# MONTANA ADMINISTRATIVE REGISTER



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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| In the matter of the amendment of ARM 2.21.216, 2.21.221 and 2.21.222 relating to annual vacation leave | ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 2.21.216, 2.21.221 and 2.21.222 RELATING TO ANNUAL VACATION LEAVE |

TO: All Interested Persons.

1. On November 8, 1985, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.21.216, 2.21.221 and 2.21.222, relating to annual vacation leave.

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

2.21.216 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Break in service" means, as provided in 2-18-601 (13), MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment." A break in service could result from a termination or resignation or could result from absence of more than 5 working days in a row without an approved leave of absence.

(2) "Continuous employment" means, (for purposes of the qualifying period), as provided in 2-18-601 (12), MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.

(3) "Jurisdiction" means, the extent of authority of any state or local government entity within which the limits of authority or control may be exercised. State government is a single jurisdiction.

(4) "Qualifying period" means, a 6-calendar month period an employee must be continuously employed to be eligible to use vacation leave credits or to be eligible for a lump-sum payment upon termination for unused vacation leave credits.

(5) "Transfer" means, as provided in 2-18-601 (11), MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service."

(6) "Vacation leave" means, as provided in 2-18-601 (8), MCA, "a leave of absence with pay for the purpose of

rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

(7) "Vacation leave credits" means the earned number of vacation hours an employee is eligible to use upon completion of the qualifying period.

~~(8) "Year" means 2,080 hours in a pay status.~~

(Auth. 2-18-604, MCA; Imp. 2-18-611 and 2-18-612, MCA)

2.21.221 ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS (1) In accordance with 2-18-611, MCA, all employees serving in positions which are permanent, intermittent, or seasonal are eligible to earn vacation leave credits. In accordance with 2-18-611(5), MCA, temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months shall receive retroactive vacation leave credits for the preceding continuous period of temporary employment.

(2) An employee must be continuously employed for the qualifying period of 6 calendar months to be eligible to use vacation leave. Unless there is a break in service, an employee is only required to serve the qualifying period once. After a break in service, an employee must again complete the qualifying period to be eligible to use annual vacation leave.

(3) Annual vacation leave credits accrue from the first day of employment, except as provided in (1) for employees in temporary positions. Leave credits may not be advanced nor may leave be taken retroactively.

(4) A seasonal employee's accrued vacation leave credits may be carried over to the next season, if management has a continuing need for the employee, or paid out as a lump-sum payment to the employee when the season ends, in accordance with ARM 2.21.232.

(5) If annual vacation leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 6-month qualifying period, provided a break in service does not occur. As provided in 2-18-611(2), MCA, a seasonal employee "must immediately report back for work when operations resume in order to avoid a break in service." Returning seasonal employees must report to work by the date and time specified by the agency to avoid a break in service.

(6) A person simultaneously employed in two or more positions in the same or in different agencies will accrue vacation leave credits in each position according to the number of hours worked. Only hours paid at the regular rate will be used to calculate leave accrual. Under no circumstances will an employee accrue annual vacation leave credit for more than 40 hours of work in a week, except as provided in (9).

(7) When a person is simultaneously employed as provided in (6), vacation leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.

(8) When a person who is simultaneously employed as provided in (6) exceeds the maximum accrual of vacation leave credits, the number of hours forfeited will be apportioned to each position in proportion to the balance of vacation credits for each position.

(9) Vacation leave credits will not accrue for those hours exceeding 40 hours in a workweek~~,~~ for an employee regularly scheduled to work 40 hours in the workweek. This includes overtime hours that are paid at time and a half. The full accrual of vacation leave credits shall not be reduced where an agency establishes an irregular work schedule and where an employee works an average of at least 40 hours per workweek. An irregular work schedule might occur over a biweekly pay period or over a 28-day work period.

(10) As provided in 2-18-611(4), MCA, "an employee may not accrue annual vacation leave credits while in a leave-without-pay status."

(11) Where an employee who has not worked the qualifying period for use of annual vacation leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued annual leave credits or lose credit for time earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 6 month qualifying period.

(12) Where an employee has been laid off and has been allowed by the agency to maintain annual leave credits, as provided in ARM 2.21.5007(9), the employee shall not take any accrued annual leave credits. The employee may take those annual leave credits if reinstated or reemployed during the preference period by the agency, or if employed during the preference period by another state agency which agrees to accept the annual leave credits. If the employee is not reinstated or reemployed during the preference period by a state agency, the employee shall be cashed out, as provided in ARM 2.21.233, at the salary rate the employee earned at the effective date of lay-off.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-617, MCA)

2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS (1) As provided in 2-18-612, MCA, "Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency, whether the employment is continuous or not." For purposes of this paragraph,

agency means, as provided in 2-18-601 (1), MCA, "any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof."

RATE EARNED SCHEDULE

| Years of Employment | Working days Credit per Year |
|---|---|
| 1 day through 10 years | 15 |
| 10 years through 15 years | 18 |
| 15 years through 20 years | 21 |
| 20 years on | 24 |

(2) In accordance with 2-18-601, MCA, time as an elected state, county or city official, as a schoolteacher, as an independent contractor or personal services contractor does not count toward the rate earned. For purposes of this paragraph, an employee of a school district or the university system is eligible to have school district or university employment time count toward the rate earned schedule if that employee was eligible for and accumulated annual leave pursuant to 2-18-601, MCA, in the position held with the school district or university system.

(3) ~~As of October 13, 1984, an employee must be in a pay status 2,080 hours to be credited with a year of employment toward the rate earned schedule. Prior to that date, agencies may have used different methods to accrue years of employment.~~ As provided in 2-18-612, (2A and B), MCA), "(2) (A) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(I) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(II) 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(B) State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2) (A) (I) to calculate years of service under this section."

(4) This method of calculating time is effective August 1, 1984. Prior to that date, an agency may have used different methods to accrue year of employment.

~~(4)~~ (5) Only regular hours in a pay status will count as hours worked toward the rate earned. Overtime hours

(those in excess of 40 per workweek) will not count toward the rate earned.

~~(5)~~ (6) As provided in 2-18-614, MCA, "A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(a) having been ordered on active duty with the armed forces of the United States;

(b) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(c) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer."

~~(6)~~ (7) The employee must have been employed by the state, immediately prior to serving with the armed forces and return to state service within 90 days after separation or discharge; must have been employed by a county immediately prior to serving with the armed forces and return to county service within 90 days after separation or discharge; or must have been employed by a city immediately prior to serving with the armed forces and return to city service within 90 days after separation or discharge.

~~(7)~~ (8) An agency shall require an employee to produce documentation of eligible previous public employment or military service time which may be applied toward the rate earned. It will be the responsibility of the employee to supply documentation of any previous employment time or military service time to be counted toward the rate earned schedule.

~~(8)~~ (9) An employee who provides appropriate documentation of eligible previous public employment or military service shall have that time used to calculate the future leave accrual rate. The employee's leave credit balance and the employee's accrual rate shall not be adjusted retroactively. The employee shall begin earning leave at an adjusted scale, where appropriate, at the beginning of the ~~next~~ first pay period~~.~~ after the agency receives documentation of prior eligible service.

(10) ~~Where specific records of hours worked are not readily available, the agency may approximate the number of hours of service, relying on the 2,080 hours equals 1 year formula.~~ Where specific records of months or hours of employment are not readily available, the agency may approximate total service time, relying on the formula in paragraph (3).

(Auth. 2-18-604, MCA; Imp. 2-18-611 and 2-18-612, MCA)

3. ARM 2.21.216 and 2.21.222 are proposed to be amended to make the method of calculating time toward accelerated annual leave accrual consistent with amendments to 2-18-611 and 2-18-612, MCA, approved in House Bill 774 by the 49th Legislature.

4. ARM 2.21.221(5) is being amended to clarify the meaning of "immediately" for returning seasonal workers at the request of a state agency which hires numerous seasonal employees.

5. ARM 2.21.221(9) is proposed to be amended to allow employees who work an irregular schedule and average at least 40 hours per workweek to accumulate full vacation leave credits. As a result of a recent Supreme Court case (Garcia v SAMTA), the state of Montana is covered by the federal Fair Labor Standards Act (FLSA). For certain types of positions irregular schedules are permitted under the FLSA. Current state rules do not allow for full accrual of leave credits where an employee works an irregular schedule and averages at least 40 hours per workweek.

6. ARM 2.21.221(12) is proposed to be amended to restrict an employee who is in lay-off status from actually taking annual leave credits which an agency may have allowed the employee to maintain during a preference period following a reduction in force. It was not intended that an employee could actually use annual credits while not employed by the state. State agencies have requested that ARM 2.21.221(12) be adopted to specifically preclude an employee using annual leave credits while laid off.

7. ARM 2.21.222(2) is proposed to be amended to clarify when prior public service with a school district or the university system should be credited for purposes of accelerating the rate annual leave is earned.

8. ARM 2.21.222(8) and (9) are proposed to be amended to clarify how to calculate and document prior public service. Both these changes are proposed at the request of agencies.

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

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than November 18, 1985.

10. Barbara A. Charlton, Policy Coordinator, Employee Relations Bureau, State Personnel Division, Department of Administration, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

11. The authority of the agency to make the proposed amendments is based on 2-18-604, MCA, and the rules implement 2-18-611, 2-18-612 and 2-18-617, MCA.

Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State October 7, 1985.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

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| In the matter of the proposed new rules concerning the fertilizer assessment and reporting | ) ) ) ) | NOTICE OF HEARING ON THE PROPOSED NEW RULES ESTABLISHING FERTILIZER ASSESSMENTS AND REPORTING |

TO ALL INTERESTED PERSONS:

1. On November 18, 1985 at 10:00 a.m. in room 225 Agriculture/Livestock Building, Sixth and Roberts, Helena, a public hearing will be held to consider the adoption of proposed new rules concerning fees and reporting of fertilizer.

2. The proposed new rules read as follows:

RULE I REPORTING OF FERTILIZER AND FEE SCHEDULES

(1) Every Manufacturer or person responsible for registering and paying the fees for a commercial fertilizer and/or soil amendment shall file on or before the 30th calendar day after the end of a month, a monthly statement setting forth the number of tons of each commercial fertilizer and/or soil amendment distributed in this state during the past month and to whom it was distributed or indicate if no sales or distributions occurred.

(2) Based upon the filed reports the person responsible to pay the fees on commercial fertilizers and/or soil amendments shall pay the following fees:

(a) Inspection fee of 25 cents per ton for fertilizer distributed other than anhydrous ammonia or soil amendments;

(b) Inspection fee at 65 cents per ton for anhydrous ammonia fertilizer distributed;

(c) Inspection fee at 10 cents per ton for a soil amendment distributed and not less than $5.00 total for six reporting periods.

(d) Educational assessment of 35 cents per ton for all fertilizers excluding soil amendments, in addition to the inspection fees.

(3) In the event the responsible party fails to file the monthly report within 60 days after the end of the filing period, the department may initiate proceedings to revoke registration of the responsible party's registered fertilizer(s). The failure to file a monthly report shall be evidence of fraudulent or deceptive practice in the evasion of these rules.

(4) In the event the responsible party fails to pay the assessment due 30 days after the end of the reported period the department shall assess a collection fee of 10 percent of the amount due but not less than $10.00.

(5) No responsible party shall be allowed to register or re-register a fertilizer if the fees owing to the department are more than 30 days past due.

AUTH: 80-10-301, MCA IMP: 80-10-103, 207, 211, MCA

RULE II REPORTS OF NON-FEE PAYING FERTILIZER DEALERS

(1) Every person who distributed commercial

fertilizers and/or soil amendments and who is not responsible for payment of the fees prescribed in section 80-10-207(1) shall file with the department on forms furnished or approved by the department, semiannual statements for the periods ending June 30 and December 31, setting forth the number of net tons of each commercial fertilizer and/or soil amendment received during the 6th month period and the amount of the ending inventory. The reports shall be filed on/or before the 30th calendar day of the month following the close of each 6 month period.

(2) Failure to file the disclosure may constitute grounds for revoking a license.

AUTH: 80-10-301, MCA IMP: 80-10-207,211, MCA

3. The reason for the proposed rules is to set the fees for fertilizer at a level equal to the costs of inspection. These new rules for reporting, implement changes in the statutes passed in the 1985 legislature.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, either orally or in writing at a hearing. Written data, views, arguments, may be submitted to Roy Bjornson, Administrator, Plant Industry Division, Department of Agriculture, Agriculture/Livestock Building, Helena, MT 59620, no later than November 18, 1985.

5. Garth Jacobson, Department of Agriculture, has been designated to preside over the conduct of the hearing.

Keith Kelly
Department of Agriculture

Certified to the Secretary of State October 7, 1985

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

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| In the matter of the adoption of rules pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance | ) ) ) ) ) | NOTICE OF PUBLIC HEARING |

TO: All Interested Persons

1. On November 15, 1985 at 9:00 a.m., a public hearing will be held in room 160 of the Mitchell Building, Helena, Montana, to consider the adoption of proposed rules pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance.

2. The text of the proposed rules are as follows:

RULE I PURPOSE AND APPLICABILITY

(1) The purpose of these rules is to protect the public in insurance transactions involving termination, renewal or non-renewal or premium increases on contracts of insurance by:

(a) Regulating the grounds for mid-term cancellation of an insurance policy;

(b) Prohibiting mid-term increases in premiums;

(c) Increasing the opportunity for policyholders to shop for replacement or substitute insurance;

(d) Reducing the opportunity for breach of policy bargain, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) Increase the opportunity for agents to freely compete.

(2) [Rule I-X] shall apply to all forms of insurance which are subject to Section 33-1-501, MCA, except to the extent these rules conflict with statutory cancellation requirements. The statutory requirements would prevail.

(3) These rules are not exclusive. The Commissioner is not limited only to these rules as to what activities might constitute Undefined Unfair Trade Practices prohibited by Section 33-18-1003, MCA. The Commissioner may also consider other provisions of the Insurance Code to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition and do not prejudice any other rights the policyholder may have at common law, under statutes or other Administrative Rules of Montana.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE II DEFINITIONS

As used in [Rules I through X] the following definitions apply unless the context requires otherwise.

(1) "Anniversary date" means the month and day that rates, rating plans and rating systems are initially applied to a policy in effect and each annual anniversary thereafter, unless a different date is established by the filing of the insurer with the Insurance Department.

(2) "Cancellation: and similar terms mean the decision by theinsurer to terminate an insurance policy prior to the term of the policy.

(3) "Classification" means a grouping of insurance risks according to classification system used by an insurer.

(4) "Classification system" means a schedule of classifications and a rule or set of rules used by an insurer for determining the classifications applicable to an insured.

(5) "Insurer" means any insurer authorized to write insurance in this state.

(6) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time regardless of the timing of actual charges.

(7) "Rate" means a monetary amount applied to the units of exposure basis assigned to a classification and used by an insurer to determine the premium for an insured.

(8) "Rating plan" means a rule or set of rules used by an insurer to calculate premium for an insured, and the parameter values used in such calculation, after application of classification premium rates to units of exposure.

(9) "Rating system" means a collection of rating plans to be used by an insurer, rules for determining which rating plans are applicable to an insured, a classification system, and other rules used by an insurer for determining contractual consideration for an insured.

(10) "Renewal" means any agreement whereby an insurer and insured agree to an extension or continuation of an existing insurance policy.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE III MID-TERM CANCELLATION

(1) Except as provided by subsection (3) no insurance policy may be cancelled by the insurer prior to the expiration of the agreed term or one year from the effective date of the policy or renewal, whichever is less, except for reasons specifically allowed by statute, for failure to pay a premium when due or on grounds stated in the policy which pertain to the following:

(a) Material misrepresentation;

(b) Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; or

(c) Substantial breaches of contractual duties, conditions or warranties.

(2) Cancellation under subsection (1) shall not be effective prior to 10 days after the 1st class mailing or delivery of written notice to the policyholder.

(3) Subsections (1) and (2) do not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE IV ANNIVERSARY CANCELLATION AND ANNIVERSARY RATE INCREASES

(1) A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer by giving notice 30 days prior to any anniversary date.

(2) If a policy has been issued for a term longer than one year, and for additional premium consideration, an annual premium has been guaranteed, the insurer may not increase that annual premium for the term of that policy.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE V NON-RENEWAL

(1) A policyholder has a right to reasonable notice of non-renewal so coverage may be procurred elsewhere. Unless otherwise provided by statute, at least 30 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date must be mailed or delivered to the policyholder.

(2) With respect to payment of renewal premium, notice shall be given not more than 45 days nor less than 10 days prior to the due date of the premium which states clearly the effect of nonpayment of premium by the due date.

(3) Exceptions. This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage or has requested or agreed to nonrenewal, or if the policy is expressly designated as nonrenewable.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE VI RENEWAL WITH ALTERED TERMS

(1) Subject to subsection (2), if the insurer offers or purports to renew the policy but on less favorable terms or at higher rates, and/or higher rating plan, the new terms or rates and/or rating plan may take effect on the renewal date provided the insurer has sent by 1st class mail or delivered to the policyholder notice of the new terms or rates and/or rating plan at least 30 days prior to the expiration date. If the insurer has not so notified the policyholder the policyholder may elect to cancel the renewal policy within the 30 day period after receipt or delivery of such notice. Earned premium for period of coverage, if any shall be calculated pro rate.

(2) This section does not apply if:

(a) the change is a rate or plan filed with the Commissioner and applicable to the entire class of business to which the policy belongs, or

(b) the rate and/or plan increase results from a classification change based on the altered nature or extent of the risk insured against.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE VII INFORMATION ABOUT GROUNDS

(1) If a notice of cancellation or nonrenewal under [Rule III or Rule V] does not state with reasonable precision the facts upon which the insurer's decision is based, the insurer must, upon request, mail or deliver such information within 5 working days. No such notice is effective unless it contains adequate information about the policyholder's right to make the request.

(2) This does not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and if the notice so states.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE VIII HOMEOWNERS INSURANCE AFFECTED BY BUSINESS PURSUITS

(1) Any insurer transacting homeowners insurance shall not deny homeowners insurance to an applicant therefor, or terminate any homeowners insurance policy covering a dwelling located in this state, whether by cancellation or nonrenewal, for the principal reason that an insured under such policy is engaged business pursuits, including the operation of a day care facility, at the insured location.

(2) This rule does not prevent an insurer from excluding or limiting coverage with respect to liability or property losses arising out of business pursuits of an insured, specifically including those related to the operation of day-care facilities.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE IX UNFAIR TRADE PRACTICES

(1) Failure of an insurer to comply with [Rule III to VII] constitutes an unfair trade practice under Section 33-18-1003, MCA.

(2) Mid-term premium increases and/or policy coverage reductions attempted or executed in nonconformance with these rules constitute an unfair trade practice under Section 33-18-1003, MCA.

(3) Block cancellations or renewals of entire lines of insurance and/or withdrawal of classes of business are presumed to be unfairly discriminatory and constitute an unfair trade practice under Section 33-18-1003, MCA.

(4) Termination of an appointed agent, or attempt of such termination, solely to achieve block cancellation or nonrenewal of entire lines of insurance or other such instant reunderwriting of an agency book of business shall be pre-

sumed to constitute an unfair trade practice and detrimental to free competition under Section 33-18-1003, MCA.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE X SEVERABILITY

If any provision of these rules or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

3. These rules are proposed to define unfair trade practices not in the public's interest as is the Insurance Commissioner's authority under Section 33-18-1003, MCA, 1983.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing no later than November 14, 1985, to:

Robert R. Throssell
Chief Legal Counsel
State Auditor & Insurance Commissioner's Office
P. O. Box 4009
Helena, MT 59604-4009

5. John Bebee, Deputy Insurance Commissioner has been designated to preside over and conduct the hearing.

6. The authority of the agency to adopt the proposed rules is based on Section 33-1-313, MCA, and the rules implement Section 33-18-1003, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary State this 7 day of October, 1985.

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

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| In the matter of the proposed amendments of 8.22.302 concerning board of stewards, 8.22.502 concerning licenses issued for conducting parimutuel wagering, 8.22.1502 concerning definitions of conduct detrimental to racing | NOTICE OF PROPOSED AMENDMENTS CONCERNING 8.22.302 BOARD OF STEWARDS, 8.22.502 LICENSES ISSUED FOR CONDUCTING WAGERING ON HORSE RACING MEETINGS, 8.22.1502 DEFINITION OF CONDUCT DETRIMENTAL TO RACING |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 16, 1985, the Board of Horse Racing proposes to amend the above-stated rules.

2. The proposed amendment of 8.22.302 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-614, Administrative Rules of Montana)

"8.22.302 BOARD OF STEWARDS (1) ...

(4) All cases, except appeal of a stewards decision disqualifying a horse in a race, shall be tried de novo on appeal to the board.

(5) In cases involving appeal to the board of a stewards' decision disqualifying a horse in a race the decision of the stewards shall not be changed unless:

(a) The board determines that there was collusion affecting the stewards' decision; or

(b) The board determines that actual bias or prejudice on the part of one or more stewards affected the stewards' decision; or

(c) The stewards' decision was the result of an incorrect interpretation of a statute or rule applicable to the circumstances of the race; or

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

(6) On review of a stewards' decision disqualifying a horse in a race, the board shall not substitute its judgment for (second guess) that of the stewards as to the weight of the evidence on questions of fact."

Auth: 23-4-202 (4), MCA Imp: 23-4-202 (4), MCA

3. The reason for these amendments is to clarify the applicable standard for review by the board of decisions made by stewards in race meets. Recent litigation has involved several disputes over the appropriate standard of review.

4. The proposed amendment of 8.22.502 will amend subsection (7) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of

the rule is located at pages 8-635 through 8-641, Administrative Rules of Montana)

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) ...

(7) If there shall be two or more applications requesting licenses to conduct race meetings on one or more identical dates the applicant shall be notified and a hearing will be held in conformity with the rules of Chapter 22 hereof. If the board refuses to allot dates or issue a license for a race meeting for any reason other than conflicting dates, the applicant refused dates or a license may appeal to the board and then a hearing will be held in conformity with the rules of Chapter 22. Criteria for the award of race meetings and race dates when there are two or more applications for identical dates shall include, but not be limited to, the following:

(a) Interest of the State;

(b) Interest of the track owner;

(c) Good-will of the track;

(d) Quality of the horses competing;

(e) Good of the breed;

(f) Track facilities;

(g) Geography;

(h) Skill in management;

(i) Financial stability of applying track;

(j) Opportunity for the sport of horse racing to develop;

(k) Hardship that may be caused by awarding overlapping race dates;

(l) Extent of community support for the promotion and continuance of race meets or race dates;

(m) Character and reputation of the individuals identified with the undertaking;

(n) Tenure of race meets being considered.

No applicant has a vested right to race dates. The board may award all, none or part of the race dates applied for. No single criterion is compelling or binding on the board.

(8) ..."

Auth: 23-4-104 (7), 201, 202, MCA Imp: 23-4-104 (7),201

5. This amendment is intended to establish criteria for the assignment of race dates when two or more tracks apply for authority to sponsor racing in the same calender dates. This action was suggested by the Honorable Gordon R. Bennett, Judge of the District Court, in recent litigation over the awarding of conflicting race dates.

6. The proposed amendment of 8.22.1502 will read as follows: (new matter underlined, deleted matter interlined)

(full text of the rule is located at page 8-728, Administrative Rules of Montana)

"8.22.1502 DEFINITION OF CONDUCT DETRIMENTAL TO RACING For the purpose of implementing section 23-4-202 (2), MCA, as amended, and also of defining conduct which the board considers detrimental to the best interest of racing as contemplated by ARM Rule 8.22.701 (8), the board rules that the following conduct is detrimental to the best interest of racing; but ~~without limitation~~ these rules are not intended to limit the application of the phrase or otherwise to be exclusive.

(1) ...

(6) mutilating or maiming of a race horse or other animal;

(7) ...

(10) having been convicted of a crime involving horse racing or a crime involving moral turpitude, but not having completed state supervision;

(11) ...

(14) making frivolous appeals from stewards rulings;

(15) violating the board's corrupt practices rules set forth in ARM 8.22.1501;

(16) violating statutes and rules relating to horse race regulation in the state of Montana."

Auth: 23-1-104 (6), 202 (2), MCA Imp: 23-4-104 (6), 202 (2), MCA

7. These amendments are intended to expand the types of conduct which are considered detrimental to the best interest of racing in the light of experience in regulating horse racing since the enactment of Section 9, Chapter 563 of the Laws of 1983. The amendments are also intended to make clear that conduct that is detrimental is grounds for exclusion from race courses. This reason for the amendments is to cure any vagueness that could arguably be inherent in the phrase "detrimental to the best interests of racing." This amendment is suggested by arguments in recent litigation.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than November 14, 1985.

9. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than November 14, 1985.

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

proposed amendments from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 7, 1985.

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

| | |
|---|---|
| In the matter of the amendment of rule 8.86.301 (6)(a) as it relates to the class I producer formula and the promulgation of rules to establish a statewide pooling arrangement with a triggered base plan as a method of payment of milk producer prices | ) NOTICE OF PROPOSED AMENDMENT<br>) OF RULES 8.86.301 (6)(a)<br>) PRICING RULES AND PROPOSED<br>) ADOPTION OF NEW RULES ESTAB-<br>) LISHING A STATEWIDE POOLING<br>) ARRANGEMENT: POOLING RULES<br>)<br>) DOCKET #72-85<br>)<br>NOTICE OF PUBLIC HEARING |

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

1. On Wednesday, January 15, 1986 at 9:00 o'clock a.m. MST, or as soon thereafter as interested persons can be heard, a public hearing will be held in the Scott Hart Building Auditorium at 303 Roberts Street, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to a petition to promulgate new rules (Petition) and supporting proposals submitted by Harry Mitchell and The Montana Dairymen's Association (Petitioners) to the Montana Board of Milk Control (Board) on September 7, 1985.

3. The said petition and attachments are too voluminous to reproduce or describe in detail in this notice. Copies of the documents mentioned in paragraph two (2) are available for inspection during regular business hours, at the offices of the Department of Commerce, Milk Control Bureau (Bureau), 1430 Ninth Avenue, Helena, Montana 59620-0422. Copies will be provided upon request and payment of copying charges. Requests for copies should be made to the Department by visiting or writing the address given in this paragraph or by telephoning (406) 444-2875.

4. The said Petition asks the Board to adopt new rules calling for the pooling of the returns from all grade 'A' milk marketed by milk producers in Montana to, or through, distributors regulated under the authority of the State of Montana, under terms described in material submitted with and attached to the Petition.

The said Petition also proposes that, in the event that the combined utilization of milk in fluid products by all regulated distributors falls below certain levels in relation to the supply of grade 'A' milk, the distribution of pool monies to milk producers be carried out under an alternative suggested procedure described in material submitted with and attached to the Petition.

The said Petition also asks the Board to amend Rule 8.86.301 (6)(a) to increase the ceiling on the producers economic formula from the current Minnesota-Wisconsin series plus three dollars ($3.00) to the Minnesota-Wisconsin series plus three dollars and sixty cents ($3.60).

The Petition also contemplates that additional housekeeping and administrative rules will need to be adopted or implemented by the Bureau. Such additional housekeeping and administrative rules, if any will be the subject of separate proceedings which will be separately noticed.

5. The Petition was submitted pursuant to sections 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in subsection 81-23-302 (1), (14), MCA, in particular.

6. The rationale given for the intended rules is to ensure an adequate supply of milk and dairy products for all consumers. It is asserted that a statewide pool would stabilize the market for dairy products in Montana by maintaining the status quo and by spreading the cost of surplus milk among all producers, rather than a few, "which in turn would ensure that several milk producers are not forced out of business because of economic hardship." It is further asserted that a statewide pool as proposed in the Petition will enable the Board and the Bureau to more adequately administer the handling of surplus milk, eliminating speculation and waste and providing that milk and milk products are available to the consumer by the most direct method.

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

A. Production and marketing practices which have historically prevailed statewide. (This is an express requirement of subsection 81-23-302 (14), MCA.)
B. Possible impact of the proposal upon individual producers supplying individual distributor plants.
C. Possible impact of the proposal upon the adequacy of the supply of milk within the state.
D. Possible impact upon the quality of milk available to consumers.
E. Possible impact upon wholesale and retail prices of milk.
F. Possible impact upon the ability of Montana producers to supply Montana's market requirements.
G. Whether the proposal will invite supplies of milk from neighboring states.
H. Possible impacts upon the supplies of milk in individual plant pools.

8. In its consideration of the merits of the Petition, the Board takes official notice as facts within its own knowledge of the following:

TABLE I

Disparity of blend prices paid individual producers and differences in transportation rates for the period January 1, 1985 through June 30, 1985 include the following examples:

| | BLEND PRICE PAID PER CWT BEFORE FREIGHT | FARM-TO-PLANT HAUL CHARGED PER CWT | NET BLEND PRICE PAID PER CWT AFTER FREIGHT |
|---|---|---|---|
| Beatrice Foods Co. Billings | $14.12 | $ .94 | $13.18 |
| Beatrice Foods Co. Missoula | 13.17 | .62 | 12.55 |
| Beatrice Foods Co. Great Falls | 13.96 | .99 | 12.97 |
| Beatrice Foods Co. Kalispell | 13.68 | .51 | 13.17 |
| Brown Swiss Milk Co. Billings | 13.21 | .91 | 12.30 |
| Clover Leaf Dairy Helena | 14.24 | .68 | 13.56 |
| Equity Supply Co. Kalispell | 13.67 | .38 | 13.29 |
| Gallatin Dairies, Inc. Bozeman | 13.12 | .61 | 12.51 |
| Gate City Dairy, Inc. Glendive | 13.54 | .75 | 12.79 |
| Ravalli County Crmy. Hamilton | 11.30 | .46 | 10.84 |
| Safeway Stores, Inc. Butte | 13.10 | .61 | 12.49 |
| Vita Rich Dairy, Inc. Havre | 13.14 | 1.25 | 11.89 |
| Average for 12 plants | $13.39 | $ .74 | $12.65 |

TABLE II
Blend prices that would have been paid producers under Petitioners' proposal for May 1985

| | ACTUAL BLEND PRICE RECEIVED INCLUDES RAVALLI COUNTY CREAMERY | BLEND PRICE RECEIVED UNDER POOL INCLUDES RAVALLI COUNTY CREAMERY | NET INCREASE OR DECREASE INCLUDES RAVALLI COUNTY CREAMERY | BLEND PRICE RECEIVED UNDER POOL EXCLUDES RAVALLI COUNTY CREAMERY | NET INCREASE OR DECREASE EXCLUDES RAVALLI COUNTY CREAMERY |
|---|---|---|---|---|---|
| BFC - Billings | $13.73 | $13.25 | ($.48) | $13.34 | ($.39) |
| BFC - Gr. Falls | 13.81 | 13.26 | ( .55) | 13.35 | ( .46) |
| BFC - Kalispell | 13.78 | 12.99 | ( .79) | 13.14 | ( .64) |
| BFC - Missoula | 12.93 | 13.04 | .11 | 13.08 | .15 |
| Brown Swiss Milk | 12.75 | 12.99 | .24 | 13.08 | .33 |
| Clover Leaf Dairy | 13.96 | 13.13 | ( .83) | 13.23 | ( .73) |
| Equity Supply Co. | 13.56 | 13.05 | ( .51) | 13.15 | ( .41) |
| Gallatin Dairies | 13.02 | 13.11 | .09 | 13.20 | .18 |
| Gate City Dairy | 13.11 | 13.02 | ( .09) | 13.11 | ---- |
| Ravalli Co. Crmy. | 10.64 | 13.29 | 2.65 | ----- | ----- |
| Safeway Stores | 12.61 | 13.18 | .57 | 13.27 | .66 |
| Vita Rich Dairy | 13.04 | 13.18 | .14 | 13.27 | .23 |
| Average of plants | $13.18 | $13.18 | ---- | $13.22 | ---- |

TABLE III
Producer prices in adjacent and surrounding areas
July 1985

| | CLASS I PRICE | CLASS II PRICE | CLASS III PRICE | BLEND PRICE |
|---|---|---|---|---|
| Oregon-Washington | $13.41 | $11.80 | $11.10 | $12.04 |
| Puget Sound-Inland | 13.31 | 11.80 | 11.10 | 11.84 |

| | | | | |
|---|---|---|---|---|
| S.W. Idaho - E. Oregon | 12.96 | 11.65 | 11.10 | 11.43 |
| Western Colorado | 13.46 | 11.65 | 11.10 | 12.70 |
| Great Basin | 13.36 | 11.65 | 11.10 | 12.17 |
| Eastern Colorado | 13.76 | 11.65 | 11.10 | 12.80 |
| Lake Mead | 13.06 | 11.70 | 11.10 | 12.41 |
| Rapid City | 13.41 | ----- | 11.10 | 12.04 |
| North Dakota | 12.58 | 11.65 | 10.75 | 11.30 |
| Montana | 14.47 | 11.83 | 10.06 | 12.78* |

*indicates the price at test and is a reported figure

TABLE IV
Supplies of milk which are available in surrounding areas

| | CLASS I UTILIZATION | CLASS II UTILIZATION | CLASS III UTILIZATION |
|---|---|---|---|
| Oregon-Washington | 65,935,734 | 22,907,982 | 84,822,775 |
| Puget Sound - Inland | 78,726,895 | 22,910,569 | 167,929,212 |
| S.W. Idaho - E. Oregon | 10,202,543 | 4,679,798 | 52,931,348 |
| Western Colorado | 6,451,000 | 354,000 | 2,789,000 |
| Great Basin | 46,783,000 | 8,412,000 | 56,163,000 |
| Eastern Colorado | 53,429,000 | 16,220,000 | 23,932,000 |
| Lake Mead | 10,346,000 | * | 7,711,000 |
| Western North Dakota | 7,325,313 | 542,725 | 4,786,998 |

*indicates that Class II and III are combined

TABLE V
Costs of transporting milk in ARM Rule 8.86.301 (9)

| DISTANCE | MAXIMUM FREIGHT ALLOWANCE |
|---|---|
| 25 to 50 miles | $ .25 |
| 51 to 75 miles | .40 |
| 76 to 100 miles | .50 |

| | |
|---|---|
| 101 to 150 miles | .64 |
| 151 to 200 miles | .85 |
| 201 to 250 miles | 1.06 |
| 251 to 300 miles | 1.28 |
| 301 to 350 miles | 1.49 |

The Board takes notice that more than 78% of the milk produced in the United States is paid for under one form of pooling arrangement or another.

9. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau no later than November 15, 1985.

10. Robert J. Wood, Esq., 1424 Ninth Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full Board will sit in convened session at the hearing.

11. Authority for the Board to take the actions and adopt the rules as proposed is in section 81-23-302, MCA. Such rules, if adopted in the form as proposed or in a modified form, will implement section 81-23-302 (1), (14), MCA.

BOARD OF MILK CONTROL
CURTIS C. COOK, Chairman

BY William E. Ross
William E. Ross, Chief
Milk Control Bureau

Certified to the Secretary of State October 7, 1985.

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

| | |
|---|---|
| In the matter of the adoption of a rule relating to the reporting and tattooing of bears, wolves, tigers, mountain lions and coyotes captured or held in captivity | NOTICE OF THE PROPOSED ADOPTION OF A RULE RELATING TO THE REPORTING AND AND TATTOOING OF BEARS, WOLVES, TIGERS, MOUNTAIN LIONS AND COYOTES CAPTURED OR HELD IN CAPTIVITY<br><br>NO PUBLIC HEARING CONTEMPLATED |

To: All interested persons:

1. On November 20, 1985 the Montana Department of Fish, Wildlife and Parks proposes to adopt a rule relating to the reporting and tattooing of bears, wolves, tigers, mountain lions and coyotes captured or held in captivity.

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

3. The rule as proposed reads as follows:

RULE I REPORTING AND TATTOOING OF BEARS, WOLVES, TIGERS, MOUNTAIN LIONS AND COYOTES CAPTURED OR HELD IN CAPTIVITY (1) For purposes of this rule the following definitions apply:

(a) "Bear" means a member of any species of the genus Ursus.

(b) "Coyote" means a member of the species Canis latrans, including any canine hybrid which is one-half or more coyote.

(c) "Mountain lion" means a member of the species Felis concolour.

(d) "Tattoo" means a permanent tattoo or other permanent identification approved by the department.

(e) "Tiger" means a member of the species Felis tigris.

(f) "Wolf" means a member of the species Canis lupus, including any canine hybrid which is one-half or more wolf.

(2) Report of capture or captivity--penalty.

(a) Any person who captures alive for release at a later time, or who holds in captivity for any purpose, any bear, coyote, mountain lion, tiger or wolf, must report the capture or captivity to the department, in accordance with forms prescribed by the department, within 3 days of the capture or commencement of captivity.

(b) Failure to report as provided by subsection (2)(a) is a misdemeanor punishable as provided in 87-1-102, MCA.

(c) Any person holding a bear, coyote, mountain lion, tiger or wolf in captivity shall immediately report to the

department any death, escape, release, transfer of custody or other disposition of the animal.

(3) Tattooing:

(a) Each animal reported as required by subsection (2) shall be permanently tattooed with an identifying number assigned by the department, within 15 days after the assignment of the number.

(b) Assigned numbers shall be tattooed on the inside of the left thigh, 6 inches or less from the abdomen. The tattoo shall be indelible and read from left to right as viewed from the animal's feet. Numbers or letters shall be no less than 3/8 inch in height on coyotes and 1/2 inch in height on bears, mountain lions, tigers and wolves.

(c) No tattoo is required by this subsection with respect to an animal subject to a permanent individual identification process by a state or federal agency.

(d) The tattoo shall be certified by either a veterinarian or a department employee.

(4) The fee for reports to the department under subsection (2) is:

(a) $10 for each animal;

(b) if six or more animals are reported at the same time, $10 each for the first five animals, and thereafter $5 per animal, not to exceed a total of $200.

(5) The requirements do not apply with respect to those animals:

(a) captured and released as part of an ongoing game management program or an ongoing predator control program unless the animals have been involved in killing livestock; or

(b) captured and released as part of a scientific, educational or research program as certified by the department.

AUTH: Chapter 566, Laws of 1985 IMP: Chapter 566, Laws of 1985

4. The proposed rule implements Chapter 566, Laws of 1985, which requires that certain bears, wolves, tigers, mountain lions or coyotes captured or held in captivity be permanently tattooed or otherwise permanently marked, and also that they be reported to the department. The requirements do not apply to animals captured and released as part of ongoing game management or predator control programs (unless the animals have been involved in killing livestock), or to animals captured and released as part of a scientific, educational or research program as certified by the department. No tattoo is required with respect to any animal subject to a permanent individual identification process by a state or federal agency.

The proposed rule requires that a person who captures or holds in captivity any member of the species covered by the rule to report to the department within 3 days of the capture or commencement of captivity. Failure to report is a misdemeanor punishable as provided in Section 87-1-102, MCA.

Persons holding any of those animals are also required to report any death, escape, release, transfer of custody or other disposition of the animals.

Each animal with respect to which capture or captivity must be reported must also be permanently tattooed with a number assigned by the department. The tattooing, which must be certified by either a veterinarian or an employee of the department, must take place within 15 days after the department assigns the number. The proposed rule provides for the location and size of the tattoo and for fees to accompany reports of capture or captivity of animals.

5. Interested persons may submit their data, views or arguments concerning the proposed rule to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana, no later than November 17, 1985.

6. If a person who is directly affected by the proposed rule wishes to express his data, views or arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any comments he has to Stan Bradshaw, Department of Fish, Wildlife, and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 17, 1985.

7. If the department receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is fewer, of persons who are directly affected by the proposed rule, from the Administrative Code Committee, from a governmental agency or subdivision, or from an association having no fewer than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the Department to adopt the proposed rule is Chapter 566, Laws of 1985, and it implements Chapter 566, Laws of 1985.

James W. Flynn
Director
Department of Fish,
Wildlife and Parks

Certified to Secretary of State October 7, 1985.

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

In the matter of the amendment of rule 12.3.106 relating to hunting by certain disabled persons from parked vehicles ) NOTICE OF PROPOSED AMENDMENT OF RULE 12.3.106 ) NO PUBLIC HEARING CONTEMPLATED

To: All interested persons

1. On November 20, 1985, the Montana Department of Fish, Wildlife and Parks proposes to amend rule 12.3.106 relating to hunting by certain disabled persons from parked vehicles.

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

12.3.106 DISABLED PERSONS (1) For ~~the~~ purposes of ~~See.~~ Section 87-2-803, MCA, and this section ~~a disabled person is defined as follows~~the following definitions apply:

(a) "Disabled person" means

(i) ~~A disability must be~~ a person suffering from a condition medically determined to be a permanent and substantial ~~nature~~, and resulting in significant impairment of the person's functional ability and specifically includes amputation, blindness, cancer, cerebral palsy, systic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, and renal failure~~;~~; or

~~(b)~~(ii) ~~A~~ a person who, because of lack of social competence, mobility, experience, skills, training or other successful characteristics, is in need of and is receiving sheltered employment or work activities services in a protective setting.

(b) "Nonambulatory" means, with respect to a disabled person, permanently physically reliant on a wheelchair or similar remedial appliance or device for mobility.

(c) "Permanently physically handicapped person" means disabled person as defined in subsection (1)(a)(i) of this section except for persons disabled due to mental retardation or mental illness.

(d) "Public highway" means public highway as defined in 61-1-202, MCA, other than a state or federal highway.

(e) "Right of way" means land acquired for or devoted to highway purposes, if known; or the lands extending from the road surface to bordering fencelines or to a line 30 feet from the centerline on each side of the roadway, whichever is less.

(f) "Substantially impaired mobility" means, with respect to a disabled person, virtual inability to move on foot due to permanent physical reliance on crutches, canes, prosthetic appliances or similar remedial appliance or device.

(Subsection (2) remains the same)

(3) A disabled person who is a permanently physically handicapped person and who is nonambulatory, or whose mobility is substantially impaired, may apply in accordance with forms issued by the department for a permit to hunt from a vehicle.

(a) The application must contain:

(i) a copy of the applicant's certification of disability from the department;

(ii) either certification by a physician licensed to practice in the United States or the findings of a quasi-judicial body or other reliable certification as to the applicant's permanent physical handicap and nonambulatory condition or substantial physical impairment. The Department may investigate any facts alleged in an application. If an application is sent through the mail, the applicant must include;

(A) the application form with physician's certification;

(B) his original conservation license;

(C) all hunting licenses and tags to be used under this rule.

(b) Upon granting an application the Department will stamp all licenses and tags issued to the applicant with the words "Permit to hunt from a vehicle."

(c) An applicant for renewal must submit the previous year's conservation license stamped as provided for in subsection (3)(b).

(d) A disabled person who has obtained and is carrying a license stamped as provided for in subsection (3)(b) may hunt by shooting a firearm:

(i) from the shoulder, berm or borrow pit right-of-way of a public highway;

(ii) from within a self-propelled or drawn vehicle parked on the shoulder, berm or borrow pit right-of-way, provided the vehicle is parked in such a way that it will not impede traffic or endanger motorists; or

(iii) from within a self-propelled or drawn vehicle parked in an area, other than a public highway, where hunting is permitted.

(e) A disabled person hunting as provided in subsection (3)(d):

(i) must have obtained permission of the landowner to hunt big game on private land;

(ii) must be accompanied by a companion who is able to assist in immediately dressing any killed animal;

(iii) must conspicuously mark the front, rear, and side of the vehicle from which he is hunting with the international symbol of the handicapped, which the Department will provide;

(iv) must comply with all other laws and regulations including the federal prohibition on hunting of migratory game birds from a motor vehicle; and

(v) may not shoot across a roadway.

AUTH: Sec. 87-2-803, MCA, Chapter 416, Laws of 1985 IMP: Sec. 87-2-803, MCA, Chapter 416, Laws of 1985

3. The proposed amendment implements Chapter 416, laws of 1985, which provides that a person who establishes to the department's satisfaction that he is permanently physically handicapped, and either is nonambulatory or has substantially impaired mobility, may hunt from a roadway, or from within a self-propelled or drawn vehicle parked on the shoulder, berm or borrow-pit right-of-way of a public highway, or from within a vehicle parked in an area where hunting is permitted. The rule provides a method by which the Department may readily and accurately identify those who are non-ambulatory or whose mobility is substantially impaired. The provisions proposed should allow those who qualify a relatively simple method of verifying their disability while protecting against abuse of this section.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 17, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any comments he has to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 17, 1985.

6. If the department receives requests for a public hearing from either 10%, or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee, from a governmental agency or subdivision, or from an association having no fewer than 25 members who will be directly affected, a public hearing will be scheduled. Notice of the public hearing will be published in the Montana Administrative Register.

7. The authority of the department to adopt the proposed amendment is Chapter 416, Laws of 1985, and it implements Chapter 416, Laws of 1985.

James W. Flynn
Director
Department of Fish,
Wildlife and Parks

Certified to Secretary of State October 7, 1985.

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

| | |
|---|---|
| In the matter of the adoption of rules relating to migratory game bird avicultural permits | NOTICE OF THE PROPOSED ADOPTION OF RULES RELATING TO MIGRATORY GAME BIRD AVICULTURAL PERMITS<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All interested persons.

1. On November 20, 1985, the Montana Department of Fish, Wildlife and Parks proposes to adopt rules relating to the issuance of migratory game bird avicultural permits.

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

3. The rules as proposed provide as follows:

RULE I DEFINITIONS (1) "Avicultural permit" means a migratory game bird avicultural permit issued pursuant to (this subchapter).

(2) "Federal migratory game bird regulations" means 50 C.F.R. Parts 20 and 21.

(3) "Federal permit" means the appropriate permit issued under 50 C.F.R. Part 21.

(4) "Migratory game birds" means migratory game birds as defined in Section 87-2-101(7), MCA, for which the fish and game commission declared an open hunting season during the previous license year.

AUTH: Chapter 262, Laws of 1985 IMP: Chapter 262, Laws of 1985

RULE II AVICULTURAL PERMITS (1) The department may issue an avicultural permit for taking, capturing and possessing specified migratory game birds for the purpose of propagation.

(2) An applicant for an avicultural permit must be a Montana resident as defined in Section 87-2-102 and shall apply in writing in accordance with forms prescribed by the department. An application shall be accompanied by a copy of the applicant's current federal permit and a $25 fee.

(3) A permit for the taking of live migratory game birds shall be issued only upon approval by the department of a detailed statement describing the reasons why the taking of live birds is necessary.

(4) Issuance of avicultural permits shall be based upon:

(a) the number of similar applications;

(b) the demonstrated capability of the applicant to maintain and propagate migratory game birds;

(c) the applicant's facilities; and

(d) the applicant's past compliance with any conditions and restrictions of previous federal permits or avicultural permits and applicable state and federal migratory game bird regulations.

(5) All migratory game birds or taken birds hatching from an egg taken under an aviculture permit remain the property of the state and may be disposed of only as permitted by the department.

(6) Progeny of migratory game birds taken under an avicultural permit become the private property of the permit holder who propagates the birds, and the owner may sell or transfer the birds as private property subject to applicable state and federal laws and regulations.

AUTH: Chapter 262, Laws of 1985 IMP: Chapter 262, Laws of 1985

RULE III REPORTING AND MARKING (1) Each holder of an avicultural permit shall file with the department:

(a) within 10 days following expiration of the permit a written report stating the number, species, dates and locations of all migratory game birds or eggs taken; and

(b) a copy of each federal report required for each calendar year in which migratory game birds taken under an avicultural permit remain in possession.

(2) All migratory game birds taken or propagated under an avicultural permit shall be permanently marked or identified as approved by the department.

AUTH: Chapter 262, Laws of 1985 IMP: Chapter 262, Laws of 1985

RULE IV VIOLATIONS Any violation of the terms of an avicultural permit or a federal permit may at the discretion of the department render the avicultural permit void. Any materially false statement subscribed to in an application for an avicultural permit renders the permit void and is punishable as provided in 87-1-102, MCA.

AUTH: Chapter 262, Laws of 1985 IMP: Chapter 262, Laws of 1985

4. The proposed rules implement the direction to the department in Chapter 262, Laws of 1985, providing for the issuance of migratory game bird avicultural permits for the taking, capturing and possession of specified migratory game birds for the purpose of propagation. The permits apply only to migratory game birds as defined in section 87-2-101(7), MCA, for which the fish and game commission declared an open hunting season during the preceding license year.

Under the proposed rules, applicants must be residents of Montana and are required to file a written application in accordance with a form prescribed by the department, accompanied by a copy of the applicant's current federal permit and a fee of $25.00. In addition, an applicant for a permit to take live migratory game birds must file a detailed statement of the reasons why the taking of live birds is necessary. If the department approves the statement, the avicultural permit may authorize the taking of live birds.

The department's decision whether to grant a permit application is based on (a) the number of similar applications; (b) the applicant's ability to maintain and propagate birds; (c) the applicant's facilities; and (d) the applicant's past compliance with any previous federal or state permits and state and federal laws and regulations.

All birds taken from the wild or hatched from eggs taken from the wild are the property of the state and may only be disposed of as the department permits. Progeny of birds belonging to the state, however, become the permit holder's private property and may be sold or transferred subject to applicable state or federal laws or regulations.

The proposed regulations also provide reporting and marking requirements and prohibit false statements in applications or violation of permit terms.

5. Interested persons may submit their data, views and arguments in writing concerning the proposed rules to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 17, 1985.

6. If a party who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any written comments he has to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 17, 1985.

7. If the department receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposed rules, by the administrative code committee, by a governmental agency or subdivision or by an association having not fewer than 25 members who will be directly affected by the proposed rules, a public hearing will be scheduled. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the department to adopt the proposed rules is Chapter 262, Laws of 1985, and they implement Chapter 262, Laws of 1985.

James W. Flynn, Director
Department of Fish, Wildlife
and Parks

Certified to Secretary of State October 7, 1985.

MAR Notice No. 12-2-137 19-10/17/85

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

| | | |
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| In the matter of the adoption of rules establishing a fish and game crimestoppers program. | ) ) ) | NOTICE OF PROPOSED ADOPTION OF RULES ESTABLISHING A FISH AND GAME CRIMESTOPPERS PROGRAM |

NO PUBLIC HEARING CONTEMPLATED

To: All interested persons.

1. On November 22, 1985, the Montana Department of Fish, Wildlife and Parks proposes to adopt rules establishing a fish and game crimestoppers program.

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

3. The new rules as proposed provide as follows:

RULE I FISH AND GAME CRIMESTOPPERS PROGRAM ESTABLISHED There is established in the department a statewide fish and wildlife crimestoppers program in order to assist law enforcement agencies in detecting and combating fish and wildlife-related crimes. The program shall use a toll-free number established for this purpose.

AUTH: Chapter 305 Laws of 1985 IMP: Chapter 305, Laws of 1985

RULE II REWARDS (1) Any person, other than employees of the department and their dependents, law enforcement officers and their dependents and persons who committed the reported offense (other than by way of solicitation, conspiracy, or attempt), who gives information through the crimestopper program leading to the arrest of a suspect in a fish or wildlife-related crime may be eligible for a reward under this section.

(2) The fish and wildlife crimestoppers board shall make recommendations, which shall be acted on by the department, as to whether to give a reward, and the amount of the reward not to exceed $1,000, based on:

(a) the importance of the information;

(b) the seriousness of the crime;

(c) the risk to the informant; and

(d) the value of the informant as a regular, reliable source of information.

(3) The amount of the reward may exceed $1,000 if the informant testifies in court.

(4) If more than one person supplied the information with respect to a crime, the reward may be divided as determined by

the board and the department based on the relative importance of the information received from each person.

(5) The board and the department may provide rewards in cooperation with other crimestoppers programs in the event that information provided to another law enforcement agency or program leads to the arrest of a suspect in a fish or wildlife-related crime.

AUTH: Ch. 305, L. 1985 IMP: Ch. 305, L. 1985

RULE III METHOD OF PAYMENT (1) The department shall pay approved rewards in cash using established accounting procedures to ensure that payment is made to the correct person, and an anonymous receipt system.

(2) If a drop is used to pay an approved reward, at least two persons shall witness the drop.

AUTH: Ch. 305, L. 1985 IMP: Ch. 305, L. 1985

RULE IV CONFIDENTIALITY (1) The identity of persons submitting information relating to fish and wildlife-related crimes and any information that may lead to the disclosure of identity shall be confidential.

(2) All meetings of the board and the department relating to the fish and wildlife crimestoppers programs are open to the public except when the demand of the individual privacy exceeds the merits of disclosure.

AUTH: Chpt. 305, laws of 1985, IMP: Chpt. 305, laws of 1985.

4. The proposed rules implement the direction to the Department of Fish, Wildlife and Parks in Chapter 305, Laws of 1985, to create, maintain and promote a statewide fish and wildlife crimestoppers program in order to assist law enforcement agencies in detecting and combating fish and wildlife-related crimes. The rules provide that if valuable information is provided through the program, rewards may be given of up to $1,000 depending upon the importance of the information, the seriousness of the crime, the risk to the informant, and the value of the informant as a regular, reliable source of information. Employees of the department and law enforcement officers, their dependents, and those who have committed the offenses reported (other than those involved in the offense by way of solicitation, conspiracy or attempt) are ineligible for rewards. Rewards may exceed $1,000 if the informant testifies, and may be divided among multiple sources supplying information on the same crime.

Payment of rewards is by cash using anonymous receipts, established accounting procedures, and witnesses in case of a drop payment. Identities and information regarding informants are confidential, but meetings related to the fish and wildlife crimestoppers program are open except where the demand of individual privacy clearly exceeds the merits of public disclosure.

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

Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, MT 59620, no later than November 18, 1985.

6. If a party who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any written comments he has to Stan Bradshaw, Department of Fish, Wildlife and Parks, no later than November 18, 1985.

7. If the Department receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposed amendment, by a governmental subdivision or agency, by the administrative code committee or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of the hearing will be published in the Montana Administrative Record.

8. The authority of the Commission to adopt the proposed rules is Chapter 305, Laws of 1985, and the proposed rules implement Chapter 305, Laws of 1985.

James W. Flynn, Director
Dept. Fish, Wildlife and Parks

Certified to Secretary of State October 7, 1985

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

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| In the matter of the adoption of rules regarding the certification of wood stoves or other combustion devices for tax credit purposes | ) ) ) ) | NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Combustion Device Tax Credit) |

To: All Interested Persons:

1. On November 7, 1985, at 10:30 a.m. a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule pertaining to certification of low emission wood or biomass combustion devices for eligibility for a tax credit.

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

3. The proposed rules provide as follows:

RULE I CERTIFICATION AND TESTING STANDARDS (1) Any stove, furnace, or catalytic converter added to a stove or furnace which burns wood or another nonfossil biomass fuel is eligible for the tax credit provided for in 15-32-201, MCA, if it is:

(a) Purchased and installed during the period from January 1, 1985, through December 31, 1992;

(b) Tested according to the criteria and procedures set out in Sections 340-21-100 through 340-21-190 of the Oregon Administrative Rules; and

(c) Certified by the Oregon Department of Environmental Quality as emitting less than 6 grams per hour (weighted average) of particulate when tested according to the procedures referred to in (b) above.

(2) A catalytic converter is eligible for the tax credit only if the converter and the particular model and brand of stove or furnace to which it is attached have been tested and certified together as meeting the emission limit cited in (1) (c) above.

(3) The department hereby adopts and incorporates by reference Sections 340-21-100 through 340-21-190 of the Oregon Administrative Rules, which set criteria and procedures for testing emissions from wood stoves. Copies of OAR Section 340-21-100 through 340-21-190 may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 15-32-203, MCA
IMPLEMENTING: Sec. 15-32-102, 15-32-201, MCA

RULE II CERTIFIED STOVES (1) As of October 7, 1985, the following stoves meet the certification standards of (RULE I) and qualify for a tax credit:

| | Model | Design Number | Manufacturer |
|---|---|---|---|
| (a) | Blaze King 'King' | KEJ-1101 | Woodcutters Mfg. |
| (b) | Fisher | TECH IV | CESCO Industries |
| (c) | Pellefier | FS-1 | Collins Bio-Energy Co. |
| (d) | Timber Eze | 477 | Timber Eze, Inc. |
| (e) | Vista | 640 | Stack Mfg. Co., Ltd. |

(2) A current list of all stoves, furnaces, and catalytic converters which, including and in addition to those listed in (1) above, meet the certification standards of (RULE I) and qualify for a tax credit is available from the department's Air Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 (phone: 444-3454).
AUTHORITY: Sec. 15-32-203, MCA
IMPLEMENTING: Sec. 15-32-102, 15-32-201, MCA

4. The department is proposing these rules to implement the mandate of SB 309, passed by the 1985 Legislature, to establish certification and testing requirements in order to determine which wood or biomass combustion devices will qualify for a state tax credit.

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 Complex, Helena, Montana 59620 no later than November 15, 1985.

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

7. The authority of the department to make the proposed rules is based on Section 15-32-203, MCA, and the rules implement Sections 15-32-102 and 15-32-201, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 7, 1985

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

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| In the matter of the adoption of new RULES I through XVII, (to be codified 16.10.1110 through 16.10.1126), and the repeal of rules 16.10.1101 through 16.10.1109, relating to health and safety in schools) | NOTICE OF EXTENSION OF COMMENT PERIOD (Schools) |

To: All Interested Persons:

1. On May 16, 1985, the department published notice of proposed adoption of Rules I through XVII (to be codified 16.10.1110 through 16.10.1126) and the repeal of rules 16.10.1101 through 16.10.1109, concerning health and safety in schools, at page 443 of the 1985 Montana Administrative Register, issue number 9. A public hearing was held on June 7, 1985.

2. Due to requests at the hearing for additional time to submit comments on the rules to the department, a notice extending the comment period to September 10, 1985, and responding to the comments to date was published on July 11, 1985, at page 882 of the 1985 Montana Administrative Register, issue number 13.

3. A substantial number of comments were submitted during the additional comment period, including a request from school administrators for a second extension of the comment period. The department will again accede to the request and will hold the record open until December 31, 1985, after which final action will be taken.

4. Written comments on the proposed rules may be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana 59620, and must be received by the department no later than December 31, 1985.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 7, 1985

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

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| In the matter of the amendment of rule 16.32.501 designating reportable tumors and the adoption of a new rule stating the tumor records which must be kept by an independent laboratory) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 16.32.501 AND THE ADOPTION OF A NEW RULE (Tumor Registry) |

To: All Interested Persons:

1. On November 7, 1985, at 10:30 a.m. a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.32.501, which lists the types of tumors which are reportable to the department, and the adoption of a new rule stating the records which must be kept by an independent laboratory performing lab services for a person with a reportable tumor.

2. The proposed amendment replaces present rule 16.32.501 found in the Administrative Rules of Montana. The proposed amendment would correct an outdated address and phone number.

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

4. The rules as proposed to be amended and adopted provide as follows (matter in the amended rule to be stricken is interlined, new material is underlined):

16.32.501 REPORTABLE TUMORS (1) Same as existing rule.

(2) A benign tumor other than one of those listed in subsection (1) of this rule may be reported to the department for inclusion in the tumor registry if prior approval has been obtained from the department [~~Preventive Health Services Bureau,~~ Tumor Registry, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana, 59620; phone: ~~449-4740~~ 444-4740].

(3), (4) Same as existing rule.

AUTHORITY: Sec. 50-15-706, MCA
IMPLEMENTING: Sec. 50-15-703, MCA

RULE I REQUIRED RECORDS -- INDEPENDENT CLINICAL LABORATORIES Whenever a clinical laboratory which is not owned or operated by a hospital provides laboratory services for any patient relating to a tumor designated as reportable by 16.32.501, it must collect, record, and make available to the department the following information about that patient:

(1) Name and current address of patient
(2) Patient's address at time of diagnosis
(3) Social security number
(4) Name of spouse, if any

(5) Race, sex, marital status
(6) Age at diagnosis; month, day and year of birth
(7) Date and place of initial diagnosis
(8) Primary site of tumor (paired organ)
(9) Sequence of primary tumors, if more than one
(10) Method of confirming diagnosis
(11) Histology, including dates, place, histologic type, and slide number
(12) Summary staging, including whether in situ; localized; regional; distant; or unstaged, with no information
(13) Description of tumor and its spread, if any, including size in centimeters, number of positive nodes, number of nodes examined, and site of distant metastasis
(14) Status at time of latest recorded information, i.e., whether alive or dead; tumor in evidence or recurring; or status unknown
(15) Names of physicians primarily and secondarily responsible for follow-up.

AUTHORITY: Sec. 50-15-706, MCA; Ch. 12, Sec. 2, Laws of 1985
IMPLEMENTING: Sec. 50-15-703, MCA

5. The department is proposing this amendment to 16.32.501 because the phone number cited has changed and the bureau referred to no longer exists.

6. The department is proposing the new rule because it is required, through the passage of House Bill 113 by the 1985 Legislature, to designate the information on the results of lab analyses of reportable tumors and on patients with a tumor which must be recorded by clinical laboratories operating independently of a hospital.

7. 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 Complex, Helena, MT, no later than November 15, 1985.

8. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

9. The authority of the department to make the proposed amendment and new rule is based on section 50-15-706, MCA and Chapter 12, Section 2, of the Laws of 1985; the rules implement section 50-15-703, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 7, 1985

BEFORE THE HIGHWAY COMMISSION
OF THE STATE OF MONTANA

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| In the matter of the adoption of Rules I and II, the amendment of Rules 18.6.202, 18.6.211, 18.6.212, 18.6.213, 18.6.214, 18.6.221, 18.6.231, 18.6.251 and 18.6.271, and the repeal of Rule 18.6.272 concerning the regulation of outdoor advertising. | ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE ADOPTION OF RULES I and II, AMENDMENT OF RULES 18.6.202, 18.6.211, 18.6.212, 18.6.213, 18.6.214, 18.6.221, 18.6.231, 18.6.251 AND 18.6.271, AND REPEAL OF RULE 18.6.272 ON OUTDOOR ADVERTISING. |

TO: All Interested Persons:

1. On November 19, 1985 at 9:30 A.M. a public hearing will be held in the auditorium of the Department of Highways building at 2701 Prospect Avenue, Helena, Montana, to consider the adoption, amendment and repeal of the rules listed above except for moving one subsection from Rule 18.6.202.

2. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana except for moving one subsection from Rule 18.6.202.

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

RULE I UNZONED COMMERCIAL OR INDUSTRIAL AREA As clarification of the statutory requirements, the following criteria shall be used to determine whether an area qualifies as an unzoned commercial or industrial area:

(1) The business used to qualify an area must be located on land immediately adjacent to the primary or interstate highway right-of-way, and the permanent buildings or improvements comprising the business must be located within 660 feet of the right-of-way.

(2) The business itself must be clearly visible to the traveling public and be easily recognizable as a commercial or industrial activity. A business located on what is otherwise used as residential property will not qualify an area as an unzoned commercial or industrial area if only a portion of the building so used is visible and if the property appears to be primarily residential from the highway.

(3) No industrial or commercial activity which is located either partially or totally within an area which has been zoned by a bona fide state, county, or local zoning authority may be used to qualify an area as an unzoned commercial or industrial area.

(4) A commercial or industrial activity engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising will not create an unzoned commercial or industrial area. It shall be

rebuttably 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, or if no business is actually conducted on the premises.

Auth: 75-15-121, MCA. Imp: 75-15-103 and 75-15-111, MCA

RULE II NONCOMMERCIAL SIGNS Signs with noncommercial messages are subject to the same criteria as commercial advertising. If a noncommercial sign is located on property of the owner of the sign, it shall be considered to be an on-premise sign. A person or organization intending to erect a sign with a noncommercial message on property owned by someone else must first obtain a permit for such sign, and the sign must comply with all requirements for off-premise signs under the Outdoor Advertising Act and this subchapter.

Auth: 75-15-121, MCA. Imp: 75-15-111, MCA.

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

18.6.202 DEFINITIONS (1) Off-Premise Signs~~:~~ means all signs ~~Signs~~ which ~~are located on property, separate and apart from the property on which the advertised activity is carried out~~. are not on-premise signs as defined in subsection (2).

(2) On-Premise Signs~~:~~ means signs ~~Signs~~ erected on property for the sole purpose of advertising its sale or lease~~,~~ or ~~for~~ of advertising an activity conducted on the property. To qualify as an on-premise sign, a sign advertising an activity conducted on the property must be located on the land actually used or occupied by the activity. The extent of the property used for the activity includes its buildings and parking area but does not include vacant land or land used for unrelated activities. 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. Illegally erected or maintained signs are not non-conforming signs.

(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 and all other legal requirements.

~~(5) A commercial or industrial activity engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising will not create an unzoned commercial or industrial area. It shall be rebuttably 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, or if no business is actually conducted on the premises.~~

Auth: 75-15-121, MCA. Imp: 75-15-121, MCA.

18.6.211 PERMITS (1) Applications for permits may be obtained at any of the Department of Highways ~~Field~~ District Offices located in Missoula, Butte, Great Falls, Glendive and Billings, ~~and from the Helena Headquarters office~~.

(2) A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars ($6.00).

(3) Permits shall be issued for three (3) years, assigned a permit number and renewed every three (3) years thereafter upon payment of three dollars ($3.00) without the filing of a new application.

(4) Permits for new signs in conforming areas are may be issued only after the proposed location and sign size has been checked in regard to spacing, size and lighting criteria and approved by the Department.

(5) A new sign must may not be erected without first receiving a new permit.

Auth: 75-15-121, MCA. Imp: 75-15-122, MCA.

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES (1) Applications for permits for the erection of new signs must be accompanied by a photograph, sketch, or scale drawing, showing as a minimum the following:

(a) The tract of land on which the sign will be erected. The proposed site must be tied to some permanent object and show county, highway route and reasonably accurate highway milepost location.

(b) The distance to and approximate location of other outdoor advertising signs or devices within 1,200 feet of the proposed site.

(c) If the area is zoned, the current zoning of the land in question and the name of the zoning authority.

(d) If the area is unzoned, give the name and description of the activity or activities which qualify the area as an unzoned commercial or industrial area and show the relationship of the proposed sign site to the commercial or industrial activity. Unless the sign is on or immediately abutting a commercial or industrial activity,

the distance to the ~~boundary~~ area actually occupied by ~~of~~ the ~~said~~ activity or a building or enclosure which houses said activity should be included.

(2) A stake or some identifying object should be placed at the proposed sign location to assist the Department of Highways personnel in finding the proposed sign site ~~applied for~~.

Auth: 75-15-121, MCA. Imp: 75-15-122, MCA.

18.6.213 PERMIT ATTACHMENT (1) It is the responsibility of the sign owner to see that the proper permit is continuously attached to the sign or device for which it was issued.

(2) The permit ~~should~~ shall be attached to the sign or the supporting structure near the lower left corner of the sign facing the traffic.

(3) Permits which are affixed to the wrong sign or are otherwise ~~seriously~~ in violation of requirements may be cancelled by the Department if the deficiency continues for more than thirty days.

(4) ~~If a sign exists with the improper permit attached for more than thirty days, it may be declared illegal at the discretion of the Department.~~ If the Department cancels a permit, the sign for which the permit was issued becomes an illegal sign and must be removed.

(5) If the original permit has been lost or destroyed, a substitute permit may be obtained from the Department upon presentation of a satisfactory explanation and payment of a ~~one~~ three dollar ~~($1.00)~~ ($3.00) fee.

Auth: 75-15-121, MCA. Imp: 75-15-122, MCA.

18.6.214 RENEWALS (1) Although the Department plans, as a courtesy, to remind sign owners to apply for renewal of permits, failure to issue such notice will not serve to excuse the sign owner from his duty to make proper application for renewal of a permit. Such application, including the required fee and any other information or evidence which may be required must be received by the Department at ~~its~~ the applicable district office in ~~Helena~~ Billings, Butte, Great Falls, Glendive or Missoula prior to 5:00 p.m. on the first normal business day after the day on which the permit expired.

Auth: 75-15-121, MCA. Imp: 75-15-122, MCA.

18.6.221 NEW SIGN ERECTION (1) Where the erection of a new sign is not commenced within thirty days after the date of issuance of a permit for said sign, the applicant ~~should~~ shall flag or stake the site of the proposed sign to assist the Department in verifying the location and to

prevent others from applying for a site in the immediate area. The permit may be cancelled if the site has not been flagged as required.

(2) A permit issued for a new sign will become invalid ~~four~~ three months after the date it is issued if ~~it has not been~~ the sign has not been erected and the permit has not been affixed to the sign ~~it was intended to cover by the expiration of that period~~.

(3) Signs ~~cannot~~ may not be moved and re-erected in a new location without obtaining a new permit.

Auth: 75-15-121, MCA. Imp: 75-15-122, MCA.

18.6.231 SIGN SPACING (1) Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.

(2) Only roads, streets and highways which enter directly into the main-traveled way of the primary highway shall be regarded as intersecting.

(3) Official and "on-premise" signs shall not be counted nor shall measurements be made from them for purposes of determining compliance with the above spacing requirements.

(4) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs.

(5) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(a) The double-faced sign facings may be positioned side by side on a single structure or stacked vertically on a single structure, and are to be considered as one sign for spacing and permitting purposes. A facing is any part of the sign used for a single advertisement. No more than two facings may be visible from any direction.

(b) Side-by-side signs on individual structures are considered as two signs for both spacing and permit requirements.

(c) V-type signs must be attached to a single pole at one end.

Auth: 75-15-121, MCA. Imp: 75-15-113, MCA.

18.6.251 REPAIR OF SIGNS (1) Non-conforming signs and signs in conforming areas which do not meet required size, lighting and spacing criteria may be repaired but only in conformity with the following limitations:

(a) Such repair and maintenance as is reasonably necessary to maintain the sign's appearance and structural integrity may be performed. The value of new materials used in the maintenance of a sign during one calendar year ~~must~~ may not exceed thirty percent of the value of all of

the materials which would be required to replace the sign new.

(b) Signs which are blown down, vandalized, or otherwise damaged may be re-erected provided:

(i) The sign is not damaged in excess of 50 percent of its replacement cost.

(ii) The work is accomplished with reasonable promptness.

(c) Signs which cannot be re-erected as outlined above are deemed to have been destroyed and their status as a lawful outdoor advertising device ceased at the time of their destruction. Permits for such signs will be cancelled.

(d) Non-conforming signs, which have been stolen and not recovered, ~~cannot~~ may not be replaced by a new sign.

(e) In no case ~~will~~ may the repair, maintenance, or re-erection of non-conforming signs (or signs in conforming areas which do not meet required size, lighting and spacing criteria) result in an increase of height, width, or areas over the height, width or area of the sign when first permitted; also, in no case ~~will~~ may the repair, maintenance or re-erection of a sign result in a substantial upgrading of the type ~~of~~ or value of the sign. (For example, a change from wood to steel structure or a change from unilluminated to illuminated would constitute a substantial upgrading.) No additional facings may be added to non-conforming signs.

(f) The Department shall cancel the permit for any sign which has been maintained in violation of the above limitations and such sign shall be subject to removal as an illegal sign.

(2) Conforming signs: ~~which meet required criteria.~~ The limitations set forth in (1) above are not intended to apply to conforming signs; however, repair or reconstruction of a sign which results in a change in the height, width or area of more than ten percent from that shown on the last approved permit application, or which changes the number or position of the facings is deemed to constitute the erection of a new sign for which a new permit will be required.

Auth: 75-15-121, MCA. Imp: 75-15-121, MCA

18.6.271 OUTDOOR ADVERTISING REGULATIONS TO APPLY TO RECENTLY DESIGNATED PRIMARY ROUTES (1) The Montana Highway Commission ~~has removed certain highway routes from the Federal Aid Secondary System and placed them on~~ occasionally designates additional highways as a part of the Federal Aid Primary System. Outdoor advertising signs ~~along the aforementioned routes~~ visible from the primary system are ~~controlled~~ regulated by ~~regulations contained in ARM 18.6.201 through ARM 18.6.263 and the statutory~~

~~restrictions contained~~ in the Montana Outdoor Advertising Act, Sections 75-15-101 through 75-15-134, MCA, and the regulations of this sub-chapter. Permits for ~~the foregoing~~ signs visible from newly designated primary highways must be secured from the Department pursuant to ARM 18.6.211. Applications for permits must be received by the Department ~~by June 2, 1978~~ within six months of the designation of a highway to the primary system.

(2) Information regarding the routes which have been placed on the Federal Aid Primary System may be obtained at any of the Department of Highways ~~Field~~ District Offices located in Missoula, Butte, Great Falls, Glendive and Billings, and from the Helena Headquarters office.

Auth: 75-15-121, MCA. Imp: 75-15-121, MCA.

5. Rule 18.6.272, regarding the permit application form, is proposed to be repealed.

6. The Commission is proposing Rule 18.6.203 to clarify the statutory requirements for an unzoned commercial or industrial area. Subsection (1) of the proposed rule explains the meaning of lands along the highway and the location of the business under the definition in section 75-15-103(14), MCA. Subsection (2) clarifies what is meant by visible. Subsection (3) clarifies the requirement that the qualifying area be unzoned. Subsection (4) has been moved to this rule from Rule 18.6.202(5) because it is related to the determination of an unzoned commercial or industrial area, and it has not been changed.

The Commission is proposing Rule 18.6.245 to clarify the regulation of noncommercial signs under the Outdoor Advertising Act. The Act does not specifically discuss noncommercial messages. The proposed rule provides that they will be treated the same as commercial speech and provides the method for determining when they are on-premise signs.

The amendments to the existing rules concern the changes in organization of the Department of Highways regarding the outdoor advertising program. The program has been decentralized and will be operated from the five district offices. Other changes clarify the definition of on-premise signs in Rule 18.6.202, explain the meaning of facings and V-type signs under Rule 18.6.231, and clarify the permitting and enforcement procedures.

The rule proposed to be repealed merely prints the application form which may be obtained from the district offices. The rule is not substantive and is proposed for repeal because the form has been updated.

7. 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 A. Holstrom, Attorney, Department of Highways, 2701 Prospect Ave., Helena, MT 59624, no later than November 19, 1985.

8. Jack A. Holstrom, Attorney, Department of Highways, 2701 Prospect Ave., Helena, MT 59624 has been designated to preside over and conduct the hearing.

Montana Highway Commission

Ilert Hellebust
Chairman

Certified to the Secretary of State October 7, 1985

BEFORE THE WORKERS' COMPENSATION DIVISION
of the Department of Labor & Industry
of the State of Montana

| | | |
|---|---|---|
| In The Matter of Amendment of ARM 24.29.705, and 24.29.3503 Regarding Corporate Officer Coverage Under the Workers' Compensation Act. | ) ) ) ) | NOTICE OF PROPOSED AMENDMENT OF ARM 24.29.705, AND 24.29.3503 (No Hearing Contemplated) |

TO: All Interested Persons

1. On November 30, 1985, the Workers' Compensation Division proposes to amend existing rules concerning the coverage of corporate officers under the provisions of the Workers' Compensation Act.

2. The proposed amendments are as follows:

24.29.705 ELECTION NOT TO BE BOUND - CORPORATE OFFICER

(1) through (3) and (5) Same as existing rule.

(4) An election under under Sections (1) or (3) of this rule is not valid until approved by the division~~.~~ for corporations insured under plan No. 1 and plan No. 2, or until approved by the state insurance fund bureau for corporations insured under plan No. 3.

AUTH: 39-71-203, MCA
IMP: 39-71-410, MCA

24.29.3503 ELECTION OF CORPORATE OFFICERS NOT TO BE BOUND (1) The election by a corporate officer not to be bound under ~~24.29.3201~~ ARM 24.29.705, may become effective on the effective date of plan 3 coverage, provided a division endorsement form ~~215~~ is received and approved by the State Fund prior to or at the time of receipt of the initial deposit. Thereafter, an election is not valid until a division endorsement form ~~215~~ is received and aproved by the State Fund. An approved election by a corporate officer not to be bound will remain in effect until the policy is cancelled or the officer notifies the State Fund in writing to cancel such election.

AUTH: 39-71-203 and 39-71-2303, MCA
IMP: 39-71-2303, MCA

3. These rules are being amended to clarify the process by which a corporate officer may elect not to be

bound by the Workers' Compensation Act. These amendments clarify that such elections must be presented to the division for those corporations insured under plan No. 1 or plan No. 2 of the Act, and to the state insurance fund bureau for corporations insured under plan No. 3.

4. Interested parties may submit their data, views or comments concerning these changes in writing to William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by November 15, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to William R. Palmer at the address above no later than November 15, 1985.

6. If the division receives requests for a public hearing on the proposed amendments from 25 persons who are directly affected by the proposed amendment or 10% of the population of the state of Montana, 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. These amendments will affect all corporate officers and corporations operating in this state. If required, a notice of hearing will be published in the Montana Administrative Register at a later date.

GARY L. BLEWETT,
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 7, 1985

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

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|---|---|---|
| In the Matter of the Adoption of Rule I Livestock Dealers Bonds | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE: DETERMINING AMOUNTS OF BOND COVERAGE FOR LICENSED LIVESTOCK DEALERS |

TO: All Interested Persons.

1. On November 13, 1985 at 1:30 p.m. a public hearing will be held in Helena, Montana in Room 319 of the Department of Livestock at 301 Roberts to consider the adoption of a RULE requiring individual, corporate, and partnership livestock dealers to maintain bonds in amounts determined by the department.

2. The rule as proposed to be adopted reads as follows:

RULE I LIVESTOCK DEALER BOND

(1) Each licensed livestock dealer shall maintain a bond in a minimum amount set by the department.

(2) An individual dealer, partnership, or corporation holding a minumum amount bond must increase that bond by $25,000 for each individual licensed dealer it chooses to employ and place under its bond.

(3) An individual dealer, corporation, or partnership holding a bond in the amount of $50,000 or more may employ and place up to three more licensed dealers under the same bond, unless the department or federal regulations determine that the volume of business requires a larger bond. For each licensed dealer beyond the excepted three, an increase of $10,000 per dealer is required.

(4) A partnership or corporation must designate one individual as the principal licensed to buy. Additional officers, partners, or employees must obtain individual dealers licenses if they buy cattle for the partnership or corporation.

3. The reasons for the rule are to implement the changes enacted by the 1985 legislature. As of October 1, 1985 each livestocker buyer must hold a separate license and each dealer must hold a bond in an amount of $5,000 or more. The law also allows the department to increase the bond amount. The amounts proposed by the department in the rule reflect the protection required for the average volume of business as determined by the department.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Les Graham, Administrator, Brands-Enforcement Division.

5. The Board of Livestock or its designee will preside over and conduct the hearing.

6. The authority of the department to make the proposed amendment is based on Section 81-8-231 M.C.A. and it implements 81-8-277 M.C.A.

NANCY ESPY

NANCY ESPY,
Chairman, Board of Livestock

BY: Donald P. Ferlick, D.V.M.
Administrator and
State Veterinarian

LES GRAHAM
Administrator,
Brands-Enforcement
Division

Certified to the Secretary of State October 8, 1985.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

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| In the Matter of the Amendment of Rule 38.8.202 Time from Processing that Fluid Milk may be sold for Human Consumption | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 32.8.202; PROHIBITING 12 DAY PULL-DATE EXTENSION WITHOUT NOTICE TO DEPARTMENT; PROHIBITING SALE OF OVER 12 DAYS PULL DATE MILK |

TO: All Interested Persons.

1. On November 13, 1985 at 1:30 p.m. a public hearing will be held in Helena, Montana in Room 319 of the Department of Livestock at 301 Roberts to consider an amendment to Rule 32.8.202 which would prohibit the marking of any milk container with a pull date of longer than 12 days without notification to the Department of both the amount and destination of the milk; and which would prohibit the sale in Montana of milk in containers marked with a pull-date longer than 12 days.

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

32.8.202 TIME FROM PROCESSING THAT FLUID MILK MAY BE SOLD FOR HUMAN CONSUMPTION

(1) remains the same.

(2) remains the same.

(3) remains the same.

(4) No grade A pasteurized milk or grade A raw milk may be put in any container marked with a pull date which is more than 12 days after pasteurization or bottling of the milk, whichever is applicable, without notification to the department of both the amount of and state destination of the milk. The department will provide necessary forms for detailing the amount and destination of the milk.

(5) No grade A pasteurized milk or grade A raw milk put in any container marked with a pull date which is more than 12 days after pasteurization or bottling of the milk, whichever is applicable, may be offered for sale or otherwise disposed of for human consumption at retail or wholesale in Montana.

3. The reasons for the amendment are to prohibit the sale of milk on a date which occurs more than 12 days after pasteurization or bottling; and, to prohibit the sale of milk in containers which are marked with a pull-date more than 12 days after pasteurization or bottling.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Everett Tudor, Bureau Chief, Milk and Egg Bureau, no later than November 21, 1985.

5. The Board of Livestock or its designee will preside over and conduct the hearing.
6. The authority of the department to make the proposed amendment is based on Section 81-2-102 M.C.A. and it implements 81-2-102 M.C.A.

NANCY ESPY

NANCY ESPY,
Chairman, Board of Livestock

BY: Donald P. Ferlicka for L.G.

Donald P. Ferlicka D.V.M.
Administrator and
State Veterinarian

LES GRAHAM
Administrator,
Brands-Enforcement Division

Certified to the Secretary of State October 7, 1985.

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

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| In the matter of the proposed amendments of 36.21.402 concerning licensure non-transferable, 36.21.409 concerning supervision, 36.21.410 concerning examinations, 36.21.413 concerning renewals, 36.21.415 concerning fees; proposed repeal of 36.21.401 concerning board meetings, and proposed adoption of new rules outlining requirements for contractors and drillers licenses. | NOTICE OF PROPOSED AMENDMENTS OF 36.21.402 LICENSURE RESTRICTED TO NATURAL PERSONS --NONTRANSFERABLE, 36.21.409 SUPERVISION, 36.21.410 EXAMINATION, 36.21.413 RENEWALS, 36.21.415 FEE SCHEDULE, PROPOSED REPEAL OF 36.21.401 BOARD MEETINGS, AND PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 4, IMPLEMENTING THE TWO LICENSURE SYSTEM.<br><br>NO PUBLIC HEARING CONTEMPLATED |

1. On November 16, 1985, the Board of Water Well Contractors proposes to amend, repeal, and adopt the above-stated rules. All rules have been transferred to the Department of Natural Resources and Conservation from the Department of Commerce. Renumbering has occurred as follows:

| Rule Number under Commerce | Rule Number under DNRC |
|---|---|
| 8.66.101 | 36.21.101 |
| 8.66.201 | 36.21.201 |
| 8.66.202 | 36.21.202 |
| 8.66.401 | 36.21.401 |
| 8.66.402 | 36.21.402 |
| 8.66.403 | 36.21.410 |
| 8.66.404 | 36.21.413 |
| 8.66.405 | 36.21.601 |
| 8.66.406 | 36.21.633 |
| 8.66.407 | 36.21.632 |
| 8.66.408 | 36.21.631 |
| 8.66.409 | 36.21.404 |
| 8.66.410 | 36.21.409 |
| 8.66.411 | 36.21.414 |
| 8.66.412 | 36.21.415 |

Rules 36.21.602 through 36.21.630 will be reserved.

2. The proposed amendment of 36.21.402 will read as follows: (new matter underlined, deleted matter interlined)

"36.21.402 LICENSURE RESTRICTED TO NATURAL PERSONS--NONTRANSFERABLE (1) For purposes of implementing Sections 37-43-303 ~~and 304~~ MCA, the word 'person' shall be defined to mean an individual human being. Water well contractor's or driller's licenses shall only be issued to or renewed for a person (as above defined) upon that person's meeting the appropriate requirements for licensure. ~~A water well contractor's license shall not be issued to or renewed in~~

~~the name of a firm, co-partnership, association or corporation.~~ The license shall show the information required by rules II and III.

(2) Before any person (as above defined) shall be issued a water well contractor's or driller's license or shall be in the lawful possession and use of such license, he shall first have met the requirements for licensure as established by sections 37-43-303 and 305, MCA. No person shall be licensed to engage in the business of a water well contractor or driller by inheritance, purchase, transfer, or by any means other than direct licensure from the Board in the manner stated above."

Auth: 37-43-202, MCA. Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-303 and 402, MCA.

3. The rule is proposed to be amended to add "driller" as there are now two licenses. When the rule was originally adopted there were problems with persons assuming control of a firm without the appropriate licenses. The problem still exists.

4. The proposed amendment of 36.21.409 will read as follows: (new matter underlined, deleted matter interlined)

"36.21.409 SUPERVISION (1) 'Personal supervision' is defined to mean that a licensed water well contractor or driller ~~must~~ shall be present at the job site when the drilling rig is in operation."

Auth: 37-43-202, MCA. Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-302 MCA.

5. The rule is proposed to be amended to add "driller" and change the word "must" to "shall". The amendment will leave no doubt that a licensed driller or contractor shall be on site.

6. The proposed amendment of 36.21.410 will read as follows: (new matter underlined, deleted matter interlined).

"36.21.410 EXAMINATION (1) The examination is given in the board office in Helena, Montana, on any work day, Monday through Friday. ~~It~~ The examination must be started ~~by 9 a.m. or by~~ prior to 2:00 p.m.

(2) Examinations may also be given at the Department of Natural Resources and Conservation field offices in Billings, Bozeman, Glasgow, Kalispell, Lewistown, Miles City, Havre, and Missoula. Applications must be approved by the board office prior to sitting for the exam at a field office.

(3) Examinations given in field offices ~~may~~ shall be written~~, oral or both~~.

(4) A grade of 75% is necessary to pass the examination. Grading will be ~~done~~ completed by the board or its designee ~~and in all cases the board has the final say as to the score~~.

(5) Oral examinations may be given in the Helena board office with specific board approval on a case by case basis.

(6) Applicants for licensure by reciprocity will be required to pass the examination with a score of 75%.

(7) Applicants may not use notes or reference materials for the exam."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-305, 308, MCA.

6. The board is proposing the amendment to allow examinations to be given in the Department of Natural Resources and Conservation field offices around the state. This will provide a convenience for individuals who live long distances from Helena. The application must still be approved in Helena to prevent any discrepancies. Final grading will remain the responsibility of the board. The board will waive the one year apprenticeship requirements for out-of-state applicants, who are licensed in another state with equal or more stringent requirements, but not the examination requirements. The board feels because of the differences in drilling practices and geologic formations from state to state, the full examination should be required for all applicants.

7. The proposed amendment of 36.21.413 will read as follows: (new matter underlined, deleted matter interlined)

"36.21.413 RENEWALS (1) In addition to the renewal requirements of 37-43-307, MCA, each a licensed Montana water well contractor shall attach to each drilling rig a gummed label indicating the current water well contractor's license has been purchased. The label shall be attached to the drilling rig at a point near the contractor's license number. ~~The color is to be changed each year and will give the~~ The license year will appear on the label."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-307, MCA

8. The board is proposing the amendment to indicate that it is the contractors license number which must appear on the drill rig. The provision regarding color has been removed as the stickers are difficult to obtain in waterproof material in various colors.

9. The proposed amendment of 36.21.415 will read as follows: (new matter underlined, deleted matter interlined)

"36.21.415 FEE SCHEDULE

| | |
|---|---|
| (1) Application and examination | ~~$175.00~~ |
| (a) Contractors | $250.00 |
| (b) Drillers | $200.00 |
| (2) Re-examination | ~~110.00~~ 150.00 |

| | | |
|---|---|---|
| (3) Renewal | ~~90.00~~ | |
| (a) Contractor | 125.00 | |
| (b) Driller | 90.00 | |
| (4) Late renewal (in addition to renewal fee) will be charged for any license not renewed prior to July 10 | 55.00 | |
| (5) Duplicate certificate and/or license | ~~25.00~~ | 40.00 |
| (6) Change in contractor name and/or address | 40.00 | |
| (7) Change in responsible contractor (new driller license fee) | 40.00 | |
| (8) Copies of law and rules--per page (drillers and contractors are exempt from fee)" | .20 | |

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-202, 303, 305, 307, MCA

10. Under section 37-43-202, MCA, the board is charged with the responsibility of setting fees commensurate with program area costs. These are the fees the board has determined necessary to cover the administrative costs.

11. The board is proposing to repeal ARM 36.21.401 in its entirety. The current rule reads as follows: (deleted matter interlined)

"36.21.401 BOARD MEETINGS ~~(1) There is an unwritten rule that the board is to meet at least once a year, this and special meetings should be stated.~~"

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-202

12. The board is proposing the repeal as the phrase "unwritten rule" doesn't make sense when it appears in a specific rule. The procedure for public notification and conduct of the meetings are covered in the statutes relating to public participation and the Administrative Procedures Act.

13. The proposed adoptions of the new rules are as follows: (These rules will fall under sub-chapter 4)

"I. REQUIREMENTS FOR CURRENT WATER WELL CONTRACTORS (1) For purposes of implementing the two licensure system (contractor and driller), those water well contractors who are currently licensed must notify the Board office by the June 30, 1986 renewal deadline as to whether they wish to renew the license as a contractor or driller.

(2) Each firm must have a licensed and bonded water well contractor who is financially responsible for that firm and in charge of drilling operations.

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-302, 305, MCA

"II. CONTENTS OF CONTRACTOR'S LICENSE (1) Each water well contractor's license shall show on its face the name of the contractor, his firm name, if any, address, the license number, and the date issued.

(2) Firm name and address changes shall be submitted to the Board office within ten days after the change occurs.

(3) Changes in name and address must be accompanied by the fee set out in the fee schedule."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp: 37-43-202(6), (9), MCA

"III. CONTENTS OF DRILLERS' LICENSES (1) Each driller's license will be issued showing the driller's name, the contractor's individual name and firm name, if any, the driller license number, and the date issued.

(2) When a change in contractor occurs, in addition to the requirements of Rule IV, a new license will be issued to the driller containing the same information as listed above. A fee will be charged for the new license."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp. 37-43-202(6),(9), MCA

"IV. CHANGE OF RESPONSIBLE CONTRACTOR (1) In the event, a driller leaves a firm, the responsible contractor shall notify the Board office in writing within five days. His responsibility for the driller continues until such notification is received.

(2) The driller shall notify the Board office in writing of change in responsible contractor within five days of new employment.

(3) A water well contractor shall notify the Board office in writing within ten days of new hirings of any driller or apprentice."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp. 37-43-202(6),(9), MCA

"V. DRILLER COMPLETION OF EXAMINATION (1) A driller who is not licensed in Montana must successfully complete the examination prior to performing drilling work, unless he is listed as an apprentice for the licensed water well contractor firm."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp. 37-43-202, MCA

"VI. BOND REQUIREMENTS (1) In addition to the bond requirements of Section 37-43-306, MCA, each water well contractor's bond shall contain on the face of the bond, the individual contractor's name, as well as the company name and mailing address. A bond is not required for a driller's license."

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp. 37-43-306, MCA

"VII. **APPRENTICES** (1) An apprentice is a person who performs labor or services for a licensed water well contractor and whose duties are directly related to the drilling of a water well or operation of the drill rig.

(2) A contractor shall list with the board office the names of all apprentices employed on a permanent or reasonably continuous basis, except that a contractor need not list persons employed whose duties are not directly related to the drilling of a water well.

(3) Apprentices while employed shall be under the personal supervision, as defined in section 36.21.409 of this chapter, of a licensed water well contractor or driller.

(4) One year's apprenticeship as required by 37-43-305(1)(h), MCA, shall consist of 12 months of full-time employment in drilling water wells under the direct supervision of a licensed water well contractor, which experience shall have occurred during the three years immediately preceding the date of application, or suitable vocational training approved by the Board.

(5) The Board may, upon application and request, approve equivalent experience under a non-listed water well contractor or driller, if the experience was in a state other than Montana and if the Board is satisfied that the experience was the equivalent of working under a licensed water well contractor in Montana. The Board may approve other experience as equivalent as it finds appropriate.

(6) It is necessary to provide documentation of actual experience in water well construction during the past three years. This should include the number of wells constructed, the approximate dates, and any other information that would be helpful in evaluating experience.

(7) A statement from the licensing agency for water well contractors in another state relative to the experience is also required.

Auth: 37-43-202, MCA Auth. Extension: Sec. 11, Chapter 728, L. 1985 Imp. 37-43-305(1)(h), MCA

14. The board is proposing the adoptions for the following reasons:

Rule I will provide the option for current licensees to remain contractors or become drillers. Some of the current contractors have employees who are currently having difficulties obtaining bonds and who would fall under the definition of a driller. Additional portions of the rule state who must carry the bond and that apprentices must be supervised and listed with the board office.

Rule II is designed to avoid problems in sale of firms to unlicensed persons. In the past when the license was issued to a firm, it was possible that the licensed person would

leave the firm and the firm was operated without an individual who was duly qualified, licensed, and bonded. The rule will insure that each firm has a licensed and bonded contractor.

Rule III will allow the board to keep track of the drillers and tie them to the contractor who is responsible for their work. When they leave the employ of one contractor and go to work for another, a new license will be issued upon payment of a fee. The rule will prevent the driller from drilling on his own without a responsible contractor or bond.

Rule IV places the responsibility on both the contractor and the driller to let the board office know of changes in employment. The rule is designed to prevent drilling without proper licensure or bonding. By requiring the contractor to list apprentices with the board, the office also has an idea of how long an apprentice has actually worked when he applies for a license.

Rule V is proposed to prevent individuals from drilling without licensure for an indefinite period of time. By requiring either a drillers license or listing as an apprentice, the board office is aware of the status of the individuals on the drill site and whether there is a need for supervision.

Rule IV is proposed to clarify what name must appear on the bond and that a bond is not required for a drillers license. The requirement of the individual name on the bond is to prevent change in ownership of a firm through sale or other acquisition by a person who may not be bondable or licensed.

Rule VII is proposed as a basic guideline for apprenticeship until more specific guidelines can be adopted. Currently, the only requirement is a statement from a licensed contractor. This has proven to be inadequate in some instances.

15. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Water Well Contractors, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59620 no later than November 14, 1985.

16. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Water Well Contractors, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59620 no later than November 14, 1985.

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

legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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

Certified to the Secretary of State, October 7, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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|---|---|
| IN THE MATTER OF THE ADOPTION) of New Rule I relating to net operating loss computations. ) | NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rule I relating to net operating loss computations. |

TO: All Interested Persons:

1. On November 6, 1985, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, at Helena, Montana, to consider the adoption of new rule I relating to net operating loss computations.

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

3. The new rule as proposed to be adopted provides as follows:

RULE I SPECIAL MONTANA NET OPERATING LOSS COMPUTATIONS (1) The Montana net operating loss computation will be filed on the forms prescribed by the department of revenue.

(2) For Montana individual income tax purposes, the long term capital gain deduction which must be added back to arrive at the net operating loss under section 172 of the Internal Revenue Code of 1954, is that portion of the long term capital gain deduction attributable to the Montana income or loss.

(3) In general, this subsection prescribes procedures for computing net operating losses and the carryback and carryover for a husband and wife.

(a) In the case of a taxpayer who has continuously filed separate returns, a net operating loss on a separate return must be carried back or carried over to his or her own separately filed returns.

(b) A husband and wife who have continuously used joint returns must carryback or carryover the net operating loss from their joint return to their combined joint income in the carryback or carryforward year.

(c) If a net operating loss occurs in a year when a joint return was filed, and is carried to a separate return year, it is calculated by computing each spouse's share of the joint net operating loss. The deductions attributable to the husband, for example, would be compared with the gross income attributable to him, and the excess of such deductions is his share of the loss to be carried to his separate return. A similar computation is made for the wife. If the gross income attributable to either spouse exceeds the deductions attributable to that spouse, no part of the loss can be carried to that spouse's separate return.

(d) A taxpayer sustaining a net operating loss on a sepa-

rate return must carryback or carryforward the loss to his or her own portion of the income on a joint return. The purpose of this method is to divide income and deductions reported on a joint return between the two spouses in a manner that reflects the actual allocation that would have occurred had separate returns been filed. Thus, income items are allocated to the spouse earning the income, and deductions are allocated to the spouse incurring the expense.

(4) The net operating loss for nonresidents and fractional year residents shall include only those items taxable by Montana.

Example 1: A nonresident has a loss on the operation of a Montana business and income from a separate business located in his state of residence.

| | |
|---|---|
| Montana business loss | ($75,000) |
| State of residence business income | $85,000 |
| Federal income | $10,000 |
| | |
| Income for federal purposes | $10,000 |
| Less state of residency business income | $85,000 |
| Montana loss | ($75,000) |

Example 2: A nonresident has oil income from Montana and a ranch in his state of residence that shows a loss.

| | |
|---|---|
| Montana oil income | $100,000 |
| State of residence ranch loss | ($140,000) |
| Loss for federal purposes | ($ 40,000) |
| | |
| Loss for federal purposes | ($ 40,000) |
| Less state of residence loss | ($140,000) |
| Montana income | $100,000 |

Example 3: A nonresident has a loss on the operation of a Montana farm and income from a separate business located in his state of residence.

| | |
|---|---|
| Montana farm loss | ($ 75,000) |
| State of residence business Income | $ 50,000 |
| Loss for federal purposes | ($ 25,000) |
| | |
| Loss for federal purposes | ($ 25,000) |
| Less state of residence business Income | $ 50,000 |
| Montana loss | ($ 75,000) |

Example 4: An individual moves to Montana and becomes a resident of Montana. He sustains a loss outside Montana before becoming a resident and he also sustains a loss in Montana after becoming a resident.

| | |
|---|---|
| Out-of-state loss | ($ 65,000) |
| Montana loss | ($ 75,000) |
| Loss for federal | ($140,000) |
| | |
| Loss for federal | ($140,000) |
| Less out-of-state loss | ($ 65,000) |
| Montana loss | ($ 75,000) |

(5) A nonresident of Montana who owns a business which operates both within and without Montana must follow the provisions in 15-1-601, MCA, and ARM 42.16.1115 to determine the amount of the business wide loss attributable to Montana.

(6) To determine the portion of the federal income tax and motor vehicle fee attributable to income from a trade or business, the net income from the trade or business must be divided by the adjusted gross income to arrive at a percentage. The percentage is multiplied by the federal tax or motor vehicle fee. When calculating the federal tax attributable to trade or business income, the total income figures used for the computation must be for the year the federal tax was incurred.

(7) This rule applies to tax years beginning after December 31, 1984.

AUTH: Sec. 2, Ch. 142, L. 1985 and 15-30-305 MCA; IMP: 15-30-117 MCA.

4. The Department is proposing new rule I because Chapter 142, Laws 1985 enacted 15-30-117, MCA. The new law establishes specific procedures for determining a net operating loss deduction, but it does not specify the portion of the loss that is applicable to Montana in the case of a nonresident or fractional year resident. Therefore, the rule became necessary in order that persons preparing Montana returns for the affected individuals will have specific guidelines. The rule is also necessary to ensure residents and nonresident taxpayers are treated alike.

The new rule also limits the amount of the capital gain deduction to be added back in the case of nonresidents and fractional year residents. If this limit was not imposed, the nonresidents and fractional year residents would be required to add back 100% of the capital gain deduction even though 100% of the capital gain was not taxable to Montana.

Sections 15-1-601 and 15-30-117, MCA, do not define the specific procedures for calculating the Montana net operating loss when the nonresident taxpayer is operating a business both within and without Montana. The new rule is necessary in order that the nonresidents are treated on an equal basis with residents.

The new law is not clear on losses sustained by married persons who file separate returns in some years and joint returns in other years. The rule is needed to provide clarification.

The new law states that the taxpayers may use the federal tax and the motor vehicle fee which is attributable to income from a trade or business. The new law does not specify how to calculate the amounts, thus a rule is needed.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Barbara L. Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoption is based on § 2, Ch. 142, Laws 1985 and 15-30-305, MCA, and implements §§ 15-1-601 and 15-30-117, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | |
|---|---|
| IN THE MATTER OF THE REPEAL OF 42.21.104 AND AMENDMENT OF 42.21.101, 42.21.123, 42.21.138, 42.21.154, 42.21.155, and 42.21.156 relating to the valuation of personal property. | NOTICE OF PUBLIC HEARING on PROPOSED REPEAL OF 42.21.104, AND AMENDMENT OF 42.21.101, 42.21.123, 42.21.138, 42.21.154, 42.21.155, and 42.21.156 relating to the valuation of personal property. |

TO: All Interested Persons:

1. On November 6, 1985, at 2:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana to consider the amendment of rules 42.21.101, 42.21.104, 42.21.123, 42.21.138, 42.21.154, 42.21.155, and 42.21.156 relating to the valuation of personal property.

2. The rules proposed to be amended and repealed can be found on pages 42-2105, 42-2107, 42-2122, 42-2127, 42-2143 and 42-2144 of the Administrative Rules of Montana.

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

42.21.101 AIRCRAFT (1) Remains the same.

~~(2) The department shall add or delete equipment or high and low hours according to the instructions set forth in the "Aircraft Price Digest".~~

~~(3)~~ If the above named publication does not value these properties, the department of revenue shall develop trended depreciation tables in which the percentages will approximate the wholesale value as calculated from the guidebook listed in subsection (1).

~~(4)~~ (3) For all aircraft which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original f.o.b. through old aircraft valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables mentioned in subsection ~~(3)~~ (2) to arrive at a value which approximates wholesale value.

~~(5)~~ (4) If the methods mentioned in subsections (1) and ~~(4)~~ (3) cannot be used to ascertain a wholesale market value for an aircraft, the owner or applicant must certify to the department of revenue or its agent the year acquired and the acquired price before that value can be applied to the table in subsection ~~(3)~~ (2).

~~(6)~~ (5) This rule is effective for tax years beginning after December 31, ~~1984~~ 1985.

AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.104 MOTORCYCLES Is proposed to be repealed.
AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The average wholesale value for farm machinery and equipment shall be the "average ~~as it~~ loan" value as shown in the "Official Guide Tractors and Farm Equipment", Spring Edition, for the year of the assessment. This guide may be reviewed in the department or purchased from the publisher: National Farm and Power Services, Inc., 10877 Watson Road, P. O. Box 8517, St. Louis, Missouri 63126.

(2), (3), (4), and (5) remain the same.

(6) If a piece of farm machinery or equipment's market value is below $100, it is exempt from taxation.

~~(6)~~ (7) This rule is effective for tax years beginning after December 31, ~~1984~~ 1985.
AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT (1) and (2) remain the same.

(3) All downhole equipment in oil and gas wells is exempt from taxation. Downhole equipment includes:

(a) sucker rods;

(b) tubing;

(c) casing; and

(d) submersible pumps.

Downhole equipment which is not in an oil or gas well shall be taxed as class 8 property at 11%.

~~(3)~~ (4) This rule is effective for tax years beginning December 31, ~~1984~~ 1985.
AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.154 VALUATION OF FURNITURE AND FIXTURES (1) The market value of furniture and fixtures is determined by multiplying an indexed depreciation factor times the ~~original~~ acquired cost of the property. The Department has established 6 7 specific categories and 1 general category to determine specific trend factors for this type of property. Each specific category uses data particular to the type of property in the category. The indexed depreciation factor is the product of the trend factor (based on age and category of property) times the depreciation factor from the appropriate table.

(2) This rule is effective for tax years beginning after December 31, ~~1984~~ 1985.
AUTH: 15-1-201(1) MCA; IMP: 15-6-139 MCA.

42.21.155 DEPRECIATION TABLES Depreciation schedules of 3 4, 5, and 10 years have been established for each category of property. The number of years ~~corresponded~~ correspond to the useful life of the property taking into account physical use and

~~functional and economic~~ obsolescence. The depreciation tables reflect the remaining life of the property over the term of years assigned with a 5% to 20% residual. The 5 ~~,~~ and 10 year depreciation tables "Percent Good" numbers were extracted from the Marshall and Swift Publication, "Fixtures and Equipment Table", S97, p.4. The ~~3~~ 4-year table was derived from consultation with industry representatives. "Remaining Life" is a form of depreciation. The tables are appropriate because the ~~3~~ 4, 5 and 10 year periods were incorporated through rule hearings. AUTH: 15-1-201 MCA; IMP: 15-6-139 MCA.

42.21.156 CATEGORIES (1) The specific categories of property for determination of trend factors and depreciation are contained in subsections (2) ~~(8)~~ (9). The listing of property in the several categories is for purpose of illustration of type of property in that group and is not meant to be exhaustive.

(2) Category 1 consists of computer systems and data processing equipment. The index used will be the "Producer Price Index for the 1972 Standard Industrial Classification Manual", Code #3674, "Semiconductors and Related Devices", published by the United States Department of Labor, Bureau of Labor Statistics. A ~~3~~ 4-year depreciation table will be used.

(3) Category 2 consists of calculating and accounting machines, cash registers, typewriters, ~~safes,~~ vending machines, addressing machines, time recording machines, check endorsing machines, postage machines, and other office and store machines. The index used will be the "Producer Price Index for Commodity Grouping, No. 1193, "Office and Store Machines and Equipment", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(4), (5), and (6) remain the same.

(7) Category 6 consists of janitorial equipment, electronic testing equipment, coin-operated washers and dryers, video equipment and tapes (other than class 6 property), cameras, equipment used for beauty and barber shops (except beauty and barber chairs), and carpet and shampooing equipment. The index used will be the "Producer Price Index for Commodity Grouping", No. 15, "Miscellaneous Products," published by the United States department of labor, bureau of labor statistics. A 5-year depreciation table will be used.

~~(7)~~ (8) Category 6 7 consists of repair shop tools. The index used will be the "Producer Price Index for Commodity Grouping", No. 113, "Metalworking Machinery and Equipment", published by the United States Department of Labor, Bureau of Labor Statistics. A 10-year depreciation table will be used.

~~(8)~~ (9) Category ~~7~~ 8 consists of all other commercial furniture and fixtures. The index used will be the "Producer Price Index for Commodity Grouping", No. 122, "Commercial Furniture", published by the United State Department of Labor, Bureau of Labor Statistics. A 10-year depreciation table will be used.

AUTH: 15-1-201(1) MCA; IMP: 15-6-139 MCA.

4. The Department is proposing these amendments to existing rules for the following reasons:

The Department has determined that high and low hours are not reliable indexes of value insofar as aircraft are concerned. Accordingly, they will not be considered in connection with the assessment of aircraft and are being removed from Rule 42.21.101.

Chapter 516, L. 1985, amended 15-6-138, MCA, removing motorcycles from the ad valorem assessment system. The Legislature determined that motorcycles should be subject to a flat fee in lieu of an ad valorem tax. Therefore, Rule 42.21.104 is no longer necessary and is proposed to be repealed.

Chapter 463, L. 1985, amended 15-6-138, MCA. The Legislature determined that the assessment for farm machinery and equipment should be based upon an average loan value rather than an average "as is" value as reflected in national valuation guides. Accordingly, Rule 42.21.123 is being amended to reflect that new standard. Furthermore, the Legislature directed that all farm machinery and equipment having an ad valorem value less than $100 should be exempt from taxation. The amendment to the rule reflects that legislative direction.

Chapter 583, L. 1985, amended 15-6-213 and 15-7-103 which determined that all downhole equipment should be exempt from taxation as of January 1, 1985. Rule 42.21.138 is being amended to reflect that legislative direction.

The Department of Revenue has concluded that the acquired cost of personal property assets should be the basis for ad valorem assessment rather than the original cost of those assets. All other commercial and industrial personal property assets are valued based upon the taxpayer's acquired cost of the asset. Therefore, the new methodology will promote uniformity of assessment practice. Rule 42.21.154 is furthermore being amended to reflect that a 5-year depreciation table will be prepared and incorporated for use in the valuation of certain types of furniture and fixture assets. The Department of Revenue has concluded that these assets have economic lives of five years rather than the seven year economic lives which were previously used for their assessment.

The Department is amending Rule 42.21.155 to provide for a different residual value for certain types of personal property assets. The Department has concluded that computers and data processing equipment will have a 5% residual value so long as they are in use by the taxpayer.

The Department is amending Rule 42.21.156 to create a new category to identify property which requires a specialized depreciation table.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Allen B. Chronister, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendments is based on § 15-1-201, MCA, and implement §§ 15-6-138, 15-6-139, 15-6-213, and 15-7-103, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | |
|---|---|
| IN THE MATTER OF THE AMENDMENT of Rules 42.20.113, 42.20.114, 42.20.141, 42.20.142, 42.20.143, and 42.20.146 relating to the valuation of agricultural and timberland | NOTICE OF PUBLIC HEARING on the Proposed Amendment of Rules 42.20.113, 42.20.114, 42.20.141, 42.20.142, 42.20.143, and 42.20.146 relating to the valuation of agricultural and timberland. |

TO: All Interested Persons:

1. On November 7, 1985, at 7:00 p.m., a public hearing will be held in Hill County Courthouse in Havre, Montana, and on November 12, 1985, at 7:00 p.m., a public hearing will be held in the Missoula County Courthouse, Missoula, Montana, to consider the amendment of rules 42.20.113, 42.20.114, 42.20.141, 42.20.142, 42.20.143, and 42.20.146 relating to the valuation of agricultural and timberland.

2. The rules proposed to be amended can be found on pages 42-2011, 42-2035, and 42-2035 of the Administrative Rules of Montana.

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

42.20.113 TIMBERLAND CLASSIFICATION - GENERAL PRINCIPLES

(1) ~~All commercial timberlands with a potential for producing finished lumber products shall be appraised as such.~~ The following shall be used by the department of revenue to determine which lands will be classified and appraised as timberland:

(a) To qualify for timberland classification and appraisal:

(i) each contiguous ownership must have more than 15 contiguous acres of commercial timber, and

(ii) each noncontiguous land parcel under one ownership must have more than 15 contiguous acres of commercial timber.

(iii) contiguous and noncontiguous, for purposes of this rule, are defined in rule VIII in MAR Notice No. 42-2-306.

(b) Commercial timber is defined as:

(i) lands, greater than 15 contiguous acres in size, which are at least 10 percent stocked by softwood species of any size, producing or capable of producing crops of wood of commercially marketable quality and which can be economically harvested in commercially marketable quantity. Qualifying areas must have the capability of producing in excess of 20 cubic feet per acre per year of commercially marketable wood in natural stands, or

(ii) lands from which the timber described in (i) have been removed to less than 10% stocking, but which have not been developed for any other use.

(c) Timberlands must be at least 120 feet wide, regardless of length to be classified as commercial timber.

(d) Lands which are converted from another use must exhibit a minimum stocking rate of 150 seedlings per acre or 100

saplings per acre to be classified timberland.

(e) Those timberlands incapable of yielding commercially marketable wood products because of adverse site conditions or which are so physically inaccessible as to be unavailable economically now or prospectively, will be classified as noncommercial. Those timberlands withdrawn from timber utilization by law, ordinance, covenant, court order, or administrative order, but which otherwise would qualify as commercial timberland, will be classified as noncommercial.

(f) Noncommercial timberlands will not be classified and appraised as timberland, but will be classified according to use.

(g) The property owner of record or the owner's agent of any timberland may apply for timberland classification by completing an application form prescribed by the department of revenue, property assessment division.

(h) The department of revenue, property assessment division will provide "application for timberland classification" forms to the owner of record or the owner's agent upon request. The application form will be available at the local county appraisal office. Applications for timberland classification must be submitted to the department of revenue, county appraisal office prior to March 1 of the year for which the reclassification is being sought or within 15 days after receipt of a notice of classification and appraisal from the department of revenue, whichever is later.

(i) The department of revenue, property assessment division will review the application and may conduct a field evaluation. The department of revenue, property assessment division will approve or deny the application, return a copy of the form with the decision reflected thereon to the property owner or the owner's agent, and inform the county assessor of the decision.

(j) Taxpayers are not required to submit annual applications. An application is required only if the department reclassifies the property, and the taxpayer disagrees with the department reclassification. The taxpayer will be notified in writing of a reclassification by the department of revenue.

(k) Any applicant for timberland reclassification, who is aggrieved by the department's determination may appeal to the appropriate county tax appeal board pursuant to 15-15-101, MCA.

(2), (3), (4), (5), and (6) remain the same.

AUTH: 15-1-201 MCA; IMP: 15-6-133, 15-7-201, and 15-8-111 MCA.

42.20.114 TIMBERLAND VALUATION - GENERAL PRINCIPLES (1), (2), (3), (4), and (5) remain the same.

(6) The values assigned to each stand size class; sawtimber, 9 inches in diameter at breast height (hereinafter referred to as D.B.H.), and larger, poletimber, 5 inches to 9 inches D.B.H., and seedlings-saplings, less than 5 inches D.B.H., shall be the discounted merchantable stumpage value at the time of harvest.

(7) remains the same.

(8) ~~Each county~~ These counties west of the continental divide shall be assigned a valuation schedule and a specific stand volume table. These counties are: ~~Flathead,~~ Granite, ~~Lincoln,~~ Mineral, Missoula, Powell, Ravalli, Sanders, and Lewis and Clark (that portion west of the continental divide). Flathead and Lincoln county shall be assigned the same valuation schedule and stand volume table. Lake county shall have one valuation schedule and stand volume table for the area east of Highway 93 and one valuation schedule and stand volume table for the area west of Highway 93.

(9) The counties west of the continental divide referenced in paragraph ~~7~~ 8 hereinabove shall have commercial tree species divided into 3 groups. They are:

| | |
|---|---|
| Group I | Ponderosa Pine, Western White Pine |
| Group II | Douglas-fir, Larch |
| Group III | Lodgepole Pine, Engelmann Spruce, White Spruce, Western Hemlock, True Firs, Whitebark Pine, Limber Pine, Cedar |

(10) remains the same.

(11) The counties east of the continental divide, referenced in subsection ~~9~~ 10 above shall have commercial tree species divided into two groups. They are:

| | |
|---|---|
| Group I | Douglas-fir |
| Group II | Ponderosa Pine, Lodgepole Pine, Engelmann Spruce, True Firs, Whitebark Pine, Limber Pine |

(12) and (13) remain the same.

~~(14)--That portion of Flathead county which was cruised to determine timber inventories shall utilize timber volume cruise data instead of average stand volume tables.~~

AUTH: 15-1-201 MCA; IMP: 15-7-103 and 15-8-111 MCA.

42.20.141 AGRICULTURAL LANDS (1) The department of revenue has herein adopted and incorporated the ~~pamphlet "Procedures and Instructions for Land Reclassification and Reappraisal"~~ "Montana Agricultural Land Classification Manual (1985 - as revised)" ~~and all amendments and supplements thereto~~ by reference. Copies of this ~~pamphlet~~ manual may be reviewed in this department or may be purchased from the department at cost plus mailing.

(2) remains the same.

AUTH: 15-1-201 MCA; IMP: 15-6-133 and 15-7-103 MCA.

42.20.142 GRAZING LAND (1) remains the same.

(2) About four range ewes with lambs are considered the equivalent of a 1000 lb. steer. Calves are usually not

considered until weaned, and four yearling steers or heifers are considered as equivalent to three 1000 lb. steers. A dry cow is considered the equivalent of a 1000 lb. steer. ~~About four cows with calves are~~ A range cow with calf is considered the equivalent of ~~five~~ a 1000 lb. ~~steers~~ steer.
AUTH: 15-1-201 MCA; IMP: 15-7-103 MCA.

42.20.143 ~~WILD HAY LAND~~CONTINUOUSLY CROPPED HAY LAND (1) The following is the schedule for the classification and valuation of ~~wild hay land~~ continuously cropped hay land:

The schedules remain the same.
AUTH: 15-1-201 MCA; IMP: 15-7-103 MCA.

42.20.146 TILLABLE, IRRIGATED LAND (1) The following are the schedules for the classification and valuation of tillable, irrigated land, arranged by water rotation:

Class 1 (Maximum Rotation) Assessed Value
Per Acre by Water Cost Classes

| Tons Alfalfa Per Acre | Grade | Under $1.50 | $1.50 2.49 | $2.50 3.49 | $3.50 4.49 | $4.50 5.49 | $5.50 6.49 | $6.50 7.49 | $7.50 & Over |
|---|---|---|---|---|---|---|---|---|---|
| 4.5+ | 1A | ~~110.40~~ | ~~103.74~~ | ~~97.07~~ | ~~90.40~~ | ~~83.74~~ | ~~77.07~~ | ~~70.40~~ | ~~63.74~~ |
| 4.0-4.4 | 1B | 94.70 | 88.98 | 83.26 | 77.55 | 71.83 | 66.11 | 60.39 | 54.68 |
| 3.5-3.9 | 2 | 78.70 | 73.96 | 69.20 | 64.45 | 59.70 | 54.94 | 50.19 | 45.44 |
| 3.0-3.4 | 3 | 63.70 | 59.85 | 56.00 | 52.16 | 48.31 | 44.47 | 40.62 | 36.78 |
| 2.5-2.9 | 4 | 48.53 | 45.60 | 42.67 | 39.74 | 36.81 | 33.88 | 30.95 | 28.02 |
| 2.0-2.4 | 5 | 31.92 | 30.00 | 28.07 | 26.14 | 24.21 | 22.29 | 20.36 | 18.43 |
| 1.5-1.9 | 6 | 19.86 | 18.67 | 17.47 | 16.27 | 15.07 | 13.87 | 12.67 | 11.47 |
| 1.0-1.4 | 7 | 11.37 | 10.69 | 10.00 | 9.31 | 8.63 | 7.94 | 7.25 | 6.57 |
| Less than 1.0 | 8 | 4.55 | 4.28 | 4.00 | 3.72 | 3.45 | 3.18 | ~~2.90~~ 3.06 | ~~2.63~~ 3.06 |

Class 2 (Medium Rotation) Assessed Value
Per Acre by Water Cost Classes

| Tons Alfalfa Per Acre | Grade | Under $1.50 | $1.50 2.49 | $2.50 3.49 | $3.50 4.49 | $4.50 5.49 | $5.50 6.49 | $6.50 7.49 | $7.50 & Over |
|---|---|---|---|---|---|---|---|---|---|
| 4.5+ | 1A | ~~97.26~~ | ~~90.60~~ | ~~83.93~~ | ~~77.27~~ | ~~70.60~~ | ~~63.94~~ | ~~57.27~~ | ~~50.60~~ |
| 4.0-4.4 | 1B | 81.72 | 76.12 | 70.52 | 64.92 | 59.32 | 53.72 | 48.12 | 42.52 |
| 3.5-3.9 | 2 | 67.27 | 62.66 | 58.05 | 53.44 | 48.83 | 44.22 | 39.61 | 35.00 |
| 3.0-3.4 | 3 | 53.90 | 50.21 | 46.51 | 42.82 | 39.12 | 35.43 | 31.73 | 28.04 |
| 2.5-2.9 | 4 | 41.60 | 38.76 | 35.90 | 33.05 | 30.20 | 27.35 | 24.49 | 21.65 |
| 2.0-2.4 | 5 | 30.39 | 28.31 | 26.22 | 24.14 | 22.06 | 19.98 | 17.89 | 15.81 |
| 1.5-1.9 | 6 | 19.86 | 18.67 | 17.47 | 16.27 | 15.07 | 13.87 | 12.67 | 11.47 |
| 1.0-1.4 | 7 | 11.37 | 10.69 | 10.00 | 9.31 | 8.63 | 7.94 | 7.25 | 6.57 |
| Less than 1.0 | 8 | 4.55 | 4.28 | 4.00 | 3.72 | 3.45 | 3.18 | ~~2.90~~ 3.06 | ~~2.63~~ 3.06 |

Class 3 (Minimum Rotation) Assessed Value
Per Acre by Water Cost Classes

| Tons Alfalfa Per Acre | Grade | Under $1.50 | $1.50 2.49 | $2.50 3.49 | $3.50 4.49 | $4.50 5.49 | $5.50 6.49 | $6.50 7.49 | $7.50 & Over |
|---|---|---|---|---|---|---|---|---|---|
| 4.5+ | 1A | ~~$86.26~~ | ~~$79.60~~ | ~~$72.93~~ | ~~$66.27~~ | ~~$59.60~~ | ~~$52.94~~ | ~~$46.27~~ | ~~$39.60~~ |
| 4.0-4.4 | 1B | 73.84 | 68.14 | 62.43 | 56.72 | 51.02 | 45.31 | 39.60 | 33.90 |
| 3.5-3.9 | 2 | 62.01 | 57.22 | 52.43 | 47.64 | 42.84 | 38.05 | 33.26 | 28.47 |
| 3.0-3.4 | 3 | 50.79 | 46.86 | 42.94 | 39.02 | 35.09 | 31.16 | 27.24 | 23.32 |
| 2.5-2.9 | 4 | 40.15 | 37.05 | 33.95 | 30.85 | 27.74 | 24.64 | 21.54 | 18.43 |
| 2.0-2.4 | 5 | 30.11 | 27.78 | 25.46 | 23.13 | 20.80 | 18.48 | 16.15 | 13.82 |
| 1.5-1.9 | 6 | 19.86 | 18.67 | 17.47 | 16.27 | 15.07 | 13.87 | 12.67 | 11.47 |
| 1.0-1.4 | 7 | 11.37 | 10.69 | 10.00 | 9.31 | 8.63 | 7.94 | 7.25 | 6.57 |
| Less than 1.0 | 8 | 4.55 | 4.28 | 4.00 | 3.72 | 3.45 | 3.18 | ~~2.90~~ 3.06 | ~~2.63~~ 3.06 |

AUTH: 15-1-201 MCA; IMP: 15-7-103 MCA.

4. During the 49th Legislative Session, the Legislature amended 15-7-201 through 15-7-216, MCA, relating to the valuation of agricultural land. Specifically, it amended the criteria which must be fulfilled in order to secure a tax classification as agricultural land. The Legislature furthermore created a new property tax class for timberland. In order to administer the new law, the Department proposes to amend the timberland classification rules so as to conform with the recent legislative enactment. Rule 42.20.113 is being amended to comply with that direction.

The Department proposes to amend rule 42.20.114 in order that timberland in Flathead County may be valued in a manner conforming to the valuation of timberland in other counties.

The Department has revised its agricultural land classification manual as of 1985. Therefore, rule 42.20.141 is being amended to reflect the changes and to put affected taxpayers on notice that it may be obtained from the Department of Revenue's offices.

The Department proposes to amend rule 42.20.142 to comply with the recommendations of the Department's Agricultural Land Valuation Advisory Council and the Legislative Joint Interim Subcommittee on Agricultural Land Taxation.

The Department proposes to amend rule 42.20.143 in order to comply with the recommendations of the Department's Agricultural Land Valuation Advisory Council and the Legislative Joint Interim Subcommittee on Agricultural Land Taxation. The proposed amendments more accurately define the agricultural use category of certain hay lands.

The Department proposes to amend rule 42.20.146 so as to comply with Chapter 681, L. 1985. That law addresses the valuation of agricultural land for the appraisal cycle commencing on January 1, 1986. These proposed amendments also are intended to comply with the recommendations of the Department's Agricultural Land Valuation Advisory Council and the Legislative Joint Interim Subcommittee on Agricultural Land Taxation.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Chris D. Tweeten, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on § 15-1-201, MCA, and implement §§ 15-6-133, 15-7-103, 15-7-201, and 15-8-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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|---|---|
| IN THE MATTER OF THE ADOPTION) of New Rules I through XIV ) relating to the valuation of ) land beneath agricultural im-) provements and timberlands. ) | NOTICE OF PUBLIC HEARING on the Proposed Adoption of Rules I through XIV relating to the valuation of land beneath agricultural improvements and timberlands. |

TO: All Interested Persons:

1. On November 7, 1985, at 7:00 p.m., a public hearing will be held in Hill County Courthouse in Havre, Montana, and on November 12, 1985, at 7:00 p.m., in the Missoula County Courthouse in Missoula, Montana, to consider the adoption of new rules I through XIV relating to the valuation of land beneath agricultural improvements and timberlands.

2. The proposed new rules I through XIV do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I QUALIFICATION FOR CLASSIFICATION AS AGRICULTURAL OR TIMBERLAND (1) One acre beneath residential improvements on agricultural land and residential improvements on timberland must be valued at its market value. That land must qualify for classification as agricultural land pursuant to 15-7-202, MCA, or as timberland under 15-6-143, MCA, before Rule II is applicable.

AUTH: 15-1-201 MCA; IMP: 15-7-201, 15-8-111, and 15-7-103 MCA.

RULE II VALUATION OF ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON TIMBERLAND (1) A market value determination will be made for each one acre area beneath each residence which is located on agricultural land and for each one acre area beneath each residence that is located on timberland as defined in ARM 42.20.113.

(a) Occupancy of the residential improvement, for purposes of applying this rule, shall be irrelevant. The existence of ancillary structures and outbuildings shall be similarly irrelevant, for purposes of applying this rule.

(b) A single one acre market value determination will be made when multiple residences are located on the same one acre area.

(2) Each one acre area beneath an agricultural improvement or an improvement on timberland as defined in paragraph (1) above, shall be appraised according to market value consistent with that of comparable land.

(a) If the one acre of land is located on an agricultural or timber operation that is many miles from a suburban area, the

market value assigned to the one acre area will be consistent with the market value of comparable land. In no case will the market value be lower than the lowest market value assigned to improved tracts within the county.

(b) If the one acre of land is located on an agricultural or timber operation that is near a suburban area, the market value assigned to the one acre area will be consistent with the market value of surrounding suburban land.

(c) No specific site improvement values for water systems and septic systems will be added to the one acre land values determined according to paragraphs (2)(a) and (2)(b) above.
AUTH: 15-1-201 MCA; IMP: 15-7-103, 15-8-111, and 15-7-201 MCA.

RULE III PROCEDURE FOR REMOVING ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON TIMBERLAND FROM PROPERTY LAND CLASSIFICATION (1) All agricultural land and timberland acreage will be classified and valued based upon its productive capacity.

(2) All one acre tracts beneath agricultural improvements and improvements on timberland valued pursuant to Rules I through VI, will be valued based upon their market values.

(3) To avoid double taxation, the productive capacity value for the one acre beneath agricultural improvements and improvements on timberland which are valued at market value must be subtracted from the productive capacity value for the entire property ownership.

(4) The department of revenue will attempt to determine the current land classification of land beneath all agricultural improvements and all improvements on timberlands. Should the department of revenue be unable to make accurate determinations on current land classification of the one acre area beneath agricultural improvements and improvements on timberland, the following estimation procedures are adopted.

(a) For agricultural land:

(i) Subtract one acre of the highest per acre productive value of grazing classification from the property ownership.

(ii) If the property ownership contains no land in the grazing classification, subtract one acre of the highest per acre productive value of the nonirrigated farmland classification from the property classification.

(iii) If the property ownership contains no land in the nonirrigated farmland classification, subtract one acre of the highest per acre productive value of the irrigated land classification from the property classification.

(b) For timberland:

(i) Subtract one acre of the highest per acre productive value of the nonforest grazing classification from the property ownership.

(ii) If the property ownership contains no land in the nonforest grazing classification, subtract one acre of the highest per acre productive value of the timberland classification from the property ownership.

(5) During the reappraisal cycle, additional review of one acre areas beneath agricultural improvements and improvements on timberland will be conducted to ensure the correct land classification has been subtracted from the property ownership.
AUTH: 15-1-201 MCA; IMP: 15-7-103, 15-8-111, and 15-7-201 MCA.

RULE IV RESIDENCE DEFINED (1) The term "residence" includes all conventionally constructed improvements as well as all mobile homes and manufactured housing.
AUTH: 15-1-201 MCA; IMP: Chapter 463, L. 1985.

RULE V ELIGIBILITY FOR CLASS 14 TAX TREATMENT (1) Except as provided in Rule VI, all agricultural improvements and improvements on timberland will be eligible for class 14 tax treatment.
AUTH: 15-1-201 MCA; IMP: Chapter 699, L. 1985.

RULE VI AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON TIMBERLAND LOCATED ON DISPARATE LAND OWNERSHIPS (1) The department of revenue will not assign a market value for one acre areas beneath agricultural buildings if the land beneath the agricultural buildings and the agricultural buildings are not in common ownership.

(2) If agricultural improvements and the land beneath the agricultural improvements are not in common ownership, the improvements and the land will not be eligible for class 14 tax treatment.

(3) The department of revenue will not assign market value determinations for one acre areas beneath buildings on timberland if the land beneath buildings on timberland and the building on timberland are not in common ownership.

(4) If improvements on timberland and the land beneath the improvements on timberland are not in common ownership, the improvements and the land will not be eligible for class 14 tax treatment.
AUTH: 15-1-201 MCA; IMP: Chapter 699, L. 1985.

RULE VII APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND (1) The property owner of record or his agent must make application to the property assessment division, department of revenue, in order to secure agricultural classification of his land. In order to be considered for the current tax year, an application must be filed on a form available from the county appraisal office before March 1 or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later. The form must be filed with the county appraisal office.

(2) The county appraiser will review the application and may conduct a field evaluation. The county appraiser will approve or deny the application, and will return a copy of the form to the property owner or his agent. A copy of the form will be provided to the county assessor.

(3) An annual application is not required. An application is required only if the department reclassifies the property and the taxpayer disagrees with the department's reclassification action. The taxpayer will be notified in writing if the department acts to reclassify the taxpayer's property.
AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE VIII DEFINITION OF TERMS (1) The term contiguous parcels of land means separate land acreages that are adjacent and physically touching along all or most of one side.

(2) The term noncontiguous parcels of land means land acreages that do not physically touch and that are separated by one or more of the following features only:

(a) federal, state, or county roads and highways, or
(b) navigable rivers and streams, or
(c) county line boundaries, or
(d) school district boundaries, or
(e) railroads.

(3) For the purposes of this rule, all land acreages separated by a feature not enumerated in paragraph (2) above shall not be included within the definition of "noncontiguous parcels of land". For purposes of determining eligibility for agricultural land classification, such land acreages must individually meet the eligibility criteria set forth in 15-7-202, MCA, and rules IX through XII.
AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE IX CRITERIA FOR AGRICULTURAL LAND VALUATION (1) An applicant for agricultural land classification must prove that the parcel(s) indicated in the application actually produced the livestock, poultry, field crops, fruit, or other animal and vegetable matter raised for food or fiber. Proof of production shall be evidenced by:

(a) submission of a copy of the current year's county farm and ranch assessment filed by the owner, the owner's agent, employee, or lessee, and
(b) weight receipt from elevator or stockyard, or
(c) visual confirmation by the county appraiser.

(2) The applicant must provide proof that the parcel(s) indicated in the application marketed at least $1,500 of gross income each year. Acceptable proof of income shall include sales receipts, cancelled checks, copy of income tax statements, or other written evidence of sales transactions.

(3) If the land is primarily used to grow crops that are not marketed but consumed by livestock, poultry, or other animals in the agricultural operation, the applicant must prove that the parcel(s) on the application produce(s) no less than 450 bushels of grain, with wheat as the base; 30 tons of hay or an equivalent measure of weight of any other field crop by comparison in the market for the year; or the parcel serves as grazing land supporting 40 or more animal unit months, with cattle as the base. Acceptable proof shall include:

(a) A copy of the current year county farm and ranch assessment filed by the owner, the owner's agent, employee, or lessee; and

(b) An affidavit from the agricultural stabilization and conservation service (ASCS) indicating proven yield, or

(c) An affidavit from the county brand inspector or meat packing plant (animal fiber), or

(d) A visual confirmation by the county appraiser.

(4) A written estimate of the weight or quantity of food or animal fiber produced must be made by the applicant. The written estimate must include all proof set forth in paragraph (3) above. The weight estimate will be multiplied by the current commodity price to determine whether the $1,500 annual gross income test has been met.

AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE X PRODUCTION FAILURES (1) The following types of production failures will be considered to be beyond the control of the producer:

(a) drought,

(b) fire,

(c) hail,

(d) grasshopper and other types of insect infestation,

(e) frost, after the earliest frost free day in the spring,

(f) frost, before the average first frost day in the fall,

(g) flood,

(h) excessive rain.

(2) Overgrazing and other poor agricultural and horticultural management practices will not be considered sufficient intervening causes of production failure.

AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE XI MARKETING DELAY FOR ECONOMIC ADVANTAGE (1) The marketing of livestock, poultry, field crops, fruit and other animal and vegetable matter for food and fiber may be delayed by the producer in order to take advantage of economic conditions which will become more favorable to the producer during subsequent months. In no case may that delay exceed 12 months from the initial date of application for agricultural classification. The applicant must still be able to provide proof of production and qualification for the current tax year.

AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE XII FILED AND PLATTED SUBDIVISIONS (1) Contiguous lots in a filed and platted subdivision must meet all of the production and income qualification tests in these rules to be classified as agricultural land. For purposes of this subsection, noncontiguous parcels are lots or separately described parcels of land that do not physically touch and are separated by one or more of the following physical boundaries only:

(a) federal highways and roads, or

(b) state highways and roads, or
(c) navigable rivers and streams, or
(d) railroads.

(2) All land acreages separated by features not included in item (1) above shall not be considered "noncontiguous" for purposes of determining eligibility for agricultural land classification. In those instances each separate land acreage or lot must individually meet the eligibility test enunciated in 15-7-201, MCA, and rules III through XII, to gain agricultural land classification.
AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE XIII TIMBERLANDS (1) Parcels which meet the criteria for timberland classification set forth in ARM 42.20.113, shall be deemed to have qualified for agricultural classification pursuant to 15-7-202, MCA.

(2) Parcels which do not fulfill the criteria set forth of in ARM 42.20.113, shall not be classified as timberlands.

(3) Parcels which do not fulfill all of the timberland criteria set forth of in ARM 42.20.113, must fulfill all the criteria within 15-7-202, MCA, and rules VII through XII, in order to qualify for agricultural land classification.
AUTH: 15-1-201; IMP: 15-7-201 through 15-7-216 MCA.

RULE XIV COMMERCIAL AND INDUSTRIAL USE (1) Any portion of any parcel of land which is used as a commercial or industrial site shall not be classified as agricultural land. AUTH: 15-1-201; IMP: 15-7-201 through 15-7-216 MCA.

4. The Department is proposing new rule I because Chapter 699, Laws 1985, changed the criteria which must be fulfilled if land is to be classified as agricultural. It also required that one acre beneath residential improvements on either agricultural land or on timberland be valued at market value. Rules I through III set forth the procedure to be employed in classifying and valuing that property. Chapter 669, Laws 1985, also provides that agricultural buildings are entitled to a tax class percentage reduction. The Department is proposing Rules IV through VI to set forth the manner in which those properties will be treated for assessment purposes.

During the 49th session of the Legislature, the Legislature substantially amended the Green Belt law set forth in 15-7-201 through 15-7-216, MCA. As a result, the Department is promulgating rules VII through XIV in order to implement the tax classification methods and criteria for agricultural land.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Chris D. Tweeten, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearings.

7. The authority of the Department to make the proposed adoptions is based on § 15-1-201, MCA, and implement §§ 15-7-201 through 15-7-216, 15-8-111, 15-7-103, and Chapter 463, L. 1985, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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|---|---|
| IN THE MATTER OF THE ADOPTION of New Rules I through VI relating to the valuation of real property. | NOTICE OF PUBLIC HEARING on the Proposed Adoption of Rules I through VI relating to the valuation of real property. |

TO: All Interested Persons:

1. On November 14 and 15, 1985, at 9:00 a.m., a public hearing will be held in the Auditorium of the Scott-Hart Building, 303 Roberts Street, Helena, Montana, to consider the adoption of new rules I through VI relating to the valuation of real property.

2. The proposed new rules I through VI do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record or his agent must make application through the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620, in order to obtain a property tax exemption. An application must be filed on a form available from the division before March 1 of the year for which the exemption is sought. Applications postmarked after March 1 will be considered for the following tax year only.

(2) The following documents must accompany the application:

(a) Articles of incorporation (if incorporated);

(b) Federal internal revenue service tax exempt status letter (501 determination letter);

(c) Deed or security agreement which is evidence of ownership (for real property only);

(d) Title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of ownership (for personal property only);

(e) Letter explaining how the organization or society qualifies for property tax exemption; and

(f) Photograph of the property.

(3) The department will review the application and the supporting documents and will perform a field evaluation. The department will approve or deny the application. The applicant, the county assessor, and the county appraiser will be advised, in writing, of the decision.

(4) The department of revenue will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201(1)(a), MCA:

(a) The properties will be tax exempt as of the purchase date which is reflected on the deed or security agreement.

(b) If a property is tax exempt as of January 1 of the

current tax year and is sold to other than a governmental purchaser after January 1 of the current tax year, it will retain its tax exemption until the following January 1.

(5) The department of revenue will employ the following exemption criteria for real properties when considering exemption claims based upon 15-6-201(1)(b), (c), (d), (e), (g), (l), or (n); 15-6-203; 15-6-209; and 15-6-211, MCA.

(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on January 1 of the following tax year if an application is filed by March 1 of the following tax year.

(b) If the real property is tax exempt on January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it will retain its exemption until the following January 1.

AUTH: 15-1-201 MCA; IMP: 15-6-201 MCA.

RULE II TAX BENEFITS FOR THE REMODELING, RECONSTRUCTION, OR EXPANSION OF EXISTING BUILDINGS OR STRUCTURES (1) The property owner of record or his agent must make application to the appropriate governing body in order to be eligible for tax benefits for remodeling, reconstruction, or expansion of existing buildings or structures which are available pursuant to 15-24-1501, MCA. Application will be made on a form available from the county commissioners of the affected county, or, if the construction will occur within an incorporated city or town, on a form available from the city commission or the local governing body. The application to the affected governing body must be made prior to completion of a building permit or prior to commencement of construction. Failure to make application prior to completion of a building permit or prior to commencement of construction will result in the waiver of all construction period tax benefits. Additionally, all subsequent tax benefits, if approved, will be calculated as of the date the building permit was completed or as of the date construction began, whichever is earlier. The local governing body must review the application and it must decide whether to approve or to deny the application. A copy of the processed application form, reflecting the governing body's decision, must be mailed to the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620, before April 1 of the tax year for which the benefits are sought.

(2) The department will review the application and it will perform a field evaluation. The department will advise the local governing body whether the remodeling, reconstruction, or expansion of the existing building or structure increases the taxable value of that structure or building by at least 2½%. If the taxable value does not increase by at least 2½%, the application will be automatically denied. In that event, the local governing body and the applicant will be so advised in writing.

(3) Sufficient quantities of application forms will be provided to all local governing bodies by the property assessment division, department of revenue, mitchell building, Helena, Montana 59620. Additional application forms will be made available upon request. The application form shall require the submission of the following information by the applicant:

(a) Property owner name;
(b) Description of property;
(c) Location of property;
(d) Legal description of property;
(e) Mailing address of owner of property;
(f) City, state, zip code information;
(g) Indicated taxable value increase due to remodeling;
(h) Assessment/tax computation;
(i) Indication of date received by appraisal office;
(j) Date remodeling, reconstruction, or expansion was started;
(k) Owners signature block; and
(l) Indication of approval or denial of application by governing body.

(4) "Construction Period" means a period of time that commences with the issuance of a building permit and which concludes when the county appraiser determines that the structure is substantially completed. If more than one building permit is issued, the date on the earliest building permit issued will constitute the commencement of the construction period. In those cases where building permits are not issued, the commencement of the construction period is that time determined by the county appraiser to be the start of construction. That determination will coincide with the date the contract is let, the date the application is approved by the governing body, or when site work begins, whichever occurs first. For purposes of determining the eligibility for tax benefits, the construction period for a specific project may not exceed 12 months.

(5) The computation of tax benefits will be dependent upon the approval of the application by all affected governing bodies.

(6) For projects which are entirely, physically located outside the boundaries of incorporated cities or towns, the governing body of the affected county has sole authority to approve the tax benefits for the project. If approved, the tax benefit will apply only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the county governing body.

(7) If the project is entirely, physically located within an incorporated city or town, both the governing body of the affected county and the governing body of the incorporated city or town must approve the application by resolution before all available tax benefits may be extended to the project. If the city approves the application and the county rejects the

application, the tax benefit will apply only to the number of mills levied and assessed for high school district and elementary school district purposes within the incorporated city or town and to the number of mills levied and assessed by the incorporated city or town. The number of mills levied and assessed by the county governing body will not be affected nor will any tax benefit be extended by the county to the project.

(8) Tax benefits will never include any relief from statewide levies.

(9) Existing county, municipal, and local governing body resolutions must be reconsidered by the appropriate governing bodies to include the expanded provisions of reconstruction.

(10) Except as provided under (1), only additional value created after an application has been filed may be considered for tax benefits according to this rule.

AUTH: 15-1-201 MCA; IMP: 15-24-1501 MCA.

RULE III VALUATION OF LEASEHOLD IMPROVEMENTS ON COMMERCIAL PROPERTY (1) The department of revenue will employ the following appraisal and assessment methodology for the valuation of lease hold improvements located on commercial property:

(a) The entire commercial property including the leasehold improvements located thereon shall be appraised using accepted appraisal techniques and the cost replacement manuals identified in ARM 42.19.101.

(b) The total appraised value for the entire commercial property, including leasehold improvements located thereon, shall be assessed to the owner of record/commercial property owner. The owner of record shall be solely responsible for any valuation and tax allocation between and among the lessees in their property. The department of revenue will assist in the allocation process, whenever possible.

AUTH: 15-1-201 MCA; IMP: 15-8-111 MCA.

RULE IV COMPARABLE PROPERTY (1) The term comparable property is defined as:

(a) those properties that have similar utility, similar use, similar function, and are of a similar type as the subject property, and

(b) comparable properties must be influenced by the same set of economic trends, and physical, economic, governmental, and social factors as the subject property, and

(c) the comparable properties must have the potential of a similar, if not identical, highest and best use as the subject property. By definition, commercial property shall be compared only to commercial property. Residential property shall be compared only to residential property.

(2) The term single family residence with ancillary improvements is defined as:

(a) A structure originally constructed or converted for use and occupancy by a single family unit and whose primary use is currently one of occupancy by a single family unit.

(b) All supportive structures integral to the use of a single family residence such as attached garages, sheds, and site improvements.

(3) Within the definition of comparable property in (1), the following types of property are considered comparable:

(a) Single family residences with ancillary improvements are comparable to residential property.

(b) Duplexes, triplexes, fourplexes, and condominiums of 2 or more units are comparable only to one another.

(c) Mobile homes are comparable to mobile homes.

(d) Residential city and town lots are comparable to other residential city and town lots.

(e) Commercial city and town lots are comparable to other commercial city and town lots.

(f) Residential tract land is comparable to other residential tract land.

(g) Commercial tract land is comparable to other commercial tract land.

(h) Improvements necessary to the function of a bona fide farm, ranch, or stock operation are comparable to other improvements necessary to the function of a bona fide farm, ranch, or stock operation.

(i) One acre sites beneath farm improvements are comparable to other one acre sites beneath farm improvements and residential tract land.

AUTH: 15-1-201 MCA; IMP: Ch. 743, L. 1985.

RULE V CONDOMINIUMS (1) It is the intention of the department of revenue to employ an appraisal methodology for condominiums which is consistent with section 1, chapter 452, Laws 1985.

(2) The department of revenue will employ the following appraisal and assessment methodology for the appraisal of condominiums, except for time share condominiums.

(a) The entire condominium project will be appraised using accepted appraisal techniques and the cost replacement manuals identified in ARM 42.19.101.

(b) Appraised value will be allocated to each unit according to its percentage of individual interest in condominium common elements. The allocation will be based on the percentage of undivided interest in the common elements set forth in the condominium declaration required by 70-23-301 and 70-23-403, MCA, and section 1, chapter 452, Laws 1985. Allocation of appraised value will be determined by multiplying the percentage (expressed as a decimal) times the appraised value of the entire condominium project.

(3) The department of revenue will employ the following appraisal and assessment methodology for the appraisal of time share condominiums.

(a) The entire condominium project will be appraised using accepted appraisal techniques and the cost replacement manuals identified in ARM 42.19.101.

(b) Any units in a condominium project which are not owned and operated as time share condominium units will be valued pursuant to the methodology set forth in paragraph (2)(b).

(c) The total appraised value for all time share condominium units comprising a condominium project will be calculated and assessed to the owner of record (time share association). Thereafter, it will be incumbent upon the association to allocate its total tax liability among the various parties having interest in the time share condominiums.
AUTH: 15-1-201 MCA; IMP: 15-7-103 MCA.

RULE VI ACCURACY OF REALTY TRANSFER CERTIFICATE (1) The name of the grantor (seller) reflected on the realty transfer certificate (RTC) must be identical to the name of grantor (seller) reflected on the accompanying deed. It must also be identical to the name of the owner of record reflected on the most recent assessment roll.

(2) The name of the grantee (buyer) reflected on the realty transfer certificate must be identical to the name of the grantee (buyer) reflected on the deed.

(3) "Breaks in the chain of title" mean that the grantor (seller) on the realty transfer certificate is not the same individual as the owner of record reflected on the most recent assessment roll. Breaks in the chain of title are inaccurate filings and they must be corrected before the RTC will be accepted for processing by the department of revenue. Realty transfer certificates that bridge the break in the chain of title must be filed. Name identification and name abbreviation inaccuracies in items (1) and (2) may be corrected through the submission of an affidavit available at the department of revenue.

(4) If, in the judgment of the county appraiser, there is sufficient evidence to suggest the realty transfer certificate is inaccurately completed or that a transaction is not exempt, the department of revenue will return the realty transfer certificate to the filer. The inaccurate information will be identified and the filer will be required to correct the inaccuracy and to resubmit the realty transfer certificate. AUTH: 15-1-201 MCA; IMP: 15-7-306 MCA.

4. The Department is proposing new rule I for the purpose of advising taxpayers how the Department will process property tax exemption applications.

The 49th Session of the Legislature substantially amended 15-24-1501, MCA. Rule II is proposed in order to implement the new law relating to tax benefits for remodeling of existing structures.

Rule III is being proposed in order to set forth the assessment approach which the Department will employ when leasehold improvements are situated on commercial property.

House Bill No. 240, as enacted by the 49th Legislature, directed the Department to promulgate rules defining "comparable property" for purposes of implementing the new law. Rule IV is being proposed in order to comply with that direction.

In Rule V, the Department is setting forth the methodology which it will employ for purposes of appraising condominium properties.

The Department is proposing Rule VI relating to Realty Transfer Certificates in order to put taxpayers on notice that the certificates must be fully and accurately completed before they will be accepted for processing.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Barbara L. Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoptions is based on § 15-1-201, MCA, and implement §§ 15-6-201, 15-7-103, 15-7-306, 15-8-111, 15-24-1501, MCA, and Ch. 743, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| IN THE MATTER OF THE ADOPTION) of New Rules I and II and the) Amendment of Rule 42.22.112 ) relating to the valuation of ) centrally assessed property. ) | NOTICE OF PUBLIC HEARING on the Proposed Adoption of Rules I and II, and the Amendment of Rule 42.22.112 relating to the valuation of centrally assessed property. |

TO: All Interested Persons:

1. On November 14 and 15, 1985, at 9:00 a.m., a public hearing will be held in the Auditorium of the Scott-Hart Building, 303 Roberts Street, Helena, Montana, to consider the adoption of new rules I and II and the amendment of rule 42.22.112, relating to the valuation of centrally assessed property.

2. The proposed new rules I and II do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I DETERMINATION OF TAX RATE FOR CLASS 15 PROPERTY

(1) To implement the statutory direction to compute an annualized tax rate for class 15 property, the department of revenue will employ the procedure outlined in this rule.

(2) The department of revenue has developed a form which will be employed in order to solicit information regarding the taxable value for all commercial and industrial property from the county assessors. That form will be dispatched annually to the county assessors on January 1. The county assessors shall have up to and including the 15th day of May of each taxable year in which to return the form to the property assessment division. A copy of the form is available to taxpayers upon request.

(3) The department of revenue will obtain the taxable value for net and gross proceeds property from its corporation and natural resource division each year. The department of revenue will obtain the taxable value for centrally assessed property from its intercounty property bureau each year.

(4) Upon receipt of the information referred to in paragraphs (2) and (3) above, the department of revenue will proceed to compute the tax rate reflected in 15-6-145, MCA. It will employ the mathematical formula reflected in the statute.

(5) In the event that a county assessor should fail to return the solicited information form in a timely fashion, the department of revenue will estimate the taxable value for all commercial and industrial property within that particular county. This estimation process will take place only if the county assessor should fail to return the form in a timely fashion.

(a) The department of revenue will use the reported taxable

value for all commercial and industrial property for the previous tax year in estimating the total taxable value of all commercial and industrial property for the present tax year.

(b) This estimation will be a disputable one, and it may be attacked by the taxpayer in the event of litigation or in the event of an assessment appeal.

(c) If the department of revenue should receive the information which was initially solicited from the county assessors relating to the total taxable value of all commercial and industrial property within that county, the department of revenue will recompute the overall tax rate set forth in 15-6-145, MCA. In the event that the total tax rate should be determined to be not less than nor more than 5% of the estimated rate, no further adjustment of the tax rate will be made for that particular tax year. In the event that the recomputed tax rate should be less than or greater than 5% of the estimated tax rate, the department of revenue will recompute the overall tax rate for the state of Montana and it will issue revised assessments to the affected property taxpayers pursuant to 15-8-601, MCA.

AUTH: 15-1-201 MCA; IMP: Title 15, chapter 6, part 1 MCA.

RULE II METHODOLOGY FOR PREPARATION OF SALES ASSESSMENT RATIO STUDY (1) In order to implement the statutory direction to prepare an annualized sales assessment ratio study of all commercial and industrial real property and improvements, each January 1, the department of revenue will employ the following methodology.

(2) The department of revenue will endeavor to follow the sales assessment ratio study principles set forth in a document entitled sales assessment ratio study preparation (1980) published by the International Association of Assessing Officers. In the event that that publication is insufficient for purposes of the ratio study preparation, the department of revenue reserves the right to employ other statistically accepted methods for purposes of preparing the study.

(3) The department of revenue will rely upon the sales information which is reflected on realty transfer certificates filed pursuant to 15-7-302, MCA, for purposes of a sales assessment ratio study. The sales for all commercial and industrial property shall be forwarded to the property assessment division from the various county appraisal offices for inclusion into the computer system.

(a) The department of revenue shall rely upon the expertise and the judgment of its various county appraisers in order to determine whether a particular sale is suitable for inclusion in the study. That judgment is exercised when the county appraiser checks the appropriate block on the realty transfer certificate reflecting that the sale is a valid sale.

(b) The department of revenue shall not employ a general system of sales confirmation in order to determine whether the sale was truly an arms length transaction.

(c) For purposes of the sales assessment ratio study, the department of revenue shall rely upon all realty transfer certificate sales information for the preceding calendar year tendered to the property assessment division and entered into the computer system as of December 31 of the preceding tax year.

(4) The department of revenue may engage the services of various statisticians, experts, and other persons in order to facilitate the preparation of the sales assessment ratio study.

(5) When the department of revenue has prepared the annual sales assessment ratio study, it will be published in a written format. The final published document will be available upon request to interested taxpayers.

(6) When the department of revenue has determined the overall assessed to market value ratio for all commercial and industrial real property and improvements in the state of Montana, it shall integrate that factor into the formula set forth in 15-6-145, MCA.

(7) The sales assessment ratio study will be conducted solely for the purpose of determining the tax rate applicable to class 15 properties.

AUTH: 15-1-201 MCA; IMP: Title 15, chapter 16, part 1 MCA.

42.22.112 COST INDICATOR (1) and (2) remain the same.

(3) The choice of cost shall depend upon which type best reflects market value of the property at the time of valuation. For taxable periods ending on or beginning after December 31, 1985, the cost indicator ~~shall be consistent with the cost approach used in valuation of other commercial and industrial property~~ for railroads, airlines, and other federally protected taxpayers shall be treated consistent with federal law.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 1 MCA.

4. The Department is proposing new rule I in order to comply with the legislative direction set forth in Chapter 743, Laws 1985. Specifically, the Legislature directed the Department of Revenue to promulgate an administrative rule for the purpose of setting forth the methodology which it will employ in order to compute an annualized tax rate for affected class 15 property taxpayers. The rule implements what will be codified as Class 15 within Title 15, chapter 6, part 1, MCA.

The Department proposes to adopt rule II in order to comply with legislative direction to promulgate an administrative rule for the purpose of addressing the manner in which it will prepare an annual sales assessment ratio study of all commercial and industrial real property and improvements. The legislative direction is to be found in Chapter 743, Laws 1985. The rule implements what will be codified as Class 15 within Title 15, chapter 6, part 1, MCA.

The Department proposes to amend rule 42.22.112 in order to comply with the direction of the Legislature as set forth in

Chapter 660, Laws 1985. Specifically, the Legislature directed the Department of Revenue to modify the cost indicator which it employs in connection with the valuation of centrally assessed companies.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Barbara L. Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoptions and amendment is based on § 15-1-201, MCA, and implement Title 15, chapter 6, part 1, MCA, and §§ 15-23-101 and 15-23-108, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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|---|---|
| IN THE MATTER OF THE ADOPTION of New Rules I through IX relating to the Montana appraisal plan. | NOTICE OF PUBLIC HEARING on the Proposed Adoption of Rules I through IX relating the Montana appraisal plan. |

TO: All Interested Persons:

1. On November 14 and 15, 1985, at 9:00 a.m., a public hearing will be held in the Auditorium of the Scott-Hart Building, 303 Roberts Street, Helena, Montana, to consider the adoption of new rules I through IX relating to the Montana appraisal plan.

2. The proposed new rules I through IX do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I MONTANA APPRAISAL PLAN (1) The Montana appraisal plan consists of three parts: residential and commercial appraisal, agricultural and timber appraisal, and industrial appraisal. The Montana appraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.

(2) The appraisal plan, as enumerated herein, consists of the valuation of residential and commercial property, agricultural and timberland property, and industrial property. Consistent with 15-7-111, MCA, the department will enter a new appraisal value for each parcel of land, each commercial improvement, each residential improvement, and each industrial improvement on the tax rolls on January 1, 1986. The only exception to this general plan of reappraisal will be agricultural land values. Those existing agricultural land values will continue as enumerated in ARM 42.20.141 through 42.20.146, since the legislature has expressed an intention not to update agricultural land values during the reappraisal period that concludes on January 1, 1986.

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

RULE II RESIDENTIAL AND COMMERCIAL APPRAISAL PLAN (1) The goal for the appraisal cycle will be to complete 10 residential appraisals per day per appraiser assigned residential responsibilities. The goal for commercial appraisals during this cycle will be to complete 2 commercial appraisals per day per appraiser assigned commercial responsibilities. In order to achieve these appraisal goals, the department's procedures have been modified somewhat for the remainder of the cycle.

(a) All residential property will be listed on a residential appraisal form (RDCF-3). Residential property recorded on forms other than these will be transferred to the RDCF-3 form prior to the end of the cycle.

(b) For commercial property, the commercial appraisal form (AB-22) will be used through the remainder of the cycle.

(c) For agricultural improvements, the agricultural appraisal form (AB-21) will be used through the remainder of the cycle.

(2) Daily work progress reports will be completed and submitted monthly for every county. Those work progress reports will assess plan performance against actual accomplishments and identify those factors that directly affect the appraisal performance in any given month.

(3) For residential new construction, the 1972 Montana appraisal manual will be used through tax year 1985. For reappraisal the Montana appraisal manual developed from January 1, 1982 Marshall valuation service data will be used. The 1982 values will go on the assessment lists beginning tax year 1986.

(4) For commercial new construction, the July, 1976 Marshall Valuation Service will be used through tax year 1985 less a 12% equalization factor; for reappraisal the January 1, 1982 Marshall Valuation Service Manual will be used unless the property is not listed in this manual. In that case other construction cost manuals such as Boeckh or Means will be used with a publication date as close to Marshall valuation service as possible.

(5) For the reappraisal of both residential and commercial property, the January 1, 1982, values will be placed on the tax rolls for tax year 1986. All property owners will receive an assessment list/notice of change in appraisal valuation pursuant to 15-7-103, MCA. The department of revenue reserves the right to identify only the new valuation on the notice of change/assessment list. The previous valuation for the property may be obtained by reviewing real property assessment lists received by taxpayers prior to tax year 1986 or by reviewing tax information, if available, in the county assessment and county appraisal offices. These notices will be prepared for mailing in early 1986 to allow the property owners sufficient time to discuss their appraisals prior to taxes being calculated for tax year 1986.

(a) Residential and commercial appraisers will be required to be certified in accordance with Rules V and VI of this plan.

(b) Improvements constructed prior to 1976 should be reappraised according to previously stated guidelines. Where the appraiser is satisfied with existing building measurements, the property need not be remeasured. Property appraised since 1978 will be reviewed and brought up to date.

(c) No callbacks will be made to the property unless specifically requested by the taxpayer or the appraisal supervisor, area manager, or bureau chief.

(6) The department of revenue will not recheck estimated appraisals unless the property owner allows access to the interior of the structure for purposes of making a true and equitable appraisal. Should the property owner question the

appraisal when value notification occurs, but continue to deny access to the interior of the structure for purposes of appraisal, the owner will be instructed to file an appeal pursuant to 15-15-101 through 15-15-104, MCA.

(7) During the appraisal cycle, it will be the goal of the department of revenue to work toward automating residential and commercial appraisals to achieve an automated pricing function and a value notification listing function.

(8) Residential and commercial lots and tracts will be valued as of January 1, 1982. Accumulated market data available to the department of revenue along with all data solicited from realtors, fee appraisers, lending institutions, knowledgeable buyers, and sellers will be analyzed and serve as the basis for valuing all residential and commercial lots and tracts. This data has been collected from the time period January 1, 1979 to July 1, 1985 and it has been adjusted to January 1, 1982 through a comparison of multiple sales on similar property.

(9) The department of revenue will not appraise sewage systems and water systems apart from the land or improvement upon which they are located.

(10) For residential and commercial property, the department will rely on one or more of the following three approaches to value: the market data approach, the income approach, and the cost approach. Residential appraisals, once integrated into the computer, and commercial appraisals will rely heavily on the cost approach. For residential property, the cost approach will be augmented with information derived from valid sales of comparable properties. For commercial property, the cost approach will be augmented with income information and information derived from valid sales of comparable properties.

(11) The appraisal of farm homes, property in small, rural communities, and newly developed subdivisions will reflect the market conditions associated with these types of property as of January 1, 1982. For farm home appraisals, the appraiser will consider that the farm home generally sells with the farm. If the appraiser can demonstrate that farm homes generally sell for less than similar property because of the distance to an urban area, the property may receive, in accordance with the appraiser's judgment, a reduction from the normal appraised value. If there is more than one residence on a farm, each residence will receive that consideration. Homes on small tracts and farm homes near enough to the community to be reasonably used as commuter residences will not receive this consideration. Residential and commercial property in rural communities may receive reductions if the appraiser has evidence that the property is selling for less than comparable property in urban areas. In subdivisions, consideration should be given for the rate at which lots are selling in that development, prevailing interest rates, and the present worth of future income, when appraising the subdivision land. All of these considerations, if allowed, will be supported in fact by the local appraiser.

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

RULE III AGRICULTURAL AND TIMBER APPRAISAL PLAN (1) The goal of agricultural and timber appraisals for the remainder of the cycle will be to complete 3 appraisals per day per appraiser assigned to agricultural appraisals. These 3 appraisals will be based on ownership rather than parcels, and will include appraisal of the farmstead buildings.

(2) Use changes will be kept current annually on both agricultural and timberland.

(3) Agricultural and timber appraiser/classifiers will be required to be certified in accordance with Rule VII.

(4) Beginning tax year 1986, agricultural and timberlands will be valued in accordance with administrative rules adopted by the department of revenue. For agricultural land, the method will comprise using existing values with appropriate adjustments to the lowest irrigated land values. Those adjustments will prohibit irrigated land being valued lower than comparable nonirrigated land on similar soils. Timber values will be determined in a manner similar to that in the past; lumber values minus logging costs less an adjustment for time required for harvesting will be applied to stand volume tables to value the standing timber. A value on the land under the timber equal to its grazing capacity will be applied in accordance with agricultural land values established. The timber values will be based on data over the 5-year period commencing January 1, 1977, through January 1, 1982. Beginning tax year 1986, agricultural and timberland will be put on the tax rolls using the new value data. Until that time, the existing valuation schedules will continue to be used. All property owners affected by a change in classification, grading or valuation will receive an assessment list/notice of change reflecting such by early 1986, allowing these owners sufficient time to discuss their appraisals prior to tax calculation for tax year 1986. The department of revenue reserves the right to identify only the new valuation on the assessment list/notice of change. The previous valuation for the property may be obtained by reviewing real property assessment lists received by taxpayers prior to tax year 1986 or by reviewing tax information, if available, in the county assessment or county appraisal offices. The assessment list/notice of change may be accompanied by form AB-16 for agricultural land. Agricultural and timber property will be appraised using form AB-9, copies of which are available from the department of revenue. A mailer form may be utilized for determining timber changes (cutting, fires, disease, etc.). This form will be mailed to timber owners for reporting such changes.

(5) Daily work progress reports will be completed and submitted monthly for every county. Those work progress reports will assess planned performance against actual accomplishments, and identify those factors that directly affect the appraisal

performance in any given month. The form shall be provided by the department of revenue.
AUTH: 15-1-201 MCA; IMP: 15-7-111 MCA.

RULE IV INDUSTRIAL APPRAISAL (1) The department asserts that there are approximately 900 industrial properties in the state of Montana. These properties will be appraised by industrial appraisers and the resulting appraised values will be distributed to the appropriate county assessors. Each industrial property will be appraised prior to January 1, 1986.

(2) Industrial appraisers will be required to be certified in accordance with Rule VIII.

(3) Industrial property will be valued as an entity. Class 8 property of the entity will be valued on an annual basis. For the appraisal cycle that concludes on January 1, 1986, the January 1, 1982 Marshall Valuation Service Manual will have been used to value industrial real property improvements. In cases where the real property improvements are not adequately identified in the Marshall Valuation Service Manual, other cost construction manuals such as Boeckh or Means will be used with a publication date as close to Marshall Valuation Service as possible.

(4) For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310.

(5) The industrial appraisal bureau will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.
AUTH: 15-1-201 MCA; IMP: 15-7-111 MCA.

RULE V RESIDENTIAL PROPERTY CERTIFICATION REQUIREMENTS (1) Training and testing criteria shall be as follows:

(a) Training sessions will be offered in March and August of each year if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) The employee shall attend the first residential training session offered by the department of revenue after the commencement of employment. Satisfactory completion of the residential training session shall include successful completion of the written examination conducted at the conclusion of the residential training session. If the employee fails to successfully complete the first written examination, attendance at the next residential training session shall be required. Failure to successfully complete the second written examination shall result in the immediate termination of employment.

(2) After successful completion of the residential training session, the employee shall prepare a written residential demonstration appraisal narrative report. The department of revenue will allow up to 40 hours of administrative leave to each employee in order to complete the report. The report must be submitted to the department of revenue within 6 months after successful completion of the training session, or within 30 days

after using the administrative leave granted, whichever occurs first.

(a) The residential narrative report must include:

(i) title page;
(ii) letter of transmittal;
(iii) table of contents;
(iv) assumptions and limiting conditions;
(v) photographs of subject property;
(vi) identification of property;
(vii) purpose of appraisal;
(viii) definition of market value;
(ix) date of appraisal;
(x) assessment and taxes;
(xi) city data;
(xii) neighborhood data;
(xiii) site data;
(xiv) plot plan;
(xv) zoning;
(xvi) description of improvements;
(xvii) construction features;
(xviii) property history;
(xix) highest and best use;
(xx) estimate of remaining economic life;
(xxi) cost approach with summary;
(xxii) market data approach with summary;
(xxiii) income approach with summary;
(xxiv) correlation and final estimate of value;
(xxv) certification;
(xxvi) qualification of appraiser; and
(xxvii) addenda and exhibits.

(b) Within 2 months after submission of the report by the employee, the department of revenue shall advise the employee in writing whether the report is satisfactory. If the report is unsatisfactory, the employee shall have 2 months from the date of notification to correct and to resubmit the report. No additional administrative leave shall be granted for this purpose. Failure to successfully complete a written narrative report shall result in immediate termination of employment. Upon final acceptance, the residential narrative report shall become the property of the department of revenue.

(3) Upon commencement of employment with the department of revenue, the employee shall undertake a one-year period of on-the-job appraisal work. During this period, the employee shall be in a probationary status in order to ensure that the employee has the aptitude for appraisal work. Such work shall be supervised by department of revenue. Failure to perform the appraisal work satisfactorily at any time during the one-year period shall result in immediate termination of employment.

(4) Criteria set forth in paragraphs (1), (2), or (3) above, may be waived by the property assessment division if sufficient proof is presented that the employee has previously fulfilled such criteria.

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

RULE VI COMMERCIAL PROPERTY CERTIFICATION REQUIREMENTS (1) The employee must be previously certified in the appraisal of residential property.

(2) Training and testing criteria shall be as follows:

(a) Training sessions will be offered in March and August of each year if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) The employee shall attend the first scheduled commercial training session after being assigned commercial appraisal responsibilities. Satisfactory completion of the commercial training session shall include successful completion of the written examination conducted at the conclusion of the commercial training session. If the employee fails to successfully complete the first written examination, attendance at the next commercial training session shall be required. Failure to successfully complete the second written examination shall result in immediate termination of employment or demotion to a residential appraisal position or an agricultural/timber classifier position if the positions are available, and the individual is certified to perform in that position.

(3) After successful completion of the commercial training session, the employee shall prepare a written commercial demonstration appraisal narrative report. The department of revenue will allow up to 80 hours of administrative leave to each employee in order to complete the report. The report must be submitted to the department of revenue within 6 months after successful completion of the training session, or within 30 days after using the administrative leave granted, whichever occurs first.

(a) The commercial narrative report must include:

(i) title page;
(ii) letter of transmittal;
(iii) table of contents;
(iv) assumptions and limiting conditions;
(v) photographs of subject property;
(vi) identification of property;
(vii) purpose of appraisal;
(viii) definition of market value;
(ix) date of appraisal;
(x) assessment and taxes;
(xi) city data;
(xii) neighborhood data;
(xiii) site data;
(xiv) plot plan;
(xv) zoning;
(xvi) description of improvements;
(xvii) construction features;
(xviii) property history;
(xix) highest and best use;

(xx) estimate of remaining economic life;
(xxi) cost approach with summary;
(xxii) market data approach with summary;
(xxiii) income approach with summary;
(xxiv) correlation and final estimate of value;
(xxv) certification;
(xxvi) qualification of appraiser; and
(xxvii) addenda and exhibits.

(b) Within 2 months after submission of the report by the employee, the department of revenue shall advise the employee in writing whether the report is satisfactory. If the report is unsatisfactory, the employee shall have 2 months from the date of notification to correct and to resubmit the report. No additional administrative leave shall be granted for this purpose. Failure to successfully complete a written narrative report shall result in immediate termination of employment or demotion to a residential appraisal position or an agricultural/timber classifier position, if the positions are available and the individual is certified to perform in that position. Upon final acceptance, the commercial narrative report shall become the property of the department of revenue.

(4) Upon successful attainment of the criteria set forth in paragraphs (1), (2), and (3), the employee shall undertake a one-year period of on-the-job commercial appraisal work. The commencement of the year experience requirement will coincide with the employee's notification of being assigned commercial appraisal responsibilities. All work will be supervised by the department of revenue. Failure to perform the appraisal work satisfactorily shall result in immediate termination or demotion to a residential appraisal position or an agricultural/timber classifier position, if the positions are available and the individual is certified to perform in that position.

(5) Criteria set forth in paragraphs (1), (2), (3), and (4) above, may be waived by the property assessment division if sufficient proof is presented that the employee has previously fulfilled such criteria.

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

RULE VII AGRICULTURAL PROPERTY CERTIFICATION REQUIREMENTS

(1) The employee must be previously certified in appraisal of residential property.

(2) Training and testing criteria shall be as follows:

(a) Training sessions will be offered in January and September of each year if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) The employee shall attend the first scheduled agricultural/timber training session after being assigned agricultural classification/appraisal responsibilities. Satisfactory completion of the agricultural/timber training session shall include successful completion of the written examination conducted at the conclusion of the agricultural/timber training

session. If the employee fails to successfully complete the first written examination, attendance at the next agricultural/timber training session shall be required. Failure to successfully complete the second written examination shall result in immediate termination of employment or demotion to a residential appraisal position, if the position is available and the individual is certified to perform in that position.

(3) After successful completion of the agricultural/timber training session(s), the employee shall prepare written agricultural and/or timber classification demonstration narrative report(s). The department of revenue will allow up to 40 hours of administrative leave to each employee in order to complete each required report. The report(s) shall be submitted to the department of revenue within 6 months after successful completion of the training session(s), or within 30 days after using the administrative leave granted, whichever occurs first.

(a) The report must consist of at least 1 completed appraisal (classification) of an ownership large enough and diverse enough to adequately demonstrate the ability to differentiate between classes and productive grades of land. Materials submitted for this demonstration appraisal shall include:

(i) copy of ownership plat in which property is situated;

(ii) copy of property record card (AB-9) properly completed;

(iii) copy(ies) of field notes properly completed;

(iv) copies of soil survey information utilized;

(v) copy of milar overlay of area (ownership) and comparable adjoining properties. This will show the number of acres in each class and grade of land by 40-acre tract or fractional lot for both the subject property and comparables;

(vi) copies of other pertinent data utilized in classifying and grading the property including precipitation information;

(vii) a detailed narrative explaining and justifying the classifications and grading established should be given

(b) Within 2 months after submission of the report by the employee, the department of revenue shall advise the employee in writing whether the report is satisfactory. If the report is unsatisfactory, the employee shall have 2 months from the date of notification to correct and resubmit the report. No additional administrative leave shall be granted for this purpose. Failure to successfully complete a written narrative report shall result in immediate termination of employment or demotion to a residential appraisal position, if the position is available and the individual is certified to perform in that position. Upon final acceptance, the agricultural and/or timber classification narrative report shall become the property of the department of revenue.

(4) Upon successful attainment of the criteria set forth in paragraphs (1), (2), and (3), the employee shall undertake a one-year period of on-the-job agricultural/timber classification work. The commencement of the year experience requirement will coincide with the employee's notification of being assigned

agricultural/timber classification responsibilities. All work will be supervised by the department of revenue. Failure to perform the classification work satisfactorily at any time during the one-year period shall result in immediate termination or demotion to a residential appraisal position, if the position is available and the individual is certified to perform in that position.

(5) Criteria set forth in Paragraph (1), (2), (3), and (4) above, may be waived by the property assessment division if sufficient proof is presented that the employee has previously fulfilled such criteria.

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

RULE VIII INDUSTRIAL PROPERTY CERTIFICATION REQUIREMENTS (1) The employee must be previously certified in appraisal of residential property, and appraisal of commercial property.

(2) Training and testing criteria requires the employee to successfully complete an advanced course of instruction on the various methods of property appraisal, and write a comprehensive examination in industrial appraisal.

(3) The employee must write an abbreviated narrative appraisal report defining the particular industrial process, explaining the depreciation used and substantiating the value conclusion. Upon acceptance, the industrial narrative report shall become the property of the department of revenue.

(4) The employee must:

(a) Complete 1 year of responsible industrial property appraisal.

(b) Appraise or assist in the appraisal of at least 3 separate plants in different industrial processes.

(5) Individual steps may be waived by the property assessment division if sufficient proof is given that the employee has previously met such requirements.

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

RULE IX CERTIFICATION SEQUENCE (1) Specific positions within the property assessment division require multiple certifications: (Example 1: Commercial appraiser position requires residential certification and commercial certification; Example 2: Agricultural appraiser position requires residential certification and agricultural certification; Example 3: Appraisal supervisor position requires residential certification, agricultural certification, and commercial certification).

(2) The following certification sequence shall be adhered to for positions requiring multiple certification:

(a) residential certification;

(b) agricultural certification;

(c) commercial certification;

(d) industrial certification.

(3) Subject to property assessment division review and modification, each level of certification must be satisfactorily

completed before the incumbent may begin to work on the requirements of the next higher level of certification.
AUTH: 15-1-201 MCA; IMP: 15-7-111 MCA.

4. The Department has been directed by the Legislature to promulgate a real property appraisal plan pursuant to 15-7-111, MCA. **See also Patterson v. Department of Revenue**, 171 Mont. 168, 557 P.2d 798 (1976). Certification of all appraisers employed by the Department of Revenue for the tax appraisal of residential, commercial, industrial, and agricultural properties is required by 15-7-105 through 15-7-107, MCA. The Department of Revenue, Property Assessment Division is adopting the specific certification requirements for the indicated property types in rules I through IX.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 15, 1985.

6. Barbara L. Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoptions is based on § 15-1-201 and implement § 15-7-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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|---|---|
| IN THE MATTER OF THE ADOPTION of New Rules I through IV relating to jointly owned generating facilities and the coal tax rebate. | NOTICE OF PUBLIC HEARING on the Proposed Adoption of Rules I through IV relating to jointly owned generating facilities and the coal tax rebate. |

TO: All Interested Persons:

1. On November 18, 1985, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the adoption of new rules I through IV relating to jointly owned coal using facilities and the coal tax rebate.

2. The proposed new rules I through IV do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I DEFINITION OF "THIRD PARTY INTERMEDIARY" (1) "Third party intermediary" is defined to mean any individual, corporation, partnership, subsidiary, or other entity which purchases coal on behalf of or for the benefit of another party. Any coal purchased by a third party intermediary is considered to be a purchase by a broker and not a qualified purchaser. If a qualified purchaser does purchase coal from a third party intermediary, that purchase will be included in the consumption level for the qualified purchaser in determining eligibility for the tax credit. Any partner or joint owner of a coal using facility who purchases coal on behalf of or for the benefit of another partner or joint owner of that facility is included in the definition of a third party intermediary, but only to the extent that the partner or joint owner purchased coal on behalf of or for the benefit of another partner or joint owner.
AUTH: 15-35-122 MCA; IMP: 15-35-103 MCA.

RULE II BASE CONSUMPTION LEVEL DETERMINATION - JOINTLY OWNED FACILITIES (1) Separate consumption levels will be determined for each partner in a jointly owned coal using facility. Each partner will be allocated a portion of the facility's total consumption based either on actual coal consumed by each partner, electrical generation received, percentage ownership, or any other reasonable method determined by the department of revenue. A joint owner's share of the consumption from a jointly owned coal using facility will be added to other Montana coal purchases by that purchaser to determine the total base level consumption for that purchaser.
AUTH: 15-35-122 MCA; IMP: 15-35-102 MCA.

RULE III BASE CONSUMPTION LEVEL - SALE OF INTEREST (1) A purchaser of a coal using facility or an interest in a facility is a qualified purchaser for coal used in that facility only if base consumption levels are adjusted according to this rule.

(2) When an interest in a coal using facility is transferred, sold, or disposed of in any manner, the department shall assign to the acquiring party a proportionate share of the base consumption level attributable to that facility and reduce the consumption level by an equal amount for the party selling the interest.

AUTH: 15-35-122 MCA; IMP: 15-35-102 MCA.

RULE IV ELIGIBILITY FOR TAX CREDIT A joint owner will be eligible for the tax credit provided according to 15-35-202, MCA, if the joint owner's total purchases of Montana coal, including his share of the coal consumed by the jointly owned coal using facility, exceed his base consumption level. A joint owner's share of coal consumed by a jointly owned facility will normally be determined for purposes of the tax credit computation in the same manner used to determine the base consumption level. However, if the department determines that the method used to determine a joint owner's base consumption level no longer properly reflects a joint owner's share of current level consumption, the method used to determine a joint owner's current consumption share will be changed. However, a joint owner's base consumption level once determined will not be modified except as provided under Rule III.

AUTH: 15-35-122 MCA; IMP: 15-35-202 MCA.

4. The Department is proposing these rules because Chapter 636, Laws 1985, amended 15-35-102, MCA, and enacted 15-35-202, MCA. These rules are needed to a) prevent purchases of coal through third party intermediaries from creating a new coal production tax credit that would not exist in the absence of the third party intermediary; b) ensure that eligibility for the new coal production tax credit, in the case of partners in a jointly owned coal using facility, reflects the actual use of or benefit received from the coal by each partner, and c) ensure that sales of interests in facilities do not create claims for credits that exceed those that would occur in the absence of such sales.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than December 3, 1985.

6. James M. McLean, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoptions is based on § 15-35-122, MCA, and implement §§ 15-35-102 and 15-35-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/7/85

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

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| In the matter of the adoption of a rule establishing limits on receipts from political committees; and the amendment of ARM 44.10.321, 44.10.323, 44.10.531, and 44.12.109 | ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT. ) CONTRIBUTIONS; EXPENDITURES - ) DEFINITIONS AND REPORTING REQUIREMENTS; PERSONAL FINANCIAL ) DISCLOSURE BY ELECTED OFFICIALS ) |

TO: All Interested Persons.

1. On November 8, 1985, at 10:00 o'clock a.m., a public hearing will be held in room 405 of the Capitol building at Helena, Montana, to consider the adoption of Rule I, and the amendment of ARM 44.10.321, 44.10.323, 44.10.531, and 44.12.109.

2. Proposed Rule I does not replace or modify and section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows (all language is new):

RULE I LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES (1) Pursuant to the operation specified in sections 13-37-218 and 15-30-101(8), MCA, limits on contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the House of Representatives may receive no more than $800;

(b) a candidate for the state Senate may receive no more than $1300.

(2) These limits apply to combined receipts for both the primary and general election campaigns of 1986.

AUTH: 13-37-218, MCA IMP: 15-30-101(8), MCA

4. The agency is proposing this rule because its adoption is mandated by section 13-37-218, MCA. We have no discretion in the matter.

5. The proposed amendment to ARM 44.10.321 would change the status of debts of candidates paid by third parties from in-kind contributions to monetary contributions for purposes of section 13-37-218, MCA, and our rules. Forgiven loans and expenditures encouraged to avoid a contribution would be similarily affected.

6. The proposed amendments provide as follows (new material is underlined, deleted material is interlined):

44.10.321 CONTRIBUTION - DEFINITION (1) For purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "contribution" as defined in section 13-1-101(3), MCA, includes, but is not limited to:

(a) Each contribution as listed in section 13-37-229, MCA.

(b) The purchase of tickets or admissions to, or advertisements in journals or programs for testimonial or fund raising events, including, but not limited to dinners, luncheons, cocktail parties, and rallies held for the support or opposition of a candidate, issue, or political committee.

(c) A candidate's own money used on behalf of his candidacy, except as provided in section 13-1-101(7)(b)(ii), MCA.

~~(d) An in-kind contribution, as defined in subsection (2) of this rule.~~

(d) The forgiving of any loan to or debt of a candidate or political committee.

(e) Payment of a loan or other debt by a third person.

(f) An expenditure encouraged to avoid a contribution, as specified in ARM 44.10.517.

(g) An in-kind contribution, as defined in subsection (2) of this rule except that in-kind contributions shall not be counted against the limits set forth in section 13-37-218, MCA.

(h) contributions received after an election used to retire campaign debts.

(2) The term "in-kind contribution" means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate or political committee, except as provided ~~in section 13-3-101(3)(a)(iii) and (b)(i),~~ MCA in subsections (d) through (f) above.

~~(a) An "in-kind contribution" includes, but is not limited to:~~

~~(i) Forgiveness of any loan or other debt of a candidate or political committee.~~

~~(ii) Payment of a loan or other debt by a third person.~~

~~(iii) An expenditure made at the behest of a candidate or political committee, as specified in ARM 44.10.517.~~

(3) remains the same as present rule.

AUTH: 13-37-114, MCA IMP: 13-37-218 and 13-1-101(3), MCA

7. The agency is proposing this rule in response to an unexpected situation which developed after the passage of section 13-37-218, MCA. That section made a distinction between "monetary" and "in-kind" contributions, a distinction which was made or defined nowhere else in the code. When 13-37-218 was read together with the present version of this rule, it allowed payment of a candidate's campaign debt by a third party to escape the limitations established by the section. The resulting encouragement and proliferation of third-party payments was not only administratively unworkable, but, we are satisfied, contrary to the intention of the legislative session that passed 13-37-218. The amendment would make clear that third-party payments are not only "contributions" but are "monetary" contributions for purposes of 13-37-218. The other changes are of similar effect but less consequence.

8. The proposed amendment to ARM 44.10.323 would add a definition of "independent expenditure" to the definition of "expenditure" already contained in ARM 44.10.323 and provides as follows:

44.10.323 EXPENDITURE - DEFINITION (1) and (2) remain the same as present rule.

(3) "Independent expenditure" means an expenditure which is not made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, a candidate or an agent of a candidate or committee. Independent expenditures shall be reported as prescribed in ARM 44.10.531.

AUTH: 13-37-114, MCA IMP: 13-1-101(7) and 13-37-230, MCA

9. The agency is proposing this amendment because independent expenditures, once rare, are becoming more frequent and may become common as they have in other jurisdictions. Although several private opinion letters have been written on the subject, the rules have never contained an explicit definition. A proposed amendment to ARM 44.10.531 (see below) will make clear how they are to be reported.

10. The proposed amendment to ARM 44.10.531 would affirm that independent expenditures are to be reported as other expenditures and prescribe how it is to be done and provides as follows:

44.10.531 EXPENDITURES, REPORTING (1) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.

(2) An expenditure shall be reported on the date and for the reporting period during which it is made.

(3) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.10.503, subsection (3)(a).

(4) Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures. In addition, a person making an independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit.

AUTH: 13-37-114, MCA IMP: 13-37-230, MCA

11. The agency is proposing this amendment to clarify the procedure for reporting independent expenditures. The statutes themselves require that such expenditures be reported; the addition of the requirement of reporting the beneficiary is necessary because of recent developments. When Title 13, chapter 37 was written, independent expenditures were practically unknown. They are becoming more common and it is at least possible to spend a considerable sum of

money campaigning without having to disclose exactly whom the funds were intended to benefit. This not only makes an unworkable situation from the administrative point of view, but is contrary to the intent of the drafters of chapter 37, which was to disclose "the full source and disposition of funds used to influence elections in Montana."

12. The proposed amendment to ARM 44.12.109 would remove from the definition of "business interest" the exemption for money held in a retirement fund and provides as follows:

44.10.109 PERSONAL FINANCIAL DISCLOSURE BY ELECTED OFFICIALS (1) remains the same as present rule.

(2) Not included within the meaning of "business interest" and herefore not reportable under 5-7-213, MCA are interests of the following nature:

(a) Ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal automobiles or household furnishings;

(b) Cash surrender value of any insurance policy or annuity;

~~(c) Money held in any retirement fund, whether public or private;~~

~~(d)~~ (c) Bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

~~(e)~~ (d) Securities issued by any government or political subdivision.

(3) Remains the same as present rule

AUTH: 5-7-111, MCA IMP: 5-7-102(12) and 5-7-213, MCA

13. The agency is proposing this amendment because a 1983 amendment to the parent statute (5-7-102[12][b]) nullified subsection (c). Retirement income is now required to be reported by the statute, and (c) is a nullity. In fact, this amendment affects no one and ought not to require a hearing. Our forms have been changed to reflect the amendment to the statute.

14. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, no later than November 28, 1985.

15. Jack Lowe, of the above address, has been designated to preside over and conduct the hearing.

BY: _____
PEG KRIVEC, Commissioner

Certified to the Secretary of State October 1, 1985.

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE WHEAT RESEARCH AND
MARKETING COMMITTEE

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| In the matter of the adoption of an amendment concerning setting the annual assessment on wheat and barley | NOTICE OF ADOPTION OF AMENDMENT TO RULE 4.9.401 RELATING TO THE ANNUAL ASSESSMENT ON WHEAT AND BARLEY |

TO: All Interested Persons.

1. On August 29, 1985 the Wheat Research and Marketing Committee published notice of hearing on an amendment of the above-stated rule at pages 1183, 1184 of the Montana Administrative Register issue number 16.

2. On October 1, 1985 a hearing was held concerning the proposed amendment to make the emergency rule to increase the assessment on wheat and barley a permanent rule. No comments or testimony were made or received.

3. The committee has adopted the rule as proposed.

Keith Kelly
Director

Certified to the Secretary of State October 7, 1985

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

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| In the matter of the amendments of 8.32.402 concerning licensure by examination, 8.32.408 concerning temporary work permits, 8.32.409 concerning preparation of licenses, 8.32.413 concerning conduct of nurses, 8.32.507 concerning consideration of reapplication for a license after previous denial, revocation or suspension, 8.32.603 concerning officers, 8.32.606 concerning duties of board members, and adoption of new rules concerning standards for nursing practice | NOTICE OF AMENDMENTS CONCERNING 8.32.402 LICENSURE BY EXAMINATION, 8.32.408 TEMPORARY WORK PERMIT, 8.32.409 PREPARATION OF LICENSES, 8.32.413 CONDUCT OF NURSES, 8.32.507 CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL, REVOCATION OR SUSPENSION, 8.32.603 OFFICERS, 8.32.606 DUTIES OF MEMBERS, and ADOPTION OF NEW RULES CONCERNING STANDARDS FOR NURSING PRACTICE |

TO: All Interested Persons:

1. On August 16, 1985, the Board of Nursing published a notice of amendments and adoption of the above-stated rules at pages 1056 through 1065, 1985 Montana Administrative Register, issue number 15.

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

"8.32.402 LICENSURE BY EXAMINATION Subsections (1) through (3) remain the same as proposed.

~~(5)~~ (4) The application for licensure by examination, fees and all credentials must be submitted to the executive secretary no later than ~~30 days~~ eight weeks prior to the examination date."

3. The above amendment to sub-section (4) was inadvertently omitted from the original notice. It is amended to conform with the other amendments to Rule 8.32.402 for the reasons stated in paragraph number 3 of the original notice.

4. One written comment was received suggesting the term "Nursing Analysis" be defined in the proposed new rules. The definition of this term is already in 37-8-102(3)(a)(i), MCA. No other comments or testimony were received.

BOARD OF NURSING
THERESE SULLIVAN, R.N.
PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, October 7, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

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| In the matter of the amendments of 8.97.301 concerning definitions, 8.97.402 concerning criteria for determining eligibility, 8.97.503 concerning increasing pooled program from $1,000,000 to $3,000,000, 8.97.504 concerning clarification of bonding limit, 8.97.505 concerning eligibility for pooled projects, 8.97.509 concerning guarantee fee and adoption of new rules under sub-chapter 4, concerning the loans to Capital Reserve Account or Guarantee Fund and rules concerning the creation of a loan loss reserve fund for the in-state investment fund | NOTICE OF AMENDMENT OF 8.97.301 DEFINITIONS, 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY, 8.97.503 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM, 8.97.504 BONDING LIMIT, 8.97.505 ELIGIBILITY REQUIREMENTS, 8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES, and ADOPTION OF NEW RULES UNDER SUB-CHAPTER 4, LOANS TO CAPITAL RESERVE ACCOUNT ON GUARANTEE FUND, AND LOAN LOSS RESERVE FUND |

TO: All Interested Persons:

1. On August 15, 1985, the Montana Economic Development Board published a notice of a public hearing on the proposed amendment and adoption of the above-stated rules at pages 1066 through 1072, 1985 Montana Administrative Register, issue number 15.

2. The public hearing was held on September 6, 1985, at 10:00 a.m. in the upstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

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

4. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

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| In the matter of the amendments of 8.97.301 concerning definitions, 8.97.402 concerning criteria for determining eligibility, 8.97.403 concerning preferences, 8.97.404 concerning investment authorizing eligibility requirements | NOTICE OF AMENDMENTS OF 8.97.301 DEFINITIONS, 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY, 8.97.403 PREFERENCES, 8.97.404 INVESTMENT AUTHORIZED BY RULE, 8.97.505 ELIGIBILITY REQUIREMENTS |

TO: All Interested Persons:

1. On August 15, 1985, the Montana Economic Development Board published a notice of a public hearing on the proposed amendment of the above-stated rules at pages 1073 through 1076, 1985 Montana Administrative Register, issue number 15.

2. The public hearing was held on September 6, 1985, at 10:00 a.m. in the upstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

3. The board has amended the rules exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

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| In the matter of the amendment of 8.97.402 concerning criteria for determining eligibility | ) ) ) ) | NOTICE OF AMENDMENT OF 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY |

TO: All Interested Persons:

1. On August 15, 1985, the Montana Economic Development Board published a notice of public hearing on the proposed amendment of the above-stated rules at pages 1080 through 1081, 1985 Montana Administrative Register, issue number 15.

2. The public hearing was held on September 6, 1985, at 10:00 a.m., in the upstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

3. The board has amended the rule exactly as proposed.

4. Only comments and testimony supporting the proposed amendment were received.

DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

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| In the matter of the amendment of 8.97.505 concerning eligibility requirements | ) ) ) ) | NOTICE OF AMENDMENT OF 8.97.505 ELIGIBILITY REQUIREMENTS |

TO: All Interested Persons:

1. On August 15, 1985, the Montana Economic Development Board published a notice of a public hearing on the proposed amendment and adoption of the above-stated rule at page 1082, 1985 Montana Administrative Register, issue number 15.

2. The public hearing was held on September 6, 1985, at 10:00 a.m., in the upstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

3. The board has amended and adopted the rule exactly as proposed.

4. No comments or testimony were received.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK
CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, October 7, 1985.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

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| In the matter of the amendment and repeal of ARM 23.3.901 - 23.3.941 and the adoption of new rules I-V pertaining to alcohol analysis. | ) ) ) ) ) | NOTICE OF TRANSFER AND AMENDMENT, REPEAL AND ADOPTION OF NEW RULES PERTAINING TO ALCOHOL ANALYSIS. |

TO: All Interested Persons:

1. On August 15, 1985, the Department of Justice published notice of a proposed transfer and amendment, repeal and adoption of new rules pertaining to alcohol analysis at pages 1086 - 1099 of the Montana Administrative Register, issue number 15.

2. The Department has adopted rules 23.4.101, 23.4.103, 23.4.104 EXEMPTION OF CLINICAL AND HOSPITAL LABORATORIES, 23.4.105 REQUIREMENTS FOR CERTIFICATION OF PERSONS, 23.4.106, 23.4.108, 23.4.109, 23.4.110, 23.4.111, 23.4.112, 23.4.113, 23.4.115, 23.4.116, 23.4.117, 23.4.120 BI-ANNUAL INSPECTION, and 23.4.121 OPERATOR SUPERVISOR REQUIRED as proposed. The Department has adopted rules 23.4.102, 23.4.107, 23.4.114, 23.4.118, and 23.4.119 as proposed, with the following changes:

23.4.102 DEFINITIONS

(1) - (9) same as proposed.

(10) "Department" means the Department of Justice, ~~Division of Forensic Science~~.

(11) - (25) same as proposed.

23.4.107 CERTIFICATION APPLICATION FORMS

(1) same as proposed.

(2) Copies of the application form are available upon request from the Department of Justice, ~~Division of Forensic Science~~, Laboratory of Criminalistics Bureau, 275 West Front Street, Missoula, Montana 59802.

23.4.114 SUSPENSION OR REVOCATION

(1)(a) - (1)(c) same as proposed.

(d) The certificate holder fails to obtain satisfactory results in the alcohol proficiency program required by ARM ~~23.3.905~~ 23.4.105 of this subchapter.

(e) The certificate holder fails to demonstrate accuracy to within 0.01 of the appropriate weight/volume in the analyses of the evaluation samples. (Ref. ~~23.3.902(23)~~ ARM 23.4.102(23) of this subchapter.) If a certificate holder fails to meet the requirements on an evaluation sample, the results of alcohol analyses by the certificate holder are considered invalid by the department until proficiency has been demonstrated by the certificate holder.

(1)(f) - (2) same as proposed.

23.4.118 REPORTING TEST RESULTS

(1) same as proposed.

(2) Copies of the report form are available upon request from the Department of Justice, ~~Division of Forensic Science~~,

Laboratory of Criminalistics Bureau, 275 West Front Street, Missoula, Montana 59802.

23.4.119 REQUIRED CERTIFICATION FOR BREATH ALCOHOL

(1) same as proposed.

(2) All individuals or laboratories except the Department of Justice, ~~Division of Forensic Science~~, Criminalistics Laboratory;

(3) same as proposed.

3. Proposed rules 23.4.122 through 23.4.127 have been adopted as rules 23.4.131 through 23.4.136, respectively.

4. No public hearing was held on the proposed transfer, amendment, repeal, and adoption. The above changes were made to correct inaccuracies which were called to the Department's attention by John MacMaster of the Administrative Code Committee staff. Mr. MacMaster called and pointed out that Chapter 503 of the 1985 Law of Montana requires that all references to the Division of Forensic Science be replaced with references to the Department of Justice. He also pointed out inaccurate cites in the amended rules to other rules within the subchapter and suggested that the Department reserve some rule sections. Finally, Mr. MacMaster suggested that the Department explain more specifically the reason for the amendment and redrafting of the rules regarding alcohol analysis.

5. Section 61-8-405(6), MCA, states that the Department "shall adopt uniform rules for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary." As was stated in the notice of proposed adoption, published August 15, 1985, the rules are being amended to conform with the 1983 changes in the pertinent statutes.

The 1983 amendments added the per se offense found in section 61-8-406, MCA, and use of the term "alcohol concentration" in section 61-8-401 and 406, MCA. The definition of the term "alcohol concentration" is found in section 61-8-407, MCA. That definitional section constitutes statutory recognition and approval of test procedures which determine alcohol concentration from a sample of blood, breath, or urine; it sets the quantities of samples required and used in implementing sections 61-8-401 and 406, MCA.

In 1983, section 61-8-404, MCA, was amended to allow admission of a chemical test report during the trial of a DUI or per se offense. In setting the admissibility standards for the evidence, the statute refers to the rules of the Department of Justice.

Given these amendments, it was necessary to adopt uniform rules which accurately reflect the current methods of sampling and the reporting of alcohol analysis results.

6. The authority for the amendment and adoption of the rules is section 61-8-405(6), MCA. The rules implement the same section of law.

MIKE GREELY
Attorney General

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

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| In the matter of the adoption of amendments of rules 24.7.301 through 24.7.306 concerning Board of Labor Appeals procedural guidelines. | ) ) ) ) ) ) ) | NOTICE OF ADOPTION OF AMENDMENTS OF ARM 24.7.301 POLICY, 24.7.302 GENERAL RULES GOVERNING APPEALS, 24.7.303 DEFINITIONS, 24.7.304 RIGHT TO APPEAL, 24.7.305 HEARING PROCEDURE, 24.7.306 DETERMINATION OF APPEALS. |

TO: All Interested Persons.

1. On June 27, 1985, the Board of Labor Appeals published Notice of Proposed Amendments of rules 24.7.301 24.7.302, 24.7.303, 24.7.304, 24.7.305, and 24.7.306 concerning board procedure involving review of contested unemployment insurance cases at page 732 of 1985 Montana Administrative Register issue number 12.

2. The agency has amended the rules as proposed.

3. At the public hearing and by written comment Montana State AFL-CIO and International Union of Operating Engineers criticized the proposed rule 24.7.306(1) because they believe the rule severely restricts parties from introducing new evidence at the board hearing unless good cause is shown. The board believes that each party will receive ample opportunity to present all relevant evidence. If any party needs to present additional evidence at the board hearing which was unavailable at the lower level the board would review each case to determine if good cause exists to allow the evidence to be introduced.

The primary purpose of this rule is to give credibility and consistency to the appeals process.

4. The authority for the rule is 2-4-103 MCA and the rule implements 2-4-201 and 2-4-103.

LEO BERRY
Chairman of the Board of
Labor Appeals

Certified to the Secretary of State this 18th day of September, 1985.

BEFORE THE WORKERS' COMPENSATION DIVISION
of the Department of Labor & Industry
of the State of Montana

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| In The Matter of Amendment of ARM 24.29.101, Organizational Rule | ) ) ) | NOTICE OF AMENDMENT OF ARM 24.29.101 ORGANIZATIONAL RULE |

TO: All Interested Persons:

1. Effective October 18, 1985, the Division of Workers' Compensation will amend ARM 24.29.101, which is the division's organizational rule.

2. The division will amend ARM 24.29.101 as follows:

24.29.101 DIVISION ORGANIZATIONAL RULE

(1) through (7) Same as existing rule.

(8) (a) through (h) and (j) through (dd) Same as existing rule.

(i) to order or deny approval of elections not to be bound as employees of officers of private corporations, ~~election not to be bound~~ as employees insured under plan No. 1 and plan No. 2 if their status as corporate officers is or is not in accord with 39-71-410, MCA and ARM 24.29.705.

(9) (a) through (h) Same as existing rule.

(i) to order or deny approval of elections not to be bound as employees of officers of corporations insured under plan No. 3 if their status as corporate officers is or is not in accord with 39-71-410, MCA and ARM 24.29.705.

(10) and (11) Same as existing rule.

3. The foregoing amendments are necessary to clarify the duties of the Insurance Compliance Bureau and the State Insurance Fund Bureau in the processing of elections of corporate officers not to be bound under the provisions of the Workers' Compensation Act.

4. Since ARM 24.29.101 is the division's organizational rule, no hearing is required for its adoption or amendment as set forth in Sec. 2-4-201, MCA. These amendments are authorized by Sections 2-4-201 and 39-71-203, MCA, and implement Section 2-4-201, MCA.

GARY L. BLEWETT,
Administrator
Division of Workers'
Compensation

CERTIFIED TO THE SECRETARY OF STATE: October 7, 1985.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

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| In the matter of the adoption of rules regarding lump sum conversions of benefits under section 39-71-741, MCA | NOTICE OF ADOPTION OF RULES PERTAINING TO LUMP SUM CONVERSIONS OF BENEFITS UNDER SECTION 39-71-741, MCA |

TO: All Interested Persons.

1. On June 13, 1985, the Division of Workers' Compensation published notice of the proposed adoption of rules pertaining to lump sum conversions of benefits under Section 39-71-741, MCA, at page 645 of the 1985 Montana Administrative Register. This Notice advised that a hearing would be held on the proposed rules on July 9, 1985, at 10 a.m. in Room 302 of the Workers' Compensation building, 5 South Last Chance Gulch, Helena, Montana. The hearing was held on that date, at which time interested persons presented their testimony.

2. After due consideration of the testimony at the hearing and other comments received, the division has adopted the following rules effective October 18, 1985, as follows:

24.29.1201 INTRODUCTION

(1), (2), and (3) Same as proposed rule.

(4) Permanent partial conversions must meet the requirements of subsection (3) above. Permanent total conversions must meet the test of subsection (3) above plus all other requirements provided herein. These rules do not apply to lump sums of accrued benefits, impairment awards, or disputed liability settlements where no recognition is ever made of benefits due.

(5) and (6) Same as proposed rule.

24.29.1202 DOCUMENTATION REQUIREMENTS (1) Requests for lump sum conversions of permanent partial and permanent total and death benefits must include a description of the lump sum proposal, including but not limited to analysis of current financial conditions as described in subsection (3), analysis of financial condition under the proposed lump sum conversion as described in subsection (4), and an affidavit signed by the worker or his beneficiary, attesting to the validity of information provided in the worker's or beneficiary's written ~~documentation. All analyses must be supported by complete documentation.~~ application.

(2) Requests for lump sum conversions of permanent total

and death benefits must include, in addition to the requirements of subsection (1), calculations of the total amount of benefits to be converted and their reduction to present value at a 7% discount, compounded annually, ~~and~~ or an analysis of financial condition that would be reasonably expected had the worker not been injured as described in subsection (7).

(3) Same as proposed rule.

(4) "Analysis of financial condition under the proposed lump sum conversion" for the purposes of subsection (1) shall include a description of the use of the lump sum and how this use will contribute to financially sustaining the worker or beneficiary over the same period biweekly payments would have been paid~~:~~. Additional documentation is required for permanent total or death benefit lump sum proposals if a proposal involves debts or business ventures as indicated in subsections (5) and (6).

(5) If ~~the~~ a permanent total or death benefit lump sum proposal involves the partial or total elimination of existing delinquent or outstanding debts, a debt management plan must be described and include:

(a) and (b) Same as proposed rule.

(6) If ~~the~~ a permanent total or death benefit lump sum proposal involves a business venture, a business plan must be described and include:

(a), (b), (c), and (d) Same as proposed rule.

(7) Same as proposed rule.

24.29.1203 METHODS THE DIVISION WILL APPLY TO EVALUATE INFORMATION PROVIDED (1) In all lump sum conversion requests, the worker or his beneficiary must demonstrate that his ability to sustain himself financially is more probable with a whole or partial lump sum conversion than ~~he cannot sustain himself financially~~ with biweekly payments and his other resources, ~~within 12 months following the application~~ or the application for a lump sum conversion will be denied.

(2), (3), and (4) Same as proposed rule.

(5) The division will deny or approve all lump sum settlement applications within thirty (30) days of receipt. If additional information is required to enable a determination on such applications, it will be requested within the thirty day review period. If additional information is not received within thirty (30) days, the application will be denied on the basis of lack of information.

24.29.1204 FURTHER STUDIES MAY BE REQUIRED Same as proposed rule.

3 On April 15, 1985, the Governor signed S.B. 281, amending section 39-71-741, MCA, which became effective immediately The statute, as amended regarding conversions of biweekly permanent disability workers compensation benefits to lump sums, imposes substantially new criteria for such

conversions and their approval or denial by the division. These rules concerning proper documentation and procedure to evaluate a worker's or beneficiary's application for a lump sum conversion are needed to protect the health and welfare of applicants for lump sum conversions.

4. The authority of the division to adopt these rules is based on Section 39-71-203, MCA, and Chapter 471, Laws of 1985. These rules implement Section 39-71-741, MCA.

5. On July 9, 1985, a public hearing was held by the Division of Workers' Compensation regarding the adoption of the proposed rules under Section 39-71-741, MCA. The division has thoroughly considered all verbal and written commentary received. The following is a summary of the comments received from the public and the division's responses.

Comment: Under Rule 3, section 1, it appears that the income of a spouse may be improperly considered as "other income."

Response: "Spousal or other family income" required as part of the analysis of current financial condition is a legitimate part of the claimant's other available resources. The Supreme Court has approved this in consideration of lump sums. See 41 St. Rep. 704.

Comment: The entire set of rules should not apply to cases of permanent partial disability, accrued benefits, impairment awards and disputed liability settlements.

Response: Agreed. The rules clearly show and have been amended to more clearly show their limited effect on permanent partial cases. Rule 1, Section 4 is being amended to clearly show the inapplicability of the rules to accrued benefits and impairment awards, which claimants are entitled to without justification and disputed liability settlements, which are compromises of the issue of liability itself.

Comment: The factor of Rule 3, section 1, that a lump sum cannot be obtained unless the claimant can show he cannot sustain himself within 12 months following the application is arbitrary and beyond the authority of Senate Bill 281.

Response: The comment may be correct and the language is revised.

Comment: The documentation required under Rule 2, Section 3 is much too burdensome and time consuming and shows little or no deference for the privacy interests of the injured worker.

Response: The documentation is reasonably necessary to determine the financial condition and needs of a claimant. The division as always will protect the private records of

claimants from public disclosure. In order to ease the burden, the rule is amended to enable use of an affidavit to provide information required in Rule II, (3). The division is also amending the rules to indicate that the division will act on a petition for settlement within thirty days.

Comment: It would be extremely difficult for an unrepresented claimant who has applied for a lump sum to present the necessary information without the assistance of either an attorney or financial analyst.

Response: The statute puts the burden on the claimant to show that a lump sum conversion is in his best interests. As noted above, some information may be provided by affidavit. The complexity of the application will depend on individual circumstances. The Division will advise a claimant if further information is required.

Comment: The use of the both sexes life expectancy table may short change females who live longer than men generally. Shouldn't a male and female table be used?

Response: Section 49-2-309, MCA, requires the use of gender neutral factors.

Comment: The expense and delay of a business venture analysis is prohibitive.

Response: The statute requires in permanent total cases that such an analysis be done in order to determine whether the claimant's money will be wisely invested and will produce a reasonable income.

Comment: The requirements for "supportive documentation" in Rule II(7)(b)(i) and (iv) are unrealistic in regard to someone's opinion or projection as to the worker's probable financial condition had he not been injured.

Response: Such information is required by the statute and is reasonably available. This information is only required when a lump sum application shows an amount less than what the 7% discount would yield.

GARY L. BLEWETT,
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 7, 1985

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the adoption of a rule relative to ballot preparation for the AIS-315 Optical Scan Ballot Counter | NOTICE OF ADOPTION OF 44.3.1761 RELATIVE TO BALLOT PREPARATION FOR THE AMERICAN INFORMATION SYSTEMS 315 OPTICAL SCAN BALLOT COUNTER |

TO: All Interested Persons

1. On August 29, 1985, the secretary of state published notice of the proposed adoption of a rule relative to ballot preparation for the AIS-315 Optical Scan Ballot Counter. The notice was published at page 1224 of the 1985 Montana Administrative Register, Issue No. 16.

2. No public hearing was contemplated and no request for a public hearing was received. Public comments were accepted until September 26, 1985. No public comments were received.

3. The agency has adopted rule 44.3.1761 as proposed.

4. The authority for the rule is 13-17-107(2), MCA, and the rule implements 13-17-107(2), MCA.

Jim Waltermire
Secretary of State

Dated this 7th day of October, 1985.

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

| | | |
|---|---|---|
| In the matter of the adoption of rules and the amendment of Rules 46.6.102, 46.6.302, 46.6.304 and 46.6.305 pertaining to the physical disabilities program | ) ) ) ) ) ) ) ) ) | NOTICE OF THE ADOPTION OF RULES (I) 46.6.1501, (II) 46.6.1502, (III) 46.6.1503, (IV) 46.6.1504, (V) 46.6.1601, (VI) 46.6.1602, (VII) 46.6.1603, (VIII) 46.6.1604, and (IX) 46.6.1202 AND AMENDMENT OF RULES 46.6.102, 46.6.302, 46.6.304 AND 46.6.305 PERTAINING TO THE PHYSICAL DISABILITIES PROGRAM |

TO: All Interested Persons:

1. On August 29, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules and the amendment of rules as listed above pertaining to the physical disabilities program at page 1228 of the 1985 Montana Administrative Register, issue number 16.

2. The Department has amended Rules 46.6.102, 46.6.302, 46.6.304 and 46.6.305 as proposed.

3. The Department has adopted Rules 46.6.1501, PHYSICAL DISABILITIES PROGRAM, PURPOSES; 46.6.1502, PHYSICAL DISABILITIES PROGRAM, SERVICES; 46.6.1503, PHYSICAL DISABILITIES PROGRAM, ELIGIBILITY REQUIREMENTS; 46.6.1504, PHYSICAL DISABILITIES PROGRAM, CLIENT SERVICES AND PLACEMENT; 46.6.1601, INDEPENDENT LIVING REHABILITATION PROGRAM, PURPOSES; 46.6.1602, INDEPENDENT LIVING REHABILITATION PROGRAM, SERVICES; 46.6.1603, INDEPENDENT LIVING REHABILITATION PROGRAM, ELIGIBILITY REQUIREMENTS; 46.6.1604, INDEPENDENT LIVING REHABILITATION PROGRAM, PROVISION OF SERVICES; and 46.6.1202, CLIENT GRIEVANCES, as proposed.

4. The Department has thoroughly considered all commentary received:

COMMENT: The program description is confusing in this notice.

RESPONSE: There are two sets of services being implemented by these rules. The set for the benefit of physically disabled persons generally is a state initiated and funded program that provides community-based services to persons who are not otherwise eligible for programs and similar physical disability services. The set of services for independent living rehabilitation is a federally initiated program that provides community-based services to persons who are so severely disabled as to need intensive rehabilitation services.

COMMENT: Does the program have the potential to serve learning disabled adults who have not previously been identified by any service provider system?

RESPONSE: Both sets of services implemented by these rules may be provided by the Department within its discretion to persons determined by a physician to be permanently impaired in a manner which limits walking, self-care, seeing, hearing, speaking, learning, reasoning, judgement, or memory. A person with learning disabilities may be determined to be eligible for services, but not based on the learning disability per se. The statutes and rules governing these services do not provide for entitlement to the services.

COMMENT: Available funds should be prioritized with those persons who are most severely handicapped receiving services first.

RESPONSE: The administrative direction in providing these services is to prioritize consideration for eligibility upon the degree of disability.

COMMENT: Learning disabled persons would likely need services for a shorter period of time if the program's intent is to help them become competitively employed.

RESPONSE: The purposes of these services are not to provide for the vocational rehabilitation of the recipients. Therefore, competitive employment is not the primary goal of these programs.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 7, 1985.

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

| | | |
|---|---|---|
| In the matter of the adoption of rules and amendment of Rule 46.12.581 pertaining to licensed clinical social work services. | ) ) ) ) ) ) | NOTICE OF THE ADOPTION OF RULES (I) 46.12.587, (II) 46.12.588, and (III) 46.12.589 AND AMENDMENT OF RULE 46.12.581 PERTAINING TO LICENSED CLINICAL SOCIAL WORK SERVICES |

TO: All Interested Persons:

1. On August 29, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules as listed above and the amendment of Rule 46.12.581 pertaining to licensed clinical social work services at page 1234 of the 1985 Montana Administrative Register, issue number 16.

2. The Department has adopted Rules 46.12.587, LICENSED CLINICAL SOCIAL WORK SERVICES, DEFINITIONS and 46.12.589, LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT, as proposed.

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

46.12.588 LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

Subsections (1) through (4) remain as proposed.

(5) SERVICES THAT CAN BE INCLUDED UNDER A FACILITY'S LONG-TERM CARE PER DIEM ARE NOT PAYABLE AS LICENSED CLINICAL SOCIAL WORK SERVICES.

AUTH: Sec. 53-6-113 MCA; Sec. 2, Ch. 77, L. 1985 (HB 595)

IMP: Sec. 53-6-101 MCA

4. The Department has amended Rule 46.12.581 as proposed.

5. The Department has thoroughly considered all commentary received:

COMMENT: Explain the rationale and method of determining rates for social worker's services.

RESPONSE: Licensed social workers provided the department with a copy of a report to the Delaware State Legislature. The report was prepared in 1983 by GLS Associates, a health care consulting group.

This report indicates that licensed social workers are reimbursed an average of $30.00 per visit by third party payers who cover them while other practitioners, including psychologists, are paid $41.00 per visit. The study concludes that based on the percentage of billed charges paid by third party payers, social workers charge an average of 73% of the amount charged by other practitioners. The fees in the proposed rules are based on 80% of fees paid to psychologists. The average charge by psychologists in Montana is $51.78. Based on the GLS Study, the average charge by social workers would be $37.80. If the Department were to pay 80% of this figure, the rate would be $30.24 per hour.

The Department believes the fee based on 80% of the current rate is adequate to assure reasonable participation of social workers and still assure the Department stays within its mandate to not expand the program.

COMMENT: By combining the limit on social worker's services with the limit on psychologists in the 22-hour cap, the Department is equating the two services.

RESPONSE: The Department combined the limit on social worker's services and psychologists' services as a means of staying within the legislative mandate to not expand the Medicaid program. Federal regulations allow the Department to distinguish between services by the practitioner performing the service.

The GLS study provided by members of the National Association of Social Workers (NASW) indicates there will be increased utilization of services or at least increased claims against insurance companies that will offset any savings incurred because social workers charge less and see patients for fewer visits.

The cap is compatible with the service delivery practices of social workers. The GLS study indicates that licensed clinical social workers see patients for fewer sessions than other practitioners providing mental health services.

The GLS study also indicates that licensed social worker services are part of the mental health delivery system. In Montana's Medicaid program, coverage includes licensed psychologist services, psychiatric services performed by licensed physicians, community mental health center clinic services, and, under these rules, licensed clinical social worker's services. These services are all part of the mental health service coverage. They are, however, recognized as separate services under federal regulations and covered under separate administrative rules promulgated by the Department.

The combination of the limits on social worker's services and psychologist's services is a legitimate cost containment and utilization control measure.

COMMENT: Are social worker services provided to nursing home patients by facility staff reimbursable as part of the 22-hour limit or included in the facility's per diem?

RESPONSE: Any consultation with the staff of a long-term care facility cannot be paid for under these rules. Any service that is a required part of a nursing home's participation in Medicaid and is not identified as an ancillary service in ARM 46.12.1205 cannot be paid for under these rules.

Management or professional fees (e.g., management, legal, accounting or consulting services) are allowable costs under ARM 46.12.1207(j). However, social services as defined in 42 CFR 442.344 are mandatory services. ARM 46.12.1202 incorporates these services as mandatory for facilities participating in the Montana Medicaid program. Therefore, any social services mandated under this regulation cannot be paid for under the proposed rules. Rule II of the proposed rules has been modified to clarify this point.

Dave Lewis

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 7, 1985.

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

| | | |
|---|---|---|
| In the matter of the amendment of Rule 46.12.3001 pertaining to Medicaid applications-social security number requirements | ) ) ) ) ) | NOTICE OF AMENDMENT OF RULE 46.12.3001 PERTAINING TO MEDICAID APPLICATIONS-SOCIAL SECURITY NUMBER REQUIREMENTS |

TO: All Interested Persons:

1. On August 29, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3001 pertaining to Medicaid applications-social security number requirements at page 1226 of the 1985 Montana Administrative Register, issue number 16.

2. The Department has amended Rule 46.12.3001 as proposed.

3. The only comment received was from the Department representative, Jim McDonnell of the Economic Assistance Division. He noted the Department is required to amend this rule or the state could receive federal monetary sanctions.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 7, 1985.

VOLUME NO. 41 OPINION NO. 29

POLICE - Application of time spent as a special officer to retirement;
POLICE DEPARTMENTS - Computation of time served for retirement;
RETIREMENT SYSTEMS - Purpose of police pension systems, police retirement to benefit active officers only;
MONTANA CODE ANNOTATED - Sections 7-3-4465(1), 7-32-4106, 19-10-301, 19-10-302, 19-10-401(1), 19-10-501 to 19-10-503;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 4 (1979).

HELD: Time served for temporary duty as a special officer counts toward a police officer's requirements for the retired list under section 19-10-401(1), MCA. The city treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service.

4 October 1985

Leo Fisher
City Attorney
P.O. Box 238
Whitefish MT 59937

Dear Mr. Fisher:

You have requested my opinion on the following matter:

> Does the time served by a police officer on the eligible list for temporary duty count toward that officer's retirement? If so, must the city treasurer withhold from that officer's compensation the amount required to be retained for the police retirement fund?

Your question concerns section 19-10-401(1), MCA, as it relates to a police officer's eligibility for service

retirement. The police department has an active list of police officers and an eligible list as required by section 7-32-4106, MCA. The city assigns officers on the eligible list to fill in for members on the active list who are ill or on vacation, or have days off. Appointments to the active list are made from the eligible list. Officers chosen from the eligible list for temporary employment do not contribute to the retirement fund. A temporary officer is considered a special officer under section 7-3-4465(1), MCA.

Section 19-10-401(1), MCA, states:

> A person who is employed by any city as a police officer on July 1, 1975, is eligible for the retired list when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank. [Emphasis added.]

This section seems to conflict with the other provisions of title 19, chapter 10, which make reference only to active officers. If there is any doubt concerning the meaning of a given term in a statute, it is to be determined by the context in which it is employed and by the purpose and subject of the statute. State ex rel. Snidow v. State Board of Equalization, 93 Mont. 19, 34, 17 P.2d 68, 72 (1932).

The general purpose for establishing police pension systems is to reward efficiency, encourage police officers to remain in active service, and provide assurance of a decent standard of living upon retirement. Bartels v. Miles City, 145 Mont. 116, 121, 399 P.2d 768, 771 (1965).

When chapter 10 is read as a whole, it becomes clear that this system was established to benefit active officers. Section 19-10-301, MCA, requires the city to contribute to the fund an amount equal to eleven percent of the total salaries of active police officers. Section 19-10-302, MCA, requires the city treasurer to deduct six percent of an active officer's monthly compensation for the retirement fund. Retirement benefits are paid to officers removed from the active list to the retired list, as are disability and death benefits. §§ 19-10-501 to 503, MCA.

Since temporary officers do not contribute to the retirement fund or receive benefits from it, it is apparent that the legislative intent was to benefit only active officers.

The question that remains is whether time spent in temporary duty applies toward the required time for retirement.

A previous Attorney General's opinion relating to firefighters' pension eligibility held that time spent in training and on probation should be figured into the computation of active duty for purposes of retirement. 38 Op. Att'y Gen. No. 4 at 15 (1979). Firefighters in training or on probation were ineligible for membership in the department's relief association. They were not required to make contributions to the association, and could not voluntarily contribute. Id. at 14. Retirement eligibility depended on time spent in active duty for the fire department. Time spent in training and on probation was considered active duty because these firefighters were fully paid and actively engaged in the business of the fire department. Id. Thus, a firefighter could count this time toward retirement even though no contributions were made to the association.

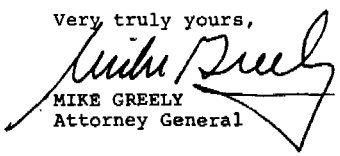
Likewise, temporary or special officers do not contribute to the police retirement fund. Section 19-10-401(1), MCA, however, allows time served as a special officer, added to time served as a regular and probationary officer, to apply toward the required time for retirement. Time spent on the eligible list, waiting for temporary or active duty, does not apply toward the required time for retirement. This makes sense, as special officers are fully paid and actively engaged in the business of the police department.

THEREFORE, IT IS MY OPINION:

Time served for temporary duty as a special officer counts toward a police officer's requirements for the retired list under section 19-10-401(1), MCA. The city treasurer may not withhold contributions for the retirement fund from a temporary officer's

compensation, as the purpose of the retirement fund is to benefit only active officers who have completed 20 years or more of service.

Very truly yours,



MIKE GREELY
Attorney General

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

| | | |
|---|---|---|
| IN THE MATTER of the Extent of the Public Service Commission's Jurisdiction Over Municipal Utilities. | ) ) ) ) | DECLARATORY RULING |

BACKGROUND

On April 10, 1985, the Petitioner, Montana Consumer Counsel (MCC), filed with the Commission a Petition for a Declaratory Ruling asking the Commission to determine the scope of its jurisdiction regarding the regulation of municipal utilities. Specifically, the MCC's Petition presented the following question to the Commission:

> Can a municipal utility refuse to provide service to subscribers within its established service territory by simply modifying the boundaries of its service area without Public Service Commission approval?
>
> Petition for Declaratory Ruling, Para. V, pp. 3-4 (emphasis theirs).

Briefly, the specific facts of this case involve the decision by the Town of St. Ignatius, Montana, to discontinue the use of the Mission Reservoir as a water source. A transmission line carried water from the Reservoir to the Town. At least seven persons living outside of the town boundaries were provided water service by way of taps from said transmission line. As a source of water, the Mission Reservoir did not meet Federal and State water purity requirements. The town found alternative means for providing water to its citizens, and use of the transmission line was discontinued. The persons outside the town limits who were receiving their water service from taps on said transmission line were not offered the alternative service by the Town of St. Ignatius.

In the Petition, the MCC also stated that all regulated municipal utilities under the Commission's jurisdiction would be interested in this Declaratory Ruling. Accordingly, and in conformance with Section 2-3-111, MCA (1983), and the Attorney General's Model Rules promulgated thereunder (see ARM 1.3.207), the Commission issued a Notice of Proposed Agency Action on August 6, 1985, to all municipal utilities within the State of Montana. Comments were received from two municipalities, the Town of St. Ignatius, and the City of Billings. The Town of St. Ignatius argued that the Petition should be denied, since the Commission had in fact previously approved the abandonment of the transmission line, and the discontinuance of service, in Docket No. 81.3.51, and Order No. 4828 dated July 13, 1981. In brief, the City of Billings

argued that the Commission did not have jurisdiction over this action by virtue of Title 69, Chapter 7, MCA, and that under Section 69-7-113(2), MCA, the proper forum for review of this matter was the local district court.

Given the nature of this action, and consistent with the Commission's discretion under both Section 2-4-501 et seq., MCA, and ARM 1.3.227, a hearing was not conducted.

ANALYSIS AND FINDING

As a preliminary consideration, the previous Commission ruling in Docket No. 81.3.51 must be examined. Since its effect has been raised as an issue before this Commission, the Commission takes official notice of the contents of the record of that Docket, including Order No. 4828 of this Commission, dated July 13, 1981, issued as a final order. The final order notes the request of the town for approval of its service area. Although there is a brief reference in the order to the Town's decision to abandon the Mission Reservoir as a source of water, there is no discussion or consideration of a discontinuance of service. More importantly, by its own terms the final order expressly approves only the request of the Town of St. Ignatius to increase its water rates. There is no approval by the Commission of any dicontinuance of service. From the record, it appears that this issue, was not presented to the Commission at hearing. Finally, there were no challenges by the Town of St. Ignatius to the substance of Order No. 4828 after it was issued. In summary, the discontinuance of service to the persons now represented by the MCC was not approved, or even considered by the Commission in Docket No. 81.3.51.

Prior to July 1, 1981, the Commission exercised extensive regulatory authority over municipal utilities within the State of Montana. The scope and extent of this authority is reflected in various decisions referred to by the MCC, including City of Polson v. Public Service Commission, 155 Mont. 464, 473 P.2d 508 (1970), and City of Billings v. Public Service Commission, 38 St. Rptr. 1162, 631 P.2d 1295 (1981). Unfortunately, in its Petition the MCC did not consider the application of Title 69, Chapter 7, MCA, which specifically sets forth the extent of Commission jurisdiction over municipal utilities. These laws (along with corresponding revisions to Title 69, MCA) became effective July 1, 1981. None of the authority cited by the MCC considers the operation and effect of this particular body of statutory law.

Title 69, Chapter 7, MCA, is divided into two parts. Part 1 is entitled "Regulation of Rates by Municipality," and sets forth the procedure to be followed by a municipality desiring to increase its utility rates. In this regard, the role of the Commission is very limited, as set forth in both

Sections 69-7-102, and 69-7-121, MCA. Part 2 is entitled "Operation of Utilities." It is comprised of one section, 69-7-201, MCA, which provides as follows:

> 69-7-201. Rules for operation of municipal utility. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

The review process for both municipal rates and operating rules is set forth in Section 69-7-113, MCA, which states:

> 69-7-113. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.
>
> (2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

Obviously, the reasonable interpretation of Section 69-7-201, MCA, when considered in conjunction with Section 69-7-113(2), MCA, is that in regards to the operating rules of a municipal utility, the only means of review is through the local district court. In other words, under the legislative directive contained in Title 69, Chapter 7, MCA, the Commission's only regulatory power over municipal utilities involves proposed rate increases in excess of 12 percent. This has been the Commission's interpretation of these laws since they were first enacted. See ARM 38.5.701 et

seq. The MCC has not presented any compelling reasons for revising this policy.

The Commission finds and declares that by law, it does not have proper jurisdiction over the subject matter contained in the Petition for Declaratory Ruling filed by the Montana Consumer Counsel. Accordingly, said Petition is DENIED.

APPROVED BY THE COMMISSION September 19, 1985.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Trenna Scoffield
Secretary

(SEAL)

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

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules 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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of 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 Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

# ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1985. This table includes those rules adopted during the period July 1, 1985 through September 30, 1985, 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 June 30, 1985, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1985 Montana Administrative Register.

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