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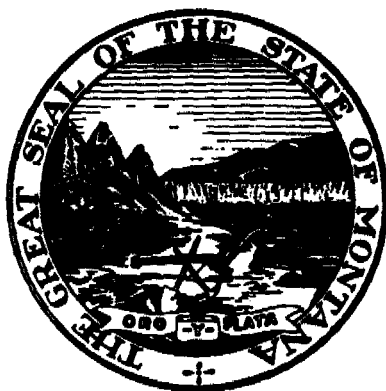
OF MONTANA

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**MONTANA
ADMINISTRATIVE
REGISTER**

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**1987 ISSUE NO. 11
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 2.21.804, 2.21.812,) THE PROPOSED AMENDMENT OF ARM
2.21.814, 2.21.821, and) 2.21.804, 2.21.812,
and 2.21.822, relating to the) 2.21.814, 2.21.821, AND
Sick Leave Fund) 2.21.822 RELATING TO THE
) SICK LEAVE FUND

TO: All Interested Persons.

1. On July 8, 1987, at 12:15 p.m., in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.21.804, 2.21.812, 2.21.814, 2.21.821, and 2.21.822 relating to the Sick Leave Fund.

2. The proposed amendments provide as follows:

2.21.804 PROHIBITED USES OF SICK LEAVE FUND AND DIRECT GRANTS (1) No sick leave accrued prior to July 1, 1971, may be contributed to the sick leave fund or provided as direct grants.

(2) An employee shall not receive direct grants of sick leave or a grant from the sick leave fund:

(a) if the employee is eligible for workers' compensation benefits;

(b) if the employee is no longer employed by the state;

(c) while the employee is on long-term leave of absence without pay for a reason other than extensive illness or accident or during the one-year preference period following a reduction-in-work force.

~~(d) to provide care or attendance to an immediate family member.~~

(Auth. 2-18-604 & 2-18-618 MCA; Imp. 2-18-618, MCA)

2.21.812 MEMBERSHIP IN SICK LEAVE FUND (1) A full-time or part-time employee in a position - designated as permanent or seasonal - of the executive, legislative or judicial branches of state government or of the Montana university system may become a participating employee in the sick leave fund.

(2) To enroll in the sick leave fund, an employee must:

(a) have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618(1), MCA;

~~(b) have a minimum balance of 40 hours of sick leave credited to the employee's account. The minimum balance for a part-time employee shall be prorated;~~

~~(c) (b) contribute at least 8 hours of accrued sick leave to the sick leave fund. The initial contribution for part-time employees shall be prorated.~~

(c) have a minimum balance of 40 hours of sick leave remaining in the employee's account following the contribution. The minimum balance for a part-time employee shall be prorated.

(3) An employee may contribute a combined total of no more than 40 hours of sick leave either to the sick leave fund or as direct grants in a 12-month period. The 12-month period is calculated from the first day the employee contributes to the fund or makes a direct grant. An employee may exceed the 40-hour limit in order to make an additional contribution requested by the department of administration to maintain a minimum balance in the fund. At the time of termination, there is no limit on the amount of sick leave an employee may contribute to the fund.

(4) An employee meeting the requirements in (2) (a-c) may enroll in the sick leave fund at any time.

(5) All contributions to the sick leave fund shall be voluntary and irrevocable.

(6) Participation in the fund constitutes the employee's agreement to abide by all rules related to the sick leave fund promulgated by the department of administration.

(7) An employee remains a member of the sick leave fund unless or until the employee:

- (a) fails to authorize an additional contribution;
- (b) terminates employment with state government; or
- (c) resigns in writing from the fund at any time.

(Auth. 2-18-604 & 2-18-618 MCA; Imp. 2-18-618, MCA)

2.21.814 ELIGIBILITY TO RECEIVE GRANTS FROM THE SICK LEAVE FUND (1) A participating employee who meets the eligibility requirements of paragraph (6) of this rule may receive no more than a maximum of 160 hours of sick leave in any continuous 12-month period in grants from the sick leave fund. Leave approved for a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either grants from the fund or direct grants is 160 hours.

(2) The 12-month period is calculated from the first day the employee takes sick leave which is a grant from the sick leave fund or a direct grant.

(3) No employee is eligible to receive a grant of sick leave from the sick leave fund without the approval of the agency head or designee.

(4) Participation in the sick leave fund or meeting the eligibility requirements of paragraph (6) of this rule does not guarantee that receipt of sick leave shall be approved in any specific case by the agency head.

(5) When approving leave of absence, a supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.

(6) To be eligible to receive a grant from the sick leave fund, an employee must:

- (a) have met the 90-day qualifying period to take sick leave provided for in 2-18-618(1), MCA;
- (b) suffer an extensive illness or accident which results in absence from work of no less than 10 consecutive working days;

(c) exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time. Participation in the fund or agreeing to receive direct grants constitutes an employee's agreement required in 2-18-615, MCA, to exhaust all accrued annual vacation leave in order to become eligible to receive the additional sick leave;

(d) take 5 days of leave of absence without pay following exhaustion of all accrued leave and compensatory time;

(e) receive approval from the supervisor for leave of absence;

(f) receive approval from the agency head or designee to receive a grant or a direct grant of sick leave;

(g) provide to the employing agency a physician's certification of extensive illness or accident, in accordance with ARM 2.21.137, in the sick leave policy; and

(h) have been a member of the sick leave fund for 90 days.

(7) If an employee is incapacitated and unable to apply for leave of absence and a grant from the sick leave fund, another person may do so for the employee.

(8) Participation in the sick leave fund does not prohibit an agency from terminating an employee for, as provided in 39-2-504, MCA, "continued incapacity to perform."

(9) An employee may request a grant from the sick leave fund, as provided in ARM 2.21.132(1g), to provide "necessary care of or attendance to an immediate family member . . . until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of paragraph (6) of this rule.
(Auth. 2-18-604 & 2-18-618 MCA; Imp. 2-18-618, MCA)

2.21.821 ELIGIBILITY TO MAKE DIRECT GRANT (1) To be eligible to make a direct grant of sick leave, an employee shall have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618(1), MCA, and shall have a minimum balance of 40 hours of accrued sick leave ~~credited~~ to remaining in the employee's account, following the contribution. The minimum balance for a part-time employee shall be prorated.

(2) An employee may directly grant a maximum of 40 hours of accrued personal sick leave in any continuous 12-month period to another employee or employees. An employee may contribute no more than a combined total of 40 hours of sick leave to either the sick leave fund or as direct grants in any 12-month period. The 12-month period is calculated from the first day an employee makes a direct grant or contribution to the sick leave fund. If the employee's leave balance falls below 40 hours, the employee will not be eligible to make a direct grant. The employee may not reduce the leave balance below 40 hours by making direct grants.

(3) At the time of termination, there is no limit on the amount of sick leave an employee may contribute as direct grants, up to the maximum allowable benefit per employee. The recipient employee must be eligible to receive direct grants in the same pay period in which the donor employee terminates.

~~(3)~~ (4) An employee may make a direct grant of sick leave to an employee of any state agency.
(Auth. 2-18-604 & 2-18-618 MCA; Imp. 2-18-618, MCA)

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS (1) An employee may receive no more than a maximum of 160 hours of sick leave in any continuous 12-month period in direct grants. Leave granted to a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either direct grants or grants from the sick leave fund is 160 hours.

(2) The 12-month period is calculated from the first day the employee takes sick leave which is a direct grant or a grant from the sick leave fund.

(3) The employee shall meet all applicable eligibility requirements in ARM 2.21.814(6). The employee does not have to be a member of the sick leave fund to give or receive direct grants.

(4) No employee is eligible to receive direct grants of sick leave without the approval of the agency head or designee.

(5) A supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, as provided in ARM 2.21.814(5).

(6) If an employee is incapacitated and unable to apply for leave of absence and direct grants, another person may do so, as provided in ARM 2.21.814(7).

(7) An employee may receive a direct grant of sick leave, as provided in ARM 2.21.132(1g), to provide "necessary care of or attendance to an immediate family member. . .until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of paragraph (3) of this rule.

(Auth. 2-18-604 & 2-18-618 MCA; Imp. 2-18-618, MCA)

3. The rules are proposed to be amended to respond to objections from the Administrative Code Committee to certain parts of the rules as originally adopted. State agencies also have requested clarification of certain rules as they have begun administering direct grants and fund activity. The Sick Leave Fund Advisory Council has been consulted and recommends the proposed amendments. The Department of Administration concurs with the Council's recommendations.

The Administrative Code Committee's objections are in three areas: the prohibition against use of granted leave to care for family members; the requirement to use all annual leave before becoming eligible for granted leave, and the directors' discretion to approve or deny granted leave.

11-6/11/87

MAR Notice No. 2-2-163

4. ARM 2.21.804 (2d) prohibits the use of granted leave to care for immediate family members. Advisory council members expressed concern that use of granted sick leave should not become an easy alternative to finding other care. They recommend removing the prohibition against use of granted leave to care for family members and in its place, citing the current Sick Leave rule (ARM 2.21.132 (1g)), which allows the use of sick leave, "until other attendance can reasonably be obtained."

The Code Committee felt ARM 2.21.814 (6c), the required use of all annual leave, conflicts with 2-18-615, MCA, which provides, "Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee." The Advisory Council agrees that the rules as written may appear to conflict with this statute. However, the Council believes that use of additional sick leave made available through voluntary participation in the Sick Leave Fund or through a direct grant should be reserved for hardship situations. The Department proposes the amendment of ARM 2.21.812 to state specifically that participation in the Sick Leave Fund or receipt of direct grants constitutes the employee's agreement required by 2-18-615, MCA, to take annual leave. In addition, the Department will modify forms used to administer the fund and direct grants to specifically inform employees that they are agreeing to use annual leave.

The Code Committee felt that under the current rules, a given agency could for budgetary, staffing, or other purposes, tailor its own pooled sick leave fund program, or have no program at all. There must be only one program and it must cover all agencies. The Department and the Advisory Council agree that all state employees should be eligible to participate in the program. The Sick Leave Fund rules must, however, preserve the discretion directors and heads of other agencies currently exercise to approve or deny leave and to manage leave use in their agencies, as provided in ARM 2.21.123(2) and ARM 2.21.137. The department director or other agency head is the only person in a position to judge whether use of leave is appropriate or whether abuse of sick leave has occurred. Preserving this discretion is the primary purpose of ARM 2.21.814(3), which states, "No employee is eligible to receive a grant of sick leave from the sick leave fund without the approval of the agency head or designee," and ARM 2.21.822(4), which states, "No employee is eligible to receive direct grants of sick leave without the approval of the agency head or designee." While this is the primary intent of these rules, the department and council cannot ignore the financial reality of the Sick Leave Fund. There is no funding. The Advisory Council and the Department hope that no director or agency head will be placed in the situation of being unable to fund a sick leave grant. However, there may be exceptional circumstances

where budget constraints may prevent a director from approving a sick leave grant, for example, where approval of a grant would require that other employees be laid off or have their hours reduced, or where approval of a grant would prevent an agency from meeting its legal obligations or requirements.

The remaining amendments are intended to clarify administrative issues brought to the Department's attention by other agencies as they have begun to administer Sick Leave Fund activities.

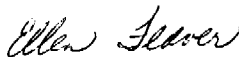
5. Interested parties may submit their data, views or arguments concerning the proposed amendment of these rules to:

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

no later than July 10, 1987.

6. Gale Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is based on 2-18-604, MCA, and 2-18-618, MCA, and the rules implement 2-18-618, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State June 1, 1987.

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

In the matter of the proposed amendment of 8.22.1804 concerning twin trifecta) NOTICE OF PROPOSED AMENDMENT
OF 8.22.1804 TWIN TRIFECTA)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On July 13, 1987, the Board of Horse Racing proposes to amend to above stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-763 through 8-766, Administrative Rules of Montana)

"8.22.1804 TWIN TRIFECTA (1) through (9) will remain the same.

(10) If, in the first half of the twin trifecta only there is a failure to select, in the exact order, the first three horses, payoffs and exchanges shall be made on twin trifecta tickets selected in the following order of priority:

(a) ~~--tickets-selecting-the-first-and-second-place-horses;~~
(b) ~~--tickets-selecting-the-first-and-third-place-horses;~~
(c) ~~--tickets-selecting-the-second-and-third-place-horses;~~
(d) ~~--tickets-selecting-the-horse-that-finished-first;~~
(e) ~~--tickets-selecting-the-horse-that-finished-second;~~
(f) ~~--tickets-selecting-the-horse-that-finished-third;--in the-event--that--there--are--no--tickets--satisfying--(a)--through (f);--the-twin-trifecta-shall-be-refunded.~~

(a) first, second, fourth;

(b) first, third, fourth;

(c) second, third, fourth;

(d) first, second, fifth;

(e) first, third, fifth;

(f) first, fourth, fifth; and

(g) sequentially thereafter.

(11) through (21) will remain the same."

Auth: 23-4-104, MCA Imp: 23-4-104, 202, 301, MCA

3. When ARM 8.22.1804 was adopted, the method of selecting a consolation pay-off was not described in a manner as to allow the existing parimutuel software to pay. The method of paying has to be consistent with the formula described in ARM 8.22.1803 (3) Pool Calculations under the rules of Trifecta wagering.

Failure to change the rule will cause a multitude of problems for the patron, Board of Horse Racing, and management and could possibly result in a number of lawsuits.

To insure that all parimutuel pay-offs are in consort with the existing rules and the existing software and to

prevent minor uprisings at the tracks around the state, it becomes necessary to amend ARM 8.22.1804.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 9, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Horse Racing 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 9, 1987.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public 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 340 based on the 3400 licensees in Montana.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 1, 1987.

BEFORE THE MONTANA STATE LIBRARY COMMISSION


In the matter of the amendment) NOTICE OF EXTENSION OF
and repeal of rules in Chapter) COMMENT PERIOD
101, sub-chapter 1 concerning)
the organizational rule; and)
Chapter 102, subchapter 1 and)
11 concerning general policy)
and public library development)

TO: All Interested Persons

1. On March 26, 1987 the commission published a notice on page 302, 1987 MAR, issue number 5 of proposed amendment and repeal of rules in Chapter 101, sub-chapter 1 concerning the organizational rule; and chapter 102, sub-chapter 1 and 11 concerning general policy and public library development. A public hearing was held May 2, 1987.

2. At the hearing it was brought to the attention of the commission, though the rules as printed in the Register were correct, there was an error in the copies of the above rules mailed directly to individuals and organizations. The copy mailed direct did not include interlining of the matter to be stricken. In response to this the commission will redistribute by direct mail a corrected copy and leave open the record until July 17, 1987, considering any comments submitted to the commission by that date. Final action on adoption of these rules will be deferred until after that date.

3. Interested parties may submit their written comments concerning the proposed amendment and repeals no later than July 17, 1987 to: Sara Parker, Montana State Library, 1515 East 6th Avenue, Helena, MT 59620.


Sheila Cates
Library Development

Certified to the Secretary of State May 29, 1987.

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

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of ARM 16.8.820 concerning	)	ON PROPOSED AMENDMENT OF
ambient air quality standards	)	AIR QUALITY STANDARDS
for sulfur dioxide	)	FOR SULFUR DIOXIDE

(Air Quality)

To: All Interested Persons

1. On July 10, 1987, at 9:30 a.m., a public hearing will be held in Room C209, Cogswell Building, 1400 Broadway, Helena, Montana, to consider the revision of the Board rule 16.8.820, the state's ambient air quality standards for sulfur dioxide.

2. The rule, as proposed to be amended, provides as follows (material to be stricken is interlined, new material is underlined):

16.8.820 AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE

(1) No person shall cause or contribute to concentrations of sulfur dioxide in the ambient air which exceed any of the following standards:

(a) Hourly average: 0.50 parts per million, 1-hour average, not to be exceeded more than 18 times in any twelve consecutive months;

(b) Twenty-four hour average: 0.10 parts per million, 24-hour average, not to be exceeded more than once per year, except that persons causing or contributing to ambient 24-hour average concentrations of sulfur dioxide that exceeded more than once 0.10 parts per million during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.14 parts per million more than once per year;

(c) Annual average: 0.02 parts per million, annual average, not to be exceeded, except that persons causing or contributing to ambient annual concentrations of sulfur dioxide that exceeded 0.02 parts per million during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.03 parts per million.

(2) Measurement method: For determining compliance with this rule, sulfur dioxide shall be measured by the pararasani-line method as more fully described in Title 40, Part 50 (Appendix A) Code of Federal Regulations (1979), or by an approved equivalent method.

AUTHORITY: 75-2-202, MCA

IMPLEMENTING: 75-2-202, MCA

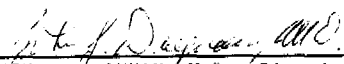
3. The revision to the rule is being proposed because of the recent enactment of the 50th Legislature, HB534, directing the Board to revise the state's 24-hour and annual standards for sulfur dioxide.

11-6/11/87

VAR Notice No. 16-2-322

4. Interested parties may submit their data, views, or arguments concerning the proposed revision, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620, no later than July 13, 1987.

5. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.



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

Certified to the Secretary of State June 1, 1987.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF AN
an amendment to a federal agency	)	AMENDMENT TO A FEDERAL
reference document pertaining to	)	AGENCY RULE PRESENTLY
air quality models (16.8.937),	)	INCORPORATED BY REFERENCE
new source performance standards	)	IN 16.8.937, 16.8.1423,
(16.8.1423), and emission standards)	)	AND 16.8.1424
for hazardous air pollutants)	
(16.8.1424)	)	(Air Quality)

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. The Board hereby gives notice of the adoption and incorporation by reference of later amendments to (1) the U.S. EPA guidance document on air quality models that appears at 40 CFR 51.24(1); (2) 40 CFR Part 61, which sets forth emission standards for hazardous air pollutants; and (3) 40 CFR Part 60, which sets forth performance standards for new stationary sources of air pollution. These updated federal documents may be inspected and copied at the Montana Air Quality Bureau, Cogswell Building, 1400 Broadway, Helena, Montana; and are also available for public inspection at EPA's Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are available as supplies permit from the Library Service Office, U.S. EPA, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

2. The effective date for the adoption of the later amendment is July 20, 1987. The rules, with the updated incorporations, will appear as follows (material to be stricken is interlined; new material is underlined):

16.8.937 AIR QUALITY MODELS (1) The board hereby adopts and incorporates by reference "Guideline on Air Quality Models" (EPA-4-2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, April 1978) "Guideline on Air Quality Models (Revised)" (Publication No. EPA 450/2-78-027R, July, 1986, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711), which sets forth air quality modeling procedures including requirements for concentration estimates, air quality models, data requirements and model validation and calibration; and ARM 16.8.1107(2) and (3) which sets forth the provisions for public notice of the submittal of an application for an air quality permit, notice of the department's preliminary determination on the application for the air quality permit, and the public comment period; and "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office

11-6/11/87

MAR Notice No. 16-2-323

of Air Quality Planning and Standards--Research Triangle Park, N.C. 27711, May 1978. A copy of ARM 16.8.1107(2) and (3) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620. Copies of the "Guideline on Air Quality Models (Revised)" and "Workbook for the Comparison of Air Quality Models" are available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620, and at EPA's Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the ten EPA Regional Offices. Copies are available as supplies permit from the Library Service Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park NC 27711, and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(2) All estimates of ambient concentrations required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models" (EPA-440/2-78-027R, U.S. Environmental Protection Agency Office of Air Quality Planning and Standards, April 1978) "Guidelines on Air Quality Models (Revised)" (Publication No. EPA 450/2-78-027R, July, 1986, Office of Air Quality Planning and Standards, Research Triangle Park NC 27711).

(3) Where a preferred air quality impact model specified in the "Guideline on Air Quality Models (Revised)" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under ARM 16.8.1107(2) and (3). Written approval of the EPA administrator must be obtained for any modification or substitution. Methods like those outlined referenced in the "Workbook for the Comparison of Air Quality Models" (EPA-440/2-78-027R, U.S. Environmental Protection Agency Office of Air Quality Planning and Standards, May 1978) "Guideline on Air Quality Models (Revised)", July, 1986, should be used to determine the comparability of air quality models.

AUTHORITY: 75-2-111 and 75-2-203, MCA

IMPLEMENTING: 75-2-203, MCA

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) Same as existing rule.

(2) All new stationary sources shall comply with the provisions of Title 40, Part 60, Code of Federal Regulations (CFR), July 1, 1984 July 1, 1987.

(3) For the purpose of this rule, the board hereby adopts and incorporate by reference Title 40, Part 60, CFR, which sets forth standards of performance for new stationary sources. A copy of Title 40, Part 60, CFR, may be obtained from is available for public inspection and copying at the Air Quality Bureau of the Department, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana; at EPA's Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, DC 20460, and at the libraries of each

of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

AUTHORITY: 75-2-111 and 75-2-203, MCA

IMPLEMENTING: 75-2-203, MCA

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(1) Same as existing rule.

(2) The owner or operator of any stationary source shall comply with the provisions of Title 40, Part 61, Code of Federal Regulations (CFR), ~~July 4, 1984~~ July 1, 1987.

(3) For the purpose of this rule, the board hereby adopts and incorporates by reference Title 40, Part 61, CFR, which sets forth emission standards for hazardous air pollutants. A copy of--Title 40, Part 61, CFR, may be obtained from is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station 1400 Broadway, Helena, Montana 59620, at EPA's Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

AUTHORITY: 75-2-111 and 75-2-203, MCA

IMPLEMENTING: 75-2-203, MCA

3. If the agency receives requests for a public hearing under Section 2-4-315, MCA, on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons, based on approximately 100 existing stationary sources in Montana.


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

Certified to the Secretary of State June 1, 1987.

11-6/11/87

MAR Notice No. 16-2-323

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC
adoption of a rule	)	HEARING
regulating special vehicle)	
combinations)	

TO: All Interested Persons:

1. On July 6, 1987 at 10 o'clock A.M. a public hearing will be held in auditorium of the Department of Highways building at 2701 Prospect Avenue, Helena, Montana, to consider the adoption of a rule regulating special vehicle combinations.

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

3. The proposed rule provides as follows:

RULE I SPECIAL VEHICLE COMBINATIONS

(1) A "special vehicle combination" is a truck-trailer-trailer combination of vehicles or truck tractor-semitrailer-trailer-trailer combination of vehicles.

(2) No special vehicle combination may be operated without a valid overlength permit.

(3) Special overlength permits shall be issued to a specific truck or truck tractor and are non-transferable.

(4) In addition to the special overlength permit, the operator must obtain all other necessary permits for travel in Montana.

(5) When a terminal is beyond a 2-mile radius of an interchange on the interstate system, the Department of Highways may authorize travel between the terminal and the interchange. The operator shall apply in writing to the Department of Highways for authorization to travel outside the 2-mile radius to reach a terminal. The written application must specify requested routing and show good cause why the travel is necessary.

(6) The Department of Highways may restrict or prohibit travel of special vehicle combinations to specific routes, hours of operation, specific days, or seasonal periods, when adverse conditions, traffic, weather or other safety considerations make such operation unsafe or inadvisable.

(7) The following equipment requirements apply to special vehicle combinations:

(a) All trucks and truck tractors shall be powered to provide adequate acceleration ability and hill climbing ability under normal operating conditions, and to operate

on level grades at speeds compatible with other traffic. The ability to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated is required.

(b) All trucks and truck tractors shall have adequate traction to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated and to be able to resume a speed of 20 mph after stopping on any such grade and to negotiate all grades encountered.

(c) Each individual single and tandem axle shall have tires of the same size and construction (radial or non-radial). Tires must be properly inflated for the load being carried, and shall meet the standards set forth in 49 CFR Section 393.75.

(d) All fifth wheels shall be clean and lubricated with a light duty grease. The fifth wheel shall be located in a position which provides adequate stability. The fifth wheel shall be heavy duty as required in 49 CFR Section 393.70.

(e) Pick-up plates shall be of equal strength to the fifth wheel, as provided in 49 CFR Section 393.70.

(f) The king pin shall be of a solid type and permanently fastened. Screw out or folding type king pins are prohibited.

(g) All hitch connections shall be of a no-slack type, preferably air actuated ram. Air actuated hitches which are isolated from the primary air transmission system are required.

(h) The drawbar length shall be the practical minimum consistent with weight distribution and clearances required between trailers for turning and backing maneuvers.

(i) Permanently attached trailer axles must be those designed for the width of the trailer.

(i) Truck-trailer-trailer combinations must have a minimum of six (6) axles and a maximum of nine (9) axles.

(ii) Truck tractor-semitrailer-trailer-trailer combinations must have a minimum of seven (7) axles and a maximum of nine (9) axles.

(j) All braking systems shall comply with state and federal requirements. In addition, fast air transmission and release valves shall be provided for all trailers, semitrailers, and converter dollies. A brake force proportioning valve may be provided on the steering axle. Indiscriminate use of engine retarder brakes is prohibited.

(k) Anti-sail type mud flaps and anti-spray splash guards are required.

(8) Special vehicle combinations are restricted to the following operating conditions:

(a) The total weight on any single axle may not exceed 20,000 pounds. The total weight on any tandem axle may not exceed 34,000 pounds. The total weight on any group of two or more consecutive axles may not exceed the amount provided in Section 61-10-107, MCA.

(b) In no case may any trailer or semitrailer be placed in front of another trailer or semitrailer which carries an appreciably heavier load. The heaviest trailer or semitrailer shall be placed in front and the lightest at the rear. An empty trailer or semitrailer may not precede a loaded trailer or semitrailer.

(c) A special vehicle combination shall be stable at all times during normal braking and normal operation. A special vehicle combination, when travelling on a level, smooth, paved surface, shall follow in the path of the towing vehicle without shifting or swerving more than three inches to either side when the towing vehicle is moving in a straight line.

(d) While operating on a highway with two lanes in one direction, permitted vehicles shall remain in the right hand lane unless otherwise posted or conditions otherwise require, or when passing another vehicle or when emergency conditions exist.

(e) A minimum safe distance of 100 feet per 10 mph of speed shall be maintained between a special vehicle combination and other vehicles except when overtaking and passing.

(f) In the event a special vehicle combination is disabled for any reason other than an accident, it shall be parked as far off the travelled way as possible and marked as required by Federal Motor Carrier Safety regulations.

(9) As required by 49 CFR Section 177.835(c), transportation of Class A explosives is prohibited.

(10) A driver of a special vehicle combination shall be experienced in driving these combinations, maintain a good driving record and be subject to the following requirements:

(a) The driver shall comply with all of the driver's requirements of the Motor Carrier Safety Regulations of the U.S. Department of Transportation.

(b) The driver must have had documented special instruction and training in the operation of special

vehicle combinations prior to operating any such combination on a highway.

(c) The driver shall be under the control and supervision of the company holding the overlength permit.

(d) No person who has had any suspension of driving privileges in any state during the past three years where such suspension arose out of the operation of a motor vehicle used as a contract or common carrier of persons or property may operate a special vehicle combination.

(e) All drivers of special vehicle combinations operating under a permit shall be certified by the permit holder's safety office. The certification shall demonstrate that the driver has met the written requirements of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390 through 397. The certification shall also show that the driver has successfully completed a company approved road test for each type of combination to be operated. The driver certification forms shall be current and on file in the permit holder's business office as stated on the application and shall be available for inspection during normal business hours.

(f) All permit applicants are subject to prior approval to ensure that their equipment conforms with the requirements of these regulations and the requirements of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390 through 397. In addition, all equipment operated under the permit by the permit holder is subject to periodic field inspection to ensure continued compliance with equipment requirements.

(11) No person may operate any special vehicle combination under Section 61-10-124(4), MCA, at a speed greater than 55 miles per hour. Violation of this restriction shall result in confiscation of permits.

(12) Every special vehicle combination operated under an oversize permit shall be covered by insurance of not less than \$750,000 public liability and \$50,000 property damage unless a greater amount is required by state or federal law or regulations.

(13) No overlength permit may be issued to a company which does not have a documented, established and aggressive safety program, including a driver training and certification program.

(14) Any company approved to operate special vehicle combinations under an overlength permit shall provide the Department of Highways with any information relating to accidents, operational costs, safety inspections, equipment, maintenance, and other items which may be requested.

(15) Notwithstanding other state and federal requirements for reporting motor vehicle accidents, reportable accidents involving special vehicle combinations operated under a special overlength permit must be reported to the Montana Highway Department within 10 days of the date of the accident.

(16) The original permit shall be carried in the truck or truck-tractor of the special vehicle combination operating under the permit, and shall be displayed to any peace officer, employee of the Department of Highways, Montana Highway Patrol, or Public Service Commission upon request.

(17) In addition to the requirements in this rule, all equipment operated, all drivers employed and all operating procedures used shall comply with the current Motor Carrier Safety Regulations, Parts 390 - 397 of the U.S. Department of Transportation, Federal Highway Administration.

(18) An overlength permit may be confiscated by any peace officer or by the Department of Highways for failure of the company or any of its drivers to comply with any requirement contained herein.

(19) Application for permits may be obtained from the Department of Highways, Gross Vehicle Weight Division, Licensing Bureau, P.O. Box 4639, Helena, MT 59604, during regular business hours, 7:30 a.m. to 5:00 p.m. on Monday through Friday, except on legal holidays observed by the State of Montana.

(20) Complaints concerning operation of special vehicle combinations may be reported to the Department of Highways, Gross Vehicle Weight Division, Licensing Bureau, P.O. Box 4639, Helena, MT 59604.

4. The department is proposing this rule because for the safe operation of special vehicle combinations it is necessary to have a rule regulating their general operation, equipment, drivers, speed, stability, weight, load sequence, operational procedures, accident reporting, and insurance.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to N. Clyde Peterson, Assistant Attorney General, Agency Legal Services, Department of Justice, 215 North Sanders, Helena, Montana 59620, no later than July 10, 1987.

6. N. Clyde Peterson, Assistant Attorney General, Agency Legal Services, Department of Justice, 215 North Sanders, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 5, chapter 474, Session Laws of 1987, and the rule implements section 61-10-124, MCA.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State June 1, 1987

BEFORE THE BOARD OF PARDONS
OF THE STATE OF MONTANA

In the Matter of the) NOTICE OF PROPOSED AMENDMENT
Proposed Revision of) OF RULES 20.25.101, 20.25.201,
the Rules of the Board) 20.25.301, 20.25.302, 20.25.303,
of Pardons.) 20.25.401, 20.25.504, 20.25.505,
20.25.701, 20.25.702, 20.25.703,
20.25.801, 20.25.802, 20.25.803,
20.25.901, 20.25.1101, 20.25.1104
and 20.25.1107.
NO PUBLIC HEARING REQUIRED

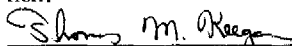
1. At its meeting on May 28, 1987, in Deer Lodge, Montana, the Board of Pardons proposed to revise its rules now published at pages 20-253 through 20-266 of the Administrative Rules of Montana.

2. Since rule-making by the Board is exempted from the notice and comment or opportunity for hearing requirements of the Montana Administrative Procedure Act, this notice is published in the Administrative Register as a courtesy to those persons who may wish to offer comments and suggestions before the Board makes its final decision.

3. The text of the proposed revision of the text will be mailed to any person who requests a copy by writing to Nick Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620.

4. Comments and suggestions concerning the proposed revision, while not binding upon the Board, will be considered by the Board if sent, prior to June 26, 1987, to: Henry Burgess, Chairman, Board of Pardons, 300 Maryland Avenue, Deer Lodge, Montana 59722.

6. Authority to adopt the proposed changes is based upon sections 46-23-218, 46-23-215, MCA.


THOMAS M. KEEGAN, Member
Montana Board of Pardons

Certified to the Secretary of State, June 1, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-) NOTICE OF PROPOSED AMENDMENT
MENT of Rule 42.13.222) of Rule 42.13.222 BEER WHOLE-
SALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS.

NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 13, 1987, the Department of Revenue proposes to amend rule 42.13.222 relating to Beer Wholesaler and Table Wine Distributor Recordkeeping Requirements.

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

42.13.222 BEER WHOLESALE AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) Beer wholesalers and table wine distributors shall keep and maintain records at their place of business of all beer or table wine furnished or sold to retailers. These records must contain the following information:

(a) name and address of retailer;
(b) date sold or furnished;
(c) date delivered;
(d) item sold or furnished;
(e) retailer cost per item; and
(f) date wholesaler or distributor received retailer's payment.

(2) Commercial records or invoices may be used if they contain the information listed in subsection (1)(a) through (f).

(3) Beer wholesalers shall keep and maintain records at their place of business of visits to retailers within their assigned territory, as specified under Title 16 for department inspection.

Auth: Sec. 16-1-303 MCA and Auth Ext. Sec. 8, Ch. 61, L. 1987 and Impl. 16-3-243, 16-3-404, and 16-3-406 MCA and Sec. 5(1), Ch. 61, L. 1987.

3. Ch. 61, L. 1987 requires a wholesaler, appointed to distribute a brand of beer within a territory, to call on and offer that brand to at least 75% of the retailers within the territory at least every 3 weeks. This amendment will add store visits to the data maintained by wholesalers to evidence compliance with state law.

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


Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 9, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 9, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 amendments is based on 16-1-303, MCA and Auth. Ext. Sec. 8, Ch. 61, L. 1987. The rules implement 16-3-243, 16-3-404, and 16-3-406, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/1/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-)
MENT of Rule 42.13.105)

NOTICE OF PROPOSED AMENDMENT
of Rule 42.13.105 APPLICABILITY
OF LICENSES; PREMISES DEFINED;
GOLF COURSE EXCEPTION; PORTABLE
SATELLITE VEHICLE, MOVABLE DEVICES.
NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 13, 1987, the Department of Revenue proposes to amend rule 42.13.105 relating to Applicability of Licenses; Premises Defined; Golf Course Exception; Portable Satellite Vehicle, Movable Devices.

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

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE, MOVABLE DEVICES

(1) All licenses shall be applicable only to the premises in respect to which they were issued. Where a licensee conducts as a single business enterprise two or more bars located on the same premises and which have such inter-communication as will enable patrons to move freely from one bar to another without leaving the premises, the various bars shall be regarded as but one premises for which but one license is required. In all other cases licenses must be obtained for each bar even though operated in the same building with another bar.

(2) The term "premises" shall be construed to mean the building or specific portion of any building in which the liquor and/or beer business is conducted and those areas in which the licensee operates a sidewalk cafe, open-air restaurant, or tavern outside of and adjacent to the licensed building and to which patrons are permitted free access from said building.

(3) Retail all-beverages licensees operating at a golf course and publicly owned golf courses holding a retail beer and table wine license may, under the provisions of 16-3-302, MCA, sell beer and table wine anywhere within the golf course boundaries from portable satellite devices and other moveable satellite devices.

(4) Non-publicly owned golf courses holding retail beer or table wine licenses are restricted to sales of beer and table wines on their premises as defined in subsection (2).

(5) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302(2) MCA may include:

(a) self-propelled wheeled vehicles such as golf carts, concession vans or similar conveyances containing beverage dispensing and storage equipment; or

(b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed or transported to a temporary site and which contains beverage dispensing and storage equipment; and

(c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.

(d) Other devices not described within these categories may be submitted to the liquor division for approval of use. Auth: Sec. 16-1-303 MCA and Auth Ext. Sec. 2, Ch. 646, L. 1987 and Impl. 16-6-104, 16-4-204, and 16-3-302 MCA and Sec. 1(2)(3), Ch. 646, L. 1987.

3. Ch. 646, L. 1987 allows golf courses holding retail all-beverages licenses and publicly owned golf courses holding retail and table wine licenses to sell alcoholic beverages anywhere within the boundaries of the golf course. The current rule restricts sales to premises defined as a building, portion of a building or sidewalk cafe/restaurant/tavern adjacent to the building. The proposed amendment is necessary to provide the exception for golf courses enacted by the 1987 session.

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

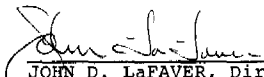
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 9, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 9, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 amendments is based on 16-1-303, MCA and Auth. Ext. Sec. 2, Ch. 646, L. 1987. The rules implement 16-6-106, 16-4-204, and 16-3-302, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/1/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE TRANSFER)	NOTICE OF PROPOSED TRANSFER
of Rules 42.21.201 through)	of Rules 42.21.201 through
42.21.211 pertaining to)	42.21.211 pertaining to
Classification of Nonproduc-)	Classification of Nonproduc-
tive Patented Mining Claims)	tive Patented Mining Claims
Claims and Nonproductive Real) and Nonproductive Real Property	to 42.20.301 through
Property to 42.20.301 through)	42.20.311.
42.20.311.)	

NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 17, 1987, the Department of Revenue proposes to transfer rules 42.21.201 through 42.21.211 in their entirety to a new sub-chapter 3 and numbered as 42.20.301 through 42.20.311. The rules are presently found in the Personal Property Chapter, Title 42, Chapter 21, Sub-Chapter 2, Classification of Mining Claims.

2. The rules as proposed to be transferred are as follows:

~~42-21-201~~ 42.20.301 Application for Classification as Non-productive, Patented Mining Claim

~~42-21-202~~ 42.20.302 Definition of Terms

~~42-21-203~~ 42.20.303 Criteria for Valuation as Mining Claim

~~42-21-204~~ 42.20.304 Additional Restrictions that Curtail Preferential Treatment

~~42-21-205~~ 42.20.305 Valuation of Acreage Beneath Improvements on Eligible Mining Claims

~~42-21-206~~ 42.20.306 Valuation of Improvements Located on Eligible Mining Claims

~~42-21-207~~ 42.20.307 Valuation of Eligible Mining Claim Land

~~42-21-208~~ 42.20.308 Application for Classification as Class 19 Property

~~42-21-209~~ 42.20.309 Eligibility Criteria for Classification and Valuation as Class 19

~~42-21-210~~ 42.20.310 Portions of Parcels Eligible for Classification as Class 19

~~42-21-211~~ 42.20.311 Portions of Parcels Eligible for Classification as Class 4

3. It is necessary to transfer these rules from chapter
11-6/11/87

MAR Notice No. 42-2-343

21, which is designated for personal property, and appropriately place them in chapter 20 which relates to real property. The content of the rules will not change, only the numbers.


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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than July 13, 1987.

5. If a person who is directly affected by the proposed transfer wishes to submit his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit his request along with any written comments he has to Cleo Anderson at the above address no later than July 17, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 amendments is based on 15-1-201, MCA; Authority Extension, Sec. 9, Ch. 34 and 35, L. 1986 Sp. Sess. The rules implement 15-6-101, 15-6-148, 15-6-149, 15-6-153, 15-6-154 and 15-8-111, MCA.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State June 1, 1987.

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 Rule 46.10.403 per-	)	THE PROPOSED AMENDMENT OF
taining to the AFDC Table of	)	RULE 46.10.403 PERTAINING
Assistance Standards	)	TO THE AFDC TABLE OF
	)	ASSISTANCE STANDARDS

TO: All Interested Persons

1. On July 1, 1987, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.403 pertaining to the Aid to Families with Dependent Children (AFDC) Table of Assistance Standards.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsection (1) remains the same.

(2) Monthly income as defined in ARM 46.10.505 is tested against the gross monthly income standard and, after specified exclusions and disregards, the net monthly income standard. These tests are applied using income reasonably expected to ~~exist~~ be received in the benefit month. However, if income is reported or discovered after the month of receipt, this income must be accounted for by applying the gross monthly income tests retroactively in the second month after receipt. Monthly income is to be compared to the full standard for the size assistance unit even though the grant may only cover part of the month. If this monthly income exceeds the standard, the assistance unit is not eligible for any part of the benefit month. The assistance unit may be further ineligible as provided in ARM 46.10.403(3).

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 474	\$ 170
2	631 640	279 276
3	792 803	385 379
4	951 968	487 481
5	1,123 1,132	581 577
6	1,273 1,295	655 668
7	1,434 1,462	729 755
8	1,593 1,624	803 838
9	1,754 1,702	875 916
10	1,915 1,776	944 990
11	2,076 1,844	1,023 1,058
12	2,237 1,909	1,097 1,123
13	2,398 1,970	1,171 1,184
14	2,559 2,026	1,245 1,240
15	2,720 2,078	1,319 1,291
16	2,880 2,124	1,391 1,338

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with gross monthly income defined in APM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Amount Per-Month</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 129	\$ 165	\$ 63
2	233	331	168
3	346	494	272
4	461	657	374
5	574	823	470
6	688	988	561
7	803	1,151	648
8	916	1,228	731
9	1,030	1,302	808
10	1,143	1,371	882
11	1,258	1,436	951
12	1,373	1,499	1,018
13	1,486	1,552	1,077
14	1,600	1,604	1,132
15	1,713	1,650	1,184
16	1,828	1,696	1,230

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 256	\$ 92
2	341 346	151 149
3	428 434	208 205
4	514 523	263 260
5	607 612	314 312
6	688 700	354 361
7	775 790	394 408
8	861 878	434 453
9	948 920	473 495
10	1,035 960	513 535
11	1,122 997	553 572
12	1,209 1,032	593 607
13	1,296 1,065	633 640
14	1,383 1,095	673 670
15	1,470 1,123	713 698
16	1,557 1,148	752 723

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	Amount Per-Month	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$---70	\$ 89	\$ 34
2	126	179	91
3	187	267	147
4	249	355	202
5	310	445	254
6	372	534	303
7	434	622	350
8	495	664	395
9	557	704	437
10	618	741	477
11	680	776	514
12	742	810	550
13	803	839	582
14	865	867	612
15	926	892	640
16	988	917	665

Subsections (3) through (3)(a)(ii) remain the same.

(iii) the funds are unavailable for reasons beyond the family's control of the assistance unit.

Subsections (3)(b) through (4) remain the same.

(a) Benefit standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>With Shelter Obligation Per Day</u>	<u>Without Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Day</u>
1	\$ 212	\$ 7.07	\$ 76	\$ 2.53
2	282	9.40	125	4.10
3	354	11.80	172	5.67
4	426	14.20	217	7.17
5	501	16.70	260	8.60
6	570	19.00	293	9.97
7	642	21.40	326	11.27
8	713	23.77	359	12.50
9	785	26.17	392	13.67
10	857	28.57	425	14.77
11	929	30.97	458	15.80
12	1,001	33.37	491	16.77
13	1,073	35.77	524	17.67
14	1,145	38.17	557	18.50
15	1,217	40.57	590	19.27
16	1,289	42.97	623	19.97

(b) Benefit standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Child- ren in Hsld.	Grant Amount Per-Month	With Shelter Oblig./ Month	Grant Amount Per-Day	With Shelter Oblig./ Day	Without Shelter Oblig./ Month	Without Shelter Oblig./ Day
1	\$--53	\$ 74	\$--1.77	\$ 2.47	28	.93
2	104	148	3.47	4.93	75	2.50
3	155	221	5.17	7.37	122	4.07
4	206	294	6.87	9.80	167	5.57
5	257	368	8.57	12.27	210	7.00
6	308	442	10.27	14.73	251	8.37
7	359	515	11.97	17.17	290	9.67
8	410	550	13.67	18.33	327	10.90
9	461	583	15.37	19.43	362	12.07
10	512	614	17.07	20.47	395	13.17
11	563	643	18.77	21.43	426	14.20
12	614	671	20.47	22.37	455	15.17
13	665	695	22.17	23.17	482	16.07
14	716	718	23.87	23.93	507	16.90
15	767	739	25.57	24.63	530	17.67
16	818	759	27.27	25.30	551	18.37


AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 and 53-4-241 MCA

3. The proposed changes to the Montana AFDC standards insure that the benefit amounts for "child only" assistance units are equal to other assistance units of the same size. Previously, there were two sets of standards (with and without shelter) for grants with adults included but only one standard for the child only. The department proposes to change the standards to ensure that similar size assistance units receive similar treatment in both situations. This proposed change requires a few minor changes of other standards in order to maintain appropriate relationships. Additionally, the wording of subsection (3)(a)(iii) has been changed to make it consistent with subsections (3)(a)(i) and (ii).

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 July 9, 1987.

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 June 1, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of ARM 2.21.1501, 2.21.1502,	)	RULES 2.21.1501, 2.21.1502
and 2.21.1511 through	)	AND 2.21.1511 THROUGH
2.21.1520, 2.21.1531, and	)	2.21.1520, 2.21.1531 AND
2.21.1532, and the adoption	)	2.21.1532, AND THE ADOPTION
of new rules relating to the	)	OF NEW RULES RELATING TO
administration of compensatory	)	THE ADMINISTRATION OF
time for employees exempt	)	COMPENSATORY TIME FOR
from the federal Fair Labor	)	EMPLOYEES EXEMPT FROM THE
Standards Act (FLSA)	)	FEDERAL FAIR LABOR
	)	STANDARDS ACT (FLSA)

TO: All Interested Persons.

1. On March 26, 1987, the Department of Administration published notice of the proposed repeal of ARM 2.21.1501, 2.21.1502, and 2.21.1511 through 2.21.1520, 2.21.1531 and 2.21.1532 and adoption of ARM 2.21.1801 through 2.21.1803, 2.21.1811, 2.21.1812, and 2.21.1831 relating to the administration of compensatory time for employees exempt from the federal Fair Labor Standards Act (FLSA) at page 278 of the 1987 Montana Administrative Register, issue number 6.

2. The rules have been repealed and new rules have been adopted with no changes.

3. A public hearing was conducted on April 28, 1987, to receive comments on these proposed rules. The Department received two written comments, one supporting the rules and the other is summarized below.

COMMENT: The need for ARM 2.21.1812(5) was questioned. It was suggested that the state only needs ARM 2.21.1812(6) allowing the unlimited accumulation of exempt compensatory time, with a requirement that compensatory time balances must be down to an allowable maximum within three months after the beginning of the next calendar year.

RESPONSE: State agencies have found that it is very difficult to manage large compensatory time balances at the end of the year. Some employees have had to forfeit excess compensatory time because compensatory time was not managed on a regular basis during the calendar year. Agencies have found that requiring smaller compensatory time balances such as 120 hours or a lower balance is a better way to manage compensatory time for the agency and the employee. ARM

2.21.1812(5) makes agencies aware that they have the discretion to establish lower maximum compensatory time balances if the agency believes this is necessary.

Ellen Feaver

Ellen Feaver, Director
Department of Administration

Certified to Secretary of State June 1, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF THE ADOPTION
of rules relating to overtime)	OF RULES RELATING TO
and compensatory time in lieu)	OVERTIME AND COMPENSATORY
of overtime compensation.)	TIME IN LIEU OF OVERTIME
)	COMPENSATION.

TO: All Interested Persons.

1. On March 26, 1987, the Department of Administration published notice of the proposed adoption of ARM 2.21.1701 through 2.21.1703, 2.21.1711 through 2.21.1713 and 2.21.1731 relating to overtime and compensatory time in lieu of overtime compensation at page 272 of the 1987 Montana Administrative Register, issue number 6.

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

2.21.1713 NONEXEMPT COMPENSATORY TIME (1) Same as proposed rule.

(2) Where a state agency chooses to allow some or all of its covered employees to accrue nonexempt compensatory time, the agency must follow all of the provisions of 29 CFR Part 553, application of the Fair Labor Standards Act to employees of state and local governments. ~~29--CFR--553 specifically requires:~~

~~(a)--That covered employees must agree in advance, to receive compensatory time off in lieu of receiving cash overtime compensation, and~~

~~(b)--That unused nonexempt compensatory time must be cashed out at specified rates upon termination.~~

29 CFR Part 553 are the federal regulations which require advanced agreements with employees as a condition for use of compensatory time in lieu of overtime compensation and cash payments for unused nonexempt compensatory time upon termination of employment. Specific provisions relating to the administration of these two requirements can be found at:

(a) 29 CFR Part 553.23 agreement or understanding prior to performance of work, and

(b) 29 CFR Part 553.27 payments for unused compensatory time.

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

(5) State agencies may require the cash out of unused nonexempt compensatory time when a covered employee changes from nonexempt to exempt status through a personnel action such as a promotion or reassignment. If the agency allows the exempt employee to maintain a nonexempt compensatory time balance, the agency must allow the employee to use the nonexempt compensatory time as time off or must pay cash for

unused nonexempt compensatory time upon termination in accordance with 29 CFR Part 553.

3. A public hearing was conducted on April 28, 1987, to receive comments on these proposed rules. The comments received are summarized below.

COMMENT: ARM 2.21.1713(2) (a) and (b) should be a clear reference to the federal regulations addressing the issue or an exact quote of the federal regulations.


RESPONSE: The Department of Administration agrees and has changed ARM 2.21.1713(2) to clarify the reference.

COMMENT: A rule needs to be added addressing situations where an employee changes status from nonexempt to exempt and vice versa.

RESPONSE: The Department agrees and has added ARM 2.21.1713(5) which addresses what agencies may do when a covered employee changes from nonexempt to exempt status.

COMMENT: The State should consider adding a rule that would require cash payment of unused compensatory time when an employee is demoted. If the state had this requirement, agencies would not have to worry about the federal requirement to average pay at termination.

RESPONSE: The Department does not believe it is necessary to hold state agencies to a higher standard than what is in the federal regulations for every demotion situation. The federal requirement to average pay for three years at termination only applies where the employee's pay has decreased in the past three years. The federal law does not require cash out of compensatory time for all demotions. This would be an additional requirement agencies would have to follow and may not be easier to administer than the three year averaging at termination.



Ellen Feaver, Director
Department of Administration

Certified to Secretary of State June 1, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF THE ADOPTION OF
of emergency rules pertaining) EMERGENCY RULES PERTAINING
to the Cropland Insect) TO THE CROPLAND INSECT AND
Detection and Spraying Program) SPRAYING PROGRAM

TO: All Interested Persons.

1. On June 1, 1987 Governor Schwinden declared a state of emergency regarding a grasshopper infestation in the state of Montana. This declaration utilizes Title 80, Chapter 7, Part 5, Montana Code Annotated (MCA), to provide a mechanism for the equitable distribution of funds to counties that participate in an insect pest control program.

The Department of Agriculture has determined that grasshoppers exist in such numbers that they are destroying, substantially damaging, or threatening to destroy agricultural crops.

The department must adopt the following rules immediately, without prior notice or hearing, in order to ensure equity in the distribution of the funds to participating counties. The department finds that an imminent peril to the public welfare requires adoption of these rules.

2. The text of the rules is as follows:

RULE I DECLARATION OF INFESTATION (1) The department shall make a declaration of infestation in a county before that county may participate in the cropland spraying program with the state.

(2) This declaration shall be based upon sampling standards acceptable to the department that demonstrate that grasshoppers exist in sufficient numbers so as to cause an economic impact on the crops in the county.

AUTH: 80-7-507, MCA

IMP: 80-7-502, MCA

RULE II MANAGEMENT AGREEMENT (1) The department and county may enter into a crop insect management agreement upon the county's demonstration that it meets all necessary requirements for participation in the program, including any requirement specified for the use of the state's available funding.

(2) The department shall enter into an agreement with each participating county which shall include the following provisions:

(a) The target pest is grasshoppers.

(b) Specify that the county shall obligate the expenditure of the 2 mill levy required by 10-3-405, MCA for this program prior to participation by the state.

(3) Specify that all applicators participating in the program must use federal/state registered pesticides specifically approved for grasshopper control.

(4) Specify the time for which all applicator operations must be completed in order to be part of the program.

(5) Specify the maximum dollar amount per acre of the state's share which shall not exceed \$1.25 per acre of the acres that may qualify for state financial participation.

(6) Specify the deadline for parties to submit claims for reimbursement of payments.

(7) Designate the person(s) administering the program for the county.

(8) Specify any other provisions necessary to fulfill the requirements of the program.

AUTH: 80-7-507, MCA

IMP: 80-7-503, 80-7-504, MCA

RULE III CONTRACT DATES (1) The agreement with the county shall specify that all contracts for purchasing and/or applying the pesticide must be made on or before June 20 and all applications shall be completed on or before June 30 of the year.

AUTH: 80-7-507, MCA

IMP: 80-7-503, 80-7-504, MCA

RULE IV LANDOWNER APPLICATION OF PESTICIDES (1) For the purpose of these rules, the definition of landowner includes the person responsible for the crop.

(2) In the event the county elects to have the landowner conduct the application of pesticides or have the landowner contract to have the pesticides applied on his lands, then:

(a) The landowner must comply with all requirements of these rules and he must pay for all chemical and application costs incurred on or before August 15 of the year.

(b) The landowner must:

(i) Submit proof of payment for the pesticide and/or the applicator services demonstrating that the application occurred on or before June 30 and that the contract for these services occurred on or before June 20.

(ii) Verify by affidavit that the application was made if the landowner applied the pesticide.

(iii) Specify the number of acres sprayed.

(iv) Specify the type of pesticide applied and if it was mixed with any other nontarget pesticide.

(v) Submit all the claims to the county on or before August 15.

(3) In the event the landowner fails to meet the requirements of these rules, then any application of pesticides to his land shall be considered outside of the program and he shall be ineligible for reimbursement.

AUTH: 80-7-507, MCA

IMP: 80-7-503, 80-7-504, MCA

RULE V DETERMINATION OF THE STATE'S PAYMENT TO THE COUNTY (1) The county shall submit to the department on or before September 10 the number of acres sprayed in that county, number of participating landowners, and total costs submitted under the program.

(2) The department shall determine the total number of acres sprayed in the state under the program.

(3) The state shall pay each participating county a pro rata share, as stipulated in these rules, from the emergency appropriation fund. The state's financial participation in the program with each county that has qualified is limited to an amount up to 1/3 of the total cost of the qualified acres in that county. However, the state participation on a per acre cost basis shall not exceed \$1.25, nor shall the state's participation exceed \$200,000 for all the treated acres within the qualified counties. The county pro rata share of the state's contribution shall be divided on the basis of comparing the total statewide program costs to the cost for each county.

(4) In the event the combination of the state's funding and the county's funding exceeds the total cost of the program in that county, then the state's contribution to that county shall be reduced by an amount so that the total funding combination equals the program's cost in that county.

(5) The state shall pay the counties an amount not to exceed the unobligated balance as of June 30, 1987 in the funds provided in 10-3-312, MCA, or \$200,000, whichever is less.

AUTH: 80-7-507, MCA

IMP: 80-7-503, 80-7-504, MCA

RULE VI REIMBURSEMENT TO LANDOWNERS (1) The landowner shall be reimbursed by the county following his compliance with Rule IV and the state's disbursement of money to the county.

(2) The county may determine the reimbursement of the landowners from the fund consisting of the state's share and the county's share.

(3) In no event shall the landowner be paid an amount greater than his cost of supplies and services.

(4) In the event the program funds fail to equal the actual costs of applying the pesticide, the added expenses shall be incurred by the landowner.


AUTH: 80-7-507, MCA

IMP: 80-7-504, MCA

3. The rationale for the proposed rules are set forth in the statement of reasons for emergency.

4. These rules are authorized under section 80-7-507, MCA. They implement Title 80, Chapter 7, Part 5, MCA.

The emergency action is effective June 1, 1987.



Keith Kelly
Director

Certified to the Secretary of State June 1, 1987.

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

In the matter of the adoption) NOTICE OF THE
of a rule defining) ADOPTION OF A RULE
promotional or developmental) 6.10.104A
stage 6.10.104A)

TO: All Interested Persons

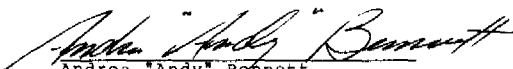
1. On April 16, 1987, the State Auditor and Commissioner of Securities published a notice of public hearing to consider the adoption of a rule defining promotional or developmental stage at pages 351-352 of the 1987 Montana Administrative Register, issue number 7.

2. A hearing was held on May 21, 1987, at 9:00 a.m. with Robert R. Throssell acting as hearing examiner. Those present were the Deputy Securities Commissioner, Jayne Mitchell and Staff Attorney, Tom Irigoin. No other persons appeared in support of or against the adoption of the rule.

3. The State Auditor and Commissioner of Securities has adopted the rule as proposed.

4. The State Auditor and Commissioner of Securities received written comment in support of the proposed rule from Deputy Securities Commissioner Jayne Mitchell. No other comments for or against the proposed rule were received.

5. The authority of the state auditor to make the proposed rule is based on section 30-10-107(1), MCA, and Sec. 2, Chapter 107, Montana Session Laws of 1987. The rule implements section 30-10-206, MCA, and Sec. 1, Ch. 107, Montana Session Laws of 1987.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State May 29, 1987.

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

In the matter of the amendment of)	
rules 16.44.102, 16.44.103,)	NOTICE OF AMENDMENT
16.44.109, 16.44.110, 16.44.116,)	OF RULES
16.44.118, 16.44.120, 16.44.123,)	
16.44.124, 16.44.126, 16.44.202,)	
16.44.306, 16.44.321, 16.44.323,)	
16.44.330, 16.44.331, 16.44.332,)	
16.44.333, 16.44.334, 16.44.351,)	
16.44.352, 16.44.401, 16.44.405,)	
16.44.410, 16.44.411, 16.44.412,)	
16.44.413, 16.44.511, 16.44.603,)	
16.44.609, 16.44.702, 16.44.802,)	
16.44.803, 16.44.804, 16.44.805,)	
16.44.811, 16.44.817, 16.44.822,)	(Hazardous Waste
and 16.44.823, regarding)	Management)
hazardous waste management)	

To: All Interested Persons


1. On April 30, 1987, the Department published notice at page 417 of the 1987 Montana Administrative Register, issue number 8, of proposed amendments which clarify for each rule which incorporates a federal rule by reference where the citation to the edition of the federal rule may be found. The amendments effect other minor changes such as correction of internal rule references and the use of "and" instead of "or" in ARM 16.44.401(4)(c)(ii).

2. The Department has amended the rules as proposed with changes only in the citations provided in the history section which follows each rule. The changes to each section are as follows:

(a) Section 75-10-404, MCA, is deleted from the history portion of all of the above-captioned rules except 16.44.323, 16.44.351, and 16.44.603.

(b) In 16.44.323, 16.44.351, and 16.44.603, the authority for each rule is Sec. 75-10-405, MCA, and each rule implements Sec. 75-10-405, MCA.

3. Comments were received from the Administrative Code Committee staff that the history sections of the rules should be clarified as described above. No other comments were received by the Department.


JOHN J. DRYNAM, M.D., Director

Certified to the Secretary of State June 1, 1987.

11-6/11/87

Montana Administrative Register

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
Rules 1 through XXII relating) of Rules 1 through XXII
to the Montana State Veterans) relating to the Montana
Cemetery.) State Veterans Cemetery.

TO: All Interested Persons,

1. On December 26, 1986, the Department published notice of the proposed adoption of Rules I through XXII (34.5.101 through 34.5.122 at page 2053 of the 1986 Montana Administrative Register, Issue No. 24.

2. The Agency has adopted the following rules as proposed.

34.5.103 (RULE III) PAYMENT OF TRANSPORTATION COSTS (1) All transportation costs shall be paid by the veterans family or private funds.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.104 (RULE IV) PREPARATION FOR BURIAL (1) All bodies shall be prepared for burial, and services conducted by licensed mortuaries, and morticians in and for the state of Montana, under the rules and regulations of the state of Montana, board of morticians.

(2) Each family shall have the right to select their own mortuary firm for arrangements.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.106 (RULE VI) CREMATED REMAINS (1) Cremated human remains must be provided in a container acceptable to the director.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.107 (RULE VII) GRANITE MARKERS (1) Only flat granite markers will be acceptable for the plot marker.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.108 (RULE VIII) BURIAL SERVICES (1) All burial services will be conducted in the service area.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.109 (RULE IX) BURIAL PLOTS (1) Burial plots will be provided on a first come first served basis as the need arises.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.110 (RULE X) PLOT CHARGES (1) There will be no charge for any burial plot.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.111 (RULE XI) VISITING HOURS (1) Visiting hours all year: 8:00 A.M. to 5:00 P.M. daily. (Note: Personnel may not be on duty on weekends.)

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

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34.5.112 (RULE XII) RESTRICTIONS (1) The cemetery may not be used as a picnic ground.

AUTH: 10-2-602, MCA IMP: 10-2-602, MCA

34.5.114 (RULE XIV) ARTIFICIAL FLOWERS (1) Artificial flowers may be placed on graves during the period of October 10th and April 15th.

AUTH: 10-2-602, MCA IMP: 10-2-602, MCA

34.5.115 (RULE XV) PERMANENT PLANTINGS (1) Permanent plantings will not be permitted on graves at any time. Potted plants and/or artificial flowers will be permitted on graves during the period 10 days before and 10 days after Easter Sunday and/or Memorial Day.

AUTH: 10-2-602, MCA IMP: 10-2-602, MCA

34.5.117 (RULE XVII) COMMEMORATIVE ITEMS (1) Statues, vigil lights, glass objects of any nature and any other commemorative items are not permitted on the graves at any time.

AUTH: 10-2-602, MCA IMP: 10-2-602 MCA

34.5.118 (RULE XVIII) DECORATING WITH FLAGS (1) All graves will be decorated on the work day immediately preceding Memorial Day and Veterans' Day with small United States flags, which will be removed on the first work day after those holidays. Flags are not permitted on graves at any other time.

AUTH: 10-2-602, MCA IMP: 10-2-602 MCA

34.5.119 (RULE XIX) REMOVAL OF DECORATIVE ITEMS (1) During lawn mowing and ground maintenance season all floral items will be removed from graves on the first and third Mondays of each month.

AUTH: 10-2-602, MCA IMP: 10-2-602 MCA

34.5.120 (RULE XX) DEPOSITING MONIES (1) 10% of all monies received shall be deposited in a perpetual maintenance account.

AUTH: 10-2-602, MCA IMP: 10-2-602 MCA

34.5.121 (RULE XXI) APPOINTMENT OF DIRECTOR (1) The director of the state veterans cemetery shall be appointed by the board of veterans affairs.

AUTH: 10-2-602, MCA IMP: 10-2-602 MCA

34.5.122 (RULE XXII) SETTING OF FEES (1) The fees assessed veterans spouses may be set by the board of veterans affairs at its first annual meeting of each calendar year.

AUTH: 10-2-602, MCA IMP: 10-2-602 MCA

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3. The Agency has adopted the rules with the following changes:

34.5.101 (RULE I) ELIGIBILITY OF VETERAN (1) Any veteran who received any discharge, other than a dishonorable discharge, from the armed forces of the United States is eligible for burial in the cemetery. The term "veteran" shall include individuals who served with national guard and reserve units of the U.S. military forces.

(2) Veterans not qualifying for a veterans administration "plot allowance" shall be charged an equivalent fee for opening and closing of all gravesites.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.102 (RULE II) NON-VETERAN SPOUSE ENTITLEMENT (1) Any non-veteran spouse of an eligible veteran may also qualify for burial in the state's veterans' cemetery providing that the interment of the qualifying non-veteran spouse is in the same burial plot as that provided for the veteran.

(2) The non-veteran spouse will be charged an opening and closing fee equal to the veterans administration "plot allowance" for veterans.

(3) The non-veteran spouse will be required to provide a like headstone comparable to that of the veteran.

(4) If the veteran has been buried in a plot designated for cremated human remains, the non-veteran spouse must also choose a burial designed for cremated human remains.

(5) The burial for the non-veteran spouse and/or the eligible veterans must be prearranged prior to the interment of the first spouse buried.

(6) The non-veteran spouse must comply with all rules applicable to the burial of the veteran spouse.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.105 (RULE V) VAULTS (1) A vault acceptable to the director of the state veterans cemetery shall be provided at the veterans or non-veterans spouses expense. This shall include cremated human remains.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.113 (RULE XIII) FRESH CUT FLOWERS (1) Fresh cut flowers may be placed on graves at any time during normal working hours. Only temporary metal flower containers are permitted. Floral items will be removed from graves when they become faded or unsightly.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

34.5.116 (RULE XVI) CHRISTMAS FLOWERS (1) Christmas wreaths or blankets are permitted on graves during the Christmas season and will be removed by February first each year.

AUTH: 10-2-602, MCA

IMP: 10-2-602, MCA

4. Ten public hearings were held around the State of Montana on the proposed rules and the following amendments were made at the request of the Montana veterans.

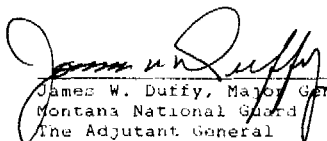
(a) Rule 34.5.101 (Rule I) is amended to include the National Guard and Reserve Units of the Military and also to charge an equivalent fee to those veterans not eligible for the V.A. plot allowance.

(b) Rule 34.5.102 (Rule II) is amended to set a fee for a non-veteran spouse.

(c) Rule 34.5.105 (Rule V) is amended to clarify the responsibility of the expense of a vault.

(d) Rule 34.5.113 (Rule XIII) is amended to include a specific time for placement of flowers.

(e) Rule 34.5.116 (Rule XVI) is amended to designate an exact date in February for removal of Christmas wreaths or blankets.


James W. Duffy, Major General
Montana National Guard
The Adjutant General

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.10.318	)	RULE 46.10.318 PERTAINING
pertaining to the policy of	)	TO THE POLICY OF THE AFDC
the AFDC emergency assis-	)	EMERGENCY ASSISTANCE PRO-
tance program to not pay	)	GRAM TO NOT PAY RECIPIENT'S
recipient's taxes	)	TAXES

TO: All Interested Persons

1. On March 12, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.318 pertaining to the policy of the AFDC emergency assistance program to not pay recipient's taxes at page 248 of the 1987 Montana Administrative Register, issue number 5.

2. The Department has amended Rule 46.10.318 as proposed with the following changes:

46.10.318 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH
DEPENDENT CHILDREN Subsections (1) through (3) remain as
proposed.

(4) Emergency assistance is not available to pay any
taxes that an applicant or recipient has failed to pay. IF
THE FAILURE TO PAY PROPERTY TAXES IS DUE TO UNFORESEEABLE
REASONS NOT UNDER THE CONTROL OF THE APPLICANT AND RESULTS IN
ACTUAL EVICTION, EMERGENCY ASSISTANCE WILL BE AVAILABLE IN THE
FORM OF VENDOR PAYMENTS TO PROVIDE THE FIRST TWO MONTHS OF
RENT IN A RENTAL UNIT. AN EVICTION NOTICE WILL BE REQUIRED
BEFORE EMERGENCY ASSISTANCE WILL BE GRANTED.

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

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

3. The Department has thoroughly considered all commen-
tary received:

COMMENT: Denying payment of emergency assistance for taxes is an overly broad reaction to a recent administrative fair hearing decision. It is arbitrary, without any basis and violates Congressional intent that each emergency public assistance case receive particularized scrutiny. Without particularized scrutiny, an individual may be denied assistance for which they qualify.

RESPONSE: The Department disagrees. As stated in the original notice, the administrative fair hearing decision has caused some confusion. The Department's interpretation of the current administrative rule has always been that delinquent

taxes are not payable under the emergency AFDC program. Recipients are responsible to pay taxes on the assets they own and the income they earn. The actual emergency that could arise from non-payment of property taxes is eviction. However, this emergency would not arise until after a tax sale and pursuant to a quiet title action or other appropriate court action. If the failure to pay property tax is due to unforeseeable reasons not under the control of the applicant (in accordance with subsection (1)(c) of this rule), and results in actual eviction, then the Department will provide for the emergency by paying the first two months rent in a rental unit. Language has been added to subsection (4) of the rule to reflect this.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1987.

VOLUME NO. 42

OPINION NO. 17

GAMBLING - Authority of city to license the conduct of raffles;

GAMBLING - Limitation on value of raffle prizes;

MUNICIPAL GOVERNMENT - Authority of city to regulate raffles;

MONTANA CODE ANNOTATED - Sections 23-5-402(1)(b), 23-5-413, 23-5-421;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 6 (1987).

- HELD: 1. Pursuant to section 23-5-421, MCA, a city may require an organization seeking to conduct a raffle to obtain a license only if the drawing for prizes is held on premises which are subject to licensure for the sale of liquor, beer, food, cigarettes, or other consumable products.
2. Regardless of whether a license to conduct a raffle may be required by a city pursuant to its authority under section 23-5-421, MCA, prizes for the raffle may not exceed \$1,000 in value unless the organization conducting the raffle obtains a license from the board of county commissioners pursuant to section 23-5-413(2), MCA.

19 May 1987

Robert G. Dwyer
Dillon City Attorney
125 North Idaho Street
Dillon MT 59725

Dear Mr. Dwyer:

You have asked my opinion on two questions concerning the city's authority to regulate the conduct of raffles. Your questions arise from my recent opinion, 42 Op. Att'y Gen. No. 6 (1987), which held that a town does not have authority under section 23-5-421, MCA, to regulate otherwise lawful bingo games conducted on premises which

are not subject to licensure for the sale of liquor, beer, food, cigarettes, or other consumable products.

I have restated your questions as follows:

1. May the city require a license to be issued, pursuant to section 23-5-421, MCA, to an organization seeking to conduct a raffle and to sell raffle tickets at various locations, including bars and restaurants?
2. If a city license is not required to conduct a raffle, is the \$1,000 limitation on the value of the raffle prize suspended as to that raffle?

The Montana Bingo and Raffles Law, §§ 23-5-401 to 431, MCA, authorizes raffles to be conducted in accordance with its provisions. Section 23-5-421, MCA, permits the city to require that licenses be obtained for raffles "to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products."

The reasons for my holding in 42 Op. Att'y Gen. No. 6 would apply as well to the regulation of raffles, and I conclude that the city does not have authority to license and regulate raffles conducted on premises which are not subject to licensure for the sale of consumable products.

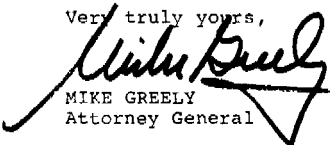
By statutory definition, raffles are "conducted" by drawing for prizes. § 23-5-402(1)(b), MCA. It follows that the city's licensing authority extends only to raffles in which the drawing for prizes takes place on premises which have been licensed for the sale of consumable products. If an organization seeking to conduct an otherwise lawful raffle does not hold its drawing on such premises, the city would not have the authority to require the organization to obtain a license. The fact that raffle tickets are sold on licensed premises, such as bars and restaurants, does not change this result; the determining factor is the location of the drawing.

With respect to your second question, it is important to distinguish between licenses which may be issued by a city or other local governing body pursuant to section 23-5-421, MCA, and the special raffle licenses which are required by section 23-5-413(2), MCA. Subsection (1) of section 23-5-413, MCA, generally limits raffle prizes to tangible personal property not exceeding \$1,000 in value. In 1981 the Legislature enacted an exception to this limitation; subsection (2) of section 23-5-413, MCA, now allows a nonprofit corporation, religious corporation sole, or other nonprofit organization to apply to the board of county commissioners for a license to conduct a raffle in which the prizes exceed \$1,000 in value. This license is separate from any license which may be required under section 23-5-421, MCA. The provisions of section 23-5-413, MCA, apply even if a city license is not required to conduct the raffle. Raffle prizes may not exceed \$1,000 in value unless an eligible corporation or organization complies with the requirements of section 23-5-413(2), MCA, and obtains the necessary license from the board of county commissioners.

THEREFORE, IT IS MY OPINION:

1. Pursuant to section 23-5-421, MCA, a city may require an organization seeking to conduct a raffle to obtain a license only if the drawing for prizes is held on premises which are subject to licensure for the sale of liquor, beer, food, cigarettes, or other consumable products.
2. Regardless of whether a license to conduct a raffle may be required by a city pursuant to its authority under section 23-5-421, MCA, prizes for the raffle may not exceed \$1,000 in value unless the organization conducting the raffle obtains a license from the board of county commissioners pursuant to section 23-5-413(2), MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 18

COUNTIES - Levy of property taxes and issuance of bonds to pay tax protest refunds;
TAXATION AND REVENUE - Levy of property taxes and issuance of bonds to pay tax protest refunds;
MONTANA CODE ANNOTATED - Sections 7-6-2501, 7-6-2531, 7-7-2201, 7-7-2221, 7-7-2501(1), 15-1-402(8), 15-1-402(9);
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 34 (1981).

- HELD: 1. Voter approval is not required before a county may collect a special tax protest refund levy.
2. Voter approval is necessary before a county may issue and sell bonds for the purpose of making tax protest refunds.

21 May 1987

Ted L. Mizner
Powell County Attorney
Powell County Courthouse
Deer Lodge MT 59722

Dear Mr. Mizner:

You have asked my opinion on the following question:

Is voter approval necessary when a county imposes a special levy or issues bonds for the purpose of paying tax protest refunds?

Refunds of taxes paid under protest must be made when a protest action is decided adversely to the taxing jurisdiction. § 15-1-402(8), MCA. In June 1986 the Legislature authorized taxing jurisdictions to use funds from several sources for the purpose of paying tax protest refunds.

(9) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

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(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds may not exceed, in the aggregate, 10 mills annually.

§ 15-1-402(9), MCA.

With respect to the collection of a special tax protest refund levy pursuant to subsection (9)(a), section 7-6-2501, MCA, establishes a limitation on property taxes levied to finance the general governmental expenses of the county. This limitation may not be exceeded without voter approval. § 7-6-2531, MCA. Thus, the first part of your question concerning whether imposition of a special levy requires voter approval depends upon whether the levy is subject to the limitation set forth in section 7-6-2501, MCA.

I concluded in 39 Op. Att'y Gen. No. 34 at 135 (1981), that section 7-6-2501, MCA, does not limit a county's power to levy additional taxes authorized by statute for special purposes. Accord 16 McQuillan, Municipal Corporations § 44.29 (1984). Similarly, the special levy authorized by section 15-1-402(9)(a), MCA, would not be subject to the limits of section 7-6-2501, MCA. The voter approval requirements of section 7-6-2531, MCA, do not apply to the special tax protest refund levy.

The second part of your inquiry concerns the issuance and sale of bonds authorized by section 15-1-402(9)(c), MCA. Whether voter approval is required before bonds

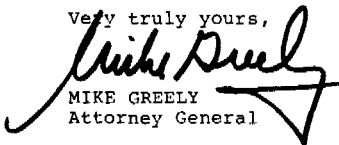
may be issued depends upon the type of bond under consideration. The bonds described in subsection (9)(c) are general obligation bonds, i.e., bonds secured by funds raised by taxation, as contrasted with county revenue bonds, which are backed by income from the project constructed with the proceeds of the bond issue. See §§ 7-7-2201, 7-7-2501(1), MCA; 15 McQuillan, Municipal Corporations §§ 43.05, 43.11 (1985).

County general obligation bonds must be approved by the voters before issuance. Certain exceptions to the voter approval requirement are set forth in section 7-7-2221, MCA; bonds issued for the purpose of paying tax protest refunds are not, however, an exception to the rule. Therefore, the election requirements for the issuance and sale of county general obligation bonds apply to those bonds issued pursuant to section 15-1-402(9)(c), MCA.

THEREFORE, IT IS MY OPINION:

1. Voter approval is not required before a county may collect a special tax protest refund levy.
2. Voter approval is necessary before a county may issue and sell bonds for the purpose of making tax protest refunds.

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. |
| 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. |

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 March 31, 1987. This table includes those rules adopted during the period March 31, 1987 through June 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1987, 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 1987 Montana Administrative Register.

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