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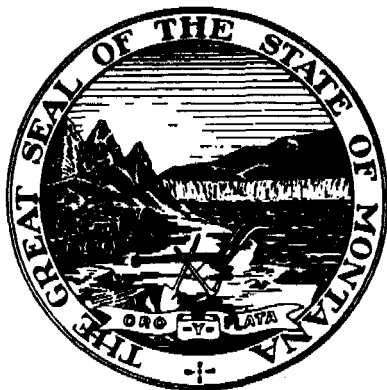
JAN 30 1986

OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

# **DOES NOT CIRCULATE**

1986 ISSUE NO. 2  
JANUARY 30, 1986  
PAGES 88-151



JAN 30 1986

## OF MONTANA

## MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
STATE OF MONTANA

In the matter of the adoption )	NOTICE OF HEARING ON
of rules pertaining to )	PROPOSED NEW RULES
designation of noxious weeds )	DESIGNATING NOXIOUS WEEDS
pursuant to the County Weed )	PURSUANT TO THE COUNTY
Control Act )	WEED CONTROL ACT
)	

TO: All Interested Persons

1. On February 28, 1986, at 10 a.m. in room 225 Agriculture/Livestock Building, Sixth and Roberts, Helena, a public hearing will be held. The Department of Agriculture will consider the adoption of the above captioned new rules.

2. The proposed new rules provide as follows:

RULE I DESIGNATION OF NOXIOUS WEEDS (1) The department designates certain exotic plants listed in these rules as statewide noxious weeds under the County Weed Control Act 7-22-2101 (5), MCA. All counties must implement management standards for these noxious weeds consistent with weed management criteria developed under 7-22-2109 (2) (b) of the Act. The department established two categories of the noxious weeds.

AUTH: 7-22-2101, MCA

IMP: 7-22-2101, MCA

RULE II CATEGORY 1 (1) Category 1 noxious weeds are weeds that are currently established in many counties of the state. Management criteria for control of these weeds is necessary in all counties to contain or suppress existing infestations or to prevent, through eradication or other appropriate measures, new infestations of these weeds. All of these weeds render land unfit or greatly limit the beneficial uses.

(2) The following are designated as Category 1 noxious weeds:

- (a) Canada Thistle (Cirsium arvense)
- (b) Field Bindweed (Convolvulus arvensis)
- (c) Whitetop (Cardaria draba)
- (d) Leafy Spurge (Euphorbia esula)
- (e) Russian Knapweed (Centaurea repens)
- (f) Spotted Knapweed (Centaurea maculosa)
- (g) Diffuse Knapweed (Centaurea diffusa)
- (h) Dalmation Toadflax (Linaria dalmatica)
- (i) St. Johnswort (Hypericum perforatum).

AUTH: 7-22-2101, MCA

IMP: 7-22-2101, MCA

RULE III CATEGORY 2 (1) Category 2 noxious weeds are weeds that have not been detected in the State of Montana or have recently been introduced into the state of Montana. These weeds have the potential for rapid spread and invasion of lands, thereby rendering them unfit for beneficial uses. County planning to prevent the spread or introduction of these weeds is necessary. Management criteria for detection and immediate action to eradicate or contain these weeds is necessary in all counties.

(2) The following are designated as category 2 noxious weeds:

- (a) Dyers Woad (Isatis tinctoria)
- (b) Yellow Starthistle (Centaurea solstitialis)
- (c) Common Crupina (Crupina vulgaris)
- (d) Tansy Ragwort (Senecio jacobaea)
- (e) Rush Skeletonweed (Chondrilla juncea).

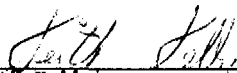
AUTH: 7-22-2101, MCA

IMP: 7-22-2101, MCA

3. The above rules are necessary to implement the County Weed Control Act. The reason for these rules is to designate the noxious weeds in the State of Montana. The weeds are divided into two categories. Category 1 lists noxious weeds that are presently threatening to the beneficial use value of lands in Montana. Category 2 lists noxious weeds that are potential threatening if they are introduced into the state or if they spread to such areas so as to threaten the beneficial use of the lands of the state. Local weed management of these noxious weeds requires different treatments for the two categories. Category 1 weeds require long range management programs to begin to control and reduce the areas of these noxious weeds. Category 2 noxious weeds require a management effort to detect and eradicate if possible these types of weeds so as to prevent them from obtaining a foothold in the lands of the state.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, either orally or in writing at the hearing. Written data views, arguments, may be submitted to Gary Gingery, Administrator, Environmental Management Division, Department of Agriculture, Agriculture/Livestock Building, Helena, Montana 59620, no later than February 28, 1986.

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

  
\_\_\_\_\_  
Keith Kelly  
Department of Agriculture

Certified to the Secretary of State January 20, 1986.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of 8.22.502 con- ) ON THE PROPOSED AMENDMENT  
cerning parimutuel wagering ) OF 8.22.502 LICENSES  
 ) ISSUED FOR CONDUCTING  
 ) PARIMUTUEL WAGERING ON  
 ) HORSE RACING MEETINGS

TO: All Interested Persons.

The notice of proposed amendment published in the Montana Administrative Register on October 18, 1985, issue 19, page 1455, is amended as follows because the required number of persons designated therein have requested a public hearing:

1. On March 7, 1986, at 4:30 p.m., a public hearing will be held in the Bonanza West of the Ponderosa Inn, Great Falls, Montana to consider the amendment of rule 8.22.502.

2. The amendment is the same as proposed in the original notice.

3. The rule is proposed for amendment for the reasons as stated in the original notice.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Horse Racing, no later than March 7, 1986.

5. Geoffrey Brazier, Helena, Montana has been designated to preside over and conduct the hearing.

6. The authority of the board to make the proposed rule amendment is based on section 23-4-104 (7), 201, 202, MCA, and the rule implements 23-4-104 (7), 201, MCA.

BOARD OF HORSE RACING  
HAROLD GERKE, CHAIRMAN

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

Certified to the Secretary of State, January 20, 1986.

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

In the matter of the amendment	)	NOTICE OF CHANGE
of rule 16.8.1404, limiting	)	OF HEARING DATE
visible air contaminants; the	)	
adoption of new rule I, prohibiting	)	
wood stove combustion of certain	)	
materials; and the repeal of	)	
16.8.1201, 16.8.1202 and 16.8.1203	)	
and the adoption of new rules II,	)	
III and IV, setting standards for	)	(Air Quality)
stack heights	)	

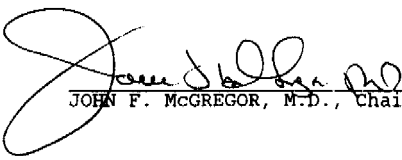
TO: All Interested Persons

1. On January 16, 1986, the board published a notice of public hearing to be held March 14, 1986, to consider the amendment, repeal, and adoption of the above-captioned rules, at page 20 of the 1986 Montana Administrative Register, issue number 1.

2. The hearing date has been changed to March 7, 1986, and will be held at 10:30 a.m. in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 7, 1986.

4. Robert L. Solomon has been designated to preside over and conduct the hearing.



JOHN F. MCGREGOR, M.D., Chairman

Certified to the Secretary of State January 20, 1986.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE PROPOSED AMEND-
of Rule 42.20.113 relating to )	MENT of Rule 42.20.113 relat-
the valuation of agricultural )	ing to the valuation of
and timberland. )	agricultural and timberland.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 3, 1986, the Department of Revenue proposes to amend rule 42.20.113 relating to the valuation of agricultural and timberland.

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

42.20.113 TIMBERLAND CLASSIFICATION - GENERAL PRINCIPLES

(1) through (6) remain the same.

(7) The growing and cultivating of Christmas trees will not be considered for timberland classification. Those lands which are cultivated for purposes of growing and marketing Christmas trees will be considered for agricultural land classification. Such land will be subject to the administrative rules relating to agricultural land classification.

AUTH: 15-1-201 MCA, § 7, Ch. 681, L. 1985, § 2, Ch. 705, L. 1985, and § 4, Ch. 739, L. 1985; IMP: 15-6-133, 15-7-201, and 15-8-111 MCA.

3. Rule 42.20.113 is proposed to be amended because the proposed amendment was offered in response to input received during the hearings on November 7, 1985, and November 12, 1985. The amendment was inadvertently omitted from the adoption notice filed on December 16, 1985. This amendment is intended to correct that omission.

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

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


no later than February 27, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dawn Sliva at the above address no later than February 27, 1986.

6. If the agency receives requests for a public hearing on

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

7. The authority of the Department to make the proposed amendment is based on § 15-1-201, MCA, § 7, Ch. 681, L. 1985, § 2, Ch. 705, L. 1985, and § 4, Ch. 739, L. 1985. The rule implements §§ 15-6-133, 15-7-201, and 15-8-111, MCA.

  
JOHN D. LAFAYER, Director  
Department of Revenue

Certified to Secretary of State 01/20/86

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.12.102 and	)	THE PROPOSED AMENDMENT OF
46.12.303 pertaining to	)	RULES 46.12.102 AND
billing, reimbursement,	)	46.12.303 PERTAINING TO
claims processing and	)	BILLING, REIMBURSEMENT,
payment for the Medicaid	)	CLAIMS PROCESSING AND
program.	)	PAYMENT FOR THE MEDICAID
	)	PROGRAM.

TO: All Interested Persons

1. On February 19, 1986, at 9:30 a.m., a public hearing will be held in Room 107 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.102 and 46.12.303 pertaining to billing, reimbursement, claims processing and payment for the Medicaid program.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (34) remain the same.

(35) Professional component means the cost of professional services of the physician including examination of the patient, when indicated, performance and/or supervision of the procedure, interpretation and reporting of the examination and consultation of the referring physician. It does not include the cost of personnel, materials, equipment or other facilities.

(36) Technical component means the cost of personnel, materials including visual contrast media and drugs, space, equipment and other facilities, but does not include the cost of radio-isotopes.

(37) Total value means the combined value of the professional component and the technical component of physician services.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) Providers shall submit claims within 180 days of the date the service was performed, within 180 days after the applicants eligibility is determined, or within 180 days after a written notice from a third party resource, whichever occurs last. For providers of hospital services, the service shall be deemed to have been performed upon the recipient's discharge from one continuous confinement. A written inquiry to the department or to the local county welfare department regarding eligibility within the 180 day limit

shall constitute evidence of an effort to bill medicaid for these services.

(a) All claims submitted to the Montana medicaid program by individual practitioners and sole proprietorships, whether or not incorporated as a public service corporation, are to be submitted on personally signed state approved billing forms, or they shall not be considered valid and proper claims.

Subsection (1)(b) remains the same.

(c) All claims submitted to the Montana medicaid program for hospital-based physician services shall be submitted on a state approved claim form with the signature of the physician providing the service, except for the following claims:

(i) Claims submitted for the professional component of electrodiagnostic procedures which do not involve direct personal care on the part of the physician and performed by physicians on contract to the hospital may be submitted on state approved claim forms signed by the person with authority to bind the hospital under subsection (b) above.

(ii) Electrodiagnostic procedures include echocardiology studies, electroencephalography studies, electrocardiology studies, evoked potential studies, holter monitors, telephonic or teletrace checks and pulmonary function tests.

(iii) If, after review, the department determines that claims for hospital-based physician services are not submitted by a hospital provider in accordance with this subsection, the department may require the hospital provider to obtain the signature of the physician providing the service on the claim form.

Subsections (2) through (7)(b) remain the same.

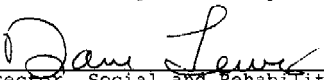
AUTH: Sec. 53-2-201 and 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-111 and 53-6-141 MCA

3. This rule is being amended at the request of Montana hospital providers to facilitate and clarify claims processing for hospital-based physician services.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than February 27, 1986.

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

  
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 20, 1986.

2-1/30/86

MAR Notice No. 46-2-459

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

In the matter of the amend- )  
ment of Rule 46.13.401 )  
pertaining to LIEAP maximum )  
benefit awards for wood )  
 )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Interested Persons

1. On March 14, 1986, the Department of Social and Rehabilitation Services proposes to amend Rule 46.13.401 which pertains to LIEAP maximum benefit awards for wood.

2. Rule 46.13.401 as proposed to be amended provides as follows:

46.13.401 BENEFIT AWARD MATRICES Subsections (1)  
through (2) remain the same.

[On each matrix, all figures remain the same except the maximum benefit award for "wood (cords)" has been changed for each district as follows:]

LC DISTRICTS I, II & III

Wood (cords)	1 Bedroom Home			2 Bedroom Home		
	<u>197</u>	<u>138</u>	<u>167</u>	<u>263</u>	<u>184</u>	<u>223</u>
	<u>263</u>	<u>184</u>	<u>223</u>	<u>328</u>	<u>230</u>	<u>279</u>

Wood (cords)	3 Bedroom Home			4+ Bedroom Home		
	<u>328</u>	<u>230</u>	<u>279</u>	<u>394</u>	<u>276</u>	<u>335</u>
	<u>394</u>	<u>276</u>	<u>335</u>	<u>460</u>	<u>322</u>	<u>391</u>

LC DISTRICT IV

Wood (cords)	1 Bedroom Home			2 Bedroom Home		
	<u>207</u>	<u>145</u>	<u>176</u>	<u>276</u>	<u>193</u>	<u>234</u>
	<u>276</u>	<u>193</u>	<u>234</u>	<u>345</u>	<u>241</u>	<u>293</u>

Wood (cords)	3 Bedroom Home			4+ Bedroom Home		
	<u>345</u>	<u>241</u>	<u>293</u>	<u>413</u>	<u>289</u>	<u>351</u>
	<u>413</u>	<u>289</u>	<u>351</u>	<u>482</u>	<u>338</u>	<u>410</u>

LC DISTRICT V

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>179</u>	<u>126</u>	<u>152</u>	<u>239</u>	<u>167</u>	<u>203</u>
	239	167	203	299	209	254
<hr/>						
	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>299</u>	<u>209</u>	<u>254</u>	<u>359</u>	<u>251</u>	<u>305</u>
	359	251	305	419	293	356

LC DISTRICT VI

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>201</u>	<u>141</u>	<u>171</u>	<u>268</u>	<u>187</u>	<u>228</u>
	268	187	228	335	234	285
<hr/>						
	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>335</u>	<u>234</u>	<u>285</u>	<u>402</u>	<u>281</u>	<u>341</u>
	402	281	341	469	328	398

LC DISTRICT VII

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>170</u>	<u>119</u>	<u>144</u>	<u>226</u>	<u>158</u>	<u>192</u>
	226	158	192	283	198	240
<hr/>						
	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>283</u>	<u>198</u>	<u>240</u>	<u>339</u>	<u>238</u>	<u>288</u>
	339	238	288	396	277	336

LC DISTRICT VIII

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>191</u>	<u>134</u>	<u>162</u>	<u>255</u>	<u>178</u>	<u>217</u>
	<u>255</u>	<u>178</u>	<u>217</u>	<u>319</u>	<u>223</u>	<u>271</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>319</u>	<u>223</u>	<u>271</u>	<u>382</u>	<u>268</u>	<u>325</u>
	<u>382</u>	<u>268</u>	<u>325</u>	<u>446</u>	<u>312</u>	<u>379</u>

LC DISTRICT IX

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>191</u>	<u>134</u>	<u>162</u>	<u>255</u>	<u>178</u>	<u>217</u>
	<u>255</u>	<u>178</u>	<u>217</u>	<u>319</u>	<u>223</u>	<u>271</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>319</u>	<u>223</u>	<u>271</u>	<u>382</u>	<u>268</u>	<u>325</u>
	<u>382</u>	<u>268</u>	<u>325</u>	<u>446</u>	<u>312</u>	<u>379</u>

LC DISTRICT X

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>201</u>	<u>141</u>	<u>171</u>	<u>268</u>	<u>187</u>	<u>228</u>
	<u>268</u>	<u>187</u>	<u>228</u>	<u>335</u>	<u>234</u>	<u>285</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>335</u>	<u>234</u>	<u>285</u>	<u>402</u>	<u>281</u>	<u>341</u>
	<u>402</u>	<u>281</u>	<u>341</u>	<u>469</u>	<u>328</u>	<u>398</u>

LC DISTRICT XI

Wood (cords)	1 Bedroom Home			2 Bedroom Home		
	<u>185</u>	<u>190</u>	<u>157</u>	<u>247</u>	<u>173</u>	<u>210</u>
	<u>247</u>	<u>173</u>	<u>210</u>	<u>309</u>	<u>216</u>	<u>262</u>

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Wood (cords)	3 Bedroom Home			4+ Bedroom Home		
	<u>309</u>	<u>216</u>	<u>262</u>	<u>371</u>	<u>259</u>	<u>315</u>
	<u>371</u>	<u>259</u>	<u>315</u>	<u>432</u>	<u>303</u>	<u>367</u>

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LC DISTRICT XII

Wood (cords)	1 Bedroom Home			2 Bedroom Home		
	<u>226</u>	<u>158</u>	<u>192</u>	<u>302</u>	<u>211</u>	<u>256</u>
	<u>302</u>	<u>211</u>	<u>256</u>	<u>377</u>	<u>264</u>	<u>320</u>

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Wood (cords)	3 Bedroom Home			4+ Bedroom Home		
	<u>377</u>	<u>264</u>	<u>320</u>	<u>452</u>	<u>317</u>	<u>385</u>
	<u>452</u>	<u>317</u>	<u>385</u>	<u>528</u>	<u>369</u>	<u>449</u>

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AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

3. This amendment is proposed to provide additional Low Income Energy Assistance Program (LIEAP) funds for those claimants who utilize wood as a winter heating source. This amendment is necessary to channel these additional funds to the claimants during the winter months, their time of greatest heating need. Without the additional funds, the LIEAP claimants who use wood as a winter heating source could run short of fuel.


4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604, no later than February 27, 1986.

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



the Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604, no later than February 27, 1986.

6. If the agency receives requests for a public hearing for the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 296 persons based on the latest annual LIEAP statistics showing 1,140 households utilizing wood statewide with an average of 2.6 members per household.

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

Certified to the Secretary of State January 20, 1986.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

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

TO: All Interested Persons.

1. On October 17, 1985, the department of administration published notice of the proposed amendment of ARM 2.21.216, 2.21.221, and 2.21.222 relating to annual vacation leave at page 1441 of the 1985 Montana Administrative Register, issue number 19.

2. The rules have been amended with the following changes:

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, job share, 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) - (5) Same as proposed rule.

(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.~~

(7) - (8) Same as proposed rule.

(9) Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Vacation leave credits will not accrue for those hours exceeding 40 hours in a workweek that are paid as overtime hours or are recorded as compensatory time hours. A full-time state employee shall not earn less than or more than the full-time annual leave accrual rate provided by ARM 2.21.223, except as provided in paragraph (10) of this rule.

(10) - (13) Same as proposed rule.

2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS

(1) Same as proposed rule.

(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 annual leave pursuant to 2-18-601, MCA, in the position held with the school district or university system.

(3) - (10) Same as proposed rule.

3. A public hearing was conducted on November 8, 1985, to receive comments on these proposed rule actions. The following comments were received during the comment period.

COMMENT: In ARM 2.21.221(9) the use of the term "irregular work schedule" was questioned. The meaning of this term is unclear and may conflict with its use in wage and hour regulation. The Labor Standards Division suggested use of a different term.

RESPONSE: The department has deleted the term.

COMMENT: ARM 2.21.221(9) as proposed should be amended to credit full-time employees who work schedules other than 40 hours per week with leave in the same manner a part-time employee is credited with leave accrual.

RESPONSE: While this suggestion for recordkeeping is not compatible at this time with the Payroll/Personnel/Position Control system, the department agrees that the amendments as proposed need clarification. ARM 2.21.221(6) and (9) have been revised to clarify the hours against which annual vacation leave may be accrued by an employee.

COMMENT: ARM 2.21.221(12) refers to a preference period, but the policy does not explain what the preference period means.

RESPONSE: ARM 2.21.221(12) refers the reader to ARM 2.21.333. This rule in the Reduction-in-Work Force Policy (RIF) explains RIF preference. It would be an unnecessary repetition to include this provision in the annual leave rules.

COMMENT: Concern was expressed with ARM 2.21.222(2) because it was suggested that some school districts may not be accumulating annual leave for certain employees who may be

eligible for leave. The rule as proposed states an employee must be "eligible for" and "accumulate leave," but there may be times when an eligible school district employee has not actually "accumulated" leave. This should not preclude the employee from applying that time toward the annual leave rate earned, if the employee is employed by the state.

RESPONSE: The department agrees and has deleted "and accumulated" from the sentence.

COMMENT: One person believes that time worked for a school district or the university system should be credited the same for annual leave purposes as for retirement purposes.

RESPONSE: Annual leave is provided for in a different section of the law than the state retirement system. This rule is consistent with the statutory provisions regarding eligible accrual of time for annual leave purposes only.

In the matter of the amend-	)	NOTICE OF THE AMENDMENT
ment of ARM 2.21.133 relating	)	OF ARM 2.21.133 RELATING
to the administration of sick	)	TO THE ADMINISTRATION OF
leave	)	SICK LEAVE

TO: All Interested Persons.

1. On November 14, 1985, the department of administration published notice of the proposed amendment of ARM 2.21.133 relating to sick leave at page 1657 of the 1985 Montana Administrative Register, issue number 21.

2. The rule has been amended with the following changes:

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS (1) -  
(9) Same as proposed rule.

(10) Persons simultaneously employed in two or more positions in the same or in different agencies will accrue sick leave credits in each position according to the number of hours worked. 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. ~~Only hours paid at the regular hourly rate will be counted. Under no circumstances will an employee accrue sick leave credits for more than 40 hours of work in a week.~~

(11) Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Sick leave credits will not accrue for ~~overtime~~ ~~(those hours exceeding 40 hours per in a work week that are paid at time and a half)~~ as overtime hours or are recorded as compensatory time hours.

A full-time state employee shall not earn less than or more than the full-time sick leave accrual rate provided by ARM 2.21.134, except as provided in paragraph (12) of this rule.  
(12) - (14) Same as proposed rule.

3. A public hearing was conducted on December 11, 1985, to receive comments on these proposed rule changes. The department received two comments. The comments, which concerned ARM 2.21.133(10) and (11) were the same comments received on ARM 2.21.221(6) and (9) relating to the accrual of annual leave. The department made the same changes to ARM 2.21.133(10) and (11), that were made to ARM 2.21.221(6) and (9), so that the sick and annual leave rules are consistent.

BY: Ellen Feaver  
Ellen Feaver, Director  
Department of Administration

Certified to Secretary of State January 20, 1986.

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

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of 8.58.419 concerning discri- ) 8.58.419 CONCERNING DIS-  
mination ) CRIMINATION

TO: All Interested Persons:

1. On December 13, 1985 the Board of Realty Regulation published a notice of amendment of the above-stated rule at pages 1907 through 1908, 1985 Montana Administrative Register, issue number 23.

2. The board has amended the rule as proposed with the following change:

"8.58.419 SUSPENSION OR REVOCATION - VIOLATION OF RULES  
- UNWORTHINESS OR INCOMPETENCY (4)(a) through (4)(i) will  
remain the same.

(j) Refusing, because of race, color, sex, national origin or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers."

Auth: 37-51-203, MCA Imp: 37-51-203, MCA

3. The Legislative Council suggested adding the word "sex" to the proposed amendment. The board concurred and the word "sex" has been added.

4. No other comments or testimony were received.

BOARD OF REALTY REGULATION  
GEORGE PIERCE, CHAIRMAN

BY: Keith L. Colbo  
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, January 20, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BUILDING CODES BUREAU

In the matter of the amendments )	NOTICE OF AMENDMENT AND
of 8.70.101 concerning uniform )	ADOPTION OF RULES (BUILD-
building code, 8.70.102 uniform )	ING CODES BUREAU)
housing code, 8.70.103 code for )	
the abatement of dangerous )	
buildings, 8.70.104 model )	
energy code, 8.70.105 uniform )	
mechanical code, 8.70.601 the )	
safety code for elevators and )	
the adoption of new rules 8.70. )	
108 family dwellings, 8.70. )	
109 accessibility standards )	
and 8.70.409 carnivals and )	
similar public amusements and )	
assemblies )	

TO: All Interested Persons:

1. On November 14, 1985, the Building Codes Bureau published a notice of amendments and adoption of the above-stated rules at pages 1680 through 1692, 1985 Montana Administrative Register, issue number 21.

2. A public hearing was held concerning the proposed amendments and adoption of the above-stated rules on December 6, 1985, at 9:30 a.m., in the downstairs conference room, Department of Commerce building, 1430 9th Avenue, Helena, Montana. The written and oral comments and testimony are noted below.

3. The board has amended rules 8.70.101 through 8.70.104 exactly as proposed.

4. The board amended rule 8.70.105 as proposed but the information shown here under subsection (a) was interlined when it should not have been and will still remain part of the rule.

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Mechanical Code, 1985 Edition, as amended, with the following amendments thereto:

(a) The fees contained in section 304 shall be deleted and replaced with the following:

--requested inspection fee - \$30, provided that such service is not in excess of 1 hour in duration, and then \$15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for

these items."

The remainder of the rule was adopted as proposed.

5. The board amended 8.70.302 as proposed with the following changes:

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1)(b)(i) through (x) will remain the same as proposed.

(xi) Sec. 1004 (a), Materials, page 75, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, lead or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. CPVC and PB water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

(xii) through (2) . . ." will remain the same.

Auth: 50-60-203, 504, 508, MCA Imp: 50-60-203, 504, 508, MCA

6. The board amended 8.70.601 as proposed with the following change:

"8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ANSI/ASME A 17.1 - 1984 AND ANSI/ASME A17.1A - 1985 SUPPLEMENT TO SAFETY CODE FOR ELEVATORS AND ESCALATORS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Safety Code for Elevators and Escalators, ANSI/ASME A 17.1 - 1985 1984 Edition, along with ANSI/ASME A 17.1a - 1985 Supplement to Safety Code for Elevators and Escalators. A copy of the Safety Code for Elevators and Escalators ANSI/ASME A 17.1 - 1984 can be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

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

Auth: 50-60-203, 702, MCA Imp: 50-60-203, 702, MCA

7. New rules I (8.70.108), II (8.70.109) and III (8.70.409) were adopted exactly as proposed.



8. The board has thoroughly considered all oral and written comments received:

COMMENT: The Administrative Code Committee noted that the change in the fee structures for the uniform mechanical code, the uniform building code and the uniform plumbing code should indicate that the increases in the fees were necessitated by the need for effective enforcement.

RESPONSE: The Bureau agrees and has noted the reason further in its amendment of the rule affected.

COMMENT: The Administrative Code Committee has noted that Section 50-60-508, MCA should be noted as authority for amending ARM 8.70.105 and 302.

RESPONSE: The Bureau agrees and the authority section has been properly noted.

COMMENT: The Bureau noted that with respect to ARM 8.70.105, the wording at the end of the rule commencing with "requested inspection fee . . ." was interlined when it should not have been and should still remain a part of the rule.

RESPONSE: There were no objections or comments and the change has been made.

COMMENT: With respect to the use of CPVC in plumbing installations, it was noted that CPVC creates problems in extreme temperatures in thawing and bursting. It was also noted that there may be problems with toxic chemical penetration, and should not be allowed for water systems.

RESPONSE: The Bureau felt that the use of such pipe had not been shown to present a hazard and there was no basis to assume that it presented unusual difficulties in use and installation. It was also noted that CPVC was to have been included in the original rule as proposed but was left out inadvertently.

9. No other comments or testimony were received.

BUILDING CODES BUREAU  
W. JAMES KEMBEL, ADMINISTRATOR

BY:   
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, January 20, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BUILDING CODES BUREAU

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of 8.70.407 concerning elec- ) 8.70.407 ELECTRICAL IN-  
trical inspection fees ) SPECTION FEES

TO: All Interested Persons:

1. On November 14, 1985, the Building Codes Bureau published a notice of amendment of the above-stated rule at pages 1693 through 1695, 1985 Montana Administrative Register, issue number 21.

2. On December 6, 1985, at 9:30 a.m., a public hearing was held in the downstairs conference room, Department of Commerce building, 1430 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rule.

3. The board has amended the rule exactly as proposed.

4. No comments or testimony were received.

BUILDING CODES BUREAU  
W. JAMES KEMBEL, ADMINISTRATOR

BY:   
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, January 20, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE SCIENCE AND TECHNOLOGY DEVELOPMENT BOARD

In the matter of the adoption of new rules pertaining to the operations of the Science and Technology Development Board ) NOTICE OF ADOPTION OF NEW  
 ) RULES I (8.122.101), II (8.  
 ) 122.201) THROUGH IV (8.  
 ) 122.203), V (8.122.301)  
 ) THROUGH XIV (8.122.310), XV  
 ) (8.122.316) THROUGH XXIII  
 ) (8.122.325), XXIV (8.122.331)  
 ) THROUGH XXXIII (8.122.340),  
 ) XXXIV (8.122.346) THROUGH  
 ) XXXIX (8.122.351) PERTAINING  
 ) TO THE OPERATIONS OF THE  
 ) SCIENCE AND TECHNOLOGY  
 ) DEVELOPMENT BOARD

TO: All Interested Persons:

1. On December 19, 1985, at 10:00 a.m., the Science and Technology Development Board held a public hearing in the conference room of the Department of Commerce at 1424 9th Avenue, Helena, Montana, to consider the adoption of the above-stated new rules at pages 1836 through 1845, 1985 Montana Administrative Register, issue number 22.

2. The board has adopted Rules II (8.122.201) through VIII (8.122.304), X (8.122.306) through XIII (8.122.309), XV (8.122.316) and XVI (8.122.317), XVIII (8.122.320) through XXI (8.122.323), XXIV (8.122.331) through XXXIX (8.122.351) exactly as proposed.

3. The board has adopted Rules I (8.122.101), IX (8.122.305), XIV (8.122.310), XVII (8.122.318), XXII (8.122.324), XXIII (8.122.325) as proposed with the following changes and added new Rule 8.122.319.

"I. (8.122.101) ORGANIZATIONAL RULE (1) through (4) will remain the same.

(5) Inquiries regarding the board, including a list of its members, may be addressed to the Montana Science and Technology Development Board, Department of Commerce, Capitol Station, Helena, Montana 59620. The board's street address is 1424 Ninth Avenue, Helena, Montana."

Auth: 2-4-201, MCA Imp: 2-4-201, MCA

"IX (8.122.305) ELIGIBILITY Applicants eligible for technology investment by the board include non-profit and for-profit institutions, businesses or industries located in or planning to locate a facility but not necessarily the headquarters in Montana, and educational institutions incorporated or unincorporated within the state."

Auth: 90-3-203, MCA Imp: 90-3-203, MCA

"XIV (8.122.310) FORMAL PROPOSAL Formal proposals for technology investments shall be made by delivering the number of 16 copies of a proposal deemed necessary by the administrator to the Montana Science and Technology Alliance, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620. Guidelines for preparing formal proposals to the board are available at the board's office."

Auth: 90-3-203, MCA Imp: 90-3-203, MCA

"XVII (8.122.318) INVESTMENT COMMITTEE (1) through (3) will remain the same.

(4) If the committee recommends that a proposal be modified, the applicant will be consulted as to whether the modifications are acceptable. If the modifications are acceptable, it is the responsibility of the applicant to modify the proposal. ~~†~~The modified proposal will be forwarded to the executive committee with a recommendation of approval. If the modifications are not acceptable to the applicant, the investment committee will recommend the withdrawal or approval of the unmodified proposal."

Auth: 90-3-203, MCA Imp: 90-3-203, MCA

"XXII (8.122.324) PAYBACK OF INVESTMENT Section 90-3-302(1), MCA, states that as part of the investment agreement, the board will require payment of a return that it considers commensurate with the risk of its original technology investment. The terms of the payback arrangement will be negotiated as part of the investment agreement."

Auth: 90-3-203, MCA Imp: 90-3-302, MCA

"XXIII (8.122.325) MONTHLY/QUARTERLY REPORTS remains the same except for the deletion of unnecessary subsection number (1)."

Auth: 90-3-203, MCA Imp: 90-3-203, MCA

"8.122.319 TECHNOLOGY TRANSFER COMMITTEE The technology transfer committee meets at the call of the chair and will conduct preliminary financial and technical evaluations of technology transfer proposals. Upon completion of the review, the committee will forward the proposal along with the recommendation to the investment committee. The technology transfer committee may also review requests for technical assistance."

Auth: 90-3-203, MCA Imp: 90-3-203, MCA

4. The Montana Science and Technology Development Board has thoroughly considered all oral and written comments received:

STATEMENT: On December 19, 1985 at 10:00 a.m., the Board held a public hearing in the Governor's Reception Room on the

proposed administrative rules. No one presented oral testimony. The Board received three written comments from interested parties outside of the hearing and several oral comments from the legal staff of the Legislative Council. Most of the suggested changes were proposed by the Legislative Council Staff. All comments received during the public comment period endorsed the concept of the rules and some suggested minor changes as noted below. Minor changes in style have been made in these proposed rules.

STATEMENT: Rule 8.122.319, which describes the functions of the technology transfer committee, was inadvertently omitted from the board's original notice of hearing on the proposed adoption of rules. This rule has been included in the board's rule adoption.

STATEMENT: At the suggestion of the legal staff of the Legislative Council, the citations of the statutes implemented by the proposed rules have been changed from 90-3-203, MCA, to 90-3-201 in the case of Rule VI (8.122.302), 90-3-301 in the case of Rules XXIX (8.122.336) and XXX (8.122.337), and 90-3-302 in the case of Rules XXII (8.122.324) and XXXI (8.122.338).

COMMENT ON RULE I (8.122.101): This rule should contain a listing of the board members.

RESPONSE: The board feels due to the size of the board and its changing personnel roster, the list of board members in the rule would have to be updated frequently. The board feels to comply with the intent of this comment, a list of board members would be available upon request from the alliance and has made this modification in the rule.

COMMENT ON RULE V (8.122.301): This rule needlessly duplicates that statute.

RESPONSE: The Board feels inclusion of this rule is necessary to a proper understanding of the program by the reader.

COMMENT: The term "small business" should be defined more precisely in the rule.

RESPONSE: The board feels inclusion of a definition of the term "small business" in the rule is unnecessary and further feels the standard definition of a small business by the U.S. Small Business Administration of less than 500 employees is universally acceptable.

COMMENT ON RULE VI (8.122.302): This rule needlessly duplicates the statute.

RESPONSE: The board feels inclusion of this rule is necessary to a proper understanding of the program by the reader.

COMMENT ON RULE VII (8.122.303): This rule needlessly duplicates the statute.

RESPONSE: The board feels inclusion of this rule is necessary to a proper understanding of the program by the reader.

COMMENT: Technical advisory council members should be actively sought via newspaper articles and then appointed and utilized.

RESPONSE: The board concurs and plans to implement technical advisory councils in the future.

COMMENT ON RULE VIII (8.122.304): This rule needlessly duplicates the statute.

RESPONSE: The board feels inclusion of this rule is necessary to a proper understanding of the program by the reader.

COMMENT ON RULE IX (8.122.305): The rule should clarify that it is not necessary for an applicant to locate their headquarters in Montana, that location of a facility used in the proposed project satisfies this requirement.

RESPONSE: The board concurs that clarification is needed and has made this modification in the rule.

COMMENT ON RULE X (8.122.306): The rule should further clarify that the applicant's headquarters need not be located in Montana as long as a facility involved in the proposed project is located in Montana.

RESPONSE: The board feels this concept is adequately addressed in the modification of Rule IX (8.122.305).

STATEMENT: Rule XIV (8.122.310) requested the applicant to submit 16 copies of the proposal to the alliance. The board has modified this rule to allow the administrator the flexibility in determining the necessary number of copies. This will ensure that the project applicant will only have to submit the number of copies actually needed and thereby save the applicant additional expense.

COMMENT ON RULE XVII (8.122.318): The rule should clarify that if the applicant deems the modifications in the proposal

requested by the investment committee are acceptable, it is the responsibility of the applicant and not of the alliance to make the modifications.

RESPONSE: The board concurs and has made this modification in the rule.

COMMENT ON RULE XXIII (8.122.320): In reference to the monthly or quarterly reports covered in this rule and in order to verify the project objectives are being met, the rules should state that the objectives of the project must be part of the original project proposal.

RESPONSE: The board feels that the proposal writing guidelines are adequately addressed in the alliance's "program description". This document is forwarded to each project proposer to use to compile their formal proposal.

COMMENT ON RULE XXXVII (8.122.349): This rule needlessly duplicates the statute.

RESPONSE: The board feels inclusion of this rule is necessary to a proper understanding of the program by the reader.

COMMENT ON RULE XXXIX (8.122.351): This rule needlessly duplicates the statute.

RESPONSE: The board feels inclusion of this rule is necessary to a proper understanding of the program by the reader.

5. No other comments or testimony were received.

SCIENCE AND TECHNOLOGY  
DEVELOPMENT BOARD  
R. STEPHEN BROWNING  
CHAIRMAN

BY: Keith L. Colbo  
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, January 20, 1986.

In the matter of the amendment ) NOTICE OF AMENDMENT  
of rule 12.3.106 relating to ) OF RULE 12.3.106  
hunting by certain disabled )  
persons from parked vehicles )

1. On October 17, 1985, the Montana Department of Fish, Wildlife and Parks published a proposal to amend rule 12.3.106 relating to hunting by certain disabled persons from parked vehicles at pages 1468-1470, 1985 Montana Administrative Record, issue number 19.

**COMMENT:** One commentator stated only that the rules might be abused and he therefore would not favor it. Another opposed the rules because of possible danger to school children and livestock from disabled hunters.

**RESPONSE:** The Department based the proposed rules on the legislation permitting certain disabled hunters to hunt as provided in the rules. The Department will continue to promote safety on the part of all hunters.

COMMENT: The Legislative Council staff commented that the rules unnecessarily repeat statutory language.

**RESPONSE:** The Department drafted this amendment so that it would provide a comprehensive, understandable and helpful guide for the public. The Department believes that to the extent statutory language is repeated, it is necessary to achieve this objective.

3. The Department has adopted the amendment as proposed.

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

Certified to the Secretary of State January 20,  
1986.



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

In the matter of the adoption ) NOTICE OF ADOPTION OF RULES  
of rules relating to migratory) RELATING TO MIGRATORY  
game bird avicultural permits ) GAME BIRD AVICULTURAL  
PERMITS

TO: All interested persons

1. On October 17, 1985, the Montana Department of Fish, Wildlife and Parks published proposed rules relating to the issuance of migratory game bird avicultural permits at pages 1471-1473 of the 1985 Montana Administrative Register, Issue No. 19.

2. The department has adopted the rules with the following changes:

12.6.1801 (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.~~ "Federal waterfowl sale and disposal permit" means a waterfowl sale and disposal permit issued pursuant to 50 C.F.R. § 21.25 (1985).

(4) "Federal collection permit" means a special purpose permit issued pursuant to 50 C.F.R. § 21.27 (1985) for the purpose of authorizing the permit holder to take live migratory game birds or their eggs from the wild.

(5) "Federal banding or marking permit" means a banding or marking permit issued pursuant to 50 C.F.R. § 21.22 (1985).

(6) "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: 87-2-807, MCA

IMP: 87-2-807, MCA

12.6.1802 (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.~~ current application for a federal waterfowl sale and disposal permit and a \$15.00 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 requested.

(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~~ eggs taken under an aviculture permit remain the property of the state, must be kept at a facility within Montana, 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: 87-2-807, MCA

IMP: 87-2-807, MCA

12.6.1803 (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 specified in the agricultural permit holder's federal banding or marking permit.

AUTH: 87-2-807, MCA

IMP: 87-2-807, MCA

12.6.1804 (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: 87-2-807, MCA

IMP: 87-2-807, MCA

3. Several comments on the proposal were received. The following is a summary of those comments and the Department's responses.

Comment: The Legislative Council staff questioned orally the authority of the Department to limit avicultural permittees to Montana residents.

Response: The statement of intent accompanying H.B. 581 states, "It is the further intent of the legislature that the department provide necessary guidelines for the issuance and exercise of avicultural permits not stated in the bill." The Department has determined that limiting permittees to residents of this state is not necessary. Because of the continuing enforcement responsibilities of the department with respect to the activities of avicultural permit holders, however, the rule as adopted requires in Rule II(5) that all birds and eggs taken under an avicultural permit must be kept at a facility within Montana.

Comment: Several commentators stated that requiring applicants to submit copies of their federal permits was inappropriate because those permits may not be issued until a state permit is obtained. These commentators also stated that the proposed rule was unclear as to which federal permit was intended.

Response: The rule as adopted requires applicants to submit a copy of their current application for a federal waterfowl sale and disposal permit, rather than the permit itself.

Comment: One commentator suggested that the showing of necessity in Rule II (3) in connection with a request to collect live migratory game birds was unnecessarily burdensome.

Response: The rule as adopted requires a statement of reasons why the taking of live birds is requested.

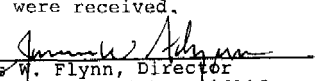
Comment: Several commentators requested that the rule be changed to permit a refund of all or part of the \$25 fee in the event the application is denied, as denial would not entail the ongoing cost of inspection and enforcement.

Response: The department has not altered the rule to provide for a refund, as the legislation provides for a fee not to exceed the cost of issuing the permit. The department has, however, lowered its estimate of this cost from \$25 to \$15.

Comment: The commentators pointed out that the proposed marking requirements could be inconsistent with federal marking requirements.

Response: The rule as adopted requires marking as specified in the federal banding or marking permit.

No other comments or testimony were received.

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

Certified to Secretary of State January 20, 1986.

2-1/30/86

Montana Administrative Register

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

In the matter of the adoption )	NOTICE OF ADOPTION OF
of rules relating to the )	RULES RELATING TO THE
reporting and tattooing of )	REPORTING AND TATTOOING
bears, wolves, tigers, )	OF BEARS, WOLVES, TIGERS,
mountain lions and coyotes )	MOUNTAIN LIONS AND COYOTES
captured or held in captivity )	CAPTURED OR HELD IN CAPTIVITY

To: All interested persons

1. On October 17, 1985 the Montana Department of Fish, Wildlife and Parks published a proposal to adopt rules relating to the reporting and tattooing of bears, wolves, tigers, mountain lions and coyotes captured or held in captivity. The notice was published at pages 1465-1467, 1985 Montana Administrative Record, Issue Number 19.

2. The department has adopted the rules as proposed with the following changes:

12.6.1901 (RULE 1) ~~REPORTING-AND-TATTOOING-OF-BEARS,~~  
~~WOLVES,-TIGERS,-MOUNTAIN-LIONS-AND-COYOTES-CAPTURED-OR-HELD-IN~~  
~~CAPTIVITY--(1) DEFINITIONS~~ For purposes of this rule the following definitions apply:

~~(a)~~ (1) "Bear" means a member of any species of the genus Ursus.

~~(b)~~ (2) "Coyote" means a member of the species Canis latrans, including any canine hybrid which is one-half or more coyote.

~~(c)~~ (3) "Mountain lion" means a member of the species Felis concolour.

~~(d)~~ (4) "Tattoo" means a permanent tattoo or other permanent identification approved by the department.

~~(e)~~ (5) "Tiger" means a member of the species Felis tigris.

~~(f)~~ (6) "Wolf" means a member of the species Canis lupus, including any canine hybrid which is one-half or more wolf.

AUTH: 87-1-231-87-1-234, MCA IMP: 87-1-231-87-1-234, MCA

~~(2)--Report-of-capture-or-captivity-penalty. 12.6.1902~~  
REPORT OF CAPTURE OR CAPTIVITY-PENALTY ~~(a)~~ (1) 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)~~ (2) Failure to report as provided by subsection (2)(a) is a misdemeanor punishable as provided in 87-1-102, MCA.

~~(e)~~(3) 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.

AUTH: 87-1-231-87-1-234, MCA IMP: 87-1-231-87-1-234, MCA

~~(3)~~--~~Fatteseing~~ 12.6.1903 TATTOOING

~~(a)~~(1) Except as provided in ARM 12.6.903 (5), Each animal reported as required by ~~subsection--(2)~~ ARM 12.6.1902 shall be permanently tattooed with an identifying number assigned by the department, within 15 days after the assignment of the number.

~~(b)~~(2) 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.

~~(e)~~(3) 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)~~(4) The tattoo shall be certified by either a veterinarian or a department employee.

(5) The department may permit ear tags or ear tattoos to be used as permanent identification of animals born and kept in captivity if the owner or breeder certifies to the department that the animals are intended to be slaughtered for their pelage prior to the age of one year. Any animals identified with ear tags or ear tatoos that are not slaughtered prior to the age of one year must be reported and tattooed as provided in ARM 12.6.1902(1) and 12.6.1903(1) respectively.

AUTH: 87-1-201, 87-1-231, MCA IMP: 87-1-231-87-1-234, MCA

~~(4)~~ 12.6.1904 FEES The fee for reports to the department under ~~subsection--(2)~~ ARM 12.6.1902 is: ~~(a)~~(1) \$10 for each animal, except that multiple young born in captivity may be registered as a single animal if the owner or breeder certifies to the department that the animals are intended to be slaughtered for their pelage prior to the age of one year;

~~(b)~~(2) if six or more animals (other than multiple young born in captivity) 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.

AUTH: 87-1-201, 87-1-232, MCA IMP: 87-1-231-87-1-234, MCA

~~(5)~~ 12.6.1905 EXCEPTIONS The requirements of ARM 12.6.1901 through 12.6.1904 do not apply with respect to those animals: ~~(a)~~(1) 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)(2) captured and released as part of a scientific, educational or research program as certified by the department.

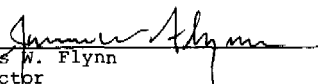
AUTH: 87-1-201, 87-1-234, MCA IMP: 87-1-231-87-1-234, MCA

3. Two comments on the proposal were received. The following is a summary of the comments and the Department's response.

Comment: One commentator favored the proposal without advancing reasons for his support. Another commented that the proposed rule did not adequately address animals born and reared in captivity.

Response: The Department has made two changes in response to this comment. First, it may permit a breeder to use ear tags or ear tattoos to identify animals born in captivity if they are to be slaughtered for their pelage prior to one year of age. In addition, a breeder may treat multiple young born in captivity as a single animal and register the entire litter for a single fee. Any animals not slaughtered as intended will then have to be reported and tattooed as would any other animal held in captivity.

No other comments or testimony were received.

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

Certified by Secretary of State January 20, 1986.

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

In the matter of the	)	NOTICE OF ADOPTION OF
adoption of rules	)	RULES ESTABLISHING A
establishing a fish and	)	FISH AND GAME
game crimestoppers program.	)	CRIMESTOPPERS PROGRAM
		12.6.2001 through 12.6.2004

TO: All interested persons.

1. On October 17, 1985, the Montana Department of Fish, Wildlife and Parks published proposed rules establishing a fish and game crimestoppers program at pages 1474-1476 of the 1985 Montana Administrative Register, Issue No. 19.

2. Oral comments were received from the Legislative Council staff. The following is a summary of those comments, and the Department's responses:

**COMMENT:** The Legislative Council staff questioned the source of the Department's authority to limit awards to \$1,000 and to exclude employees of the Department and their dependents and perpetrators of the reported offense from eligibility to receive a crimestoppers award.

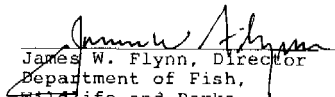
**RESPONSE:** The statement of intent accompanying S.B. 209 states, "It is contemplated that the department establish rules for instituting an award program, including criteria to be used in determining who will receive the rewards and the amount of the rewards in order to guarantee that the rewards be granted through a reasonable and consistent procedure" (emphasis added). The Department believes that this language accords it adequate flexibility to adopt these provisions, and also that they are consistent with the purpose of the legislation.

**COMMENT:** The Legislative Council staff commented that certain portions of the rules unnecessarily repeat statutory language.

**RESPONSE:** The Department drafted the proposed rules so that they would be a comprehensive, understandable and helpful guide to the public on the fish and wildlife crimestoppers program. To the extent any statutory language has been repeated, it was necessary to achieve this objective.

No other comments or testimony were received.

3. The Department has adopted the rules as proposed.

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

Certified to the Secretary of State January 20,  
1986.

2-1/30/86

Montana Administrative Register

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I (42.25.1601) relat-) ing to the electrical energy ) production license tax and ) line loss. )	NOTICE OF THE ADOPTION of Rule I (42.25.1601) relating to the electrical energy pro- duction license tax and line loss.
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TO: All Interested Persons:

1. On August 29, 1985, the Department published notice of the proposed adoption of rule I (42.25.1601) relating to the electrical energy production license tax and line loss at pages 1222 and 1223 of the 1985 Montana Administrative Register, issue number 16.

2. The Department has adopted the rule with the following changes:

RULE I (42.25.1601) ELECTRICAL ENERGY PRODUCER'S LICENSE  
TAX: LINE LOSS (1) Each person or other organization engaged in the generation of electrical energy shall be obligated to file tax returns and submit payment of the tax due. "Person" is defined as any individual, corporation, partnership, association, joint stock company, or syndicate.

(a)--Only one tax return shall be filed for each generating facility. This return will reflect 100% of the production for the tax period and include payment of the total tax liability for such facility.

(b)--Each generating facility with multiple partners or other interest owners shall designate one partner to prepare and file the tax return. This partner shall also be responsible for responding to and paying any subsequent assessment resulting from a department audit.

(c)--Nothing in these rules shall be construed to prevent the partner actually filing the tax return from recovering the proportionate share of the tax liability from other interest owners in the generating facility.

(2) (1) Deductions from total kilowatt hours generated will be allowed only for actual and necessary plant use. No deduction is allowed for any line losses.

AUTH: 15-1-201 MCA; IMP: 15-51-101 MCA.

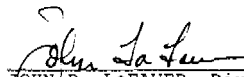
3. The Department received comments from Puget Sound Power & Light Company, Washington Water Power Company, Portland General Electric Company, and the Montana Power Company. All the comments received were in strong opposition in part 1 of Rule I which required one partner in a jointly owned electrical generating facility to file the return and pay the tax for all the partners of the facility. Based upon these comments, the Department has agreed to withdraw part 1. Part 2 of the rule pertains to line losses in computing total kilowatt hours gener-



ated. The Department received no comments on this portion of the rule and has elected to keep this portion of the rule intact.

No further comments or testimony were received.

4. The authority for the rule is § 15-1-201, MCA, and the rule implements § 15-51-101, MCA.

  
\_\_\_\_\_  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 01/20/86

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE ADOPTION
of Rules I (42.25.1701) )	of Rules I (42.25.1701)
through IV (42.25.1704) re- )	through IV (42.25.1704)
lating to jointly owned )	relating to jointly owned
generating facilities and the)	generating facilities and the
coal tax rebate. )	coal tax rebate.

TO: All Interested Persons:

1. On October 17, 1985, the Department published notice of the proposed adoption of rules I (42.25.1701) through IV (42.25.1704) relating to jointly owned generating facilities and the coal tax rebate at pages 1548 through 1550 of the 1985 Montana Administrative Register, issue no. 19.

2. The Department has adopted rules II (42.25.1702) through IV (42.25.1704) as proposed.

3. The Department has adopted rule I (42.25.1701) with the following changes:

RULE I (42.25.1701) DEFINITION OF "THIRD PARTY INTER-MEDIARY" (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 either the base consumption level or the current consumption level depending upon when that purchase occurred 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.

4. A public hearing was held on November 18, 1985, to consider the proposed adoption of these rules. Jerry Foster, Administrator, Lynn Chenoweth, Assistant Administrator, and Richard Marble, of the Natural Resource and Corporation Tax Division, appeared on behalf of the Department. James D. Mockler, representing the Montana Coal Council and Kenneth L. Williams, representing the Western Energy Company, presented testimony at the hearing.

5. Response to Comments - In responding to some of the major comments made on the proposed rules, it is well to restate the purpose of these rules. The purpose of these rules is to establish a method by which the partners in a jointly owned coal

using facility will be allocated a portion of the facility's total consumption when coal purchases do not properly reflect the actual use and benefit. These rules were designed to prevent suspect purchase arrangements from being used, in the case of jointly owned coal using facilities, to qualify for tax rebates when those rebates are not, in fact, justified under the law. The rules state that the consumption level may be determined by either actual coal consumed, electrical generation received, percentage of ownership in the facility or any other reasonable method determined by the Department of Revenue. The various alternatives were placed in the rules to allow the Department to determine the consumption level for each partner based upon the substance of the transaction rather than the form. The primary concern voiced by both the Montana Coal Council and Western Energy was that the consumption level for partners in a jointly owned facility should be determined by actual purchases made by each partner and that the Department should not be concerned with nor try to determine actual coal consumption for each partner. It is the Department's position that if purchases were used to determine consumption amounts, one partner could purchase the coal for all partners and thereby either generate a credit where one was not intended or generate a larger credit than was intended by House Bill No. 607.

Rule I (42.25.1701) - Both Montana Coal Council and Western Energy Company thought the word "base" should be inserted in the third sentence behind the phrase "be included in" to add clarification and to conform with statutory language. The term "consumption level" as used in Rule I refers to either base level or current level consumption. Since there appears to be some confusion regarding this matter, the Department agrees that the rule should be amended to be clearer. The phrase "the consumption level" has been deleted and the phrase "either the base consumption level or the current consumption level depending upon when the purchase occurred" inserted in its place.

Rule II (42.25.1702) - Both Montana Coal Council and Western Energy Company recommended shifting the rule's focus away from consumption and toward purchase on the basis that the Department does not have adequate expertise to track coal consumption. Both commentators proposed changes in the rule to accomplish this result. Their proposals would change the meaning of the rule to say that each facility will have a base consumption level. This is opposite of what is intended and what is stated in the first sentence. Changing coal "consumed" to coal "purchased" defeats the purpose of the rule and would allow one partner to purchase all the coal used in a jointly owned facility. This could result in a credit being generated which would be greater than what was anticipated under the statute. The language proposed to be deleted is essential to the Department to allow for a determination based upon the substance of the transaction rather than the form. The Department is adopting the rule as proposed.


Rule III (42.25.1703) - Western Energy Company feels that as a point of clarification, section (1) is not necessary and is adequately covered by section (2). Section (1) does establish

that a purchase of an interest in a coal using facility will not be considered a qualified purchaser of coal unless the base consumption levels are adjusted. This statement is a necessary part of the rule and should remain. The Department is adopting the rule as proposed.

Rule IV (42.25.1704) - The Montana Coal Council suggested that rule IV is unnecessary and should be deleted because rules I through III cover everything. Western Energy suggested changes in the rule to switch the emphasis from coal consumption and toward coal purchases. Montana Coal Council submitted a draft rule for consideration with the same emphasis. Rule IV as written appears to be very clear. To change the orientation from consumption to purchases completely changes the intent of the rule as previously stated in our explanation of Rule II.

No further comments or testimony were received.

6. The authority for the rules is § 15-35-122, MCA, and the rules implement §§ 15-30-102 and 15-35-202, MCA.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 01/20/86

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

in the matter of the adoption )	NOTICE OF ADOPTION OF A RULE
of a rule establishing limits )	ESTABLISHING LIMITS ON RE-
on receipts from political )	CEIPTS FROM POLITICAL COMMIT-
committees; and the amendment )	TEES; AND AMENDMENTS TO EX-
of ARM 44.10.321, 44.10.323, )	PENDITURES - DEFINITION AND
44.10.531, and 44.12.109 )	REPORTING REQUIREMENTS; PER-
)	SONAL FINANCIAL DISCLOSURE BY
)	ELECTED OFFICIALS

TO: All interested persons.

1. On October 17, 1985, the Agency published notice of the proposed adoption of Rule I and the proposed amendment of ARM 44.10.321, 44.10.323, 44.10.531, and 44.12.109. A hearing was held on November 8. The proposals appear on pages 1551-1554 of Issue 19 of the Montana Administrative Record (MAR Notice 44-2-310).

2. Rule I 44.10.331 is adopted as proposed. The rule places limits on campaign receipts from political committees by candidates for the House and Senate of \$800 and \$1300 respectively. The adoption of the rule is mandated by §13-37-218, MCA and the Agency has no discretion in the matter. The rule is authorized by §13-37-218 and it implements that section.

3. Due to a number of objections from the public and from the Administrative Code Committee, the proposed amendment to ARM 44.10.321 is not adopted.

4. The proposed amendment to ARM 44.10.323 is adopted almost identically as proposed. The amendment provides as follows (new language is underlined):

44.10.323. EXPENDITURES - DEFINITION (1) and (2) remain the same as present rule.

(3) "Independent expenditure" means an expenditure for communications advocating the success or defeat of a candidate 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

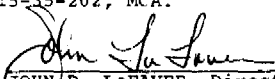
5. The amendment as adopted differs from that proposed only with the addition of the words "for communications advocating the success or defeat of a candidate." Although no objections from the public were received to the rule as proposed, this small change more clearly expresses the intention of the Agency. "Independent expenditures" have been the subject of a certain amount of litigation in other jurisdictions under laws similar to Montana's, and this rule represents the state of the law. It obviates the need to write opinion

that a purchase of an interest in a coal using facility will not be considered a qualified purchaser of coal unless the base consumption levels are adjusted. This statement is a necessary part of the rule and should remain. The Department is adopting the rule as proposed.

Rule IV (42.25.1704) - The Montana Coal Council suggested that rule IV is unnecessary and should be deleted because rules I through III cover everything. Western Energy suggested changes in the rule to switch the emphasis from coal consumption and toward coal purchases. Montana Coal Council submitted a draft rule for consideration with the same emphasis. Rule IV as written appears to be very clear. To change the orientation from consumption to purchases completely changes the intent of the rule as previously stated in our explanation of Rule II.

No further comments or testimony were received.

6. The authority for the rules is § 15-35-122, MCA, and the rules implement §§ 15-30-102 and 15-35-202, MCA.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 01/20/86

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF A RULE
of a rule establishing limits )	ESTABLISHING LIMITS ON RE-
on receipts from political )	CEIPTS FROM POLITICAL COMMIT-
committees; and the amendment )	TEES; AND AMENDMENTS TO EX-
of ARM 44.10.321, 44.10.323, )	PENDITURES - DEFINITION AND
44.10.531, and 44.12.109 )	REPORTING REQUIREMENTS; PER-
)	SONAL FINANCIAL DISCLOSURE BY
)	ELECTED OFFICIALS

TO: All interested persons.

1. On October 17, 1985, the Agency published notice of the proposed adoption of Rule I and the proposed amendment of ARM 44.10.321, 44.10.323, 44.10.531, and 44.12.109. A hearing was held on November 8. The proposals appear on pages 1551-1554 of Issue 19 of the Montana Administrative Record (MAR Notice 44-2-310).

2. Rule I 44.10.331 is adopted as proposed. The rule places limits on campaign receipts from political committees by candidates for the House and Senate of \$800 and \$1300 respectively. The adoption of the rule is mandated by §13-37-218, MCA and the Agency has no discretion in the matter. The rule is authorized by §13-37-218 and it implements that section.

3. Due to a number of objections from the public and from the Administrative Code Committee, the proposed amendment to ARM 44.10.321 is not adopted.

4. The proposed amendment to ARM 44.10.323 is adopted almost identically as proposed. The amendment provides as follows (new language is underlined):

44.10.323 EXPENDITURES - DEFINITION (1) and (2) remain the same as present rule.

(3) "Independent expenditure" means an expenditure for communications advocating the success or defeat of a candidate 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

5. The amendment as adopted differs from that proposed only with the addition of the words "for communications advocating the success or defeat of a candidate." Although no objections from the public were received to the rule as proposed, this small change more clearly expresses the intention of the Agency. "Independent expenditures" have been the subject of a certain amount of litigation in other jurisdictions under laws similar to Montana's, and this rule represents the state of the law. It obviates the need to write opinion

letters whenever the question comes up. The Administrative Code Committee objected that this and the following amendment had been considered and rejected by the 1985 legislative session. That is not so; the subject has never been considered by the legislature.

6. The proposed amendment to ARM 44.10.532 is adopted almost identically as proposed. The amendment provided 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, and the fact that the expenditure was independent.

AUTH: 13-37-114, MCA

IMP: 13-37-230, MCA

7. The only change from the rule as proposed is the addition of the words "and the fact that the expenditure was independent." It is necessary that such expenditures be identified so that they will not be counted as in-kind contributions. The Montana Chamber of Commerce objected that the rule would require reporting by individuals, but that is not so; it is a pervasive feature of both the law and our rules that only candidates for office and committees file reports. The Chamber has succeeded in identifying a tree, but has overlooked the forest, so to speak.

8. The amendment to ARM 44.12.519 is adopted as proposed. As noted on page 1554 of MAR Issue 19, the amendment only reflects an amendment to the underlying statute. The amendment is authorized by §5-7-111, MCA, and it implements §5-7-102(12) and 5-7-213, MCA.

BY: 

PEG KRIVEC, Commissioner

Certified to the Secretary of State January 20, 1986.



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

In the matter of the emer- )  
gency amendment of Rule )  
46.13.401 pertaining to )  
LIEAP maximum benefit awards )  
for wood )  
)

NOTICE OF EMERGENCY AMEND-  
MENT OF RULE 46.13.401  
PERTAINING TO LIEAP MAXIMUM  
BENEFIT AWARDS FOR WOOD

TO: All Interested Persons

1. This emergency rule is necessary to provide additional Low Income Energy Assistance Program (LIEAP) funds for those claimants who utilize wood as a winter heating source. This amendment is necessary immediately to timely channel these additional funds to the claimants during the winter months, their time of greatest heating need. Without the additional funds, the LIEAP claimants who use wood as a winter heating source could run short of fuel which would imperil their health and safety. Consequently, the immediacy of peril to public health and safety properly calls for an emergency amendment to the rule.

2. Rule 46.13.401 is amended as follows:

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (2) remain the same.

[On each matrix, all figures remain the same except the maximum benefit award for "wood (cords)" has been changed for each district as follows:]

I.C. DISTRICTS I, II & III

	<u>1 Bedroom Home</u>			<u>2 Bedroom Home</u>		
Wood (cords)	<u>197</u>	<u>138</u>	<u>167</u>	<u>263</u>	<u>184</u>	<u>229</u>
	<u>263</u>	<u>184</u>	<u>223</u>	<u>328</u>	<u>230</u>	<u>279</u>
<hr/>						
	<u>3 Bedroom Home</u>			<u>4+ Bedroom Home</u>		
Wood (cords)	<u>328</u>	<u>230</u>	<u>279</u>	<u>394</u>	<u>276</u>	<u>335</u>
	<u>394</u>	<u>276</u>	<u>335</u>	<u>460</u>	<u>322</u>	<u>391</u>

LC DISTRICT IV

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>207</u>	<u>145</u>	<u>176</u>	<u>276</u>	<u>193</u>	<u>234</u>
	<u>276</u>	<u>193</u>	<u>234</u>	<u>345</u>	<u>241</u>	<u>293</u>

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	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>345</u>	<u>241</u>	<u>293</u>	<u>413</u>	<u>289</u>	<u>351</u>
	<u>413</u>	<u>289</u>	<u>351</u>	<u>482</u>	<u>338</u>	<u>410</u>

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LC DISTRICT V

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>179</u>	<u>126</u>	<u>152</u>	<u>239</u>	<u>167</u>	<u>203</u>
	<u>239</u>	<u>167</u>	<u>203</u>	<u>299</u>	<u>209</u>	<u>254</u>

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	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>299</u>	<u>209</u>	<u>254</u>	<u>359</u>	<u>251</u>	<u>305</u>
	<u>359</u>	<u>251</u>	<u>305</u>	<u>419</u>	<u>293</u>	<u>356</u>

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LC DISTRICT VI

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>201</u>	<u>141</u>	<u>171</u>	<u>268</u>	<u>187</u>	<u>228</u>
	<u>268</u>	<u>187</u>	<u>228</u>	<u>335</u>	<u>234</u>	<u>285</u>

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	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>335</u>	<u>234</u>	<u>285</u>	<u>402</u>	<u>281</u>	<u>341</u>
	<u>402</u>	<u>281</u>	<u>341</u>	<u>469</u>	<u>328</u>	<u>398</u>

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LC DISTRICT VII

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>170</u>	<u>119</u>	<u>144</u>	<u>226</u>	<u>150</u>	<u>192</u>
	<u>226</u>	<u>158</u>	<u>192</u>	<u>283</u>	<u>198</u>	<u>240</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>203</u>	<u>190</u>	<u>240</u>	<u>339</u>	<u>230</u>	<u>200</u>
	<u>339</u>	<u>238</u>	<u>288</u>	<u>396</u>	<u>277</u>	<u>336</u>

LC DISTRICT VIII

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>191</u>	<u>134</u>	<u>162</u>	<u>255</u>	<u>170</u>	<u>217</u>
	<u>255</u>	<u>178</u>	<u>217</u>	<u>319</u>	<u>223</u>	<u>271</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>319</u>	<u>223</u>	<u>271</u>	<u>382</u>	<u>268</u>	<u>325</u>
	<u>382</u>	<u>268</u>	<u>325</u>	<u>446</u>	<u>312</u>	<u>379</u>

LC DISTRICT IX

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>191</u>	<u>134</u>	<u>162</u>	<u>255</u>	<u>170</u>	<u>217</u>
	<u>255</u>	<u>178</u>	<u>217</u>	<u>319</u>	<u>223</u>	<u>271</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>319</u>	<u>223</u>	<u>271</u>	<u>382</u>	<u>268</u>	<u>325</u>
	<u>382</u>	<u>268</u>	<u>325</u>	<u>446</u>	<u>312</u>	<u>379</u>

LC DISTRICT X

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<u>201</u>	<u>141</u>	<u>171</u>	<u>260</u>	<u>187</u>	<u>220</u>
	<u>268</u>	<u>187</u>	<u>228</u>	<u>335</u>	<u>234</u>	<u>285</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<u>335</u>	<u>234</u>	<u>285</u>	<u>402</u>	<u>281</u>	<u>341</u>
	<u>402</u>	<u>281</u>	<u>341</u>	<u>469</u>	<u>328</u>	<u>398</u>

LC DISTRICT XI

	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<del>185</del>	<del>130</del>	<del>157</del>	<del>247</del>	<del>179</del>	<del>210</del>
	<u>247</u>	<u>173</u>	<u>210</u>	<u>309</u>	<u>216</u>	<u>262</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<del>309</del>	<del>216</del>	<del>262</del>	<del>371</del>	<del>259</del>	<del>315</del>
	<u>371</u>	<u>259</u>	<u>315</u>	<u>432</u>	<u>303</u>	<u>367</u>

LC DISTRICT XII

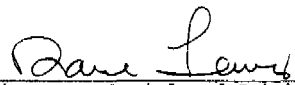
	1 Bedroom Home			2 Bedroom Home		
Wood (cords)	<del>226</del>	<del>150</del>	<del>192</del>	<del>302</del>	<del>211</del>	<del>256</del>
	<u>302</u>	<u>211</u>	<u>256</u>	<u>377</u>	<u>264</u>	<u>320</u>

	3 Bedroom Home			4+ Bedroom Home		
Wood (cords)	<del>377</del>	<del>264</del>	<del>320</del>	<del>452</del>	<del>317</del>	<del>385</del>
	<u>452</u>	<u>317</u>	<u>385</u>	<u>528</u>	<u>369</u>	<u>449</u>

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

3. This emergency amendment is effective January 21, 1986.

  
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 21, 1986.

VOLUME NO. 41

OPINION NO. 40

SUBDIVISION AND PLATTING ACT - Application of "occasional sale" exemption;  
MONTANA CODE ANNOTATED - Title 76, chapter 3, sections 76-3-102, 76-3-103(3), 76-3-103(7), 76-3-103(15), 76-3-201 to 76-3-210, 76-3-207, 76-3-207(1)(d);  
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 117 (1980), 41 Op. Att'y Gen. No. 21 (1985).

HFLD: When a parcel of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an "occasional sale" under the Montana Subdivision and Platting Act, the remaining parcel may not, in the absence of another legitimately claimed exemption, be sold without subdivision review within 12 months following sale of the first parcel.

10 January 1986

Leo Fisher  
City Attorney  
City of Whitefish  
P.O. Box 158  
Whitefish MT 59937

Dear Mr. Fisher:

You have requested my opinion on the following question:

When a parcel of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an "occasional sale" under the Montana Subdivision and Platting Act, may the remaining parcel be sold without subdivision review within 12 months following sale of the first parcel?

The Montana Subdivision and Platting Act (the Act) is found in Title 76, chapter 3, MCA. One stated purpose of the Act is to "promote the public health, safety, and general welfare by regulating the subdivision of land." § 76-3-102, MCA. A "subdivision" is defined generally as a "division of land" creating one or more parcels of less than 20 acres to be conveyed by sale, rental,

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lease, or otherwise. § 76-3-103(15), MCA. A "division of land" is defined as:

[T]he segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels ....

§ 76-3-103(3), MCA. Certain divisions of land which would normally result in the creation of subdivisions are exempted by statute from the review provisions of the Act. Section 76-3-207, MCA, provides in pertinent part:

{U}nless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

....

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale ....

An "occasional sale" is defined as "one sale of a division of land within any 12-month period." § 76-3-103(7), MCA. The 12-month period commences with the actual transfer of the parcel of land from the grantor to the grantee. 38 Op. Att'y Gen. No. 117 at 412 (1980).

As a form of legislation enacted to promote the public health, safety, and welfare, the Act must be liberally construed to effectuate its "beneficent objectives." Exemptions to the provisions of the Act must consequently be given a narrow interpretation. State ex rel. Florence-Carlton School District v. Board of County Commissioners, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978). Section 76-3-207(1)(d), MCA, expressly limits the occasional sale exemption to "a single division of a parcel." (Emphasis added.) Moreover, an occasional sale is explicitly defined as "one sale of a division of

land within any 12-month period." § 76-3-103(7), MCA. (Emphasis added.) In 41 Op. Att'y Gen. No. 21 (1985), I noted:

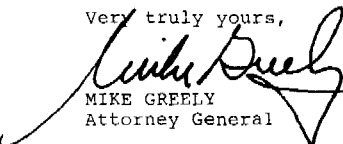
Although the "occasional sale" exception could arguably be construed as applying separately to each new parcel of land created by a subdivision, such an interpretation would effectively permit multiple divisions of land during a 12-month period without compliance with subdivision review requirements. ... [C]learly once a particular parcel of land has benefited from application of the exception, none of the land contained within that parcel may be exempted from subdivision review by operation of the "occasional sale" exception if subdivided during the next 12 months.

Under the factual situation you have described, only the sale of the first parcel would qualify for the occasional sale exemption during the applicable 12-month period. The remaining parcel of land could not be disposed of during that period without subdivision review unless it was eligible for another exemption under the Act. See §§ 76-3-201 to 210, MCA. Any other conclusion would in effect sanction the segregation and sale of two parcels of the same land within 12 months without subdivision review pursuant to the "occasional sale" exemption, a result contrary to the stated purpose and the express provisions of the Act.

THEREFORE, IT IS MY OPINION:

When a parcel of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an "occasional sale" under the Montana Subdivision and Platting Act, the remaining parcel may not, in the absence of another legitimately claimed exemption, be sold without subdivision review within 12 months following sale of the first parcel.

Very truly yours,



MIKE GREELY  
Attorney General

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 the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.



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

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

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

### Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
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Statute Number and Department	2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.
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## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1985. This table includes those rules adopted during the period October 1, 1985 through December 31, 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 September 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 1986 Montana Administrative Register.

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