises approximately 160 acres. When filled it will hold approximately one billion gallons of water or 2,800 acre-feet. It contains 19 days' storage of water at summer withdrawal rates for Units 1-4 net 26 days' storage of water for winter withdrawal rates for the four units.

12. By Order dated September 12, 1980, the Board amended condition 12(a) of its Colstrip 3 and 4 certification in response to a proposal by Montana Power and the other Applicants that an alternate source of water from Yellowtail Reservoir might be available. Condition 12(a) was amended to read as follows:

"That the applicants maintain the present surge pond capacity of approximately 2,800 acre-feet which is 19 days storage of water at summer

withdrawal rates and 26 days storage of water at winter withdrawal rates from Units 1-4. That the applicants operate the surge pond as off-stream storage by storing water during periods of high flow on the Yellowstone River and by withdrawing water for use in Colstrip Units 1-4 from the surge pond during periods of low flow while maintaining a supply of water in the surge pond that will provide the applicants an adequate source of water for use in Colstrip Units 1-4 for any anticipated periods when the flow may be below 1,500 cubic feet per second. That the surge pond be operated as off-stream storage in accordance with the storage operating plan which the Department shall require the Applicants to develop and which shall be approved by the Department and the Department of Fish, Wildlife, and Parks and submitted for each 5 year period starting on June 30, 1960, and updated annually as needed. That the Board may require the applicants, upon notice and an opportunity for hearing, to take what measures are necessary through the enlargement of existing ponds or the construction of additional surge pond facilities to increase the storage capacity up to a maximum of a 50 day supply if the Board determines that such additional capacity is necessary to insure an adequate supply of water for the four Colstrip Units during anticipated periods when the rate of flow in the Yellowstone River at Nichols may be below 1,500 cubic feet per second, and that such additional storage capacity will be operated as off-stream storage or in such manner as may be directed by the Board."

13. Colstrip Units 3 and 4 are presently under construction.

14. The existing surge pond at Colstrip will serve all four power generation units at Colstrip and the hearings before the Board and the BHES indicated that the existing surge pond had been designed and constructed to serve Colstrip Units 3 and 4 in addition to Colstrip Units 1 and 2.

15. On or about August 25, 1976, Montana Power and the



other Colstrip 3 and 4 applicants signed an "Agreement to Comply" with the terms and conditions of the Board's Certificate of Environmental Compatability and Public Need, including condition 12(c) as originally adopted by the Board.

16. All parties to this proceeding agree that it is appropriate for the Board to determine whether condition 12(c) is presently applicable to the existing surge pond at Colstrip under the declaratory ruling provisions of the Montana Administrative Procedure Act, Section 2-4-501, MCA.

17. At the December 11, 1981 Board hearing in the above-entitled matter, Petitioners withdrew their request for a declaratory ruling based on the allegation that Montana Power has violated condition 12(c) of the Board's Certificate of Environmental Compatability and Public Need for Colstrip 3 and 4.

## II. CONCLUSIONS OF LAW

1. The Board can determine whether condition 12(c) of the Colstrip 3 and 4 Certificate of Environmental Compatibility and Public Need is presently applicable to the existing surge pond at Colstrip under Section 2-4-501, MCA (declaratory rulings).

2. The Board can impose such conditions as it deems appropriate on the construction, operation and maintenance of a facility under Section 75-20-301, MCA, of the Major Facility Siting Act.

3. The imposition of monitoring, sealing and seepage limitation conditions on the existing surge pond at Colstrip

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was appropriate and permissible under Section 75-20-301, MCA, because the existing surge pond will also serve Colstrip Units 3 and 4.

4. Condition 12(c) of the Board's Colstrip 3 and 4 Certificate of Environmental Compatability and Public Need is presently applicable to the existing surge pond at Colstrip.

5. The portions of Petitioners' Application for Declaratory Ruling concerning the alleged violation of condition 12(c) are dismissed without prejudice.

6. Because of the dismissal of the portions of Petitioners' Application for Declaratory Ruling concerning the alleged violation of condition 12(c), it is not necessary for the Board to determine whether the alleged violation of condition 12(c) must be considered exclusively under Section 75-20-404, MCA, of the Major Facility Siting Act or whether such allegations can be considered under a petition for declaratory ruling, Section 2-4-501, MCA, Montana Administrative Procedure Act. Therefore, paragraph 2(B) of the Board's November 12, 1981 Order and Notice of Hearing is vacated.

7. Nothing contained herein should be construed as an implication that condition 12(c) of the Board's Colstrip 3 and 4 Certificate of Environmental Compatability and Public Need has been or is being violated.

### III. ORDER

1. Condition 12(c) of the Board's Colstrip 3 and 4 Certificate of Environmental Compatability and Public Need

is presently applicable to the existing surge pond at Colstrip.

2. The portions of Petitioners' Application for Declaratory Ruling concerning the alleged violation of condition 12(c) are dismissed without prejudice.

3. Paragraph 2(B) of the Board's November 12, 1981 Order and Notice of Hearing is vacated.

IV. NOTICE OF OPPORTUNITY FOR  
JUDICIAL REVIEW

Any party to this proceeding is entitled to judicial review of this Order in accordance with Sections 2-4-501 and 2-4-702, MCA. Judicial review may be obtained by filing a petition in district court within thirty (30) days after service of this Order.

DATED this 31st day of December, 1981.

BOARD OF NATURAL RESOURCES  
AND CONSERVATION

  
\_\_\_\_\_  
GORDON G. HOLTE, CHAIRMAN

)

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NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal 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 Joint Resolution directing an agency to adopt, amend or repeal a rule.

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

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

**Definition:** Administrative Rules of Montana (ARM) is a loose-leaf 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 statute 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<br>Subject<br>Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.           |
| Department                          | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
|                                     | 3. Locate volume and title.   |
| Subject<br>Matter and<br>Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.   |
| Title Number<br>and Department      | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.  |
| Title<br>Number and<br>Chapter      | 6. Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing rule.)                              |
| Statute<br>Number and<br>Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.                              |
| Rule in ARM                         | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.                              |

# 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 Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1981. This table includes those rules adopted during the period October 1, 1981 through December 31, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1981, this table and the table of contents of this issue of the MAR.

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