

RESERVE

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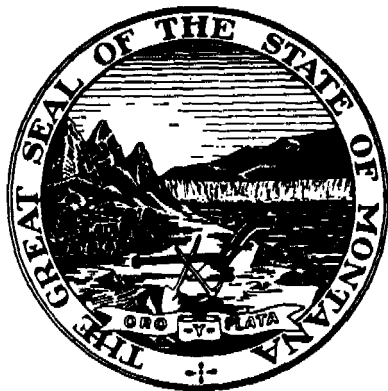
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**RESERVE**

# **MONTANA ADMINISTRATIVE REGISTER**

STATE LAW LIBRARY  
JUN 1 1983  
OF MONTANA

1983 ISSUE NO. 11  
JUNE 16, 1983  
PAGES 617-675



# MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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STATE LAW LIBRARY  
JUL 1 1983  
OF MONTANA

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the proposed ) NOTICE OF VACATION OF MAR  
adoption of new rules of ) NOTICE NO. 8-54-18  
enforcement. )

TO: All Interested Persons:

1. On May 12, 1983, the Board of Public Accountants published a notice of public hearing on the proposed adoption of new rules of enforcement at pages 367 through 371, 1983 Montana Administrative Register, issue number 9.

2. The board vacates the above-referenced notice, and no such rule adoption will occur unless another notice is promulgated in the Montana Administrative Register.

BOARD OF PUBLIC ACCOUNTANTS  
JACK DOBBINS, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 6, 1983.

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

|                               |   |                          |
|-------------------------------|---|--------------------------|
| In the matter of the adoption | ) | NOTICE OF PUBLIC HEARING |
| of an interpretive rule       | ) | FOR ADOPTION OF AN       |
| concerning access to vital    | ) | INTERPRETIVE RULE        |
| statistics records            | ) | (Vital Statistics)       |

To: All Interested Persons

1. On July 15, 1983, at 8:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of an interpretive rule which will establish guidelines for access to vital statistics information in certain circumstances, and provide for an appeal to the Board.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE 1 ACCESS TO RECORDS (1) Pursuant to Section 50-15-113, MCA, the board of health and environmental sciences hereby adopts the following statement of policy to guide the department of health and environmental sciences in handling requests for access to vital statistics records and information. This statement of policy is made in recognition of the public's constitutional right of access to documents (Article II, Sec. 9, Montana Constitution), the right of individual privacy (Article II, Sec. 10, Montana Constitution), and the provisions of Title 50, Chapter 15, Part 1, MCA.

(2) Subject to the provisions of subsection (3) of this rule, the department of health and environmental sciences may, in its discretion:

(a) disclose information from its vital statistics records to any federal, state, county or municipal agency which requires such information in order to fulfill duties enjoined upon it by law;

(b) permit the use of statistical data contained in vital statistics records for the purposes of scientific, sociological, epidemiological and other similar research.

(3) Unless disclosure is otherwise authorized by law, the department shall restrict access to vital statistics information so as to prevent identification of individuals. Requests for information which, in the department's judgment, could result in the improper identification of individuals must be referred to the board.

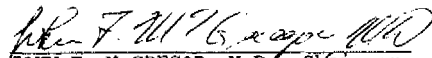
(4) Any affected person may appeal a decision by the department regarding access under this rule to vital statistics information to the board. The board will consider the request for access, pursuant to 50-15-113, at its next regularly scheduled meeting.

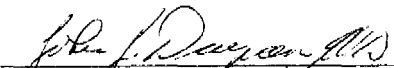
4. The Board is proposing this interpretive rule to provide guidance to the department of health and environmental sciences in dealing with requests for access to vital statistics information. Section 50-15-113 requires the board to direct or approve access to records by government agencies or by persons doing research. This interpretive rule will establish guidelines which will allow the department to deal with such requests without going to the board for direction on a case-by-case basis. Requests involving identification of individuals, and appeals from departmental decisions, will go to the board.

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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than July 15, 1983.

6. Robert L. Solomon, Helena, Montana, has been designated to preside over and conduct the hearing.

7. This rule is proposed as an interpretive rule under the implied authority of section 50-15-113, MCA, and implements section 50-15-113, MCA. This rule is advisory only.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State June 6, 1983

BEFORE THE HIGHWAY COMMISSION  
OF THE STATE OF MONTANA

|                             |   |                         |
|-----------------------------|---|-------------------------|
| In the matter of the        | ) | NOTICE OF PUBLIC        |
| amendment of Rule 18.6.202, | ) | HEARING ON PROPOSED     |
| regarding definitions       | ) | AMENDMENT OF RULE       |
| relating to outdoor         | ) | 18.6.202, OUTDOOR       |
| advertising.                | ) | ADVERTISING DEFINITIONS |

TO: All Interested Persons:

1. On July 21, 1983 at 10 o'clock A. M. a public hearing will be held in the auditorium of the Department of Highways building, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rule 18.6.202.

2. The proposed amendment replaces present rule 18.6.202 found in the Administrative Rules of Montana. The proposed amendment adds a definition of commercial or industrial activities.

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

18.6.202 DEFINITIONS (1) Off-premise Signs: Signs which are located on property, separate and apart from the property on which the advertised activity is carried out.

(2) On-premise Signs: Signs erected on property for the purpose of advertising its sale or lease, or for advertising an activity conducted on the property. Boundaries which in the judgment of the Commission are fabricated solely to circumvent the intent and purpose of this definition shall be disregarded.

(3) Non-conforming Sign means one which was lawfully erected but which does not comply with the provisions of State law or State regulations passed at a later date, or which later fails to comply with the State law or State regulations due to changed conditions.

(4) Conforming Sign means one which was lawfully erected and which complies with State law and regulations in regard to spacing, zoning, size, and lighting requirements.

(5) A commercial or industrial activity engaged in or established primarily for the purpose of qualifying an area for the establishment of outdoor advertising will not be considered to create an unzoned commercial or industrial area. It shall be conclusively presumed that any such activity is for the primary purpose of qualifying an area for outdoor advertising if the activity is not reasonably accessible to the public, if it is not connected to one or more utilities, if no business is actually conducted on the premises, or if there is not at least one employee on the premises for a minimum of 20 hours per week during normal business hours.



4. The commission is proposing this amendment because it wishes to give the public notice of what criteria are necessary to qualify an establishment as a commercial or industrial activity.

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 Jack Holstrom, Legal Division, Department of Highways, 2701 Prospect Avenue, Helena, MT 59620 no later than July 21, 1983.

6. Jack Holstrom, Legal Division, Department of Highways, 2701 Prospect Avenue, Helena, MT 59620 has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 75-15-121, MCA, and the rule implements section 75-15-111, MCA.

Ilert Hellebust  
Chairman

By: 

Certified to the Secretary of State June 6, 1983.

BEFORE THE DIVISION OF WORKERS' COMPENSATION  
OF THE STATE OF MONTANA

|                                |   |                             |
|--------------------------------|---|-----------------------------|
| In the matter of the proposed  | ) | NOTICE OF PUBLIC HEARING ON |
| amendment of ARM 24.29.201 and | ) | PROPOSED AMENDMENT OF ARM   |
| proposed new procedural rules  | ) | 24.29.201 AND ADOPTION OF   |
| for the division of workers'   | ) | NEW PROCEDURAL RULES        |
| compensation.                  |   |                             |

TO: All Interested Persons.

1. On July 6, 1983, at 9:30 a.m., a public hearing will be held in the Division of Workers' Compensation Conference Room located at 842 Front Street, Helena, Montana, to consider the proposed amendment and adoption of the above stated rules.

2. Rule 24.29.201 to be amended may be found at page 24-2057 ARM. The proposed rules will modify current procedural rules by incorporating certain select "model rules" and by promulgating new rules not currently found in the division's chapters of the Administrative Rules of Montana.

3. The rules as proposed to be amended and adopted provide as follows:

~~24.29.201 ADOPTION OF MODEL RULES--(1)--Pursuant to the authority vested in the administrator of the division of workers' compensation, the administrator adopts for the division the model rules proposed by the attorney general.~~

INTRODUCTION (1) The rules in this subchapter describe the procedures followed by the workers' compensation division in providing for public participation in decision-making; adopting, amending or repealing division rules; issuing declaratory rulings, issuing orders; providing for administrative review of adverse actions; hearing contested cases; issuing subpoenas; providing for representation; and procedures for service.

(2) The workers' compensation division is administratively attached to the department of labor and industry and in accordance with that status is obliged to publish organizational, procedural, and substantive rules used to exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(3) The rules in this subchapter apply to the workers' compensation division's administration of statutory provisions and substantive rules under:

- (a) workers' compensation act, Title 39, chapter 71;
- (b) occupational disease act, Title 39, chapter 72;
- (c) silicosis benefits law, Title 39, chapter 73;
- (d) occupational safety act, Title 50, chapter 71;
- (e) safety in mines other than coal mines, Title 50, chapter 72;

- (f) safety in coal mines, Title 50, chapter 73;
- (g) safety with boilers and steam engines, Title 50, chapter 74;
- (h) safety with hoisting engines, Title 50, chapter 76;  
and
- (i) crime victims' compensation act, Title 53, chapter 9.
- (4) Some procedural rules in this subchapter adopt and incorporate by reference the attorney general's model procedural rules found in ARM 1.3.101 through 1.3.233. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Center, 215 N. Sanders, Helena, MT 59604, phone 449-2026.
- (5) Any individual or group of individuals who want information about anything mentioned in these rules or about anything concerning the workers' compensation division, or want an appointment with the administrator or a bureau chief regarding any matter of concern to those individuals, and under the responsibility of the workers' compensation division, may make arrangements through the administrator's office at 815 Front Street, Helena, MT 59604, phone 449-2047.

AUTH: 2-15-1702, 2-4-201, MCA; IMP: Title 2, chapters 3 and 4, MCA.

RULE I PUBLIC PARTICIPATION (1) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rule 1 found in ARM 1.3.102, which sets forth the notice requirement of an agency action that is of significant interest to the public.

AUTH: 2-15-1702, 2-3-103, MCA; IMP: Title 2, chapter 3, part 1, MCA.

RULE II ADOPTING, AMENDING, AND REPEALING DIVISION RULES

(1) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rules 2 through 6 found in ARM 1.3.205 through ARM 1.3.209, which set forth the rule-making procedures for the division's rules.

AUTH: 2-15-1702, 2-4-201, MCA; IMP: Title 2, chapter 4, part 3, MCA.

RULE III ISSUING DECLARATORY RULINGS (1) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rules 22, 23, 24 and 28 found in ARM 1.3.227 through ARM 1.3.229 and in ARM 1.3.233, which set forth the way a person may petition the division for a declaratory ruling as to the applicability of a statute, regulation, or order to his activity or proposed activity and the procedures under which the division will issue a ruling in response.

AUTH: 2-25-1702, 2-4-201, MCA; IMP: Title 2, chapter 4, part 5, MCA

RULE IV ISSUING DIVISION ORDERS (1) "Order" means any decision, rule, direction, requirement, or standard of the division, or any other determination arrived at or decision determining a person's opportunity for benefits or to do business. All orders are in writing and signed by a division official delegated with such authority in the division's organizational rule or in writing by the administrator.

(2) An order may issue solely as the result of action initiated by the division, or the division's response to inquiries from the public, or

(3) An order may issue as a result of division investigation, mandated statutorily, or

(4) An order may issue upon receipt of a petition. A condition precedent to the division issuing an order in this situation is receipt of a petition which must include:

(a) the name and address of the petitioner;

(b) a detailed statement of the facts upon which the petitioner requests the division to issue an order;

(c) the rule, statute or case law under which the request for an order is made; and

(d) a short, plain statement of petitioner's contentions based upon Rule IV (b) and (c).

(5) Any division order may be appealed for administrative review, (see Rule V), or if required statutorily as a contested case, (see Rule VI). However, any party may first seek administrative review of an order, prior to a contested case hearing without affecting that party's statutory remedies.

AUTH: 2-15-1702, 2-4-201, MCA; I:"

IMP: 2-4-201, 2-4-202, 39-71-116, 39-73-101, 50-71-102, 50-72-102, 50-73-102, 50-74-101, 50-76-107, 53-9-103, MCA.

RULE V ADMINISTRATIVE REVIEW (1) The workers' compensation division administrator or his designee shall conduct an administrative review of any division order construed by a party in interest to be adverse to his interest, upon:

(a) receipt of a petition for administrative review which must conform to the requirements for petitions in Rule IV; or

(b) receipt of a petition for a contested case hearing and the parties' joint written waiver of formal proceedings in accordance with 2-4-603, MCA.

(2) An administrative review shall be conducted with the purpose of resolving the case and avoiding an unnecessary hearing.

(3) An administrative review caused by a petition pursuant to Rule V(1)(a) includes:

(a) at the discretion of the party in interest, an informal conference with the division by telephone or person-to-person at the division office in Helena; and

(b) a review by the administrator or his designee of all relevant facts and applicable laws involved in the action

by the division. Such a review will not be subject to the rules of civil procedure or evidence.

(4) An administrative review caused by a petition and waiver of formal proceedings pursuant to Rule V(1)(b) must be conducted as an informal proceeding in accordance with the provisions of section 2-4-604, MCA.

(5) The workers' compensation division administrator may rescind, alter or amend any action at any time during the administrative review, in which case a hearing will not be held unless a party in interest does not concur with the order and requests that the hearing be held.

AUTH: 2-15-1702, 2-4-201, 39-71-203, 39-72-202, 50-71-106, 53-9-104, MCA;

IMP: 39-71-204, 39-72-402, 50-71-301, 53-9-122, MCA.

RULE VI CONTESTED CASES (1) A contested case under Title 39, chapter 71, MCA, involving a dispute by a claimant or an insurer concerning any benefits provided under that chapter is administered in accordance with rules authorized by the workers' compensation court under ARM Title 2, chapter 52, subchapter 2.

(2) A contested case under Title 39, chapter 71, MCA, involving any disputed determination of legal rights, duties or privileges other than those in Rule VI(1) or (3) is administered by the workers' compensation division in accordance with ARM Rule VI(6). Such cases include but are not limited to:

(a) disputes regarding attorneys' fee agreements prior to a petition being filed in the workers' compensation court;

(b) disputes regarding insurance premium payments to the state workers' compensation insurance fund;

(c) disputes regarding state workers' compensation insurance fund premium rates;

(d) disputes regarding wage equivalency determinations made by the division;

(e) disputes regarding applications of independent contractors not to be bound by workers' compensation coverage pursuant to section 39-71-401, MCA;

(f) disputes regarding applications by corporate officers not to be bound by workers' compensation coverage pursuant to section 39-71-410, MCA;

(g) disputes concerning certification of vocationally handicapped persons;

(h) disputes concerning payment of benefits or liability involving the subsequent injury fund;

(i) disputes concerning payments to medical providers when benefits available directly to claimants are not an issue.

(3) A contested case under Title 39, chapter 71, MCA, concerning employment classifications assigned to an employer by an insurer is administered by the classification

and rating committee in accordance with section 33-16-1012, MCA.

(4) A contested case under Title 39, chapters 72 or 73, or Title 53, chapter 9, MCA, is administered by the workers' compensation division in accordance with Rule VI(6).

(5) A contested case under Title 50, chapters 71, 72, 73, 74 or 76 is administered by the workers' compensation division in accordance with Rule VI(6).

(6) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rules 8 through 21 and 28 found in ARM 1.3.212 through 1.3.225 and in ARM 1.3.233, which set forth contested case procedures for the division.

(7) The workers' compensation court is an appeal court for final decisions made by the workers' compensation division pursuant to Rule VI(2) and (3). Final decisions pursuant to Rule VI(4) are appealed in accordance with Title 2, chapter 4, part 7, MCA.

AUTH: 2-15-1702, 2-4-201, MCA; IMP: Title 2, chapter 4, part 6, 39-71-2905, MCA.

RULE VII SUBPOENAS (1) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rule 25 found in ARM 1.3.230, which sets forth the division's power to compel production of information and evidence and attendance of witnesses through subpoena.

AUTH: 2-15-1702, 2-4-201, MCA; IMP: 2-4-104, MCA.

RULE VIII REPRESENTATION (1) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rule 26 found in ARM 1.3.231, which sets forth a person's right to counsel when appearing before the division.

AUTH: 2-15-1702, 2-4-201, MCA; IMP: 2-4-105, MCA.

RULE IX SERVICE (1) The workers' compensation division hereby adopts and incorporates by reference the attorney general's model procedural rule 27 found in ARM 1.3.232, which sets forth the procedure for service of motions and pleadings upon parties.

AUTH: 2-15-1702, 2-4-201, MCA; IMP: 2-4-106, MCA.

4. The reason the division is proposing the amendment and adoption of new rules is to describe the procedures followed by the workers' compensation division in providing for public participation in decision-making; adopting, amending or repealing division rules; issuing declaratory rulings, issuing orders, providing

for administrative review, and hearing contested cases.

The division is statutorily charged with the administration of the workers' compensation act. In discharging this responsibility and in order to better serve the interests of all parties concerned, the division is publishing specific procedural rules of its operations.

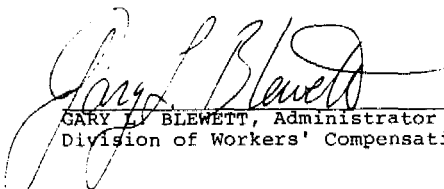
5. Interested persons may present their data, views and arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to:

Gary L. Blewett, Administrator  
Division of Workers' Compensation  
815 Front Street  
Helena, Montana 59604

no later than July 14, 1983.

6. Mr. William R. Palmer, Assistant Administrator of the Division of Workers' Compensation, has been designated to preside over and conduct the hearing.

7. The authority of the division to make the amendment and adopt the proposed rules is based on 2-15-1702, 2-4-201, 2-3-103, 39-71-203, 39-72-202, 50-71-106, 53-9-104, MCA, and implements Title 2, chapters 3 and 4, 39-71-204, 39-72-402, 50-71-301, 53-9-122, MCA.



GARY L. BLEWETT, Administrator  
Division of Workers' Compensation

Certified to the Secretary of State June 6, 1983.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ) NOTICE OF PROPOSED AMENDMENT  
AMENDMENT OF Rule 42.17.105 ) OF Rule 42.17.105 relating to  
relating to the computation ) the computation of withholding  
of withholding tax. ) tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 18, 1983, the Department of Revenue proposes to amend rule 42.17.105 relating to the computation of withholding tax.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula:

(a)  $Y = PZ$

where Z is the individual's gross earnings for the payroll period; and

Y is the individual's annualized gross earnings.

In these calculations, the quantity P (number of payroll periods during the year) has one of the following values:

|                            |        |
|----------------------------|--------|
| Annual payroll period      | P = 1  |
| Monthly payroll period     | P = 12 |
| Semimonthly payroll period | P = 24 |
| Biweekly payroll period    | P = 26 |
| Weekly payroll period      | P = 52 |

(b)  $T =$

$0.72811Y - 960N$  whenever  $0 \leq Y \leq 10326.04$   
 $935.500 + 0.63752Y - 960N$  whenever  
 $10326.04 \leq Y \leq 45511.09$   
 $9413.463 + 0.45124Y - 960N$  whenever  $Y \geq 45511.09$   
 $0.73987Y - 970N$  whenever  $0 < Y < 13138.82$   
 $1301.4 + .64082Y - 970N$  whenever

$13138.82 \leq Y \leq 44365.08$   
 $8288.9 + 0.48332Y - 970N$  whenever  $Y > 44365.08$

where T is the annualized net taxable income; and  
N is the number of withholding exemptions claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c)  $X = A + B(T-C)$  where X is the individual's annualized net taxable income tax liability and the parameters A, B and C are chosen from the following rate schedule:



ANNUALIZED NET  
TAXABLE EARNINGS INCOME T

| At Least  | But Less Than | A        | B   | C         |
|-----------|---------------|----------|-----|-----------|
| \$ 0      | \$ 1,200      | \$ 0     | .02 | \$ 0      |
| \$ 1,200  | \$ 2,400      | \$ 24    | .03 | \$ 1,200  |
| \$ 2,400  | \$ 4,800      | \$ 60    | .04 | \$ 2,400  |
| \$ 4,800  | \$ 7,200      | \$ 156   | .05 | \$ 4,800  |
| \$ 7,200  | \$ 9,600      | \$ 276   | .06 | \$ 7,200  |
| \$ 9,600  | \$ 12,000     | \$ 420   | .07 | \$ 9,600  |
| \$ 12,000 | \$ 16,900     | \$ 508   | .08 | \$ 12,000 |
| \$ 16,900 | \$ 24,200     | \$ 972   | .09 | \$ 16,900 |
| \$ 24,200 | \$ 42,700     | \$ 1,620 | .10 | \$ 24,200 |
| \$ 42,700 | -----         | \$ 3,420 | .11 | \$ 42,700 |
| \$ 4,800  | \$ 7,300      | \$ 156   | .05 | \$ 4,800  |
| \$ 7,300  | \$ 9,700      | \$ 281   | .06 | \$ 7,300  |
| \$ 9,700  | \$ 12,100     | \$ 425   | .07 | \$ 9,700  |
| \$ 12,100 | \$ 16,900     | \$ 593   | .08 | \$ 12,100 |
| \$ 16,900 | \$ 24,200     | \$ 977   | .09 | \$ 16,900 |
| \$ 24,200 | \$ 42,300     | \$ 1,634 | .10 | \$ 24,200 |
| \$ 42,300 | -----         | \$ 3,440 | .11 | \$ 42,300 |

$$(d) \quad W = \frac{X}{P}$$

where W is the amount to be withheld for the payroll period;  
X is the annualized tax liability; and  
P is the number of payroll periods during the year.

(2) This rule is effective for quarters beginning July 1, 1983, and ending June 30, 1984.

AUTH: 15-30-305, MCA; IMP: 15-30-202, MCA.

3. This rule is proposed to be amended because the formula used to compute withholding tax will be changed on July 1, 1983. It is necessary to change the formula so that it will reflect indexation, reduce underwithholding and adjust for federal tax cuts. For example, indexation is expected to raise an individual exemption allowance from \$960 to \$970.

Underwithholding has also been a problem. Many taxpayers have complained that they had to pay the state anywhere from \$50 to \$250 in additional tax because the tables underwithheld on their incomes. Most of the underwithholding occurs in the \$13,000 to \$20,000 gross income range.

Also, federal tax cuts have reduced Montana itemized deductions substantially from the 1979 base level used in the existing formula. The Department believes this rule change will bring the amount of tax withheld closer to the actual liability thereby benefitting most taxpayers.

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

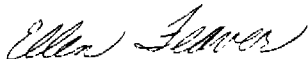
Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than July 14, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than July 14, 1983.

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

7. The authority of the agency to make the proposed amendments is based on §15-30-305, MCA, and the rule implements §15-30-202, MCA.



ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 06/06/83

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                             |   |                               |
|-----------------------------|---|-------------------------------|
| IN THE MATTER OF THE        | ) | NOTICE OF PROPOSED AMENDMENT  |
| AMENDMENT OF Rule 42.27.401 | ) | OF Rule 42.27.401 relating to |
| relating to treatment of    | ) | treatment of gasohol and the  |
| gasohol and the ADOPTION of | ) | PROPOSED ADOPTION of Rule I   |
| Rule I relating to alcohol  | ) | relating to alcohol           |
| distributors.               | ) | distributors.                 |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 18, 1983, the Department of Revenue proposes to amend rule 42.27.401 relating to treatment of gasohol and to adopt Rule I relating to alcohol distributors.

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

42.27.401 TREATMENT OF GASOHOL (1) For the purposes of Title 15, chapter 70, ~~part 27~~ reference to gasoline includes, gasohol (regardless of where produced and how produced), ~~except for the computation of the tax on gasohol meeting the definition of 15-70-201(7), MCA.~~ Gasoline in general is and gasohol are taxed at the rate specified in 15-70-204(1), MCA, ~~while gasohol as defined in 15-70-201(7), MCA, is taxed at the rate specified in 15-70-204(3), MCA.~~

(2) in particular, a distributor of gasohol (regardless of where produced and how produced) must meet all the requirements specified for a distributor of gasoline. This rule, as amended, is effective for taxable periods beginning on and after July 1, 1983.

AUTH: 15-70-104, MCA; IMP: 15-70-201 and 15-70-204, MCA.

RULE I ALCOHOL DISTRIBUTORS (1) It is the responsibility of the alcohol distributor, including anyone who imports alcohol, to collect and remit to the department of revenue the tax that is due on the alcohol pursuant to 15-70-204(3), MCA.

(2) This rule is effective for taxable periods beginning on and after July 1, 1983.

AUTH: 15-70-104, MCA; IMP: 15-70-204, 15-70-405 and 15-70-410, MCA.

3. These changes are being proposed because the 1983 Legislature enacted a new law (Chapter 649) for a tax incentive to be paid for the production of fuel alcohol in this State from Montana agricultural products. This law replaces, effective July 1, 1983, the current law which provides for a tax on gasohol that is lower than the nonaviation gasoline tax rate. Chapter

649 provides for: a) the licensing of "alcohol distributors"; b) reporting requirements of distributors; c) the taxation of alcohol to be blended for gasohol and gasohol at the same rate as nonaviation gasoline; and d) direct incentive payments for the production of fuel alcohol in Montana from Montana agricultural products. The amendment to 42.27.401 is necessary to make the rule on the tax rate for gasohol consistent with the new law. Rule 1 is necessary to specify who is responsible for the payment of the tax on imported alcohol. Section 12, subsection (3) of Chapter 649 (amending 15-70-204, MCA) provides for this tax. Payment of the tax on imported alcohol by the alcohol distributor is reasonable and appropriate because the same distributors are responsible for the tax on alcohol when it is produced in Montana.

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


Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than July 14, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than July 14, 1983.

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

7. The authority of the agency to make the proposed amendments is based on §15-70-104, MCA, and the rules implement §§15-70-201, 15-70-204, 15-70-405, and 15-70-410, MCA.

  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 06/06/83

11-6/16/83

MAR Notice No. 42-2-213

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| IN THE MATTER OF PROPOSED      | ) | NOTICE OF Departmental Intent  |
| ADOPTION of Rule I to          | ) | to Take No Further Action on   |
| implement the windfall         | ) | Rule I to implement the wind-  |
| profit tax deduction from the) |   | fall profit tax deduction from |
| net proceeds tax on oil.       | ) | the net proceeds tax on oil.   |


TO: All Interested Persons:

1. On April 29, 1983, the Department of Revenue passed the six month statutory deadline set for the adoption of Rule I to implement the windfall profit tax deduction from the net proceeds tax on oil. This Rule was originally noticed at page 1908 of the October 28, 1982 Montana Administrative Register.

The Department has held this rule in abeyance pending the enactment of recent legislation. At the public hearing on November 17, 1982, the Department and representatives of the oil industry agreed to further informal conferences and consultation in order to arrive at a position on the rule acceptable to all concerned.

As a result of several such conferences, ideas for legislation arose. Legislation was introduced and passed during the 1983 Session. Since this legislation essentially achieves the purpose of the proposed rule in a more efficient manner, the proposed rule is no longer necessary. Thus, the Department plans no further action on this proposal.

2. If necessary, the Department, at some future point, may promulgate new rules to implement the provisions of Senate Bill 413.

  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 06/06/83

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

|                               |   |                              |
|-------------------------------|---|------------------------------|
| In the matter of the adoption | ) | NOTICE OF ADOPTION OF AN     |
| of an amendment to a federal  | ) | AMENDMENT TO A FEDERAL       |
| agency rule pertaining to the | ) | AGENCY RULE INCORPORATED BY  |
| food stamp program, Rule      | ) | REFERENCE IN RULE 46.11.101, |
| 46.11.101                     | ) | FOOD STAMP PROGRAM. NO       |
|                               | ) | PUBLIC HEARING CONTEMPLATED  |

TO: All Interested Persons


1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 48 Fed. Reg. 16828, Tuesday, April 19, 1983. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments make two changes in the certification rules. First, rules allowing an income and resource exclusion for state and local energy assistance are tightened so that only legitimate energy assistance programs can be excluded for eligibility. Second, under previous regulations, there was no time limit on restoring benefits when a fraud disqualification is later reversed. New regulations change the term "fraud disqualification" to "disqualification because of intentional program violation". The new regulations fix a limit on the period over which a state can restore lost benefits when a disqualification for intentional program violation is later reversed. The new time limit is twelve (12) months from the date the state is notified of the lost benefit. A copy of 7 CFR 272, 273, and 274 published in 48 Fed. Reg. 16828, Tuesday, April 19, 1983 may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date of the adoption of the later amendment concerning restoration of lost benefits is August 1, 1983. The state has requested and must obtain approval from the Food and Nutrition Service in order to continue to exclude certain energy assistance payments from being considered as either income or resources for the Food Stamp Program.

3. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten

percent of those persons directly affected has been determined to be 5,210 persons based on 52,100 food stamp recipients.

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 6, 1983.

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

|                             |   |                        |
|-----------------------------|---|------------------------|
| In the matter of the amend- | ) | NOTICE OF THE PROPOSED |
| ment of Rule 46.5.508 per-  | ) | AMENDMENT OF RULE      |
| taining to foster care      | ) | 46.5.508 PERTAINING TO |
| review committee            | ) | FOSTER CARE REVIEW     |
|                             | ) | COMMITTEE. NO PUBLIC   |
|                             | ) | HEARING CONTEMPLATED.  |

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published MAR Notice No. 46-2-369 in the Montana Administrative Register which proposed to amend, on June 20, 1983, Rule 46.5.508 pertaining to foster care review committees. However, SB 352 passed by the 48th Legislature is not effective until October 1, 1983; therefore, the Department proposes to amend Rule 46.5.508 on October 3, 1983, the nearest filing date, to become effective October 14, 1983.

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

46.5.508 FOSTER CARE REVIEW COMMITTEE

Subsections (1) through (3) (c) remain the same.

(d) a representative of a local school district;

(e) the foster parent of the child whose care is under review, if there is one. The foster parent's appointment is effective only for and during that review.

Subsections (4) through (6) remain the same.

The authority of the department to amend the rule is based on Section 41-5-807, and the rule implements Section 41-5-807, as amended by Sec. 1, Ch. 201, L. 1983.

3. This rule is proposed to be amended due to the passage of SB 352 passed by the 48th Legislature which provided that the foster parent of the child be added as a member of the Foster Care Review Committee.


4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than July 15, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to



the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than July 15, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 35 persons based on 350 children subject to foster care review.

  
\_\_\_\_\_  
Director, Social and Rehabilitation  
Services

Certified to the Secretary of State June 6, 1983.

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

|                              |   |                             |
|------------------------------|---|-----------------------------|
| In the matter of the amend-  | ) | NOTICE OF PUBLIC HEARING ON |
| ment of Rules 46.11.111,     | ) | THE PROPOSED AMENDMENT OF   |
| 46.11.112, 46.11.114,        | ) | RULES 46.11.111, 46.11.112, |
| 46.11.116, 46.11.120, and    | ) | 46.11.114, 46.11.116,       |
| 46.11.125 and the repeal of  | ) | 46.11.120, AND 46.11.125    |
| Rule 46.11.128 pertaining to | ) | AND THE REPEAL OF RULE      |
| the food stamp program,      | ) | 46.11.128 PERTAINING TO THE |
| retrospective budgeting and  | ) | FOOD STAMP PROGRAM, RETRO-  |
| monthly reporting            | ) | SPECTIVE BUDGETING AND      |
|                              | ) | MONTHLY REPORTING           |

TO: All Interested Persons

1. On July 7, 1983, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.11.111, 46.11.112, 46.11.114, 46.11.116, 46.11.120, and 46.11.125 and the repeal of 46.11.128 pertaining to the food stamp program, retrospective budgeting and monthly reporting.

2. The rule to be repealed can be found on page 46-956 of the Administrative Rules of Montana.

The authority of the department to repeal the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.

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

46.11.111 FOOD STAMP PROGRAM, PILOT-PROJECTS-FOR RETRO-SPECTIVE BUDGETING AND MONTHLY REPORTING, PURPOSE IMPLEMENTATION (1) Federal food stamp regulations

require each state to implement a system of monthly reporting and retrospective budgeting (MRRB) by October 1, 1983. The department will phase in pilot MRRB systems in--four--(4) counties,--Madison, Hill,--Beavert--and Valley counties, starting on December-17,--1982 August 1, 1983.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.

46.11.112 FOOD STAMPS, PILOT-PROJECTS, DEFINITIONS

(1) "Beginning month" means the month in which the household applies for benefits and the month thereafter. A beginning month cannot be any month which immediately follows a month in which the household was certified.

(2) "Budget month" means the calendar month from which the department uses income, household composition, and other financial information concerning the household to calculate the household's food stamp allotment for the corresponding issuance month.

(3) "Issuance Benefit month" means the calendar month for which the department issues a food stamp allotment.

(4) "Prospective budgeting" means ~~that--the--issuance month--and--the--budget--month--are--the--same~~ the determination of a household's composition, income, and deductible expenses on the best estimate of income and circumstances which will exist in the benefit month.

(5) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance benefit month based on actual income, household composition and other financial information which existed in a previous budget month.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.

46.11.114 FOOD STAMPS, PILOT-PROJECTS, INTERVIEW-PURPOSE AND--REQUIREMENTS--FOR

(1) The household shall be required to have an in-person office interview when they make their initial application for benefits. This requirement can be met by substituting a telephone or in-home interview for an office interview when:

(a) household members are unable to come to the county office because they are sixty (60) years of age or older, or mentally or physically handicapped and no other personal representative is able to come to the office; or

(b) the household has no member who is able to come to the county office because of a lack of transportation or hardships such as illness, work hours which preclude office interviews or prolonged severe weather.

(2) The department may require an in-person office interview at the time of recertification or at other times deemed necessary by the department.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.

46.11.116 FOOD STAMPS, PILOT-PROJECTS, DETERMINING ELIGIBILITY FOR BENEFITS

(1) Eligibility shall be determined on a prospective basis.

(2) Households anticipating changes in their circumstances which will make them ineligible shall be given written notice of denial or written notice of the closure of their certification.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.

46.11.120 FOOD STAMPS, ~~PILOT-PROJECTS~~, MONTHLY REPORTING REQUIREMENTS Subsections (1) through (3) remain the same.

(4) The department shall notify a household when the household fails to return their monthly report by the report due date or when the household files a report with missing information. This notice shall be sent to the household so that it is received not later than the first day of the issuance benefit month. This notification shall inform the household about the nature of the missing report or information. The household shall have an additional ten (10) days from the date this notice is sent to file the complete monthly report.

(5) Households which fail to file a complete monthly report by their extended filing date shall have their case closed immediately without further notice.

(6) Households closed for failure to report may reapply after closure but their benefits will continue to be calculated on the basis of a complete report which is received before the end of the benefit month. If the household is found eligible, it's benefits shall be prorated from the date a reapplication for benefits is filed. ~~for the month in which the household failed to report.~~

(7) Households which have their cases closed for one full month shall be required to reapply as an initial applicant. These households shall have their eligibility and benefits determined prospectively on the basis of their new application.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.

46.11.125 FOOD STAMPS, ~~PILOT-PROJECTS~~, DETERMINING BENEFITS (1) Except as provided in paragraph (2) below, household benefits shall be determined retrospectively on the basis of the households circumstances reported in their monthly report.

(2) Household benefits shall be determined prospectively in the following situations:

(a) in cases which involve migrant farmworkers who are pursuing migrant farmwork outside of their home area;

(b) in the first two months of eligibility following an initial application;

~~(c) in the first two months of eligibility when a currently certified household moves into a MRRB project county from a non-MRRB county;~~

(d) (c) when a new member begins to live with a household which is currently on retrospective budgeting, the income and resources of the new member shall be treated prospectively in the first two months of the new members eligibility.

(3) Income received in the first two months of eligibility which is no longer available shall not be included in retrospectively budgeted income in the third and fourth months' of eligibility.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-201 and 53-2-306, MCA.


4. The department operates the Food Stamp Program according to the rules of the U.S. Department of Agriculture. These federal rules require that the department use a new method of determining a households food stamp benefit starting October 1, 1983. This new method involves using a households past circumstances to determine a future benefit. Most households will submit a monthly report which the department will use to determine their next month's benefit. This new method is known as "monthly reporting and retrospective budgeting".

Although the federal regulations are in most cases fixed, the department is allowed to design an eligibility determination system which is uniform and compatible with Montana's Aid to Dependent Children's Program. In order to do this, the department started testing a new system of monthly reporting and retrospective budgeting for the Food Stamp Program in December, 1982. Since that time, this new system has been used to determine households' food stamp benefits in Hill, Madison, Ravalli and Valley counties. The department believes that these procedures have now been sufficiently tested to implement them statewide.

The department is proposing to implement the new eligibility system effective August 1, 1983 in order to allow time to phase households into the system and still meet the October 1, 1983 deadline.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than July 15, 1983.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 6, 1983.

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

|                             |   |                               |
|-----------------------------|---|-------------------------------|
| In the matter of the amend- | ) | NOTICE OF ECONOMIC IMPACT     |
| ment of Rules 46.12.1201,   | ) | STATEMENT FOR THE AMENDMENT   |
| 46.12.1202, 46.12.1204, and | ) | OF RULES 46.12.1201,          |
| 46.12.1210 pertaining to    | ) | 46.12.1202, 46.12.1204, AND   |
| nursing home reimbursement  | ) | 46.12.1210 PERTAINING TO      |
| under the state medicaid    | ) | REIMBURSEMENT FOR SKILLED     |
| program                     | ) | NURSING AND INTERMEDIATE CARE |
|                             | ) | SERVICES                      |

TO: All Interested Persons

1. On June 6, 1983, at 9:30 a.m., a public hearing was held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204, and 46.12.1210 pertaining to reimbursement for skilled nursing and intermediate care services.


2. The following is an economic impact statement issued pursuant to section 2-4-405, MCA and for the adoption and amendment of rules set forth in MAR Notice No. 46-2-375.

(a) The cost to the state of administering and enforcing the rule: None.

(b) The aggregate cost of compliance to all persons affected: Medicaid reimbursement to nursing home providers will not be reduced by the proposed rule change. Reimbursement rates will, however, be held at current (FY83) levels until January 1, 1984, at which time overall provider rates will be increased by a 6% inflator in the nursing home rate formula. The net result will be an estimated increase in provider reimbursement of \$1,978,500 or 5.3% over FY83. On July 1, 1984, overall provider rates will again be increased by a 9% inflator in the nursing home rate formula. The net result will be an estimated increase in provider reimbursement of \$2,835,500 or 7.2% over FY84. Under the current rule, provider reimbursement would increase an estimated additional \$3,129,000 during the 1985 biennium.

(c) Any economic benefit of compliance to all persons affected: The proposed rule will adjust the inflationary increases and the implementation of those inflationary increases to more accurately reflect the most recent measures and projections of inflation. The basic operating rate formula was derived through the use of regression analysis techniques designed to determine the cost of operation of an "efficient and economically operated" long-term care facility. This formula requires adjustment because of current inflation estimates in order to update the cost of operation of an "efficient and economically operated" long-term care facility. The majority of facilities in the state will experience smaller increases than under the current rules since the current

rule's estimate of inflation was higher than current measures indicated.

  
Director, Social and Rehabilitation Services

Certified to the Secretary of State JUNE 6, 1983.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF ARCHITECTS

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM  
of ARM 8.16.413 concerning the) 8.6.413 FEE SCHEDULE  
fee schedule. )

TO: All Interested Persons:

1. On April 28, 1983, the Board of Architects published a notice of amendment of 8.6.413 concerning the fee schedule at pages 313 and 314, 1983 Montana Administrative Register, issue number 8.

2. The board has amended the rule with the following change: (new matter underlined)

"8.6.413 FEE SCHEDULE

(1) ...

(f) Division F - Structural - Long Span 14.00

(g) Division G - Mech/plbg/Elec/Life Safety 29.00

(h) Division H - Materials and Methods 35.00

(i) Division I - Construction Documents 41.00  
and Services

(2) ..."

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM  
of ARM 8.48.604 concerning ) 8.48.604 RECIPROCITY FOR REG-  
comity consideration of land ) ISTERED LAND SURVEYORS; 8.48.  
surveyors; 8.48.901 and 8.48. ) 901 EXPIRATION OF REGISTRATION  
902 concerning maintenance of ) - RENEWAL; 8.48.902 STATEMENT  
professional competency; 8.48. ) OF COMPETENCY; 8.48.904 EXPIRED  
904 concerning license renewal ) CERTIFICATE - RENEWAL GRACE  
grace period; 8.48.1101 con- ) PERIOD; 8.48.1101 PRACTICE BY  
cerning temporary licensing of) NON-RESIDENT ENGINEERS - TEMPO-  
non-resident engineers; and ) RARY PERMITS; and ADOPTION  
adoption of a rule for corner ) OF 8.48.1109 FORM OF CORNER  
recording. ) RECORDS - INFORMATION TO BE  
INCLUDED

TO: All Interested Persons:

1. On April 28, 1983, the Board of Professional Engineers and Land Surveyors published a notice of amendments and adoption of the above-stated rules at pages 315 and 321, 1983 Montana Administrative Register, issue number 8.

2. The board has amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the adoption) NOTICE OF ADOPTION OF 8.66.412  
of a fee schedule. ) FEE SCHEDULE

TO: All Interested Persons:

1. On April 28, 1983, the Board of Water Well Contractors published a notice of adoption of a new rule setting a fee schedule at page 322, 1983 Montana Administrative Register, issue number 8.
2. The board has adopted the rule exactly as proposed.
3. No comments or testimony were received.

BY:

  
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 6, 1983.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF HORSE RACING

|                                   |                                |
|-----------------------------------|--------------------------------|
| In the matter of amendment of )   | NOTICE OF AMENDMENT OF 8.22.   |
| 8.22.1606 to add trifecta bet-) ) | 1606 TYPES OF BETS; and        |
| ting and the adoption of new )    | ADOPTION OF A NEW SUB-CHAPTER  |
| rules for trifecta wagering )     | 18, RULES OF TRIPECTA WAGERING |
| under a new sub-chapter 18. )     |                                |

TO: All Interested Persons:

1. On March 17, 1983, the Board of Horse Racing published a notice of public hearing at pages 197 through 200, 1983 Montana Administrative Register, issue number 5.

The hearing was duly held on April 15, 1983 in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana. Linda King, board member, Steve Meloy, Executive Secretary for the Board and John M. Trippe, of Seeley Lake were present.

Aside from the officials nine persons attended the hearing. Five witnesses spoke in support of the amendment and the proposed new rules. No one spoke or otherwise offered a submission in opposition to the amendment or the proposed new rules.

2. The board is amending and adopting the rules exactly as proposed with two exceptions. The amendment of 8.22.1606 has one change to make the rule clearer. The adoption of the rule noticed as II. (now 8.22.1802) has several changes which are listed below to make the requirement more concise. The changes are shown below. (new matter underlined, deleted matter interlined)

"8.22.1606 TYPES OF BETS (1) The Quiniela (sometimes called "~~Quinella~~)-~~Quiniela~~-~~Quinella~~ is a contract by the purchaser of a quiniela -~~Quinella~~- ticket to select the first two horses to finish in a race.

(2) ..."

II. now "8.22.1802 REQUIREMENTS OF LICENSEE (1) ...

(3) No licensee shall offer trifecta wagering on any race when there are less than eight horses scheduled to start, at draw time. In no event will trifecta wagering be permitted on a race in which less than six horses go to the post.

(4) Urine samples may ~~shall~~ be taken from all or any horses which started in a race on which there was trifecta wagering and all urine samples shall be tested by the official racing chemist with the costs therefore borne by the licensee. In all cases the first two placing horses shall be tested.

(5) ...

(6) No more than two trifecta races may be offered on any single day at any meet."

3. One other comment was received from the attorney for the code committee requesting the board use 23-4-104, MCA as the implementing section. No other comments or testimony

were presented.

BOARD OF HORSE RACING  
LINDA KING, ACTING CHAIRMAN

BY:



GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 6, 1983.

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

|                                |   |                             |
|--------------------------------|---|-----------------------------|
| In the matter of the amendment | ) | NOTICE OF THE AMENDMENT OF  |
| of Rule 8.86.301 (8) (b), (c), | ) | RULE 8.86.301 (8) (b), (c), |
| (d), (e), (9) (a): as it re-   | ) | (d), (e), (9) (a) PRICING   |
| lates to fixing the Class III  | ) | RULES.                      |
| formula price and updating     | ) |                             |
| the freight allowance for      | ) | DOCKET #64-83               |
| Class I milk.                  | ) |                             |

TO: All Interested Persons

1. On March 17, 1983 the Montana Board of Milk Control published notice of a proposed amendment of Rule 8.86.301 (8) (b), (c), (d), (e), (9) (a) relating to fixing the Class III formula price and updating the freight allowance for Class I milk at pages 214 through 216 of the 1983 Montana Administrative Register, issue number 5.

2. The hearing was held by the Board of Milk Control to consider requests by Montana Dairymen's Association and Beatrice Foods Company of Billings, Great Falls, Missoula and Kalispell, Montana in the lower conference room of the Department of Commerce at 1430 Ninth Avenue, Helena, Montana on April 22, 1983. For clarification purposes, Vita Rich Dairy Inc. originally submitted a request to amend Rule 8.86.301 (8) which was not considered but was the reason for Montana Dairymen's Association offering their proposal as a possible alternative to amend Rule 8.86.301 (8) (b), (c), (d) and (e).

3. Several comments were received by proponents and opponents and other persons wishing to be heard. At the public hearing Mr. K.M. Kelly, representing Montana Dairymen's Association, requested the board adopt Rule 8.86.301 (8) (b), (c), (d), and (e) as originally noticed except with the following changes as noted below. Mr. Terry Baeth and Mr. Knute Kulbeck, representing Vita Rich Dairy Inc., and Mr. Ed McHugh of Cloverleaf Dairy Inc., appeared to testify in favor of the proposed amendment. Mr. Harry Mitchell appeared as a proponent in concept, but was opposed to the numbers and favored a 50-50 percent proposal. A producer and a processor testified against the whole proposal urging the board to deny the petition. They urged the board to deny the proposal for the following reasons:

(a) Opponents contend the producers are already overburdened because of the Commodity Credit Corporation deduction, and to add another deduction would only serve to compound the shortage of milk which will result from federal intervention.

(b) The proposal would permit distributors to move milk unnecessarily at the producers expense.

(c) Distributors would exploit producers by selling poor quality milk to cheese factories and keeping the better quality milk for the distributor's own use, thus resulting in a high profit margin for distributors.

(d) The proposal would penalize the producers who did not produce in excess of their production history almost as much as the producers who did, thereby not accomplishing its intended purpose.

The board rejected the opponents arguments and elected to accept proponents arguments concerning the concept, but they changed the responsibility for sharing costs from an 85-15% proposal to a 50-50% proposal.

(a) The board rejected the 85-15% proposal because the majority of the testimony favored a 50-50% proposal.

(b) The board believed the cost of handling the surplus production should be shared equally by both producers and distributors.

(c) The board believed the 50-50% proposal adequate to permit movement of milk to out-of-state markets to prevent waste.

#### 8.86.301 PRICING RULES (1) . . .

(8) . . .

(b) Fifty percent (50%) of all milk received by the plant of origin that is in excess of any beneficial use by said plant and is shipped to a different market for manufacturing purposes, nevertheless, assures the plant of an adequate supply of milk for plant needs and is therefore subject to the regularly established Class III price as prescribed by the formula established by the board. Fifty percent (50%) of all milk received by the plant of origin that is in excess of actual usage by said plant and must be shipped to a different market for manufacturing purposes to prevent waste, such as milk being classified by statute and rule as Class III, shall be subject to a special reduced price as fixed by the board pursuant to the formula hereinafter provided. The special reduced price shall first be allocated by the Bureau auditors on a pro rata basis to those producers whose monthly production exceeds their average monthly production for the calendar years 1980 and 1981. The special reduced price to be applied to the remaining portion of the fifty percent (50%) of all milk received by the plant of origin, which is in excess of actual plant usage and therefore must be shipped to another market for manufacturing purposes, or the entire fifty percent (50%) excess, as the case may be, should there be no producer whose monthly production exceeds his average monthly production for the calendar years 1980 and 1981, shall be allocated equally between the remaining producers or all of the plant's producers as the case may be. Such special reduced price shall apply in any month of the year that the above conditions exist. The formula for the special reduced price to be applied to the fifty percent (50%) of all milk received by the plant of origin which is in excess of actual plant usage and therefore must be shipped to another market for manufacturing purposes, shall be derived by subtracting the difference between the price received by

the plant for the excess milk shipped to another market and the established Class III price ordinarily paid to producers for Class III usage, from the plant's cost of hauling such excess milk to another market based on ninety-five cents (\$0.95) per running mile. In the event that the plant receives less than the established price for Class III milk as fixed by the board and ordinarily paid to producers for Class III usage for such excess milk shipped to another market, the difference will be added to the hauling as computed above.

(c) . . ."

The board is amending section (c) as originally noticed.

(d) In the event that total Class III usage allocated to producers must be shipped to another market because of inventory differences supplying regular plant Class III usage, then all producers will share in such usage pro rata. This rule is maximum and permissive in that a plant is not required to charge its producers for shipments to other markets.

(e) . . ."

The board is amending section (e) as originally noticed.

4. Several comments were received by proponents and opponents wishing to be heard concerning the proposed amendment of (9)(a). At the public hearing, Mr. Jerry Sullivan, Mr. Terry Baeth and Mr. Larry Van Dyke appeared to testify in favor of amending Rule 8.86.301 (9)(a) as originally petitioned. A processor, two producers, and a representative from Montana Dairymen's Association appeared in opposition to the proposed amendment. The board rejected petitioners arguments to amend Rule 8.86.301 (9)(a) as originally noticed for the following reasons:

(a) The board believed the petition, which was based on a 3500 gallon tanker, did not represent a reasonably efficient operator, and therefore it would not be in the public interest to set hauling rates on the experience of such a small quantity of milk.

(b) The board believed the petitioners did not present reliable or probative cost evidence relating to over-the-road bulk transportation of milk.

(c) The board believed that allowing the distributor to recover his full cost of \$1.10 per mile, could possibly result in producers being exploited by processors.

The board rejected the opponents argument urging the board not to amend Rule 8.86.301 (9)(a) for the following reasons:

(a) The board believed it in the public interest to allow milk to move to where it is needed to avoid waste.

(b) The board believed that costs have increased since 1968. However, since no reliable probative evidence had been submitted, and since both producers and processors had agreed that \$0.95 a mile was a reasonable cost to move excess milk from the plant to the cheese factory, it should be used as a basis for the rate on transfers of Class I milk between plants.

(c) The board believed that a 5200 gallon load was suffi-

ciently representative of a reasonably efficient milk hauler.

(d) The board believed that a processor who did not wish to receive milk in 5200 gallon quantities should incur the additional cost to move lesser quantities of milk.

(e) The board believed that in situations where the cost was in excess of \$0.95 a mile, the selling distributor should incur the additional cost so as not to exploit producers but assure that the distribution between producer and consumer be as direct as can be efficiently and economically done.

5. Based on comments and testimony at the hearing, the Board of Milk Control has amended the rule with the following change:

"8.86.301 PRICING RULES (1). . .

(9) . . . .

(a) The following maximum freight allowance may be charged producers of a licensed distributor or dealer whose plant is located within Montana on transfers of bulk milk, a major portion of which is used in Class I between distributors situated more than twenty-five (25) road miles apart, regardless of the market area or state of the receiving plant:

| <u>DISTANCE</u> |   |           | <u>MAXIMUM FREIGHT</u><br><u>ALLOWANCE</u><br>(Per hundredweight) |         |
|-----------------|---|-----------|---|---------|
| 25              | - | 50 Miles  | .365  | \$ .25  |
| 51              | - | 75 Miles  | .55   | \$ .40  |
| 76              | - | 100 Miles | .73   | \$ .50  |
| 101             | - | 150 Miles | 1.10  | \$ .64  |
| 151             | - | 200 Miles | 1.46  | \$ .85  |
| 201             | - | 250 Miles | 1.83  | \$ 1.06 |
| 251             | - | 300 Miles | 2.19  | \$ 1.28 |
| 301             | - | 350 Miles | 2.56  | \$ 1.49 |

BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN



Certified to the Secretary of State June 6, 1983.




BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
OF THE STATE OF MONTANA

|                                |   |                     |
|--------------------------------|---|---------------------|
| In the matter of the repeal    | ) | NOTICE OF REPEAL OF |
| of Rule 12.2.202 relating to   | ) | RULE 12.2.202 --    |
| the department policy for      | ) | DISTRIBUTION OF     |
| distribution of license holder | ) | DEPARTMENT LISTS    |
| lists and other department     | ) |                     |
| lists                          | ) |                     |

TO: All Interested Persons:

1. On March 31, 1983, the Department of Fish, Wildlife, and Parks published notice of a proposed repeal of a rule relating to distribution of department lists at page 243 of the 1983 Montana Administrative Register, issue No. 6.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.

  
James W. Flynn, Director  
Dept. of Fish, Wildlife & Parks

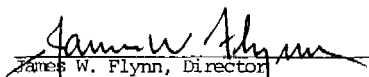
Certified to the Secretary of State May 24, 1983.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
OF THE STATE OF MONTANA

|                               |   |                       |
|-------------------------------|---|-----------------------|
| In the matter of the adoption | ) | NOTICE OF ADOPTION OF |
| of a new rule, relating to    | ) | A NEW RULE --         |
| the outfitter examination,    | ) | OUTFITTER EXAMINATION |
| permitting an applicant who   | ) |                       |
| fails the written outfitter   | ) | 12.6.514              |
| examination to take it a      | ) |                       |
| second time within a one-     | ) |                       |
| year period                   | ) |                       |

TO: All Interested Persons:

1. On March 31, 1983, the Montana Department of Fish, Wildlife, and Parks published notice of proposed adoption of a new rule relating to outfitter examinations at page 241 of the 1983 Montana Administrative Register, issue No. 6.
2. The agency has adopted the rule as proposed.
3. No comments or testimony were received.

  
James W. Flynn, Director  
Dept. of Fish, Wildlife & Parks

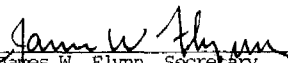
Certified to the Secretary of State May 24, 1983.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

|                                   |                           |
|-----------------------------------|---------------------------|
| In the matter of the amendments ) | NOTICE OF AMENDMENT OF    |
| of Rules 12.8.205, 12.8.207, )    | RULES 12.8.205, 12.8.207, |
| 12.8.209, and 12.8.211, con- )    | 12.8.209, AND 12.8.211 -- |
| cerning public use of )           | PUBLIC USE OF             |
| recreational areas )              | RECREATIONAL AREAS        |

TO: All Interested Persons:

1. On April 14, 1983, the Montana Fish and Game Commission published notice of proposed amendments to the public use of recreational areas at pages 288 through 290 of the Montana Administrative Register No. 7.
2. The commission has amended the rules as proposed.
3. No comments or testimony were received.

  
James W. Flynn, Secretary  
Fish and Game Commission

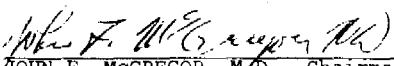
Certified to Secretary of State May 24, 1983.

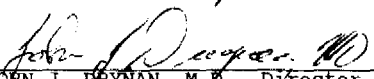
BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

|                                 |   |                                      |
|---------------------------------|---|--------------------------------------|
| In the matter of the amendment  | ) | NOTICE OF THE AMENDMENT              |
| of rule 16.38.302, setting fees | ) | OF RULE 16.38.302                    |
| for analyses of drinking water  | ) | (Laboratory Fees-<br>Drinking Water) |

TO: All Interested Persons

1. On April 14, 1983, the board published notice of a proposed amendment of rule 16.38.302 concerning fees for analyses of drinking water at page 291 of the 1983 Montana Administrative Register, issue number 7.
2. The board has amended the rule as proposed.
3. No comments or testimony were received.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State June 6, 1983

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

|                                 |                           |
|---------------------------------|---------------------------|
| In the matter of the adoption ) | NOTICE OF THE ADOPTION OF |
| of Rules 46.6.2501, )           | RULES 46.6.2501,          |
| 46.6.2505, 46.6.2510, )         | 46.6.2505, 46.6.2510,     |
| 46.6.2515, 46.6.2520, )         | 46.6.2515, 46.6.2520,     |
| 46.6.2525, 46.6.2530, )         | 46.6.2525, 46.6.2530,     |
| 46.6.2535, 46.6.2540, )         | 46.6.2535, 46.6.2540,     |
| 46.6.2545, 46.6.2550, )         | 46.6.2545, 46.6.2550,     |
| 46.6.2555, 46.6.2560, )         | 46.6.2555, 46.6.2560,     |
| 46.6.2565 and 46.6.2570 )       | 46.6.2565 and 46.6.2570   |
| pertaining to the blind )       | PERTAINING TO THE BLIND   |
| vendors program )               | VENDORS PROGRAM           |

TO: All Interested Persons

1. On April 28, 1983, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to the blind vendors program at page 330 of the Montana Administrative Register, issue number 8.

2. The Department has adopted Rule 46.6.2505, ESTABLISHMENT OF BUSINESS ENTERPRISE FACILITIES; Rule 46.6.2515, TRANSFER AND TERMINATION; Rule 46.6.2530, TRAINING OF BLIND VENDORS; Rule 46.6.2545, ORGANIZATION AND ELECTION - STATE COMMITTEE OF BLIND VENDORS; Rule 46.6.2550, FUNCTIONS OF COMMITTEE; Rule 46.6.2555, TEMPORARY OPERATION OF FACILITY BY THE DEPARTMENT; Rule 46.6.2560, CONTRACTS WITH VENDING COMPANIES and Rule 46.6.2570, INFORMING VENDORS OF RIGHTS AND RESPONSIBILITIES as proposed.

3. The Department has adopted the below-mentioned rules as proposed with the following changes:

46.6.2501 DEFINITIONS

Subsections (1) through (10) remain as proposed.

(11) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(12) "Nominee" means a non-profit agency or organization designated by the state licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the state's vending facility program.

(13) "Other property" means all real property other than state or federal property as defined in this rule.

(14) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased

in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this subchapter does not include vocational institutions or institutions of higher education.

(135) "Vending facility" means an area and equipment inclusive of vending machines on state, federal or other property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property, and may include any of the following:

(a) shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment that is necessary for the vending of articles that are approved by the agency, or other authority having care, custody and control of the property in or on which the vending stand is located;

(b) manual or coin operated vending machines or similar devices for vending the approved articles;

(c) cafeteria or snack bar facilities for the dispensing of approved food and beverages.

(146) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operating telephones.

(157) "Vendor" means either a blind vendor or any person who is by contract temporarily managing and operating a business enterprise facility which is part of the blind vendors program.

(168) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3, MCA.

#### 46.6.2510 ISSUANCE AND CONDITIONS OF CERTIFICATION

(1) In order to be eligible to be a certified blind person for the purposes of this sub-chapter, one has to be an accepted client of the vocational rehabilitation program.

(2) Criteria in the issuance of certification. Preference will be given to blind persons who are in need of employment for economic reasons and who are residents of the state of Montana, but in all instances certifications will be issued only to persons who meet the following criteria:

(a) the person has been determined to be blind as defined in ~~rule-1~~ ARM 46.6.2501(2) by the department;

(b) the person is a citizen of the United States;

(c) the person is at least 18 years of age;

(d) the person is determined by the department to be qualified to operate a business enterprise facility; and

(e) the person is determined by the department to be in need of vocational opportunities.

Subsections (3) through (4) (c) remain as proposed.

46.6.2520 EQUIPMENT AND, STOCKS AND INSURANCE

Subsections (1) through (3)(c) remain as proposed.

(4) The department will obtain and maintain in force applicable public liability and products liability insurance with minimum limits of \$500,000 each occurrence, \$1,000 medical payments, \$25,000 each accident.

(a) such insurance shall name the vendor and the state of Montana as named insured;

(b) the department will provide each unit with a copy of insurance coverage.

46.6.2525 VENDOR RESPONSIBILITIES (1) The vendor shall receive all income derived from the operation of the business enterprise facility and any assigned vending machines after deducting the operational costs and charges mutually agreed upon. Income from Vending machines on non-federal property in direct competition with the facility will be assigned to the vendor (a vending machine will be considered to be in direct competition with the business enterprise facility if it vends articles of a type authorized by the applicable license and is so located that it attracts customers who would otherwise patronize the business enterprise facility).

(2) The duties of the vendor shall be to:

Subsections (2)(a) through (2)(h) remain as proposed.

~~(i)--obtain-and-maintain-in-force,-as-an-expense-to-the unit,-applicable-public-liability-and-products-liability-insurance-with-minimum-limits-of-\$500,000-each-occurrence,-\$1,500 aggregate,-\$1,000-medical-payments,-\$5,000-each-accident;~~

~~(ii)--such-insurance-shall-name-the-vendor-and-the-state of-Montana-as-named-insured;~~

~~(iii)-to-obtain-a-certificate-and-file-same-with-the-department-indicating-that-such-insurance-is-in-force-and-the terms-of-the-policy;~~

(iv) to report to the department in writing, as soon as practicable, the occurrence of any accident at this facility. This requirement is in addition to the vendor's duty to report any accident of the insurance carrier;

(v) to report to the department any claim or suit which may be brought against the vendor as the result of any accident at the facility. This requirement is in addition to the vendor's duty to report such information to the insurance carrier.

Subsections (3) through (3)(b) remain as proposed.

(4) Vacations and leaves of absence:

(a) Annual vacations may be taken by vendors in accord with accepted business practices. Vendors planning to take a vacation should select a substitute vendor, preferably a certified blind person, to assume responsibility for the operation of the facility. Substitute vendors shall be paid by the vendor. The selection of the substitute vendor is a responsi-

bility of the vendor but must be approved by the department. The department must be notified ~~fourteen-(14)-days~~ in advance of the period vacations are selected.

(b) Requests for extended vacation periods or leaves of absence for other purposes shall be presented to the department. These requests will be evaluated on their individual merits.

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

46.6.2535 DEPARTMENT'S SET ASIDE FUNDS (1) The department will set aside funds from the net proceeds of the operation of business enterprise facilities under the blind vendors program. To the extent that set aside funds are accumulated as provided for in subsections (2) and (3), those funds may be used for the purposes of:

(a) maintenance and replacement of equipment;

(b) the purchase of new equipment;

(c) management consultant services;

(d) assuring a fair ~~maximum~~ minimum of return to vendors; ~~or~~

(e) the establishment and maintenance of retirement or pension funds, health insurance contributions, paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors certified by the department, after providing each such vendor information on all matters relevant to such proposed purposes; ~~or~~

(f) the purchase by the department of public liability and products liability insurance as provided in ARM 46.6.2520(4).

~~(2)--Extent-of-funds-to-be-set-aside:~~

~~(a)--The-schedule-of-funds-to-set-aside-may-be-revised-by the-department-periodically-as-the-accounting-records-and other-objective-criteria-may-indicate-and-as-it-may-deem advisable-and-in-the-best-interest-of-the-blind-vendor-program-~~

~~(b)--The-department-has-established-the-following-schedule-for-the-amount-of-funds-to-be-set-aside:~~

~~(i)--The-actual-net-proceeds-shall-be-the-amount-remaining-from-the-sale-of-articles-or-services-of-vending-facilities-and-any-vending-machine-or-other-income-accruing-to-vendors-after-deducting-the-cost-of-such-sales-and-other-expenses (excluding-set-aside-charges-required-to-be-paid-by-such-operators)-~~

~~(ii) (2) The amount of net proceeds for set aside purposes will be computed and reported on the SRS-VSD-BE-1 and paid monthly.~~

~~(iii) (3) Each unit's set aside fee will be computed upon five percent (5%) of the net proceeds-as-per-following schedule:-~~

~~(A)--first-\$400-of-expected-profit--2%;~~

~~(B)--\$401-to-\$500-of-the-net-proceeds--5%-of-amount-over~~



\$400-plus-\$0.00;

(E) ~~--\$501 to \$600 of the net proceeds --- 10% of amount over \$500-plus-\$13.00;~~

(B) ~~--\$601 to \$700 of the net proceeds --- 15% of amount over \$600-plus-\$23.00;~~

(E) ~~--\$701 and over of the net proceeds --- 20% of amount over \$700-plus-\$38.00;~~

46.6.2540 NECESSARY COMPLIANCE (1) All vendors shall be responsible for acquainting themselves with, and conforming to all laws, ordinances, and governmental rules and regulations pertinent to the conduct and operation of a business enterprise facility.

(2) It shall be the responsibility of the vendor to apply to the appropriate authority to secure required licenses, permits, and authorizations ~~and insurance~~.

(3) While every assistance will be given the vendor by the department it shall be the responsibility of the vendor to familiarize himself with the laws and ordinances relative to the operation of the facility and to file any necessary tax returns or other reports.

(4) This program will operate in compliance with Section 80.4(b) of the regulations of the department of health, education and welfare (45 CFR, Part 80 effectuating Title VI of the Civil Rights Act of 1964).

46.6.2565 DISTRIBUTION AND USE OF VENDING MACHINE INCOME ON FEDERAL PROPERTY (1) Vending machine income from vending machines on federal property and other property which has been disbursed to the department by a property managing department, agency, or instrumentality of the United States under the vending machine income sharing provisions in Section 395.8 of the ~~federal regulations~~ Randolph-Sheppard Act of 1974 (PL 93-516) shall accrue to each blind vendor operating a vending operating facility on such federal property in an amount not to exceed the average net income of the total number of blind vendors within such state, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States.

Subsections (2) through (6) remain as proposed.

4. The Department has thoroughly considered all verbal and written commentary received:

COMMENT: The consensus of those who testified was that the rules had not been appropriately distributed, i.e., to enough interested parties and the proposed rules were in a format that was too difficult to read. Also, the size and medium of print for all blind and/or visually impaired recipients of the

proposed rules was criticized as being inappropriate. Tapes and braille would have been more appropriate.

RESPONSE: The regular print proposed rules were mailed to the blind vendors as a priority because they would be the only ones directly affected by such. None of the blind vendors had ever requested special accommodation before.

No more than two days after the regular print proposed rules were mailed, the tape and braille copies were mailed to those requesting such special accommodation.

During the hearing, the Department did explain that rule format is set by the Secretary of State's Office.

COMMENT: More than once, testimony stated that these rules reflect only the view of the state.

RESPONSE: Each time such testimony was given, the Department responded with the purpose of a hearing. The rule-making process was explained as one allowing for public input, such as we were hearing. It was further explained that interested parties had until May 27 to comment and that the Department would be inclined to make substantive and minor changes as a result of such input.

COMMENT: Military reservations should not be excluded in the definition of federal property.

RESPONSE: Section 18-5-402(5) MCA, excludes military reservations from the definition of federal property. Thus, the Department cannot include military reservation in the definition of federal property.

COMMENT: Add the term "nominee" to the list of definitions.

RESPONSE: The Department has done so by adding a subsection to Rule 46.6.2501.

COMMENT: The \$400 deductible is too high. How about a compromise at \$200?

RESPONSE: The Department chose to retain the \$400 to decrease the number of repair calls to the Department and to encourage vendors in their attempts at being independent.

COMMENT: The public and products liability insurance is too expensive for a vendor to buy as an individual business person. "The state purchasing a package deal can get a better rate".

RESPONSE: The vendor's committee has agreed to let the Department pay for this insurance out of the set aside fund that is paid into by the vendors. As stated in Rule 46.6.2535, the Department has agreed to pay the insurance premium out of the vendor's set aside.

COMMENT: Testimony identified Rule 46.6.2525 (4) (a) as unrealistic that requires notification to the Department 14 days in advance of the period vacations are taken.

RESPONSE: The Department agreed to eliminate the 14 day period, but not the advance notice requirement.

COMMENT: Testimony raised the question as to derivation of Rule 46.6.2535 (1) (a) through (e).

RESPONSE: The Department responded that these two set aside fund purposes were taken directly from the federal regulations implementing the Randolph-Sheppard Act.

COMMENT: The set aside formula in Rule 46.6.2535 (2) (A) through (E) is too complicated and would collect more set aside than is necessary.

RESPONSE: The Department has agreed to replace the formula with a simple 5% charge against each vendor's net proceeds.

COMMENT: Testimony requested a definition of net proceeds.

RESPONSE: The Department has added a definition of "net proceeds" in Rule 46.6.2501.

COMMENT: Eliminate the set aside and let vendors pay for everything.

RESPONSE: In this most unusual relationship the Department has with vendors, the Department has always been turned to as the liable party when vendors did not underwrite the normal costs of doing business. The Department can no longer assume total financial responsibility for this program.

COMMENT: The proposed rules will destroy any incentive the vendors should have as private business people because they place total responsibility on the vendors.

RESPONSE: The purpose of the rules is to in fact extend some of the responsibility for success of the program on the vendors.

COMMENT: The Department should keep the program rather than giving the management to a nominee and it should hire another

BEP specialist even at the expense of eliminating other VSD staff positions.

RESPONSE: The Department has chosen to give the management of the program to a nominee for the following reasons:

(1) The total expense of operating the program would be reduced to the cost of only a BEP manager.

(2) A nominee introduces a third party or more objective viewpoint in managing what needs to be a very business oriented program.

COMMENT: Allow the vendors to buy their stands.

RESPONSE: The space occupied by the vendors is a non-salable item. The Department is not interested in selling its equipment via long-term arrangement (15-25 years) because of the high price of the equipment. Even in the event the Department agreed to a buy-out arrangement, the Department would continue to monitor vendors during the period of the buy-out, and according to federal regulations, the Department would have the first option on buying back all equipment if vendor decided to sell.

COMMENT: Who will pay for alterations to facilities?

RESPONSE: The agency initiating the request for alterations should be responsible for the cost. This would be open for negotiation between agencies.

COMMENT: Who pays the cost of restoring a facility to "regular" use if SRS abandons it?

RESPONSE: There will be no special accommodations made that would preclude the use of a facility by other than a blind vendor.

COMMENT: There seems to be no provision for transfer of assets from an agency now owning these assets to SRS.


RESPONSE: At present, fixtures permanently attached to a facility (e.g., sinks, counters, electrical fixtures) are the property of the agency in charge of the building. Other, more temporary fixtures, (e.g., refrigerators, freezers, stoves) have been purchased by SRS. Transfer of ownership, if necessary, would be negotiated between SRS and the agency in charge of the building.

COMMENT: What does the term "assigned" mean?

RESPONSE: This refers to income from vending machines on non-federal property on which there is a blind vendor present. The word "income from" has been added to clarify Rule 46.6.2525(1).

COMMENT: Will SRS continue to manage vending machines on state property as the Department of Administration has done in the past?

RESPONSE: There will be no change in the way that contracts for vending machine services on state property is managed.



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Director, Social and Rehabilitation Services

Certified to the Secretary of State June 6, 1983.

VOLUME NO. 40

OPINION NO. 12

COUNTY TREASURER - Collection of property taxes;  
TAXATION - Timely payment of property taxes determined  
by postmark;  
MONTANA CODE ANNOTATED - Sections 15-16-102,  
28-1-1202(2), 30-1-201(14).

HELD: Tax payments deposited in the United States mail  
on or before payment deadlines enumerated in  
section 15-16-102, MCA, as shown by the postmark  
on the envelope received by the treasurer's  
office, are considered timely paid irrespective  
of the date upon which such payment is actually  
received by the county treasurer.

1 June 1983

M. Shaun Donovan, Esq.  
Mineral County Attorney  
Mineral County Courthouse  
300 River Street  
Superior, Montana 59872

Dear Mr. Donovan:

You requested an opinion concerning:

Whether tax payments deposited in the United  
States mail on or before payment deadlines  
enumerated in section 15-16-102, MCA, as shown  
by the postmark on the envelope received by  
the county treasurer's office, are considered  
timely paid irrespective of the date upon  
which such payment is actually received by the  
treasurer.

Section 15-16-102, MCA, provides the time for payment of  
property taxes:

(1) One-half of the amount of such taxes  
shall be payable on or before 5 p.m. on  
November 30 of each year and one-half on or  
before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent....

This statute has never been interpreted in reference to your question. I recognize that the prevailing practice in most counties in this state is to apply the postmark rule; that is to say the taxes are considered to be timely paid if the postmark on the envelope shows a date no later than the deadline set forth in the statute. Other counties, however, interpret the statute to require receipt of the taxes by the county treasurer by the statutory deadline. It is my opinion that the former interpretation is the correct one.

The customary means of payment is by personal check. The majority of the population have checking accounts and pay their bills by mailing personal checks, whether the debt is a charge account, utility bill, mortgage payment or tax payment. The debtor generally is not expected to seek out his creditor and place the payment in his hands. Mailing on the last day with the envelope postmarked on that day is widely accepted as timely payment. See Berznieks v. Cooper, 275 N.W.2d 221, 226-227 (Mich. 1979).

Timely payment of federal taxes is determined according to the postmark. 26 U.S.C. § 7502. It is interesting to note that at the time of this legislation, Congress recognized that the Internal Revenue Service had been applying the postmark rule long before it was statutorily authorized. See Legislative History of Pub. L. No. 89-713, 1966 U.S. Code Cong. & Ad. News 3676, 3683-3684. The Montana Department of Revenue also uses the postmark rule for income taxes, despite lack of express statutory authorization. Additional evidence of the accepted procedure for payment is the Montana Uniform Commercial Code, wherein negotiable instruments and notes become valid and take effect upon delivery. First Security Bank of Bozeman v. Goddard, 181 Mont. 407, 593 P.2d 1040, 1045 (1979). Delivery occurs when the maker voluntarily parts with possession and control of the instrument, i.e., when he places it in the mailbox. § 30-1-201(14), MCA; First Security Bank of Bozeman v. Goddard, 593 P.2d at 1045.

It is well settled that a lawful tender or offer of payment of taxes is equivalent to actual payment for the purpose of effecting proceedings to enforce the payment. Royall v. State of Virginia, 116 U.S. 572 (1886); Stratton v. Del Valle Independent School District, 547 S.W.2d 727 (Tex. 1977). Similarly, in the law of general obligations, an offer or tender of payment stops the running of interest on the obligation and for that purpose is equivalent to actual payment. § 28-1-1202(2), MCA; Schultz v. Campbell, 147 Mont. 439, 413 P.2d 879, 884 (1966).

The aforementioned application of law in regard to payment of taxes and other obligations convinces me that the customary and generally recognized usage of the term "payment" in reference to payment schedules such as the one in section 15-16-102, MCA, refers to the time of delivery or mailing of the payment and not the actual receipt by the payee.

Section 15-16-102, MCA, was enacted in 1923 and has been amended frequently, as recently as 1981. The Legislature is presumed to have known the common and accepted practice of payments by mail, and the postmark rule, and where it has had opportunity to provide otherwise and has not seen fit to do so, a legislative intent to authorize such practice is presumed. State v. Snider, 168 Mont. 220, 541 P.2d 1204, 1208 (1975). There is nothing in the language of the statute to contradict the presumed intent that timely payment of taxes is determined according to the customary method of payment. I do not construe legislative intent to penalize taxpayers for mailing their payments on the due date or for miscalculating the number of days for the mail to reach the treasurer's office. Statutory penalties must be strictly construed and not extended by construction. Connolly v. U.S., 149 F.2d 666 (9th Cir. 1945); Shipman v. Todd, 131 Mont. 365, 310 P.2d 300 (1975). Tax statutes must be strictly construed against the taxing authority and in favor of the taxpayer. Butte Country Club v. Dept. of Revenue, 37 St. Rptr. 479, 608 P.2d 111, 115 (1980). Such statutes must also be construed in a practical manner. In re Kohr's Estate, 122 Mont. 145, 199 P.2d 856, 871 (1948).

Interpreting section 15-16-102, MCA, to require the envelope of the tax payment to be postmarked no later

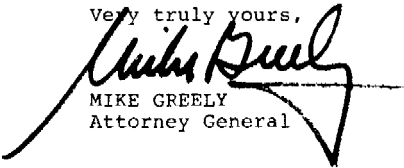


than the statutory deadline satisfies the rules of statutory construction discussed herein.

THEREFORE, IT IS MY OPINION:

Tax payments deposited in the United States mail on or before payment deadlines enumerated in section 15-16-102, MCA, as shown by the postmark on the envelope received by the treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the county treasurer.

Very truly yours,



MIKE GREELY  
Attorney General

11-6/16/83

Montana Administrative Register

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 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 Joint Resolution directing an agency to adopt, amend or repeal 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 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

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 the 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.                              |

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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 March 31, 1983. This table includes those rules adopted during the period April 1, 1983 through June 30, 1983, 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 March 31, 1983, this table and the table of contents of this issue of the MAR.

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