

RESERVE  
KFM  
9035  
1973  
.A245a

**RESERVE**

STATE LAW LIBRARY

JUN 29 1990

OF MONTANA  
**MONTANA  
ADMINISTRATIVE  
REGISTER**

**DOES NOT  
CIRCULATE**

1990 ISSUE NO. 12  
JUNE 28, 1990  
PAGES 1199-1284



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-39 Notice of Public Hearing on Proposed Adoption - Implementing the Montana Agriculture Chemical Ground Water Protection Act. 1199-1221

COMMERCE, Department of, Title 8

8-97-34 (Board of Investments) Notice of Public Hearing on Proposed Adoption and Incorporation by Reference - Rules Implementing the Montana Environmental Policy Act. 1222-1226

EDUCATION, Title 10

10-3-137 (Board of Public Education) Notice of Proposed Amendment - Class 3 Administrative Certificate. No Public Hearing Contemplated. 1227-1228

REVENUE, Department of, Title 42

42-2-468 Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Liquor Bailment. 1229-1239

42-2-469 Notice of Proposed Amendment - Applications for Property Tax Exemptions. No Public Hearing Contemplated. 1240-1242

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-618	Notice of Public Hearing on Proposed Amendment - Reimbursement for Physicians Services.	1243-1244
46-2-619	Notice of Public Hearing on Proposed Amendment - AFDC Standards of Assistance.	1245-1249

RULE SECTION

ADMINISTRATION, Department of, Title 2

	(Public Employees' Retirement Board) Corrected Notice of Rule Relating to Post Retirement Adjustments.	1250
--	---	------

COMMERCE, Department of, Title 8

	(Board of Chiropractors) Corrected Notice of Rule Number - Fee Schedule.	1251
--	--	------

EDUCATION, Title 10

NEW	(Superintendent of Public Instruction) Special Education Cooperatives.	1252-1253
AMD NEW	(Board of Public Education) State Aid Distribution Schedule - Reporting and Accreditation Requirements - Notice of Opportunity for Hearing - Hearing in Contested Cases - After Hearing.	1254-1255

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

NEW	Handicapped Children's Services Program.	1256-1258
AMD	(Health Care Facilities) Retention of Medical Records by Health Care Facilities.	1259

HIGHWAYS, Department of, Title 18

AMD	Movement of Houses, Buildings, and Other Large Objects.	1260
-----	---	------

JUSTICE, Department of, Title 23

NEW	Admission, Attendance, Conduct, Evaluations and Requirements for Graduation From the Montana Law Enforcement Academy.	1261-1262
-----	---	-----------

# STATE LAW LIBRARY

JUN 29 1990

## OF MONTANA

Page Number

### PUBLIC SERVICE REGULATION, Department of, Title 38

NEW	Motor Carrier Status - Class C Contracts -	
AMD	Class C Pickups and Delivery - Contract and	
REP	Common Carrier Distinction - Insurance -	
	Transfer of Authority - Carrier Rate	
	Increases - Vehicle Identification.	1263-1265

### REVENUE, Department of, Title 42

AMD	Requirements When Licensing is Subject to Lien.	1266-1269
AMD	Sales Assessment Ratio Study - Property Value Adjustments - Criteria for Reducing or Increasing Property Value.	1270
AMD	Sales Assessment Ratio Study - Designated Areas - Residential.	1271

### SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	1272
How to Use ARM and MAR.	1273
Accumulative Table.	1274-1284

**BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA**

In the matter of the	)	NOTICE OF PUBLIC
proposed adoption of	)	HEARING ON THE PROPOSED
new rules I through LV implementing)	)	ADOPTION OF NEW
the Montana Agricultural Chemical	)	RULES IMPLEMENTING THE
Ground Water Protection Act	)	MONTANA AGRICULTURE
	)	CHEMICAL GROUND WATER
	)	PROTECTION ACT

To: All Interested Parties

1. On July 19, 1990 at 10:00 o'clock am, a public hearing will be held at the Department of Agriculture Conference Room (225), Agriculture/Livestock Building, Helena, Montana to consider adoption of these rules.

2. The proposed rules would establish the basic program standards and procedures for implementing the Montana Agricultural Chemical Ground Water Protection Act.

3. The rules, as proposed, appear as follows:

**RULE I DEFINITIONS** These definitions apply to all rules adopted under the Montana Agricultural Chemical Ground Water Protection Act Title 80, Chapter 15, MCA.

(1) "Confidential Business Information" herein referred to as "CBI" is data or information submitted or provided under authority of Title 80, Chapter 15, MCA in any form to the department, by the Environmental Protection Agency (EPA), agricultural chemical registrants, licensed or permitted pesticide dealers, retailers and applicators, fertilizer manufacturers or distributors or any affected person. CBI agricultural chemical data or information may include; confidential statements of the complete agricultural chemical formula, agricultural chemical registration data or information and information concerning the sales, production or use of pesticides or fertilizers.

(2) "Environment" includes water, air, land, plants and man and other animals living therein and the interrelationships which exist among these.

(3) "General Agricultural Chemical Ground Water Management Plan" means a written state-wide plan, herein referred to as "GMP", which describes the general environmental conditions of the state, ground water resources, common agricultural chemical uses and their properties, agriculture cropping and livestock practices, regions vulnerable to ground water impairment or degradation by agricultural chemicals, best management plans and practices, educational programs and other general program elements set forth in Title 80, Chapter 15,

MCA, which achieve the policies of 80-15-103, MCA.

(4) "Good faith effort" means a substantiated or measurable attempt to comply with the provisions of Title 80, chapter 15, MCA and the rules adopted thereunder or any specific agricultural chemical ground water management plan.

(5) "Impairment" means the introduction, potential for introduction, or increase in the concentration of an agricultural chemical into ground water for which its beneficial use may be affected and which is contrary to 80-15-103, MCA.

(6) "Official test result" means a test result which is obtained following the department approved quality assurance and quality control (QA/QC) field and laboratory procedures.

(7) "Significant harm" means having a measurable or verified observation of adverse effects on public health, environment, agricultural crops or livestock; the term also includes the definitions set forth in 4.10.1501

(7), (21), (67), (71), (98) and (100), ARM.

(8) "Significant probability" means a reasonable possibility based on scientific or technical information and/or documented evidence, that an agricultural chemical could enter ground water.

(9) "Specific Agriculture Chemical Ground Water Management Plan", herein referred to as "SMP", are rules adopted for the purpose of preventing or reducing the potential or incidence of ground water impairment or degradation from an agricultural chemical or chemicals within a specific management zone which may include the provisions of 80-15-214 (2), MCA and which achieve the policies of 80-15-103, MCA.

(10) "Specific Management Zone", herein referred to as a "SMZ" means an area, region or localized site, the boundaries of which are defined by the department in a SMP.

(11) "Unofficial test result" means a test result which does not meet department approved quality assurance and quality control (QA/QC) field and laboratory procedures.

AUTH: 80-15-105, MCA; IMP: 80-15-105, MCA

**REASON:** This rule establishes uniform definitions for administering the rules proposed for implementing the statute 80-15-101 et seq., MCA.

**RULE II GENERAL MANAGEMENT PLAN** (1) The department when developing or modifying the GMP will include the requirements of 80-15-211 and 80-15-213, MCA and many of the program elements for a SMP in 80-15-214, MCA. The intent of the GMP is to protect ground water and the environment by providing agricultural chemical users with information and data on:

(a) aquifer and ground water information with special emphasis on regions in the state that may be vulnerable to impairment or degradation from agricultural chemicals;

(b) special state or federal agency programs and

requirements;

(c) special factors such as irrigation practices, meteorological or geological characteristics;

(d) agricultural chemical application techniques, chemical characteristics, benefits and potential problems in terms of ground water impairment and degradation;

(e) the leaching potential of chemical residues in soils whether from a point or nonpoint source;

(f) proper and modified uses of agricultural chemicals to prevent their introduction into ground water;

(g) the utilization of alternative agricultural practices, integrated pest management systems; and

(h) soil fertility practices.

AUTH: 80-15-105, MCA; IMP: 80-15-211, MCA

**RULE III GENERAL BEST MANAGEMENT PRACTICES** The department in cooperation with the Montana State University Extension Service (MSUES) will write and incorporate directly or by reference best management practices and plans (BMP's) into the GMP. These BMPs will provide recommendations and information to chemical users on minimizing the impact of agricultural chemicals on ground water through proper use of chemicals at mixing/loading sites, areas treated with agricultural chemicals, and at disposal and storage facilities. The BMP's will also include information on alternative strategies and their integration with the use of agricultural chemicals.  
AUTH: 80-15-105, MCA IMP: 80-15-211, MCA

**RULE IV GMP PUBLIC PARTICIPATION** (1) The department will follow the procedures set forth in this rule when developing or modifying the GMP. The department will:

(a) prepare an outline for the GMP for use at public meetings;

(b) sponsor interagency and public meetings;

(c) consult with local, state and federal agencies, universities and agricultural chemical user groups and the public, to identify the provisions, information and data needed, the agricultural chemicals of concern and plans for development of the GMP;

(d) consult with the MSUES as set forth in Rule III in the development of BMPs for the GMP;

(2) Upon completion of these activities listed in (1) the department will prepare a draft GMP. The department will solicit through meetings and correspondence additional agency and public comment on the draft GMP. Copies of the GMP will be available for public review and comment at the department's Helena office. Additional copies will be made available for agency and public review and comment dependent upon available resources. The department will consider public comments, revise the draft if necessary, and submit the draft or revised draft GMP to the Department of Health and Environmental

Sciences (DHES) for their review and comments in accordance with rule XV.

(3) The department will prepare a final GMP upon completion of the DHES 30 day review and comment period. If no substantive modifications are made, the plan will be finalized and implemented by the department. If substantive modifications are made the department may provide for additional public comment.

(4) The department, in cooperation with the MSUES as set forth in rule V and with other agencies, user groups and the public, will disseminate the GMP information to chemical user groups and the public.

(5) Copies of the GMP will be made available to the public upon request. The department may charge for the printing and mailing cost of the document.

AUTH: 80-15-105, MCA IMP: 80-15-211, MCA

RULE V GMP EDUCATION The department in cooperation with the MSUES will conduct educational programs to inform agricultural chemical users and other persons on the provisions of the GMP. The educational program may also include the use of written and audio-visual materials on particular aspects of the elements set forth in the GMP.  
AUTH: 80-15-105, MCA IMP: 80-15-106 and 80-15-211, MCA

RULE VI GMP EVALUATIONS The department will periodically evaluate the contents of the GMP with knowledgeable research, technical and operational persons to determine if the plan is meeting the objectives of Title 80, Chapter 15, MCA. The initial evaluation will be made after 2 years, following which additional evaluations will be made as needed. Based upon these evaluations the department may revise program elements to ensure compliance with Title 80, Chapter 15, MCA. The department may hold public meetings to assist in evaluation of the GMP. The department will follow the procedures in rule IV throughout this evaluation effort. The department will also evaluate the GMP through the provisions set forth in rule XXIV.

AUTH: 80-15-105, MCA IMP: 80-15-211, MCA

REASON: Rules II through VI establish the procedures, methods, and content for development of the general management plan and implementation of preventive, educational, evaluation and planning processes to assist agricultural chemical users and the public to understand the vulnerability and beneficial uses of ground water and methods that may be used to prevent impairment of ground water. These rules also provide for public participation in the development, implementation and the evaluation of the plan.

RULE VII SPECIAL MANAGEMENT PLAN The department will



develop a SMP when any of the criteria in 80-15-212 (1) MCA, are met. All SMPs must be adopted as administrative rules. A compliance or emergency order issued under 80-15-403, MCA may be adopted as a SMP.

AUTH: 80-15-105, MCA IMP: 80-15-212 and 80-15-217, MCA

RULE VIII SMP CONTENT (1) SMPs will incorporate provisions set forth under 80-15-214 (1), MCA. The department will consider incorporation of appropriate elements and provisions set forth in 80-15-214 (2), MCA in the SMP that are necessary to achieve the requirements of 80-15-214 (1), MCA and other requirements of Title 80, Chapter 15, MCA. The content of these provisions will be contingent upon;

- (a) the extent and nature of the problem;
  - (b) the type of agricultural chemical involved;
  - (c) soil and water analytical results;
  - (d) geological and aquifer characteristics;
  - (e) land use patterns;
  - (f) soil type;
  - (g) meteorological conditions;
  - (h) depth to ground water;
  - (i) current and potential beneficial use of the groundwater;
  - (j) physiography;
  - (k) jurisdictional and ownership boundaries; and
  - (l) other elements deemed necessary by the department.
- (2) Information and data contained in the SMP will be obtained from a variety of sources. The department will attempt to acquire the most recent and accurate information available. If appropriate data is not available the department will proceed with the SMP utilizing the expertise of knowledgeable persons. The department and associated persons may conduct studies to obtain data and information that are lacking. Once these data or information are obtained the SMP will be evaluated to determine if revisions are necessary.

AUTH: 80-15-105, MCA IMP: 80-15-214 and 80-15-217, MCA

RULE IX BMP'S FOR SMP The department may incorporate BMP's into every SMP. The BMP's may address agricultural chemical use, use of alternative agricultural chemicals, integrated pest management programs, alternative agriculture practices and methods, and other provisions deemed necessary by the department.

AUTH: 80-15-105, MCA IMP: 80-15-214, MCA

RULE X SMP - PUBLIC PARTICIPATION (1) The department will follow the procedures set forth in this rule when developing a SMP. The department, in the following order will:

- (a) prepare an outline for the SMP for use at public meetings, which will include a description of the facts and

circumstances that led the department to identify the need for a SMP;

(b) sponsor interagency and public meetings;  
(c) consult with local, state and federal agencies, universities, and agricultural chemical user groups and the public, to identify the provisions, information and data needed, other agricultural chemicals of concern and plans for development of the SMP;

(d) consult with the MSUES as set forth in rule IX in the development of BMPs and identify the benefits of appropriate use of the agricultural chemicals within the proposed SMZ of the SMP;

(2) Upon completion of these activities the department will prepare draft SMP rules. The department will submit the draft SMP to the DHES for their review and comment in accordance with rule XV.

(3) Once the department has reviewed and incorporated appropriate DHES comments on the draft SMP, draft rules will be noticed into the Montana Administrative Register. Public comment and hearing provisions of Title 2, Chapter 4, MCA will be followed by the department.

AUTH: 80-15-105, MCA IMP: 80-15-215 and 80-15-217, MCA

**RULE XI SMP EDUCATION** The department in cooperation with the MSUES and other persons will educate agricultural chemical users and other persons within the SMZ on the provisions of the SMP. The educational program may also include the use of written and audio visual materials on particular elements set forth in a SMP.

AUTH: 80-15-105, MCA IMP: 80-15-106, 80-15-215 and 80-15-217, MCA

**RULE XII SMP EVALUATIONS** The department will periodically evaluate the content of the SMP with knowledgeable research, technical and operational persons to determine whether the program is meeting the objectives of Title 80, Chapter 15, MCA. The initial evaluation will be made after two years, following which additional evaluations will be made as needed. When substantial changes are necessary, the department will determine what program elements need to be revised to ensure compliance with Title 80, Chapter 15, MCA. The department may hold public meetings to assist in making evaluations. The department will follow the procedures in rule X throughout this evaluation process. The department will also evaluate the SMP through the provisions set forth in rule XXIV.

AUTH: 80-15-105, MCA IMP: 80-15-217, MCA

**RULE XIII PRIORITIZING PREPARATION OF SMP'S** (1) The department as authorized by 80-15-212 (3), MCA shall use any or all of the following criteria for prioritizing the preparation or revision of SMP's after one of the criteria in

80-15-212(1) is met:

- (a) detection of an agricultural chemical above 50% of the established standard;
- (b) a trend of increasing concentration or migration from the point of detection of an agricultural chemical is confirmed;
- (c) the number of persons and/or wells affected in a SMZ or region of the state;
- (d) the problem cannot be completely corrected through an enforcement action;
- (e) the department's available resources for SMP preparation; and
- (f) other factors documented by the department and deemed as appropriate.

AUTH: 80-15-105, MCA IMP: 80-15-212, MCA

**REASON:** Rules VII through XIII establish the content, procedures and methods for development of specific management plans, notice and implementation of the plans by rulemaking including BMP's, public participation, education programs, evaluation procedures and prioritization of preparation of SMP's.

**RULE XIV GMP OR SMP ADVISORY COMMITTEES** The department may establish advisory committees to assist in the development, implementation or evaluation of general and specific management plans.

AUTH: 80-15-105, MCA IMP: 80-15-212 and 80-15-215, MCA

**REASON:** The rule informs the public that the department may establish advisory committees to assist in development, implementation or evaluation of either the general or specific management plans.

**RULE XV DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
REVIEW AND COMMENT**

(1) The department will provide a completed draft GMP and drafts of SMP's or modifications to such plans to the Department of Health and Environmental Sciences (DHES) for review and comment, as required by 80-15-105 (2) (b), 211 and 217, MCA. The draft GMP or SMP will be submitted to the director of DHES or his designee. Upon documented delivery of the drafts the 30 day statutory review and comment period will begin. The 30 day comment period means calendar days and will end at 5 P.M. on the 30th day.

(2) Changes in format, grammar, DHES standards (80-15-103 (20), MCA) or classification of ground water and updated monitoring results, are excluded from the management plan review process.

(3) Within the 30 day review and comment period the DHES may request meetings with the department to discuss provisions of the plans and resolve questions and issues.

(4) The department will consider DHES comments or suggested modifications and incorporate those found appropriate in the final draft of the GMP, future modifications to the final GMP, draft rules for any SMP and future proposed rules to a SMP.

(5) The department will prepare a final GMP in accordance with Rule IV.

(6) The department will prepare the proposed SMP rules upon completion of the DHES 30 day review and comment period. The department will publish the proposed rules in the Montana Administrative Register.

AUTH: 80-15-105, MCA IMP: 80-15-217, MCA

**REASON:** This rule establishes the specific procedures the department will follow to accomplish the statutory requirements in 80-15-211 and 80-15-217, MCA for the DHES 30 day review and comment on the plans.

**RULE XVI SOURCES OF INFORMATION** The department in developing the GMP or SMP's may utilize the sources of information, personnel, publications, and research listed in this rule along with any other sources the department deems appropriate. The sources include: Environmental Protection Agency, United States Departments of Agriculture and Interior, Montana State Departments of Health and Environmental Sciences, Natural Resources and Conservation, State Lands; Montana Bureau of Mines and Geology; other state agencies; units of the Montana State University System; local governments; state agencies and universities from other states; public interest groups; agricultural chemical registrants; agricultural user associations; conservation districts; and similar sources that may be able to provide technical and/or operational advice or information to the department.

AUTH: 80-15-105, MCA IMP: 80-15-211, 80-15-212, 80-15-214, 80-15-215 and 80-15-217, MCA

**REASON:** This rule satisfies the legislative "Statement of Intent" requiring communication with sources of information needed for the plans.

**RULE XVII MONITORING** (1) The department shall perform both statewide monitoring and specific management plan monitoring as required by 80-15-202, MCA for the presence of agricultural chemical residues. The department may monitor media including: soil, air, plants, water, animals, and any other media identified as necessary to accomplish the provisions of Title 80, Chapter 15, MCA.

(2) monitoring shall be used to determine:

(a) the occurrence, extent and probability of agricultural chemical impairment or degradation of ground water in Montana;

- (b) the need for intensified monitoring in a particular location;
  - (c) the need for preparation of specific ground water management plans as provided in 80-15-212, MCA;
  - (d) compliance with the requirements of Title 80, Chapter 15, MCA and rules adopted thereunder; and
  - (e) whether the provisions of a SMP are reducing the occurrence or concentration of agricultural chemicals in the environment.
- AUTH: 80-15-105, MCA IMP: 80-15-202 and 80-15-203, MCA

**RULE XVIII. SELECTION OF MONITORING SITES:** (1) Factors that may be used in establishing priority for selection of sampling sites include, but are not limited to:

- (a) local cropping practices;
  - (b) agricultural chemical use patterns;
  - (c) soil characteristics;
  - (d) depth to water table;
  - (e) ground water usage;
  - (i) public or private drinking water supply;
  - (ii) non-potable use;
  - (f) existing water quality;
  - (g) previous detections of agricultural chemical residues in ground water.
  - (h) the potential for adverse impact of impaired or degraded ground water on human health or the environment:
    - (i) number of wells per unit area;
    - (ii) volume of ground water used for human consumption per unit area.
  - (i) impairment or degradation of irrigation water;
  - (j) agricultural chemical user activities which may lead to ground water impairment or degradation.
  - (k) suspected misuse of chemicals, violation of Title 80, Chapter 15, MCA, or violation of a SMP.
- (2) The department will consider seasonal changes in climate and irrigation scheduling when determining appropriate times to sample water.
- (3) The department will re-evaluate site prioritization based on new or updated information.

AUTH: 80-15-105, MCA IMP: 80-15-202 and 80-15-203, MCA

**RULE XIX. SAMPLE COLLECTION AND ANALYSIS** (1) Sample collection and analysis performed for monitoring and investigation shall follow the department QA/QC requirements.

(2) A test result submitted to the department or the DHES must be accompanied by QA/QC field and laboratory procedures if it is to be considered as an official test result.

AUTH: 80-15-105, MCA IMP: 80-15-202 and 80-15-203, MCA

**RULE XX. POINT OF STANDARDS APPLICATION TEST RESULTS** (1) The department will review and evaluate all official ground

water test results. Official ground water test results will be classified as either:

- (a) negative detection;
- (b) positive detection below the adopted standard;
- (c) positive detection which meets or exceeds the adopted standard.

(2) Negative detections will be entered into the departments ground water data base and reported to the affected person.

(3) Positive detections lower than 50% of the standard will be entered into the departments database, reported to the affected person, and will be noted as a well to be resampled to observe changes in agricultural chemical concentrations in the aquifer. The department will prepare a SMP under 80-15-212 (1) (b) or (c), MCA, if additional monitoring demonstrates a scientifically validated increase in agricultural chemical residues in ground water or if an agricultural chemical has migrated from the point of detection.

(4) Positive detections that meet or exceed 50% of the standards will be reported to the affected persons and resampled to confirm the results. If positive detections that relate to the requirements of 80-15-212, MCA are confirmed, the following steps will be taken:

- (a) enter in ground water database;
- (b) intensify monitoring in the immediate vicinity:
  - (i) to identify the source(s) of impairment;
  - (ii) determine extent of impairment;
  - (c) conduct investigation into the possible cause of impairment;
- (d) determine need for a specific management plan as provided in 80-15-212, MCA; and
- (e) initiate any necessary enforcement monitoring.
- (5) an unofficial test result may be used to:
  - (a) initiate monitoring in a particular area;
  - (b) notify local and state agricultural, environmental and health officials.

AUTH: 80-15-105, MCA IMP: 80-15-202 and 80-15-203, MCA

**RULE XXI DEVELOPMENT AND MAINTENANCE OF GROUND WATER QUALITY DATABASE** The department will develop and maintain a database consisting of information and data compiled from previous and current ground water monitoring. This information may be summarized annually and made available, along with the ground water standard, to the public upon request. The database will consist of a number of data elements based on current department and EPA recommendations.

AUTH: 80-15-105, MCA IMP: 80-15-202 and 80-15-203, MCA

**REASON:** Rules XVII through XXI establish the monitoring program required by 80-15-202 and 80-15-203, MCA, to

determine: the presence of agricultural chemicals in ground water or other environmental media; how the monitoring will be utilized; selection of monitoring sites; use of the point of standard application (80-15-102 (16), MCA); and establishment of a monitoring data base.

**RULE XXII. ENSURE COMPLIANCE** The department will ensure compliance with Title 80, Chapter 15, MCA, the GMP and SMPs utilizing the procedures and activities set forth in rules XXIII through XXV.

AUTH: 80-15-105, MCA IMP: 80-15-105, MCA

**RULE XXIII. COMPLIANCE INSPECTIONS** (1) The department will conduct inspections of agricultural chemical facilities and users to determine compliance with Title 80, Chapter 15, MCA. Special inspections, investigations or monitoring may be conducted:

- (a) when misuse of an agricultural chemical is suspected;
- (b) if an inspection reveals that an agricultural chemical may impair ground water; and
- (c) if monitoring reveals the presence of an agricultural chemical in ground water.

AUTH: 80-15-105, MCA IMP: 80-15-401, MCA

**RULE XXIV. COMPLIANCE EVALUATIONS** (1) The department will evaluate the requirements of compliance orders, emergency orders, enforcement actions, and SMPs in terms of:

- (a) compliance dates;
  - (b) compliance with special agricultural chemical use and record keeping requirements;
  - (c) removal or treatment orders for soil or water clean-up;
  - (d) provisions of compliance orders, emergency orders, enforcement actions and SMP's; and
  - (e) other requirements of Title 80, Chapter 15, MCA.
- (2) Based upon the evaluations, the department may develop new or revised orders or SMPs, or take additional enforcement actions to ensure compliance. New or revised SMPs will be developed following procedures in rule X. The department in cooperation with MSUES may also revise the agricultural chemical ground water educational programs.

AUTH: 80-15-105, MCA IMP: 80-15-401, 80-15-403, 80-15-404,  
80-15-405, 80-15-411, 80-15-412,  
80-15-412, 80-15-413, 80-15-414,  
MCA

**RULE XXV. GMP AND SMP EVALUATIONS** The department will evaluate the GMP and established SMPs according to procedures in rules VI and XII.

AUTH: 80-15-105, MCA IMP: 80-15-217, MCA

**REASON:** Rules XXII through XXV establish department procedures as directed in the legislative "Statement of Intent" to adopt rules ensuring compliance with the requirements of 80-15-211 and 80-15-212, MCA.

**RULE XXVI COORDINATING PROPOSED ORDERS** The department will coordinate the issuance of compliance orders and emergency orders with the DHES. The department will determine if DHES is proposing orders under 75-5-613, MCA on the same issue as the department is proposing orders under Title 80, Chapter 15, MCA. The department will communicate by correspondence or meetings with the DHES to ensure that orders of both departments are coordinated.  
AUTH: 80-15-105, MCA IMP: 80-15-403 and 80-15-405, MCA

**RULE XXVII DETERMINING SIGNIFICANT PROBABILITY** (1) For purposes of determining significant probability the department will obtain information during investigations or monitoring of agricultural chemical use, chemical spills, dumps, or inconsistent use. Examples of information that will be considered are:

- (a) characteristics of the chemical that influences entry into ground water such as water solubility, half-life, absorption and adsorption;
- (b) depth to and direction of flow, volume and rate of ground water;
- (c) distance to existing wells or other conduits to ground water;
- (d) soil characteristics including depth, texture, organic matter and permeability;
- (e) amount of chemical used, spilled, dumped or otherwise available to enter ground water;
- (f) land features that could influence chemical movement such as surface water drainage;
- (g) precipitation;
- (h) cropping history and irrigation; and
- (i) other factors deemed appropriate by the department.

AUTH: 80-15-105, MCA IMP: 80-15-403 and 80-15-405, MCA

**RULE XXVIII CONTENTS OF ORDERS** (1) Each compliance or emergency order issued by the department will contain:

- (a) the name of the person or persons to whom the order will be served;
- (b) the authority of the department for issuing the order;
- (c) a description of the actions that constitute the alleged violation or that may constitute significant probability and the provisions of the act or rule that establish the violation;
- (d) the corrective actions required by the department;
- (e) criteria for determining the duration of any required monitoring;



(f) the time frame within which corrective actions are to be initiated, conducted and completed; and

(g) appeal rights under Title 2, Chapter 4, MCA.

(2) In determining the time for compliance the department will consider the gravity of the violation using criteria set forth in rule XXXVI.

AUTH: 80-15-105, MCA IMP: 80-15-403 and 80-15-405, MCA

**RULE XXIX. CORRECTIVE ACTIONS** (1) In issuing a compliance or emergency order the department may require the following actions:

(a) monitoring to determine residue levels, trends and movement of agricultural chemicals in ground water, soils or other materials;

(b) characterization of ground water features such as direction of flow, depth and rate of flow;

(c) inventory of wells, surface water features, springs, groundwater recharge areas, and other ground water resources in the area or SMZ affected or area SMZ that may be affected;

(d) monitoring the direction, depth and rate of movement of any impaired or degraded ground water;

(e) removal and disposal, relocation or treatment of impaired or degraded, water, soil or other materials;

(f) provision for alternate water supplies or removal of agricultural chemicals from ground water to provide potable water for drinking and suitable water for irrigation and other beneficial uses;

(g) procedural or operational changes that prevent, reduce or minimize the probability of ground water impairment or degradation from agricultural chemicals; and

(h) other provisions deemed appropriate to protect ground water.

(2) The department may require that persons who are served with a compliance or emergency order submit a written plan that describes the procedures for conducting corrective actions.

Examples of procedures that may be required include quality assurance procedures, analytical methods, detection limits, sampling and monitoring methods, clean-up and the other provisions of this rule.

AUTH: 80-15-105, MCA IMP: 80-15-403 and 80-15-405, MCA

**RULE XXX. DURATION OF MONITORING** (1) Monitoring required under a compliance or emergency order shall consist of sampling and chemical analyses conducted using department approved procedures and methods:

(a) Required ground water monitoring shall continue until residues in ground water are within levels established by the department in consultation with the DHES. The department may require that ground water monitoring continue for one or more annual hydrologic cycles after analytical results fall within

the accepted level.

(2) Sampling and monitoring of residues in soil may be required to determine:

(a) the extent and concentration of the agricultural chemical residues in soils which may be contributing to ground water impairment or degradation;

(b) the significant probability of spills, discharges or other releases of agricultural chemicals entering ground water; and

(c) remaining residue levels at sites where remedial actions have been undertaken.

AUTH: 80-15-105, MCA IMP: 80-15-403 and 80-15-405, MCA

**RULE XXXI. PROCEDURES FOR ISSUING COMPLIANCE AND EMERGENCY ORDERS** All orders will be issued following the requirements of Title 2, Chapter 4, part 6, MCA.

AUTH: 80-15-105, MCA IMP: 80-15-403 and 80-15-405, MCA

**REASON:** Rules XXVI through XXXI establish: how the department will coordinate proposed compliance and emergency orders with DHES; how the department will determine significant probability of agricultural chemicals entering ground water 80-15-403 (2), MCA; the contents of orders; the types of corrective actions and monitoring requirements; duration of monitoring; and procedures for issuing such orders. These rules assist in insuring the department is uniform and consistent and the rules inform the public of the procedures the department will follow in issuing such orders.

**RULE XXXII. ENFORCEMENT** Whenever the department has reason to believe that a violation of Title 80, Chapter 15, MCA, or any adopted rule thereunder has occurred and the department finds it is in the public interest to assess an administrative civil penalty, it may initiate a civil penalty action pursuant to 80-15-412, MCA.

AUTH: 80-15-105, MCA IMP: 80-15-412, MCA

**RULE XXXIII. ABILITY TO STAY IN BUSINESS** Where a determination of the appropriate amount of the penalty must be made under 80-15-412, MCA, the "effect on the person's ability to stay in business" will not be considered, until such time and to the extent the charged person places bonafide financial information in issue by presentation thereof, accompanied by appropriate documentary evidence.

AUTH: 80-15-105, MCA IMP: 80-15-412, MCA

**RULE XXXIV. OTHER PENALTIES** The department may, in the interest of judicial economy, combine a disciplinary proceeding under 80-8-211, MCA (suspension or revocation of licenses and permits) or other violations of Title 80, Chapter 8, MCA, or rules adopted thereunder, or violations of Title

80, Chapter 10, MCA, with a proceeding under 80-15-412, MCA. Any appeal from a disciplinary action against the license or permit or other violations, shall be reviewed pursuant to the procedures established by Title 2, Chapter 4, MCA.

AUTH: 80-15-105, MCA IMP: 80-15-404, 80-15-411 and 80-15-412, MCA

**RULE XXXV PENALTY DETERMINATION** (1) Each violation of Title 80, Chapter 15, MCA, or rules adopted thereunder is considered a separate offense. As stated in 80-15-412, MCA each offense is subject to a separate penalty not to exceed \$1,000, with the exception of farm applicators possessing a pesticide permit or using a fertilizer whose penalty cannot exceed \$500 for the first offense.

(2) The penalty matrices set forth in this rule establish the initial penalty value for each offense. The significance of the violation, the degree of care exercised and whether significant harm resulted to health, environment, agricultural crops or livestock may decrease or increase a penalty within the limits listed below. A person may present information on their ability to stay in business, as set forth in rule XXXIII, petitioning for a reduction in the proposed civil penalty. The department shall have the option to select the most appropriate penalty and penalty value for each and every violation of the act.

**PENALTY MATRIX**

Type of Violation	1ST Offense	2ND Offense	3RD and Subsequent Offense
(a) Violate any lawful provision of a SMP:	100-1000	500-1000	750-1000
(b) Violate any provision of a lawful order:	100-1000	500-1000	750-1000
(c) Violate any provision of Title 80, Chapter 15, MCA:	100-1000	500-1000	750-1000

AUTH: 80-15-105, MCA IMP: 80-15-412, MCA

**RULE XXXVI GRAVITY OF VIOLATIONS** (1) The department will consider several factors when determining the gravity of a violation as set forth in 80-15-412, MCA. These factors relate to provisions established by Title 80, Chapters 8 or 10, or Title 80, Chapter 15, MCA and rules adopted thereunder, agricultural chemical labeling, SMP requirements or similar requirements that regulate the use of agricultural chemicals. The factors set forth below are examples of requirements that

may be used. They are neither inclusive nor necessarily additive in substance or number and not necessarily presented in order of importance. A violation may be considered more grave when:

(a) a restricted use pesticide defined by ARM 4.10.1501(90) is involved versus a general use pesticide as defined by ARM 4.10.1501(50);

(b) a pesticide is involved that is more toxic than other available, effective registered alternative pesticides;

(c) agricultural chemical levels in ground water meet or exceed the standard, pursuant to 80-15-201, MCA;

(d) the extent, and severity of the violation results in harm to health, environment, or agriculture crops, or livestock;

(e) use is inconsistent with label direction and precautions or department rules;

(f) the person's history of compliance illustrates continued noncompliance or disregard for compliance;

(g) a restricted use pesticide (ARM 4.10.1501(90)) is sold to or provided in any manner to a person not licensed, certified or permitted;

(h) the violation results in impairment of ground or surface water;

(i) a person uses an agricultural chemical which is not registered or labeled, or has been cancelled, suspended or banned by EPA or the department by statute, rule or order;

(j) a person does not possess the proper pesticide license credential or permit to use or purchase a pesticide, or is not supervised as required by Title 80, Chapter 8 or Title 80, Chapter 15, MCA and rules adopted thereunder;

(k) records are not maintained or are improperly maintained;

(l) the person has knowledge of Title 80, Chapter 15, MCA, and rules adopted thereunder or specific management plans which were violated.

AUTH: 80-15-105, MCA IMP: 80-15-412, MCA

**RULE XXXVII DEGREE OF CARE** (1) In determining the applicability of the degree of care, the following standards will apply:

(a) Negligence means a failure to exercise reasonable care;

(b) Reasonable care means that degree of care demonstrated with a knowledge of the nature and probable consequences of the act or omission that a prudent person would ordinarily exercise acting in their own concern;

(c) Gross negligence means knowing, intentional or reckless conduct.

(2) The department in its investigation and inspection of an alleged violation will attempt to determine and verify the degree of care exercised by a person. If a violation is substantiated the department will consider the degree of care

exercised by a person in determining any administrative civil penalty.

(3) The charged persons may present evidence of the degree of care exercised, which may be considered by the department for the purpose of determining and mitigating the amount of penalty.

AUTH: 80-15-105, MCA IMP: 80-15-412, MCA

**RULE XXXVIII SIGNIFICANCE OF HARM** (1) The department will attempt to determine and verify significant harm resulting from any violation. The type and amount of verified significant harm will be considered in determination of civil penalty amounts and may mitigate or enhance the civil penalty. The department will determine that significant harm has resulted when any monitoring reveals that an agricultural chemical meets or exceeds a standard.

(2) For verification of significant harm the department will consider documented physical evidence and expert opinion from knowledgeable persons. Examples of such persons include pesticide specialists, physicians, toxicologists, biologists, water quality personnel, extension agents, university personnel, product technical representatives, and consultants and other personnel with documented qualifications.

(3) The following are criteria that the department will consider in determining significant harm including but not limited to:

(a) exposure to humans resulting in acute illness, chronic illness or death;

(b) exposure to livestock or other domestic animals resulting in illness, death, or residues in the livestock or by-products that exceed tolerances or prevent marketing or consumption;

(c) exposure to crops, ornamental plants or other plants being grown or cultivated that results in damage, destruction, reduction in yield or residues that exceed tolerances or prevent marketing or consumption;

(d) contamination of water that results in impairment or adverse effects to any existing or future beneficial use; and  
(e) exposure and adverse impact on plants other than crops, animals other than livestock, soil, water or any other components of the environment.

AUTH: 80-15-105, MCA IMP: 80-15-412, MCA

**REASON:** Rules XXXII through XXXVIII establish the process and determinations the department will use to assess civil penalties. The rules set forth specifically how "ability to stay in business" will be considered, the use of other penalties in conjunction with civil penalties; the determination of the penalty and use of the penalty matrix; and the determination of gravity; degree of care exercised by a person; and the significance of harm.

**RULE XXXIX PESTICIDE REGISTRANT CBI** (1) The department shall rely on the determination of confidentiality by the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for pesticide registrant data and information. Pesticide registrants claims for CBI must be consistent with the EPA determination and the registrant must advise the department of any reclassification of the data or information by EPA within 30 days. The department may evaluate the validity of any registrant claim of CBI at any time and reserves the right to declassify material as CBI when the registrants claim is found to be inconsistent with EPA's determination. In such cases the department shall provide the submitter of the information a 20 day comment and rebuttal period prior to declassification.

(2) Pesticide registrants in submitting data or information required by the department under the act, must:

(a) clearly mark any portions thereof which in the registrants opinion are trade secrets or commercial or financial production, sales or use information, and

(b) submit such marked material separately from other material required to be submitted under this Act. All submitted document packages containing CBI shall be accompanied by a cover letter describing CBI sections within the document package. Individual pages containing CBI within the submitted document packages shall be clearly marked as Confidential.

(3) CBI shall be hand delivered or sent to the department via U.S. Postal Service, registered mail, return receipt requested or equivalent courier. The wording "Confidential Business Information - Pesticides" shall appear on the outer surface of the mailing container. CBI mailed to the department pursuant to data requirements under Title 80, Chapter 15 or Chapter 8, MCA shall be addressed as follows:

Montana Department of Agriculture  
Environmental Management Division  
Capitol Station  
Helena, Mt. 59620

Attention: Division Administrator

(4) CBI received by the department shall be immediately secured in accordance with the procedures of the CBI rules. The director or his designee shall be responsible for initiating and maintaining security procedures.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE XL CBI-CHEMICAL USE AND SALES DATA** Dealers, distributors, registrants, applicators or any person required to submit pesticide or fertilizer production, sales or use data or from whom the department through inspections obtains

such pesticide or fertilizer use and sales data by authority under Title 80, Chapter 15, MCA are not required to mark the data or related records information as CBI. Dealers, distributors, applicators, or other persons submitting such data may voluntarily mark the data CBI. If it is not marked CBI they may be held to have waived their right to CBI in the unlikely event the department releases any such data. The department will handle pesticide data as CBI within the requirements of the Attorney General's Opinion (38 Agriculture Opinions 1 1979). The department reserves the right to reveal agricultural chemical sales or use data of persons for which an enforcement case under Title 80, Chapter 8 or 10, is finalized or in the course of an administrative hearing under Title 2, Chapter 4, MCA. Data obtained under the authority of Title 80, Chapters 8 or 10, MCA and transferred within the department for administration of Title 80, Chapter 15, MCA shall be managed in the same manner as data submitted by any person under authority of Title 80, Chapter 15, MCA.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE XLI CBI SHALL BE STORED IN AN APPROVED SECURITY FILE**

Only employees authorized by the director may be issued keys or combinations to security files. No authorized employee may share keys or combinations with any person other than those authorized for direct access to CBI documents.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE XLII AUTHORIZED ACCESS** The director will establish a written list of the department employees and other persons authorized access to CBI.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE XLIII DOCUMENT TRACKING** (1) CBI documents received by the director or his primary designee shall be immediately logged in and stamped on the front page, in red ink, with the following wording:

**CONFIDENTIAL DATA  
NOT A PUBLIC RECORD**

(2) All such CBI documents shall be assigned a document tracking number. The director shall designate the personnel responsible for recording the date of receipt, document tracking numbers and subsequent actions on a written tracking sheet which shall be affixed to the CBI document. Reproductions of CBI shall be performed only by authorized professional or clerical personnel as designated by the director. The tracking sheet shall bear the initials of the employee performing the reproductions, and the number of reproductions made. Reproductions or other physical forms of CBI shall be secured and tracked as described for the original

CBI. The tracking sheet shall bear the initials and title of any employee authorized by the department or cooperative agency receiving the CBI, the date of receipt and subsequent date of return.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

RULE XLIV MEETINGS (1) Only the submitter and authorized personnel shall be allowed to attend that part of meetings, otherwise public under 2-3-203, MCA, at which CBI will be discussed. Each person attending such a meeting shall sign an attendance log, listing his or her name, title, organization and telephone number. This log shall also include the tracking number(s) of the CBI document(s) distributed or discussed.

(2) A copy of the log shall be attached to the tracking sheet of each CBI document discussed or distributed at the meeting. CBI shall be deleted from any minutes or transcripts of meetings which are made public. Recordings, minutes or transcripts containing CBI shall be stored and tracked as described for the original CBI. It is unlawful for any person present at a meeting in which CBI is discussed to use confidential data for his own advantage or to reveal the data to the general public.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

RULE XLV TELEPHONE Authorized employees of the department may discuss the CBI over the telephone with other persons authorized to have access to CBI. Authorized employees of the department may discuss CBI with the submitter by the permission of the submitter only if the CBI is specifically identified by the submitter and the submitter is made aware that the department cannot guarantee the security of confidential information discussed over the telephone.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

RULE XLVI TRAVELING When an authorized department employee is required to travel while in the possession of CBI, such CBI shall remain in the employee's personal possession.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

RULE XLVII TRANSMITTAL CBI transmitted both within and without the department shall be hand delivered. When hand delivery is impractical, CBI shall be transmitted by certified mail return receipt requested or equivalent courier.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

RULE XLVIII CBI ACCESS JUSTIFICATION Interagency access to CBI documents, shall be requested in writing and shall state the specific purpose for such access. The department recognizes that disclosure of specific CBI may be necessary for an agency to carry out a directive on behalf of the



department, to fulfill said agency's own statutory obligations, or to complete an inquiry initiated by department. Written requests for access to CBI by agencies outside the department shall be signed by a designated person from the agency authorized by the department to receive and review CBI. All such requests shall be entered as a permanent part of the document tracking system. The department reserves the right to deny CBI access to persons or agencies not providing adequate document security.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE XLIX ELIGIBILITY REQUIREMENTS** Agencies eligible for access to submitted documents containing CBI are those responsible by statute for the protection of public health or the environment. Each such agency shall submit, for approval by the department, a written proposed procedure to ensure the security of all disclosed CBI and shall agree, in writing, to treat all documents disclosed under this rule as confidential.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE L INTERAGENCY** The department may enter into a Memorandum of Understanding (MOU) with any agency possessing an obligation, under Montana Law, to provide protection of public health or the environment. Through the MOU, an agency shall provide the department a list of trained as specified in rule LIV designated persons requesting authorization to receive CBI, agree to treat all information disclosed by the department as CBI and insure adequate document security. The department may set time limits for the return of all disclosed CBI, and may recall all or any portion of the disclosed documents at any time. Agencies receiving CBI from the department through the procedures outlined above may not reproduce or reveal to unauthorized persons(s) such documents in any manner.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE LI PERSONNEL PRECAUTIONS** Personnel from any agency other than the department, authorized to receive and review CBI documents, may not discuss the contents of said documents with any unauthorized persons. They may not discuss CBI over the telephone and may not produce notes or correspondence containing CBI.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE LII AUTHORIZATION** Prior to gaining access to CBI files all authorized employees of the department and designated personnel from other agencies shall sign a document stating that they have received, read and understand this rule, and shall abide by these CBI rules subject to penalties set forth in 80-15-414 (4), MCA.

AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE LIV NOTIFICATION OF DISCLOSURE** Within 15 days of the date of disclosure to anyone other than authorized department employees, the director shall notify the submitter of disclosed CBI providing the name of the agency, date of disclosure, detailed description of the information disclosed, and the purpose of the disclosure. The department shall also provide proof that the receiver is authorized by the department to review CBI.  
AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE LIV TRAINING** All authorized department employees and all designated personnel in other agencies authorized to receive and review CBI shall receive training in procedures to follow in requesting access to, handling, distributing and storing documents containing CBI. Such training shall assure complete understanding of this rule by all such personnel.  
AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

**RULE LV VIOLATIONS** (1) Any authorized personnel within the department or agencies outside the department, who fail to comply with these confidentiality rules, shall be investigated by that agency and complete findings reported to the department's director. The department retains the authority to revoke an agency's access to CBI if violations of the department's CBI rule are documented. If CBI access is revoked, an agency may regain access to CBI by providing proof, satisfactory to the department, that adequate steps have been taken to improve security.

(2) Persons or agencies, who with intent to defraud, uses or reveals CBI, shall have their access to CBI immediately revoked. Violators, pursuant to 80-15-414 (4), MCA are subject to a misdemeanor and upon conviction may be fined not more than \$5,000 or imprisoned for not more than 1 year, or both.  
AUTH: 80-15-105, MCA IMP: 80-15-108, MCA

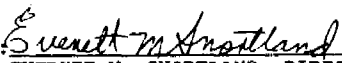
**REASON:** Rules XXXIX through LV establish the procedures and criteria the department will follow receiving, filing, storing and using confidential business information (CBI). The department is obligated by statutes and these rules to determine if data or information submitted by any person is confidential by statute and whether the data or information is subject to public disclosure under the constitution and related statutes or attorney general's opinions. The rules allow the department to provide CBI to other agencies responsible for health or environmental programs through memorandum of agreements setting forth the conditions and standards the agency must maintain with CBI.

4. The department proposes these rules for implementation of the Montana Agricultural Chemical Ground Water Protection Act. The legislature in the Statement of Intent for HB757 and in 80-15-105, MCA requires the department to adopt appropriate rules for implementing the various responsibilities of the department within the Act, including communication with the public, development and administration of the ground water plans, monitoring and other related duties to protect present and future beneficial uses of ground water.

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 the Environmental Management Division, Department of Agriculture, Capitol Station, Helena, Montana 59620, to the attention of Gary Gingery, no later than July 26, 1990.

6. Timothy J. Meloy will preside over and conduct the hearing.

DEPARTMENT OF AGRICULTURE

By:   
EVERETT M. SNORTLAND, DIRECTOR  
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, June 18, 1990.

BEFORE THE MONTANA BOARD OF INVESTMENTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING ON
and incorporation by reference	)	THE ADOPTION AND INCORPORA-
of rules implementing the	)	TION BY REFERENCE OF RULES
Montana Environmental Policy	)	IMPLEMENTING THE MONTANA
Act and the adoption of a new	)	ENVIRONMENTAL POLICY ACT
rule implementing the Montana	)	AND THE ADOPTION OF A NEW
Environmental Policy Act	)	RULE IMPLEMENTING THE
	)	MONTANA ENVIRONMENTAL
	)	POLICY ACT

TO: All Interested Persons:

1. On August 1, 1990, between 9:00 and 11:30 a.m., a public hearing will be held at 555 Fuller Avenue, in the conference room of the Board of Investments, to consider the proposed adoption and incorporation by reference of rules implementing the Montana Environmental Policy Act (MEPA). The rules proposed to be adopted and incorporated by reference are those rules already adopted by the Department of Commerce to implement MEPA. The public hearing will also be held to consider an additional rule that the Board proposes to adopt to implement MEPA.

2. The proposed new rules will read as follows:

"I ADOPTION OF MEPA RULES (1) The Board of Investments adopts the Montana Environmental Policy Act rules of the Department of Commerce as set forth in ARM 8.2.302, 8.2.303 & 8.2.305 through 8.2.327, except that the terms "the agency," "the department," and "the board" mean the Montana board of investments as created pursuant to section 2-15-1808, MCA."

Auth: Sec. 2-3-103, 2-4-201, MCA, Imp: Sec. 75-1-201, MCA

"II GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS Section 71-1-201, MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government specifically affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(1) The agency shall prepare an EIS as follows:

(a) whenever an EA indicates that an EIS is necessary or

(b) whenever, based on the criteria in ARM 8.2.305, the proposed action is a major action of state government significantly affecting the quality of the human environment.

(2) An EA may serve any of the following purposes:

(a) to ensure that the agency uses the natural and

social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;

(b) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;

(c) to determine the need to prepare the EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;

(d) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and

(e) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by ARM 8.2.313 to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

(3) The agency shall prepare an EA whenever:

(a) the action is not excluded under subsection (5) or (6) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(b) the action is not excluded under subsection (5) or (6) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2) (a) and (d) through a similar planning and decision-making process; or

(c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(4) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

(5) The agency is not required to prepare an EA or an EIS for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule of or justified by a programmatic review. In the rule or programmatic review, the agency shall identify an extraordinary circumstance in which a normal excluded action requires an EA or EIS;

(b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) minor repairs, operations, or maintenance of existing equipment or facilities;

(d) investigation and enforcement; data collection, inspection of facilities or enforcement of environmental standards;

(e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and

(f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

(6) In addition to the categories of actions listed under (5), the board has determined that the following programs and/or actions do not have a significant impact on the human environment, are primarily economic in nature, and therefore do not require the preparation of an EA or an EIS:

(a) the purchase of all stocks publicly traded on any national or international stock exchange;

(b) the purchase of all bonds issued by governmental entities or by corporations whose stock is listed on any national or international stock exchange. This exemption does not apply to bonds purchased by the Board by private placement where the Board is the sole provider of funds;

(c) the issuance of bonds under the Municipal Consolidation Finance Act through the Montana Cash Anticipation Finance Program (Title 17, Chapter 5, Part 16, MCA) when the proceeds are used to fund loans to local governments to cover temporary cash deficits;

(d) the issuance of bonds under the Montana Consolidation Finance Act through the Montana Cash Anticipation Finance Program (Title 17, Chapter 5, Part 16, MCA) when the proceeds are used to prepay debt to the Federal Bureau of Reclamation where original loan money from the federal government was used to improve existing irrigation structures;

(e) the issuance of bonds under the Municipal Consolidation Finance Act through the Intermediate Term Finance Program when vehicles and equipment, or to make modest repairs or improvements to real property. All other uses made under this program are reviewed under these rules;

(f) the purchase of all residential loans made pursuant to Title 8, Chapter 97, Subchapter 14 of the Administrative Rules of Montana; including but not limited to FHA, conventional and VA loans;

(g) the purchase of all federally guaranteed loans made pursuant to Title 8, Chapter 97, Subchapter 14 of the Administrative Rules of Montana;

(h) the purchase of all residential multi-family loans made pursuant to Title 8, Chapter 97, Subchapter 14 of the Administrative Rules of Montana;

(i) all deposits made under the linked deposit program pursuant to Title 8, Chapter 97, Subchapter 14 of the Administrative Rules of Montana; and

(4) limited partnerships where the Board is not involved in the investment decision.

(7) If an extraordinary circumstance pertaining to one of the programs and/or actions exempted in (6) is brought to the attention of the Board or Board staff, the Board shall determine whether such circumstance may create a significant impact on the human environment. If the Board determines that such circumstance may create a significant impact on the human environment, then the program and/or action is no longer exempt under subsection (6) and ARM 8.2.302 through 8.2.327 applies."

Auth: Sec. 2-3-103, 2-4-201, MCA; Imp: Sec. 2-3-104, 75-1-201, MCA

4. SUBJECT MATTER OF ARM 8.2.302 THROUGH 8.2.327 The rules that the Board is adopting and incorporating by reference are the rules that the Department of Commerce has already adopted to implement MEPA. The Department's MEPA rules reflect the model and uniform MEPA rules adopted by many other agencies in the executive branch.

The model MEPA rules establish, among other requirements and procedures, the following: general requirements of the environmental review process; determining the significance of impacts; preparation and contents of environmental assessments; determining the scope of an EIS; EIS's general requirements; preparation and contents of draft and final EISs; adoption of an existing EIS; interagency cooperation; joint review; record of decision for actions requiring EISs; public hearings; fees; and determination of authority to impose fees and determination of amount.

5. A copy of ARM 8.2.302 through 8.2.327 can be obtained at the offices of the Board of Investments located at 555 Fuller Avenue, Helena, MT 59620.

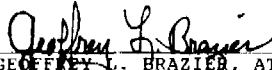
6. The Montana Board of Investments is proposing to adopt the Department's MEPA rules and incorporate them by reference, in addition to adopting a new rule, in order to implement and comply with MEPA. The text of new rule II currently exists in ARM 8.2.304 of the Department's rules. ARM 8.2.304 is amended to enumerate the actions and/or programs the Board has determined do not require the preparation of an EA or EIS.

7. Interested persons may present their view and comments either orally or in writing at the hearing. Written comments may also be submitted to Mr. Dave Lewis, Executive Director, Montana Board of Investments, Capitol Station, Helena, MT 59620 by no later than 5:00, p.m., on August 3, 1990. The record of the hearing will be deemed closed at that time.

9. Mona Jamison has been designated to preside over and conduct the hearing.

MONTANA BOARD OF INVESTMENTS  
MR. WARREN F. VAUGHAN, CHAIRMAN

BY:

  
\_\_\_\_\_  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 18, 1990.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PROPOSED AMENDMENT OF  
amendment of Class 3 ) RULE 10.57.403, CLASS 3  
Administrative ) ADMINISTRATIVE CERTIFICATE  
Certificate

NO PUBLIC HEARING IS CONTEMPLATED.

TO: All Interested Persons

1. On July 28, 1990, the Board of Public Education proposes to amend rule 10.57.403, Class 3 Administrative Certificate.

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

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (8) remain the same.

(9) The professional training required for this endorsement must include a graduate course in school law and 15 graduate quarter (10 semester) credits in supervision, curriculum and methods in the fields to be endorsed. (~~Repealed July--17--1991~~ September 1, 1991) ~~Effective July--17--1991~~ September 1, 1991, the following professional training will be required:

(a) through (b) remain the same.

AUTH: Sec. 20-4-106 MCA

IMP: Sec. 20-4-106, 20-4-106(1)(c), 20-4-108 MCA

3. This amendment has been proposed for the purpose of consistency with other rules currently being enforced.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than July 27, 1990.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Bill Thomas, Chairperson of the Board of Public Instruction, 33 South Last Chance Gulch, Helena, Montana 59620 no later than July 27, 1990.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 178 as there are 1781 teachers applying for certificate endorsement.

*Bill Thomas*

BILL THOMAS, CHAIRPERSON  
BOARD OF PUBLIC EDUCATION

BY: *Clairdette Morton*

Certified to the Secretary of State June 18, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING on
of ARM 42.11.401; 42.11.405; )	the PROPOSED AMENDMENT of
42.11.406; 42.11.408; and )	ARM 42.11.401; 42.11.405;
42.11.409; REPEAL of ARM )	42.11.406; 42.11.408; and
42.11.420 and ADOPTION of NEW )	42.11.409; REPEAL of ARM
RULES I through VII relating )	42.11.420 and ADOPTION of
to Liquor Bailment. )	NEW RULES I through VII
)	relating to Liquor Bailment.

TO: All Interested Persons:

1. On July 19, 1990, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana, to consider the amendment of ARM 42.11.401; 42.11.405; 42.11.406; 42.11.408 and 42.11.409; repeal of 42.11.420 and adoption of New rules I through VII, relating to Liquor Bailment.

2. The amendments as proposed provide as follows:

42.11.401 DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(a) "Annual net profit" means a product's net profit per unit multiplied by the product's units of sale for a 12-month period. The net profit per unit is calculated by subtracting from the most recent retail selling price of a product as determined in ARM 42.11.104, the cost of goods (vendor's product price and freight), liquor division expenses, and taxes. Liquor division expenses are allocated to each product on a fixed amount per liter plus a percentage overhead on the cost of goods.

(b) "Bailment" means a vendor's delivery of a product to a designated area in the liquor division's Helena warehouse while retaining ownership of the product delivered and entrusting the safekeeping of the product to the liquor division until such time as the liquor division may purchase the product or redeliver the product to the vendor.

(c) "Bailment warehouse" means the designated area in the liquor division's Helena warehouse used for storing products delivered through bailment procedures.

~~(b)~~ (d) "Delist" means to remove a product from all but the "special order" categories of availability that are designated in ARM 42.11.405.

~~(c)~~ (e) "List" means to establish a product's availability according to one of the classifications in ARM 42.11.405.

~~(d)~~ (f) "Product" means a unique brand of liquor or table wine in one bottle size, differentiated from other products of the same brand and size by vendor's price, weight or product bottle shape.

(2) Other words and phrases used in these rules shall have the meaning ascribed to them in the Administrative Rules of

Montana, Title 42, Chapter 11, as amended, or the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

42.11.405 PRODUCT AVAILABILITY (1) Liquor and table wine products will be made available for sale in the following classifications:

(a) A "regular" product or a "test market" product will be so designated in the liquor division's quarterly price list, ~~have sufficient supply maintained in the warehouse to fill orders with no more than 3% back orders in a month (unless the vendor or transporter causes a shortage);~~ have sufficient supply maintained in the bailment warehouse in accordance with Rule 1, and be eligible for at least one facing on state liquor store shelves depending on demand for the product in a store and alcoholic beverage code distribution limitations for table wine.

(b) A "variable supply" product will be so designated in the liquor division's quarterly price list, will have supply maintained in the warehouse on a limited basis with no commitment to a minimum service level, and will be eligible for no more than one facing on selected state liquor shelves depending on demand for the product in a selected store and alcoholic beverage code distribution limitations for table wine.

(c) A "special order" product will not be published in the liquor division's quarterly price list, will not have supply maintained in the warehouse but will only be available on an order-by-order basis, and will not be placed on any state liquor store shelves but will only be sold by the case as arranged in the special order.

(d) A "warehouse supply" product will be so designated in the liquor division's quarterly price list, will have supply maintained in the warehouse to satisfy approximately 12 single bottle requests per month with no commitment to a minimum service level, and will not be placed on any state liquor store shelves but will only be sold through the state liquor store as specified on the store order form.

(e) A "seasonal" product will not be published in the liquor division's quarterly price list but will be noticed in a supplemental requisition for merchandise, ~~will not have supply maintained in the bailment warehouse in advance of the sales season,~~ but will have orders distributed to state liquor stores to meet the estimated seasonal demand, and will be eligible for shelf and/or floor display in state liquor stores depending on expected demand for the product in a store.

(f) A "promotional" product will not be published in the liquor division's quarterly price list but will be noticed in a supplemental requisition for merchandise, ~~will not have supply maintained in the bailment warehouse in advance of the sales promotion,~~ but will only be received and shipped to stores in the quantity approved for the promotion, and will be eligible for shelf and/or floor display in state liquor stores in the quantity and for the period approved for the promotion.

(g) A "collectible" product will be so designated in the

liquor division's quarterly price list, will be purchased for limited distribution in less-than-full-case quantities to provide access to collectors based upon past sales histories to similarly designed collectibles with no commitment to a minimum service level, and will be eligible for shelf display in state liquor stores depending on expected demand for the product in a store. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

42.11.406 PRODUCT LISTING (1) A product will be listed or retained as a "regular" product if it meets the minimum sales standards in ARM 42.11.407 unless it only meets those standards temporarily as a result of closeout or overstock sales in accordance with ARM 42.11.409; and if the product is maintained in the bailment warehouse in accordance with Rule I. A product will retain this classification if a vendor maintains it in the bailment warehouse and the conditions in Rule IV (5) and (6) do not occur.

(2) A product will be listed as a "test market" product if the liquor division receives a written proposal that:

(a) is for a product that has not been listed as a "regular" product or submitted as a proposed "test market" product during the 3 years prior to receipt of the proposal and is not for a product in the 50 milliliter size;

(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;

(c) ~~convincingly demonstrates that the product can be reasonably expected to meet the minimum sales standards in ARM 42.11.407 within 18 months of the listing's effective date;~~ states that the product will be maintained in the bailment warehouse in accordance with Rule I;

~~(d) convincingly demonstrates that the vendor and the vendor's registered representative have enough resources to carry out the proposed promotion, taking into consideration promotional and maintenance responsibilities for other products;~~

~~(e)(d)~~ has no major obstacles to merchandising the product;

~~(f)(e)~~ is approved according to procedures in ARM 42.11.408; and

~~(g)(f)~~ provides the following information for each product by bottle size:

(i) a complete standard quotation and specification form signed by the vendor or an officer of the vendor which references the National Alcoholic Beverage Control Association control state code for the product, makes the price firm for the first 3 months following the effective date of the listing, and provides an agreement that subsequent price increases will be noticed not less than 60 days prior to the price list effective date;

(ii) a list of the test market locations proposed for the new product and the expected initial order amount at each location; and

(iii) a description of the promotions specific to each location that the vendor and the vendor's registered representative will undertake during the 18-month test market period; and

~~(iv) any information that the vendor or its registered representative has to convincingly demonstrate that the listing requirements in (c) and (d) will be met;~~

(3) A product will be listed as a "variable supply" product if it is not listed as a "regular" product or a "test market" product but has a sales volume higher than can be efficiently managed under the "special order" or "warehouse supply" ~~"seasonal" or "promotional"~~ classifications.

(4) A product will be listed as a "special order" product if the product is not listed in another classification other than as a "warehouse supply" product, and a state liquor store manager or agent has submitted a special order retail price request or special order form with an agreement signed by a customer to pay for the entire quantity ordered on delivery.

(5) A product will be listed as a "warehouse supply" product if it is not listed in another classification other than as a "special order" product, can be reasonably expected to achieve one turn of inventory in a year or the warehouse already holds a case or more of the product, and is approved according to procedures in ARM 42.11.408.

(6) A product will be listed as a "seasonal" product if it ~~has met or it can be convincingly demonstrated that the product can be reasonably expected to meet the minimum seasonal sales standard in ARM 42.11.407 by the close of the coming sales season and~~ the liquor division receives a proposal that:

(a) ~~the vendor has provided~~ provides a picture and complete description along with the standard quotation and specification form signed by the vendor or an officer of the vendor, which is completed for the proposed product, references the National Alcoholic Beverage Control Association control state code, and makes the price firm for the first 3 months following the effective date of the listing;

(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;

(c) states that the product will be maintained in the bailment warehouse in accordance with Rule I;

~~(b) (d) there are~~ has no major obstacles to merchandising the product; and

~~(c) (e) the product is approved according to procedures in ARM 42.11.408.~~

(7) A liquor product will be listed as a "promotional" product if the liquor division receives a written proposal that:

(a) is for a liquor product that is in the 50, 200, or 375 milliliter sizes, and has a larger size listed as a "regular" product or as a "test market" product;

(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and

42.11.211;

(c) ~~convincingly demonstrates that the product can be reasonably expected to improve the sales of the larger size product by the close of the promotional period~~ states that the product will be maintained in the bailment warehouse in accordance with Rule I;

~~(d) convincingly demonstrates that the vendor and the vendor's registered representative have enough resources to carry out the proposed promotion, taking into consideration promotional and maintenance responsibilities for other products;~~

~~(e) (d) has no major obstacles to merchandising the product;~~

~~(f) (e) is approved according to procedures in ARM 42.11.408; and~~

~~(g) (f) provides the following information for each product by bottle size:~~

(i) a completed standard quotation and specification form signed by the vendor or an officer of the vendor which references the National Alcoholic Beverage Control Association control state code for the product, makes the price firm for the first 3 months following the effective date of the listing, and provides an agreement that subsequent price increases will be noticed not less than 60 days prior to a price list effective date;

(ii) a list of the test market locations proposed for the new product and the expected initial order amount at each location; and

(iii) a description of the promotions specific to each location that the vendor and the vendor's registered representative will undertake during the 18-month test market period; and

~~(iv) any information that the vendor or its registered representative has to convincingly demonstrate that the listing requirements in (c) and (d) will be met;~~

(8) A liquor product that is designed as a collector's item will be listed as a "collectible" product if it can be convincingly demonstrated that the product can be reasonably expected to achieve one turn of inventory in a year, there are no major obstacles to merchandising the product, the product is approved according to procedures in ARM 42.11.408, and

(a) the vendor has provided a picture or brochure which contains a complete and authentic description of the container and a standard quotation and specification form signed by the vendor or an officer of the vendor, which is completed for the proposed product, references the National Alcoholic Beverage Control Association control state code, makes the price firm for the first 3 months following the effective date of the listing; or

(b) a state liquor store manager or agent has submitted a special order retail price request and special order form with an agreement signed by a customer to purchase one of the "collectibles" on delivery. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

42.11.408 PRODUCT APPROVAL PROCEDURES (1) A liquor division listing committee is established for the purpose of reviewing written product proposals for "test market", "seasonal", "promotional", "warehouse supply" and "collectible" products as required in ARM 42.11.406 and recommending to the liquor division administrator their approval or denial according to criteria in ARM 42.11.406.

(a) The committee is composed of the liquor division assistant administrator, stores bureau chief, warehouse bureau chief, purchasing and distribution bureau chief, and one representative from the Montana tavern association.

(b) The assistant administrator shall chair committee meetings, assure full consideration is given to each proposal in light of criteria in ARM 42.11.406, and bring the committee to a consensus decision about each proposal.

(c) The purchasing ~~and distribution~~ bureau chief shall receive all proposals to be considered by the committee and submit to the committee only those that are complete according to the requirements in ARM 42.11.406. The purchasing and distribution bureau chief shall also prepare an independent analysis of each proposal that is accepted as complete in which the probable effects on inventory, sales, and variety of products in the system are explained.

(d) The ~~stores-bureau-chief~~ assistant administrator shall prepare an independent analysis of each proposal that is accepted as complete in which the probable effects on merchandising in stores and by retail licensees will be explained. In preparation of the report, the stores bureau chief will consult with a representative sample of store managers, agents, and retail licensees.

(e) The listing committee will meet regularly once a month on the last Monday of the month (or the following working day if that is a holiday) unless the assistant administrator determines that there are no product proposals ready for review. A product proposal shall be deemed ready for review after the independent analysis required in (c) and (d) are completed and the purchasing and distribution bureau chief has submitted the proposal to each listing committee member 2 working days in advance of the meeting. The assistant administrator may call a special meeting of the listing committee when extraordinary circumstances require consideration of listing a "seasonal", "promotional", "warehouse supply", or "collectible" product.

(2) Any proposals which require listing committee review that are received too late for the purchasing and distribution bureau chief or the store's bureau chief to adequately prepare for the next meeting shall be held over to the following meeting.

~~(3)---When determining whether a listing proposal has convincingly demonstrated that the requirements in ARM 42.11.406 will be met, the listing committee shall consider the factors in (a) through (e):~~

~~(a)---the product's sales history elsewhere in the United States;~~



~~(b) -- the vendor's or vendor's registered representative's written explanation of why the product should do well in Montana;~~

~~(c) -- the projected sales by month for the first two years following the proposed listing's effective date, with the projection differentiated for sales to licensees and walk-in trade-at-state-liquor stores;~~

~~(d) -- the product's expected impact on the market share of other products in the proposed product's sales category by the close of the 18-month test market period; and~~

~~(e) -- the product's placement in test market locations; the initial order amount for each location; and the vendor's planned product promotions for each location;~~

~~††(3)~~ If a majority of the listing committee determines during its review that additional information is needed before a consensus can be reached, the approval process will be suspended until the assistant administrator can solicit and obtain the information. The approval process will resume when the assistant administrator determines that the information has been obtained or is not readily available; and

~~††(4)~~ If a majority of the listing committee determines during its review that the vendor's proposal did not provide sufficient information to determine whether the proposal convincingly demonstrated that the requirements in ARM 42.11.406 will be met and could have been reasonably expected to do so, the assistant administrator shall return the proposal to the vendor or the vendor's registered representative with instructions about what deficiencies must be overcome before the committee will consider the proposal.

~~††(5)~~ Proposals which require approval in ARM 42.11.406 shall be approved if the liquor division listing committee reaches a consensus that the written proposal meets all of the criteria in ARM 42.11.406 or shall be disapproved if the committee reaches a consensus that one or more of the criteria were not met and if the liquor division administrator concurs. If the committee cannot reach a consensus, the administrator shall review the proposal and decide.

~~††(6)~~ The purchasing and distribution bureau chief shall implement the results of the approval process by notifying the vendor's representative in writing concerning the disposition of a proposal or the requesting state liquor store manager or agent concerning the disposition of a "warehouse supply" or "collectible" order and, if approved, shall publish the product's listing in the liquor division's quarterly price list.

~~††(7)~~ The effective date of a new listing is the effective date of the next liquor division quarterly price list that will be published 60 days or more after a new product is approved. Quarterly price list effective dates are February 1, May 1, August 1, or November 1. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

42.11.409 DELISTING, REVISED LISTING, CLOSEOUT AND OVERSTOCK (1) A listed product that no longer meets the minimum sales standard in ARM 42.11.407, and the conditions in

Rule IV (5) and (6) occur, will be listed in a classification commensurate with its sales volume unless the sales volume is projected to be less than that for a "warehouse supply" product, in which case the product will be delisted and closed out in accordance with ARM 42.11.104(6).

(2) A product that a vendor discontinues and is not marketed by another vendor will be delisted and closed out in accordance with ARM 42.11.104(6).

(3) Inventory in excess of the projected 12 months of sales for a product will be treated as overstock in accordance with ARM 42.11.104(6).

(4) The effective date of a delisting, revised listing, closeout sale or overstock sale is as soon as written notice can be disseminated to state liquor stores. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

3. The rule to be repealed is as follows:

42.11.420 TRANSITIONAL RULE (1) For the purpose of phasing in the removal of a product from the "regular" category, the annual net profit for a product shall be:

(a) \$250 for the liquor division price list that will be effective on February 1, 1988 and May 1, 1988;

(b) \$500 for the liquor division price list that will be effective on August 1, 1988 and November 1, 1988;

(c) \$750 for the liquor division price list that will be effective on February 1, 1989 and May 1, 1989; and

(d) as in ARM 42.11.407 for the liquor division price list that will be effective on August 1, 1989 and for each price list thereafter.

(2) For purposes of listing new products, the annual net profit in ARM 42.11.407 shall be effective for the liquor division price list that follows the effective date of this rule. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

4. The new rules as proposed are as follows:

RULE 1 BAILMENT LIMITS (1) Products listed as "regular", "test market", "seasonal", or "promotional" must be maintained in the bailment warehouse in an amount above the minimum level and below the maximum level.

(2) The minimum bailment level for "regular" products is a three-week supply based on the seasonally adjusted historical average. The minimum level for "test market", "seasonal", and "promotional" products is a three-week supply based on a vendor's estimate of demand that the liquor division concurs in.

(3) Vendors will be charged a space reservation fee of \$1.00 per case per day for each case below minimum for any product for which the liquor division is unable to fill store orders.

(4) The maximum bailment level for "regular" products is a six-week supply based on the seasonally adjusted historical average or one and a half pallets, whichever is greater. The

maximum level for "test market", "seasonal", and "promotional" products is a six-week supply based on the vendor's estimate of demand that the liquor division concurs in or one and a half pallets, whichever is greater.

(5) Vendors will be charged the direct and indirect costs the liquor division incurs for warehousing any cases that have been in excess of the maximum level for more than five consecutive days.

(6) Each quarter the liquor division will notify vendors what the seasonally adjusted historical weekly average or the concurred in estimate of demand is for their products. Quarters are those used for the liquor division quarterly price list.

(7) Fees and charges will be offset on liquor division payments for products. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE II BAILMENT RECEIVINGS (1) Vendors may ship products to the bailment warehouse only if they are listed as "regular" "test market", "seasonal", or "promotional" products in accordance with ARM 42.11.406.

(2) Vendors must send the liquor division a bill of lading for each shipment to the bailment warehouse 10 days in advance of the expected date of arrival. The bill of lading must include the quantity and description of each item shipped.

(3) The liquor division will send vendors an acknowledgement of receipt within 24 hours of receipt upon which will be noted any variance with the bill of lading, the number of undamaged cases received, and number of damaged cases received.

(4) The number of undamaged cases received per product will be credited to the bailment warehouse control account.

(5) Damaged cases will not be credited to the control account. Vendors will be given the opportunity to have damaged cases returned at their cost or destroyed. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE III BAILMENT DEPLETIONS (1) The liquor division may deplete products from the bailment warehouse if the liquor division is purchasing a product from a vendor.

(2) Payment for a purchase will be made within 30 days of the date that the liquor division depletes the product from the bailment warehouse.

(3) Payment amount for a purchase will be a vendor's price per case F.O.B. Helena, Montana that was quoted to the liquor division not less than 60 days prior to the liquor division's price list publication date.

(4) The number of cases depleted per product will be debited to the bailment warehouse control account.

(5) The liquor division will notify vendors once a week of the amount and date their products were depleted from the bailment warehouse during the week. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE IV BAILMENT ADJUSTMENTS (1) The bailment warehouse

control account will be adjusted for vendor product withdrawals, redelivery of low volume products, discovery of deficient cases, and errors.

(2) Vendors may withdraw some or all of any of their products from the bailment warehouse by sending a written request to the liquor division to carry out their instructions.

(3) Vendors will be charged the direct and indirect costs the liquor division incurs for carrying out vendor withdrawal instructions.

(4) Withdrawals below the minimum supply will precipitate liquor division action to delist a product or change its listing classification in accordance with ARM 42.11.409 and will result in a vendor being charged the fee in RULE I (3) unless the withdrawal is the result of the liquor division's approval of a vendor's request to delist a product.

(5) Products in the bailment warehouse that fall below the minimum sales standards in ARM 42.11.407 may continue to be maintained in the bailment warehouse and continue their listing classifications until there is insufficient space in the warehouse to accommodate all products.

(6) When there is insufficient space in the warehouse to accommodate all products, products will be delisted in accordance with ARM 42.11.409. These delisted products will be redelivered to the vendor at vendor's expense after 10 day's notice.

(7) The liquor division will notify vendors once a week of the number of cases credited to the bailment warehouse control account that were found to be deficient (i.e. hidden breakage, packed short or have bottles with no fill or low fill) during the week. Vendors will be given the opportunity to have the deficient cases redelivered at their cost or destroyed.

(8) The liquor division will notify vendors once a week of the number of cases credited or debited to the bailment warehouse control account in error during the week and an explanation of the errors that were found. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

**RULE V BAILMENT WAREHOUSE MANAGEMENT** (1) Only liquor division personnel are authorized to move or inspect products in the bailment warehouse.

(2) Vendors and vendors' representatives may observe the operation of the bailment warehouse at any time during regular working hours by requesting the liquor division for an appointment.

(3) While on a visit to the bailment warehouse, vendors and vendors' representatives must observe Montana state liquor warehouse safety rules.

(4) The liquor division will take physical inventory in the bailment warehouse four times a year and reconcile the count with the bailment warehouse control account. Inventory is taken during the last week in March, June, September and December. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE VI BAILMENT DISPUTES (1) If a vendor disputes any liquor division decision under RULE I through RULE V, the vendor and the liquor division will attempt to resolve the dispute informally.

(2) If an informal resolution is not successful, a vendor may contest the decision in accordance with the provisions for contested cases in the Montana Administrative Procedure Act. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE VII BAILMENT TRANSITION RULE (1) For the purpose of phasing in the limits in RULE I during the three months following the effective date of this rule the minimum bailment level is a three-week supply of a product less the amount that the liquor division owns and holds in the non-bailment area of the state liquor warehouse.

(2) During the three-month phase in period, the liquor division will notify vendors once a week of the amount of their products that the division has on hand. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

5. Justification - These rules and rule amendments require alcoholic beverage vendors to maintain their products in the state liquor warehouse in Helena, Montana, if they want their products to be listed for sale in Montana under the regular, test market, seasonal, or promotional listing categories.

This requirement will reduce state investment in alcoholic beverage inventory and generate a one-time transfer of money to the state general fund in the amount of the reduced investment.

6. 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:

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

no later than August 3, 1990.

7. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.



DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State June 18, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- ) NOTICE OF PROPOSED AMENDMENT  
MENT of ARM 42.20.102 ) of ARM 42.20.102 relating to  
relating to Applications for) Applications for Property Tax  
Property Tax Exemptions. ) Exemptions.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Department of Revenue proposes to amend ARM 42.20.102 relating to Applications for Property Tax Exemptions.

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

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS

(1) The property owner of record or his agent must make application through the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620, in order to obtain a property tax exemption. An application must be filed on a form available from the division before March 1 of the year for which the exemption is sought. Applications postmarked after March 1 will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer is notified after March 1 by assessment list or AB-34 (Removal of Property Tax Exemption Letter) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption, or

(b) the local appraisal or assessment office refuses to accept an application a taxpayer or organization is attempting to submit before March 1, or

(c) the local appraisal or assessment office gives the applicant incorrect application information, or

(d) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for those impediments.

(2) The following documents must accompany the application:

(a) Articles of incorporation (if incorporated);

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

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

(d) Title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of

ownership (for personal property only);

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

(f) Photograph of the property.

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

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

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

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

(5) The department of revenue will employ the following exemption criteria for real properties when considering exemption claims based upon 15-6-201(1)(b), (c), (d), (e), (g), ~~(i), (j), (k), (l), (n), (o), (p), (r), (s), (t), (u), (v), (w), (x), (y), (z)~~ (m), (o), or (q); 15-6-203; and 15-6-209, MCA.

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

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

3. The authority for the department to amend this rule is found at 15-1-201 MCA, and it implements 15-6-211 MCA.

4. ARM 42.20.102 is proposed to be amended to allow the Department some latitude in accepting late applications when the reason for the application being late is beyond the applicant's control. There will be minimal fiscal impact from this change. The change is intended for administrative convenience to aid the taxpayer/applicant. In the past, we have had problems with applicants not meeting the March 1 application deadline. Some of the reasons were:

The applicant was misinformed about the correct application deadline;

The applicant tried to submit their application by the deadline but the county staff wouldn't accept it; and

The applicant wasn't aware that they had to apply for the exemption until they received an assessment list after the application deadline.

The changes in subsection (5) are to correct the rule to comply with Legislative changes in 15-6-201, MCA. The exemptions granted by (l) and (n) do not require an application process. The exemptions covered by (m), (o), and (q) do require

an application process. These changes should have been made after past Legislative sessions. The proposed changes in the rule should correct these problems.


5. 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 26, 1990.

6. 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 26, 1990.

7. 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.

  
\_\_\_\_\_  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State June 18, 1990.



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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule	)	THE PROPOSED AMENDMENT OF
46.12.2003 pertaining to	)	RULE 46.12.2003 PERTAINING
reimbursement for	)	TO REIMBURSEMENT FOR
physicians services	)	PHYSICIANS SERVICES

TO: All Interested Persons

1. On July 19, 1990, 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 46.12.2003 pertaining to reimbursement for physicians services.

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

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department hereby adopts and incorporates by reference the procedure code report (PCR) as amended through ~~March~~ July 1, 1990. The PCR is published by the Montana department of social and rehabilitation services and lists medicaid-payable physician procedure codes and descriptions as delineated in the CPT4 and/or the Health Care Financing Administration's common procedure coding system (HCPCS), fees assigned to relevant procedures and effective dates of fees assigned. A copy of the PCR may be obtained from the Medicaid Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604. Subsections (1)(a) through (4) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-113 and 53-6-101 MCA

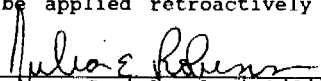
3. The proposed rule change will implement the two percent physician service fee increases authorized by the 51st legislature.

ARM 46.12.2003 incorporates by reference the Physicians Procedure Code Report (PCR), which describes and lists procedure codes for physician services reimbursable by Medicaid. The PCR is developed by the department from the Physicians' Current Procedural Terminology, Fourth Edition (CPT4) and the Health Care Financing Administration's common procedure coding system (HCPCS). Revising the PCR and updating the incorporation by reference date will implement the legislative changes.

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 59604-4210, no later than July 27, 1990.

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

6. This rule change will be applied retroactively to July 1, 1990.

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

Certified to the Secretary of State June 13, 1990.

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

In the matter of the ) NOTICE OF PUBLIC HEARING ON  
amendment of Rule ) THE PROPOSED AMENDMENT OF  
46.10.403 pertaining to ) RULE 46.10.403 PERTAINING  
AFDC standards of ) TO AFDC STANDARDS OF  
assistance ) ASSISTANCE

TO: All Interested Persons

1. On July 19, 1990, at 10:00 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 AFDC standards of assistance.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) and (2) remain the same.

(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

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 474	179
2	640	289
3	803	394
4	960	501
5	1,132	601
6	1,295	694
7	1,462	786
8	1,624	871
9	1,702	953
10	1,776	1,030
11	1,844	1,103
12	1,909	1,171
13	1,970	1,234
14	2,026	1,293
15	2,070	1,349
16	2,124	1,399

(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 ARM 46.10.505.

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

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 165	68
2	331	179
3	494	289
4	657	394
5	823	500
6	988	603
7	1,151	703
8	1,320	801
9	1,302	882
10	1,371	962
11	1,436	1,040
12	1,499	1,114
13	1,552	1,188
14	1,604	1,258
15	1,650	1,326
16	1,696	1,391

(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

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 256	97
2	346	156
3	434	213
4	523	271
5	612	325
6	700	375
7	790	425
8	878	471
9	920	515
10	960	557
11	997	596
12	1,032	633
13	1,065	667

14	<u>1,095</u>	<u>1,141</u>	670	699
15	<u>1,123</u>	<u>1,171</u>	698	729
16	<u>1,140</u>	<u>1,198</u>	723	756

(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	With Shelter Obligation Per Month	Without shelter Obligation Per Month		
1	\$ 89	96	\$ 34	37
2	<u>179</u>	<u>190</u>	91	97
3	<u>267</u>	<u>285</u>	<u>147</u>	<u>156</u>
4	<u>355</u>	<u>379</u>	<u>202</u>	<u>213</u>
5	<u>445</u>	<u>474</u>	<u>254</u>	<u>270</u>
6	<u>534</u>	<u>569</u>	<u>303</u>	<u>326</u>
7	<u>622</u>	<u>663</u>	<u>350</u>	<u>380</u>
8	<u>664</u>	<u>758</u>	<u>395</u>	<u>433</u>
9	<u>704</u>	<u>802</u>	<u>437</u>	<u>477</u>
10	<u>741</u>	<u>845</u>	<u>477</u>	<u>520</u>
11	<u>776</u>	<u>887</u>	<u>514</u>	<u>562</u>
12	<u>810</u>	<u>927</u>	<u>550</u>	<u>602</u>
13	<u>839</u>	<u>967</u>	<u>582</u>	<u>642</u>
14	<u>867</u>	<u>1,005</u>	<u>612</u>	<u>680</u>
15	<u>892</u>	<u>1,042</u>	<u>640</u>	<u>717</u>
16	<u>917</u>	<u>1,077</u>	<u>665</u>	<u>752</u>

Subsections (3) 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

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	\$212 220	\$ 7-07 7.33	\$ 76 79	\$ 2-53 2.63
2	<u>286 295</u>	<u>9-53 9.83</u>	<u>123 127</u>	<u>4-10 4.23</u>
3	<u>359 370</u>	<u>11-97 12.33</u>	<u>170 174</u>	<u>5-67 5.80</u>
4	<u>433 445</u>	<u>14-43 14.83</u>	<u>215 221</u>	<u>7-17 7.37</u>
5	<u>507 519</u>	<u>16-90 17.30</u>	<u>258 265</u>	<u>8-60 8.83</u>
6	<u>580 594</u>	<u>19-33 19.80</u>	<u>299 306</u>	<u>9-97 10.20</u>
7	<u>654 669</u>	<u>21-80 22.30</u>	<u>338 346</u>	<u>11-27 11.53</u>
8	<u>727 744</u>	<u>24-23 24.80</u>	<u>375 384</u>	<u>12-50 12.80</u>

9	762	<u>780</u>	<del>25.40</del>	<u>26.00</u>	<del>410</del>	<u>420</u>	<del>13.67</del>	<u>14.00</u>
10	795	<u>814</u>	<del>26.50</del>	<u>27.13</u>	<del>443</del>	<u>454</u>	<del>14.77</del>	<u>15.13</u>
11	826	<u>846</u>	<del>27.53</del>	<u>28.20</u>	<del>474</del>	<u>486</u>	<del>15.80</del>	<u>16.20</u>
12	854	<u>876</u>	<del>28.47</del>	<u>29.20</u>	<del>503</del>	<u>516</u>	<del>16.77</del>	<u>17.20</u>
13	882	<u>904</u>	<del>29.40</del>	<u>30.13</u>	<del>530</del>	<u>544</u>	<del>17.67</del>	<u>18.13</u>
14	907	<u>930</u>	<del>30.23</del>	<u>31.00</u>	<del>555</del>	<u>570</u>	<del>18.50</del>	<u>19.00</u>
15	930	<u>954</u>	<del>31.00</del>	<u>31.80</u>	<del>570</del>	<u>594</u>	<del>19.27</del>	<u>19.80</u>
16	951	<u>976</u>	<del>31.70</del>	<u>32.53</u>	<del>599</del>	<u>616</u>	<del>19.97</del>	<u>20.53</u>

(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 Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	\$ 74 78	\$ 2.47 2.60	20 30	4.93 1.00
2	140 155	4.93 5.17	75 79	2.50 2.63
3	221 232	7.37 7.73	122 127	4.07 4.23
4	294 309	9.80 10.30	167 174	5.57 5.80
5	360 386	12.27 12.87	210 220	7.00 7.33
6	442 464	14.73 15.47	251 266	8.37 8.87
7	515 541	17.17 18.03	290 310	9.67 10.33
8	560 618	18.33 20.60	327 353	10.90 11.77
9	583 654	19.43 21.80	362 389	12.07 12.97
10	614 689	20.47 22.97	395 424	13.17 14.13
11	643 723	21.43 24.10	426 458	14.20 15.27
12	671 756	22.37 25.20	455 491	15.17 16.37
13	695 788	23.17 26.27	482 523	16.07 17.43
14	718 819	23.93 27.30	507 554	16.90 18.47
15	739 849	24.63 28.30	530 584	17.67 19.47
16	759 878	25.30 29.27	551 613	18.37 20.43

AUTH: Sec. 53-4-212

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

3. House Bill 100 of the 51st Montana Legislature changed the base used to calculate AFDC payment levels from a state estimate of the upcoming year's federal poverty index to the previous year's federal poverty index. Thus, the tables are being changed to reflect legislative interest that 42% of the published federal poverty index for calendar 1990 be used for calculating the fiscal 1991 payment level.

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

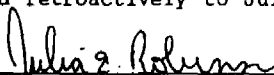
12-6/28/90

MAR Notice No. 46-2-619

Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than July 27, 1990.

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

6. This rule will be applied retroactively to July 1, 1990.

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

Certified to the Secretary of State June 18, 1990.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption )  
of a new rule 2.43.609 relating )  
to post retirement adjustments. )

CORRECTED NOTICE OF THE  
ADOPTION OF A RULE RELATING  
TO POST RETIREMENT ADJUSTMENTS

TO: All Interested Persons.

1. On May 31, 1990, the Public Employees' Retirement Board published notice of the proposed amendment, adoption and repeal of rules concerning Montana's retirement systems and the state Social Security program in the Montana Administrative Register, issue number 10, page 994A. The original notice of the proposed adoption occurred on December 7, 1989 in the Montana Administrative Register, issue number 23, page 1999.

2. Paragraph 3 of the Notice of Adoption contained erroneous language regarding the adoption of the rule regarding post retirement adjustments. The errors were in the specific language of the amendments to the rule, as adopted.

3. The correct language for the rule as the board adopted it: Rule III (2.43.609). POST RETIREMENT ADJUSTMENT (1) Post-retirement adjustments for PERS, game wardens and sheriff's retirement system retirees will be made in each year that investment earnings are available for this purpose. ~~Adjustments made in one year will be paid to eligible retirees beginning in the succeeding January.~~

(2) Eligibility for ~~each~~ post retirement adjustments will be determined ~~from as of~~ June 30th of ~~the each~~ year for ~~which adjustments are being made~~ that investment earnings are available for that purpose.

(3) Adjustments to the benefits of eligible recipients, determined in (2) above, will be paid beginning in the succeeding January.

(4) If the eligible retiree or survivor has elected to receive an option 2, 3, or 4 retirement allowance, the post retirement adjustment must be adjusted using the most recent actuarial tables adopted by the board.

4. All other portions of the May 31, 1990 Notice of Adoption are correct.

5. The adoption of this rule will be effective on July 1, 1990.

6. The authority for this rule is found in sections 19-1-201, 19-7-201, and 19-8-201, MCA, and the rule implements 19-3-1109, 19-3-1110, 19-3-1111, 19-7-708, 19-7-709, 19-7-710, 19-8-809, 19-8-810, and 19-9-811, MCA.

BY:   
Robert L. Batista, President  
Public Employees' Retirement Board

Certified to the Secretary of State on June 18, 1990



BEFORE THE BOARD OF CHIROPRACTORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) CORRECTED NOTICE ON THE  
of rules pertaining to applica- ) AMENDMENT OF 8.12.601  
tions and renewal fees and the ) AND 8.12.606 AND  
adoption of a new rule pertain- ) ADOPTION OF NEW RULE I  
ing to fees ) (8.12.615) FEE SCHEDULE

TO: All Interested Persons:

1. On April 26, 1990, the Board of Chiropractors published a notice of proposed amendment and adoption of the above-stated rules at page 769, 1990 Montana Administrative Register, issue number 8. The notice of adoption was published at page 1144, 1990 Montana Administrative Register, issue No. 11.

2. New rule I (8.12.614) FEE SCHEDULE should have been numbered (8.12.615) in the adoption notice.

3. Correct replacement pages will be filed on 6/30/90.

BOARD OF CHIROPRACTORS  
ROGER COMBS, D.C., CHAIRMAN

BY:

  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 18, 1990

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION
of rules relating to special )	OF RULES RELATING TO
education cooperatives )	SPECIAL EDUCATION
)	COOPERATIVES, RULES I
)	THROUGH VI. (10.16.2601
	through 10.16.2606)

To: All Interested Parties.

1. On May 17, 1990, the Office of Public Instruction published notice of proposed adoption of new rules on pages 872-874 of the 1990 Montana Administrative Register, Issue Number 9.

2. On June 8, 1990, at 9:00 a.m., in the conference room at the Office of Public Instruction, 1300 11th Avenue, Helena, Montana, a public hearing was held, attended by eight people with five people commenting. Six written comments were received. The comments are discussed below in reference to each rule where amendments were suggested.

3. Based upon the comments received, the rules are being adopted as proposed with those changes given below.

RULE I DURATION OF COOPERATIVE is adopted as proposed.

AUTH: 20-7-457, MCA; IMP: 20-7-452, MCA

RULE II MANAGEMENT BOARD is adopted as proposed.

AUTH: 20-7-457, MCA; IMP: 20-7-452, MCA

COMMENT: Comment was received as to the possibility of a large board.

RESPONSE: The Office feels that representation of individual districts is more important than the possible disadvantages of a large board. Multiple districts can choose to name the same representative, eg. the County Superintendent, in order to be represented.

RULE III APPROVAL OF COOPERATIVES (1) This approval criteria will act as a guidance model for the Superintendent of Public Instruction to determine whether ~~a or not an existing cooperative formed after June 30, 1990~~ is eligible for certain funding (Rule VI) from the state special revenue fund for state equalization aid. Attorney General approved cooperatives formed prior to June 30, 1990, are not subject to these approval criteria unless there are changes to the structure and service pattern of the cooperative. If changes occur, they must be in the direction of the approval criteria but not necessarily achieve the criteria. Changes to existing cooperatives will be reviewed for their consistence with these rules. In order to maintain funding levels based on reduced caseloads, existing cooperatives must show that changes are in the direction of the approval criteria. The approval criteria is as follows:

The remaining sections (a) through (f) are adopted as proposed.

AUTH: 20-7-457, MCA; IMP: 20-7-452, MCA

COMMENT: The Office received several comments expressing confusion over the application of this rule to existing cooperatives, an implication of mandatory participation and 3,000 base population figure.

RESPONSE: The rule has been revised to clarify language and reflect the concerns expressed. Participation in special education cooperatives is not mandated. The 3,000 base population was identified as a target in the guidance model because of identified efficiency in staffing and management.

RULE IV NON-PARTICIPATING DISTRICTS is adopted as proposed.

AUTH: 20-7-457, MCA; IMP: 20-7-452, MCA

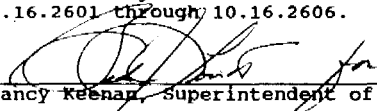
RULE V APPROVAL MECHANICS is adopted as proposed.

AUTH: 20-7-457, MCA; IMP: 20-7-453, 20-7-454, MCA

RULE VI FUNDING OF ITINERANT PERSONNEL WITH REDUCED CASELOADS is adopted as proposed.

AUTH: 20-7-457, 20-7-458, MCA; IMP: 20-7-458, MCA

4. Rules I through VI will be codified in the order given as rules 10.16.2601 through 10.16.2606.

  
\_\_\_\_\_  
Nancy Keenan, Superintendent of Public Instruction

Certified to the Secretary of State on June 18, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT OF ARM
of State Aid Distribution )	10.67.101, STATE AID
Schedule and adoption )	DISTRIBUTION SCHEDULE AND
of new rules for reporting and )	ADOPTION OF NEW RULE I,
accreditation requirements, )	10.67.102, REPORTING AND
notice of opportunity for hear- )	ACCREDITATION REQUIREMENTS,
ing, hearing in contested cases )	RULE II, 10.67.103, NOTICE
and after hearing )	OF OPPORTUNITY FOR HEARING,
)	NEW RULE III, 10.67.104
)	HEARING IN CONTESTED CASES
)	AND NEW RULE IV, 10.67.105,
)	AFTER HEARING

TO: All Interested Persons

1. On April 12, 1990, the Board of Public Education published notice of the proposed amendment concerning State Aid Distribution Schedule and adoption of new rules, on pages 684 of the 1990 Montana Administrative Register, Issue Number 7.

2. The Board has adopted rule 10.67.101. STATE AID DISTRIBUTION SCHEDULE as proposed with the following change in the IMP: Sec, 20-9-344, 20-9-2346 MCA.

3. The Board has amended 10.67.102 with the following changes:

10.67.102 REPORTING AND ACCREDITATION REQUIREMENTS

(1)-(4) same as proposed rule.

(5) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education as provided in these rules 10.67.103.

(6) School districts shall be notified by the superintendent of public instruction of the dates upon which financial reports and budget statements must be provided to the superintendent. If the superintendent does not receive the reports within 35 days after initial notice to the district, the superintendent shall give written notice of the violation to the board. Upon findings by the board of public education that the district was not able to justify the reason for not meeting a reporting requirement, the board shall withhold funds pursuant to the following schedule. Upon receipt of a written notice of a violation, the board shall determine at a hearing held pursuant to 10.67.103 whether or not a substantial reason exists to withhold funds.

(a)-(c) same as proposed rule.

(7) Where the board of public education has determined at a hearing held pursuant to 10.67.103 that a school district has failed to maintain accreditation status, the board of public education shall determine through a contested hearing that a substantial reason exists to withhold funds pursuant to the following schedule shall be utilized:

(a)-(e) same as proposed rule.

IMP: Sec. 20-9-344, 20-9-2346 MCA

3. The Board has adopted 10.67.103 with the following changes:

(1) On the basis of a preliminary notification from the superintendent of public instruction that a district has failed to submit required reports or budgets or has failed to maintain accredited status and has been designated as on deficiency status, the board of public education shall ~~determine~~ make a preliminary determination of whether or not a substantial reason exists to order the superintendent of public instruction to withhold distribution of state equalization aid or to order the county superintendent to withhold county equalization money from a district.

(a)-(f) same as proposed rule.

IMP: Sec. 20-9-344, 20-9-2346 MCA

4. The Board has adopted 10.67.104 with the following changes:

(1) same as proposed rule.

(a) a hearing or telephone hearing before the board of public education at a special or regular meeting of the board;

(b) a hearing or telephone hearing before board member(s) who will report to the board proposed findings of fact, proposed conclusions of law and a proposed order; or

(c) a hearing or telephone hearing before a hearing examiner appointed by the board of public education who will report to the board proposed findings of fact, proposed conclusions of law and a proposed order.

(2) same as proposed rule.

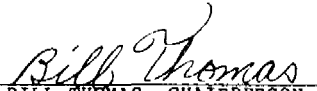
IMP: Sec. 20-9-344, 20-9-2346 MCA

5. The Board has adopted 10.67.105 with the following changes:

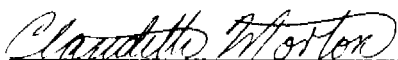
(1) same as proposed rule.

IMP: Sec 20-9-344, 20-9-2346 MCA

The Board received three pieces of written testimony prior to the closing of the hearing record, two of which were neutral but pointed out concerns and one of which was an opponent. Four persons testified at the hearing, two of which were neutral and testified as to concerns and two of which were opponents to particular areas of the rules. The Board changed the wording to resolve the concerns expressed by witnesses.

  
BILL THOMAS, CHAIRPERSON  
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State June 18, 1990.

12-6/28/90

Montana Administrative Register

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

In the matter of the adoption )	NOTICE OF ADOPTION OF
of rules I through XI, ARM )	NEW RULES FOR THE
16.24.101 through 16.24.111, )	HANDICAPPED CHILDREN'S
relating to the handicapped )	SERVICES PROGRAM
children's program )	
	(Handicapped Children's Services Program)

To: All Interested Persons

1. On May 17, 1990, the Department of Health and Environmental Sciences published a notice of public hearing on the proposed adoption of rules establishing, for the Handicapped Children's Services program, the eligibility requirements for both clients and providers, procedures for payment for services to clients as well as the methods for determination of the amounts providers will be paid, covered conditions, application procedure, conditions for obtaining a fair hearing before the department, and HCS record-keeping requirements, at pages 881-890 of the Montana Administrative Register, issue number 9.

2. After consideration of the comments received on the proposed rules, the department has adopted the rules as proposed, with the following changes:

RULE I (16.24.101) PURPOSE OF RULES Same as proposed.

RULE II (16.24.102) GENERAL REQUIREMENTS FOR HCS ASSISTANCE Same as proposed.

RULE III (16.24.103) DEFINITIONS Same as proposed; but (a) through (t) were renumbered (1) through (20).

RULE IV (16.24.104) APPLICANT ELIGIBILITY Same as proposed.

RULE V (16.24.105) HCS SERVICES (1) Same as proposed.

(2)(a) through (f) Same as proposed.

(g) speech, occupational, physical, or respiratory therapy for a condition that is not HCS-eligible.

(3) Same as proposed.

RULE VI (16.24.106) HCS PROVIDER REQUIREMENTS Same as proposed.

RULE VII (16.24.107) PAYMENT LIMITS AND REQUIREMENTS

(1) DHES will be responsible for paying for HCS-eligible services for an HCS client only:

(a) through (b) Same as proposed.

(c) up to a maximum of \$600 each for speech, physical,

occupational, or respiratory therapy, unless the HCS medical director approves a waiver:

(e)-(d) if a third party is responsible for all or part of the medical bills and the provider bills the client directly, if the client submits the claim in turn to the third party within six weeks after receiving the bill from the provider;

(d)-(e) after all third parties, if any, have paid the provider, in which case HCS pays any balance remaining, within HCS limits for the services in question.

(2) through (6) Same as proposed.

(7) For his/her services to an HCS client, a physician will be paid the amount calculated by using the CPT-4 codes published by the American Medical Association (Physician's Current Procedures Terminology, AMA, 4th edition) together with the relative value scales (RVS) for those codes as stated in the Montana medical association's RVS (or, if Montana has no code for the particular procedure, the RVS used by Colorado, California, or any other state that has such a code will be used to determine a value comparable to the values in Montana's RVS), multiplied times the following conversion factors, whichever is relevant:

(a) through (e) Same as proposed.

(8) through (13) Same as proposed.

RULE VIII (16.24.108) APPLICATION PROCEDURE Same as proposed.

RULE IX (16.24.109) FAIR HEARING PROCEDURE Same as proposed.

RULE X (16.24.110) PROGRAM RECORDS Same as proposed.

RULE XI (16.24.111) ADVISORY COMMITTEE Same as proposed.

4. Following are the comments received on the proposed rules and the department's responses:

COMMENT 1: Dr. Rae Johnston, Missoula, pointed out that the language in Rule VII(7) regarding the formula used to determine what reimbursement physicians receive for each type of service rendered to an HCS client needed to state that the revised value scales utilized by other states would be used by Montana (in cases where Montana had no code of its own for the particular service) only to determine a value comparable to Montana's in order to avoid payments for such services that are disproportional when compared to related services for which Montana has a code.

RESPONSE: The department agreed and adopted the change.

COMMENT 2: The department added an annual limit on the amount per client that would be paid by the HCS program for

12-6/28/90

Montana Administrative Register

speech, physical, occupational, or respiratory therapy, since it is current practice, known to current HCS providers and clients, and was inadvertently overlooked during the drafting of the original notice.

COMMENT 3: The department also added a clarification to Rule V that the above types of therapy would be covered only if the underlying condition necessitating the therapy was also HCS-eligible.

COMMENT 4: Mary Musil, Registered Dietitian, expressed whole-hearted support for the rules.

  
DONALD E. PIZZINI, Director

Certified to the Secretary of State June 18, 1990.



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

In the matter of the amend-	)	NOTICE OF
ment of rules 16.32.308 and	)	AMENDMENT OF RULES
16.32.328 concerning reten-	)	
tion of medical records by	)	
health care facilities	)	(Health Care Facilities)

To: All Interested Persons

1. On May 17, 1990, the department published notice at pages 891-892 of the Montana Administrative Register, issue No. 9, to amend rules 16.32.308 and 16.32.328, to allow health care facilities, including hospitals, to utilize advances in electronic storage of records, and to clarify what record retention limit applied if an underage patient died before age 18.

2. The department has amended the rules as proposed with no changes.

3. The Teton Medical Center and Nursing Home requested that nursing homes be required to retain records for only five years rather than 10.

RESPONSE: No change was made because the rules already require nursing homes to keep records only five years; the 10-year retention requirement applies only to hospitals.

*for*   
DONALD E. RIZZANY, Director

Certified to the Secretary of State June 18, 1990

BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT
of Rule 18.8.1101 concerning )	OF RULE 18.8.1101
the circumstances under which )	REGARDING MOVEMENT
houses, buildings, and large )	OF HOUSES, BUILDINGS,
objects may be moved. )	AND OTHER LARGE OBJECTS.

TO: All Interested Persons.

1. On March 29, 1990, the Department of Highways published notice of a proposed amendment to rule 18.8.1101 concerning movement of houses, buildings, and other large objects at pages 578 and 579 of the 1990 Montana Administrative Register, issue number 6.

2. The agency has amended the rule as proposed.

3. The agency conducted a public hearing on April 24, 1990, which was presided over by Norman C. Peterson, hearings officer employed by the department of justice, Agency Legal Services. At the public hearing, the agency fully explained the proposed rule amendment and explained the reasons for the proposal. Three proponents were present who testified in support of the proposed amendment. They represented the Montana Housemovers Association. Appearing in opposition to the proposed rule were three members of the Mobile Home Transporters of the state. The opposition testimony can be summarized in that large mobile homes are designed to be split into two pieces when they are moved. These individuals are licensed by the public service commission to do this and they argue that it is safer and more economical to split these mobile homes into two units and move them.

Agency's response: The proposed rule will not infringe upon the existing practice of the Mobile Home Transporters in conducting their business. Over 110 letters were received by the agency supporting the proposed rule and the only opposition was the oral testimony from the three mobile home movers. The Maintenance Division of the agency has been contacted and foresees no problems in allowing double-wide structures to be moved as one unit. The concerns and arguments of the opponents, while taken into consideration, do not justify the agency from adopting the rule as proposed.

4. The authority for the rule is section 61-10-155 MCA. The rule implements sections 61-10-101 through 61-10-148 MCA.

Larry W. Larsen, P.E.  
Director of Highways

By: 

Certified to the Secretary of State June 18, 1990

Montana Administrative Register

12-6/28/90

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the	)	NOTICE OF THE ADOPTION OF
Adoption of New Rules	)	NEW RULES CONCERNING
Concerning Admission,	)	ADMISSION, ATTENDANCE,
Attendance, Conduct,	)	CONDUCT, EVALUATIONS AND
Evaluations and	)	REQUIREMENTS FOR GRADUATION
Requirements for	)	FROM THE MONTANA LAW
Graduation from the	)	ENFORCEMENT ACADEMY.
Montana Law Enforcement	)	
Academy.		

TO: All Interested Persons

1. On April 26, 1990, the Montana Department of Justice and the Montana Law Enforcement Academy Division published a notice of the proposed adoption of new rules concerning admission, attendance, conduct, evaluations and requirements for graduation from the Montana Law Enforcement Academy, pp. 809, 1990 Montana Administrative Register, Issue Number 8.

2. The Department of Justice has adopted the following rules as proposed:

Rule I	(23.17.101)	Requirements for Sworn Officers to Attend Basic Programs
Rule II	(23.17.103)	Peace Officer Basic Course Attendance Requirements for Pre-Service Applicants
Rule III	(23.17.104)	Minimum Qualifications for Testing and Pre-Test Screening
Rule IV	(23.17.105)	Testing Procedures
Rule VI	(23.17.107)	Ranking of Pre-Service Applicants for Eligibility to Attend the Basic Course
Rule VII	(23.17.108)	Procedures for Registration, Attendance, and Fees for Pre-Service Applicants
Rule VIII	(23.17.201)	Rules of Conduct for Students Attending Basic Programs
Rule IX	(23.17.311)	Student Academic Performance Requirements for the Basic Course
Rule X	(23.17.312)	Other Student Performance Measures
Rule XI	(23.17.313)	MLEA Firearms Performance Requirements for the Basic Course
Rule XII	(23.17.314)	Physical Performance Requirements for the Basic Course
Rule XIII	(23.17.315)	Student's Final Ranking in the Basic Course Class
Rule XIV	(23.17.316)	Basic Course Achievement Awards

3. The Department of Justice has adopted the following rule as originally proposed but with the following changes:

Rule V (23.17.106) POST-TEST SCREENING PROCEDURES

(1) through (3) remain the same as proposed.

(4) An oral interview board shall be created consisting of the academy administrator, the basic programs bureau chief, a ~~sheriff, a chief of police~~ a representative of a county sheriff's department, a representative of a municipal police department and a member of the general public. An alternate ~~sheriff, chief of police~~ representative of a county sheriff's department, representative of a municipal police department and a member of the general public will also be appointed to serve whenever a representative person is unable to attend an interview. All appointments to the board shall be made by the academy administrator and confirmed by the P.O.S.T. advisory council.

(5) through (7) remain the same as proposed.

The reason for this change is the limited availability of an actual sheriff or chief of police for participation in the time-consuming oral interview process.

4. No testimony or comments were received at the public hearing held in Bozeman on May 16, 1990 or through the period for written input which extended until May 25, 1990. The adoption of these rules is effective July 1, 1990.

5. The authority of the Department to adopt these rules is based on 44-10-202, MCA.

By

Judy Browning  
Certified to the Secretary of State June 18, 1990

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the Matter of Adoption of )	NOTICE OF ADOPTION OF NEW
New Rules and Amendment of )	RULES I-III, AMENDMENT TO
Existing Rules Pertaining to )	RULES 38.3.104, 38.3.702,
Motor Carrier Status, Class C )	38.3.704, 38.3.706,
Contracts, Class C Pickups and )	38.3.2101 and 38.3.3401,
Delivery, Contract and Common )	AND REPEAL OF RULE 38.3.117
Carrier Distinction, Insur- )	
ance, Transfer of Authority, )	
and Carrier Rate Increases, )	
and Repeal of Rule Pertaining )	
to Vehicle Identification. )	

TO: All Interested Persons

1. On March 15, 1990 the Department of Public Service Regulation published notice of the proposals identified in the above titles at pages 467 through 473 of the 1990 Montana Administrative Register, issue number 5.

2. The Department of Public Service Regulation has adopted and amended the rules as proposed with the following changes:

RULE 1. 38.3.2005 STATUS OF CARRIER -- EFFECT OF LEASE OF POWER EQUIPMENT (1) through (5)(1) No changes.

(j) if the lease includes or is otherwise accompanied by the lessor's providing the services of an operator, the lease shall be for a duration no less than 30 days, during which time the power equipment and driver shall be used for no purpose independent of the lessee's exclusive rights identified in (e) above.

(6) through (8) No changes.

38.3.706 ENDORSEMENTS (1) and (2) No changes.

(a) Cargo insurance (Endorsement MV2) shall be issued in an amount no less than ~~\$10,000~~ :

(i) \$1,000 for cargo transported in a vehicle designed, equipped, and primarily intended for transportation of 7 passengers or less;

(ii) \$10,000 for all other vehicles.

(b) No change.

(i) \$100,000 for 7 passengers or less;

~~++~~ (ii) \$500,000 for 8 to 15 passengers;

~~+++~~ (iii) \$750,000 for 16 to 30 passengers;

~~++++~~ (iv) \$1,000,000 for 31 passengers or more;

~~++v~~ (v) except any motor carrier, other than as provided in (i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of \$500,000 insurance regardless of size of vehicle used;

~~++v~~ (vi) \$500,000 for transportation of nonhazardous freight;

(vii) the federal department of transportation minimum insurance limits for hazardous materials freight, as hazardous materials is defined by that department.

(3) No change.

(4) This rule shall become effective September 1, 1990.

3. The Commission has adopted the rules as proposed:

RULE II. 38.3.1303 CLASS C CARRIER CONTRACTS -- REQUIRED PROVISIONS, SUMMARY

RULE III. 38.3.1304 CLASS C CARRIER -- PICKUP AND DELIVERY

38.3.104 "CONTRACT" VS. "COMMON" CARRIER

38.3.702 BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE

38.3.704 AUTHORIZED INSURANCE COMPANIES AND CERTIFICATES OF INSURANCE

38.3.2101 SALE OR TRANSFER OF CERTIFICATE OF AUTHORITY

38.3.3401 COMPARISON OF PRESENT AND PROPOSED RATES -- DEFINITION, PERMANENCE

4. The department has repealed the rule as proposed. The authority for repeal is Section 69-12-201, MCA.

5. Written and oral comments to the proposals were received. These are summarized below, have been considered by the agency, and are ruled upon as indicated.

Bart Campbell, staff attorney, Legislative Council, commented that statutory authority for the repeal of ARM 38.3.117 should be stated. The PSC agrees with the comment and has amended the repeal accordingly as set forth above.

Beach Transportation Co. and Karst Stage, Inc., filed written comments in support of the proposed new, amended and repealed rules. The PSC appreciates the interest and comments.

A significant amount of written and oral comment was received in opposition to the proposed amendment to ARM 38.3.706 as it pertains to increased minimum cargo and passenger insurance levels for taxi cab transportation. Mary Wright, staff attorney, Montana Consumer Counsel; Gene Comes, Diamond Cab Co., Great Falls; Don Fairchild, Great Falls Capital Co. (Diamond Cab); James Michael, Kalispell Taxi Service; Kraig Kruger, Star Cab, Livingston; Dave Buesha, Billings Yellow Cab; Terri B. Bohrer, Billings Yellow Cab; Mary Ann Roberts, YWCA, Billings; Bernard Harrington, City Taxi, Butte; Theodore Foos, City Cab, Billings; and Roger Knutson, Yellowstone County Tavern Association, all submitted oral or written comments in opposition to the increased minimum insurance levels for taxi cab transportation. From the testimony and comments received the following reasons for opposition are noted. (1) Insurance for taxi cab companies at the proposed rate might not even be obtainable. (2) If the insurance is obtainable, it is cost prohibitive. (3) The increase cost will put some taxi cab companies out of business. (4) Those taxi cab companies that can afford the insurance will have to increase rates charged to passengers. (5) Either going out of business or increased rates will adversely effect the major customers of

taxi cab companies -- disabled, elderly, handicapped -- being passengers least able to afford increased rates or find alternative means of transportation. (6) Either going out of business or increased rates will adversely effect community and public interests relying on taxi cabs for transportation -- elderly doctor appointment transportation programs, low income assistance transportation programs, and community or self-help programs for intoxicated persons.

The PSC agrees with the comments. The rules as proposed are amended to reinstate the pre-amendment insurance requirement as the same relate to taxi cab transportation. It is also apparent that carrier compliance with and agency administration of the affected rule, ARM 38.3.706, cannot reasonably be expected to occur as soon as the date of adoption. The PSC therefore amends the rule to include an effective date of September 1, 1990.

Bob Wimett, Wimett Trucking, Missoula, commented that there is a problem with power unit and driver leases that might not be adequately addressed by new Rule I. Mr. Wimett notes that some lessors engage in transportation outside of the lease while the lease is in effect. He suggests that the lease should be exclusive and binding for a period (30 days) and prohibit transportation outside of the lease for that period. Mr. Wimett also suggests that upon termination of a lease there should be a 30 day waiting period before lease to the same person.

The PSC agrees with the comment, except for the 30 day waiting period. The PSC amends the rule accordingly. The PSC overrules the comment on 30 day waiting periods as it would impose an unreasonable burden on power equipment lessors and have no significant impact on enforcement.

6. The authority and implementing statutes are set forth in the notice of proposed action identified in paragraph 1.

  
CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 18, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT )	NOTICE OF THE AMENDMENT of
of ARM 42.12.205 and 42.12.208 )	ARM 42.12.205 and 42.12.208
relating to Requirements When )	relating to Requirements
Licensing Is Subject to Lien. )	When Licensing Is Subject
)	to Lien.

TO: All Interested Persons:

1. On January 25, 1990 the Department of Revenue published notice of the proposed amendment of ARM 42.12.205 and 42.12.208 relating to Requirements When Licensing Is Subject to Lien at page 194 of the 1990 Montana Administrative Register, issue no. 2.

2. A public hearing was held on February 21, 1990 where written and oral comments were received.

3. As a result of the comments received the Department has amended ARM 42.12.205 and 42.12.208 with the following changes:

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN

(1) All-beverage and beer licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a financing statement or by a copy of the note or mortgage, security agreement, or other lien (in which the license or licenses to be affected are described with common certainty such as inclusion of license number) together with a fee of \$10, the name of the mortgagee, secured party, or other lien holder must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder.

(2) No transfer of any license subject to any mortgage security interest, or other lien shall be approved unless the mortgagee, secured party, or lien holder shall subscribe and acknowledge the instrument of assignment. IF THE MORTGAGEE, SECURED PARTY, OR LIEN HOLDER IS DECEASED, OR OTHERWISE UNAVAILABLE, THE INSTRUMENT OF ASSIGNMENT MAY BE SUBSCRIBED AND ACKNOWLEDGED BY THE PERSONAL REPRESENTATIVE, HEIR, DEVISEE, OR OTHER PERSON UPON PROVIDING SUFFICIENT PROOF THAT THE PERSON HAS AUTHORITY TO ACT ON BEHALF OF THE ESTATE OR HAS OTHERWISE RECEIVED THE RIGHT TO THE SECURITY INTEREST OR LIEN.

(3) At such time as any mortgage, security interest, or lien affecting any license has been satisfied and fulfilled, the name of the mortgagee, secured party, or lien holder shall be removed upon written request of all parties in interest and upon the payment of a fee of \$10, provided, however, that in the case of foreclosure and the transfer of license to the mortgagee, secured party, or lien holder, no such fee is required. IF THE MORTGAGEE, SECURED PARTY, OR LIEN HOLDER IS DECEASED, OR OTHERWISE UNAVAILABLE, THE WRITTEN REQUEST MAY BE MADE BY THE PERSONAL REPRESENTATIVE, HEIR, DEVISEE, OR OTHER PERSON UPON PROVIDING SUFFICIENT PROOF THAT THE PERSON HAS AUTHORITY TO ACT



ON BEHALF OF THE ESTATE OR HAS OTHERWISE RECEIVED THE RIGHT TO THE SECURITY INTEREST OR LIEN. ANY NAME OF A MORTGAGEE, SECURED PARTY, OR LIEN HOLDER MAY ALSO BE REMOVED UPON THE WRITTEN REQUEST OF THE LICENSEE OR APPLICANT FOR THE LICENSE IF ACCOMPANIED BY A COURT ORDER RELEASING THE SECURITY INTEREST OR LIEN, OR OTHER SUFFICIENT PROOF SHOWING THAT THE SECURITY INTEREST OR LIEN HAS EXPIRED, BEEN DISCHARGED, OR OTHERWISE EXTINGUISHED.

(1)(4) Alcoholic beverage licenses may be subject to security interests as defined in 30-9-102(2), MCA, and other valid liens. The perfection of a security interest or other lien in an alcoholic beverage license does not depend upon filing with the department but rather by the statutory requirements which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in 30-9-301(3), MCA, desires to give additional public notice he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security interest and other liens.

(2)(5) The consent of a secured party or a lien creditor is not required by the department to transfer a license. Persons who have filed a claim of a security interest or lien will be given notice by the department of any application for transfer of the license.

(3) -- An alcoholic beverage license which is subject to a current claim of security interest or lien, a request for which was submitted to the department prior to the effective date of this rule on a form prescribed by the department, and signed by both the licensee and the secured party or lien creditor, shall not be transferred unless consented to in writing by the secured party or lien creditor. -- If the secured party or lien creditor is deceased, or otherwise unavailable, the transfer may be consented to by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien.

(4)(6) Upon written request to the department, together with a fee of \$20, the name of a person claiming a security interest shall be endorsed upon the license and shall be kept on file with the department. All such requests shall be upon forms prescribed by department and signed in each case by the licensee and the person claiming the security interest.

(5)(7) The name of a lien creditor shall not be endorsed upon the license. However, upon written request to the department, the department shall keep the name of the lien creditor on file. The request must be accompanied by sufficient proof of perfection of the lien claimed. No fee is required.

(6)(8) Any notice of security interest or other lien may be deleted from the department's file upon written request of the secured party or lien creditor. If the secured party or lien creditor is deceased, or otherwise unavailable, the written request for deletion may be made by a personal representative, heir, devisee, or other person upon providing sufficient proof

that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any notice of security interest or other lien may also be deleted from the department's file upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

{7}(9) A security interest or other lien may be foreclosed upon in any manner provided by law. For the transfer of a license pursuant to a foreclosure, the department shall accept a foreclosure bill of sale, which specifically refers to the license by number, in lieu of the voluntary assignment of the license by the licensee. In non-judicial foreclosures, the department may require sufficient documentation that the proper foreclosure proceedings were followed. Purchasers of a license at a foreclosure sale must apply to the department for transfer of the license and are subject to all statutes and rules required of any other applicant.

(10) SUBSECTIONS (1) THROUGH (3) WILL APPLY TO ALL SECURITY INTERESTS AND LIENS FILED WITH THE DEPARTMENT PRIOR TO SEPTEMBER 1, 1990. BEGINNING SEPTEMBER 1, 1990, SUBSECTIONS (4) THROUGH (9) WILL APPLY TO ALL NEW SECURITY INTERESTS AND LIENS FILED WITH THE DEPARTMENT.

42.12.208 TEMPORARY AUTHORITY (1) through (3) remain the same.

(4) In the event liens, attachments, or judgments have attached to the license, PRIOR TO SEPTEMBER 1, 1990, the department will not grant an extension beyond the initial 45 days. BEGINNING SEPTEMBER 1, 1990, NEW LIENS, NEW ATTACHMENTS, OR NEW JUDGMENTS WHICH HAVE ATTACHED TO A LICENSE DO NOT AFFECT THE ISSUANCE OF TEMPORARY AUTHORITY. The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary authority has expired and cannot be extended.

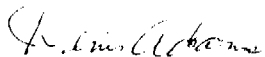
(5) and (6) remain the same.

4. Oral and written comments received during and subsequent to the hearing are summarized with the response of the Department as follows:

Licensees, secured parties, lien holders, and their attorneys have long relied upon the current rule as establishing a method of perfection for security interests and liens. The current rules have also been long relied upon to protect economic interests in the alcoholic beverage licenses by requiring consent of secured parties and lien holders to any transfer. An abrupt change in the rule would cast doubt on the effectiveness of these long established methods of perfection as well as removing relied upon protection methods. Therefore, the Department has modified its proposed rule amendments to maintain the current rules [ARM 42.12.205, subsections (1) through (3)] in full force and effect for all security interests and liens

filed before September 1, 1990. The new rules [ARM 42.12.205, subsections (4) through (9)] will apply only to those security interests and liens filed after August 31, 1990.

The current rules are being amended in one aspect only. The amendments provide for the circumstances under which security interests and liens can be removed or when licenses subject to security interests or liens can be transferred when the secured party or lien holder is deceased or otherwise unavailable.

  
\_\_\_\_\_  
DENIS ADAMS, Director  
Department of Revenue

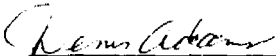
Certified to Secretary of State June 18, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT )	NOTICE OF THE AMENDMENT of
of ARM 42.20.420; 42.20.429 )	ARM 42.20.420; 42.20.429 and
and 42.20.453 relating to )	42.20.453 relating to
Sales Assessment Ratio Study )	Sales Assessment Ratio Study

TO: All Interested Persons:

1. On April 26, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.20.420; 42.20.429 and 42.20.453 relating to the Sales Assessment Ratio Study at page 818 of the 1990 Montana Administrative Register, issue no. 8.
2. No comments have been received and the Department amends the rules as proposed.

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State June 18, 1990.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- ) NOTICE OF AMENDMENT of ARM  
MENT of ARM 42.20.438 relat-) 42.20.438 relating to the  
ing to the Sales Assessment ) Sales Assessment Ratio Study  
Ratio Study )

TO: All Interested Persons:

1. On April 12, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.20.438 relating to the designated areas for residential property for the sales assessment ratio study at page 700 of the 1990 Montana Administrative Register, issue no. 7.

2. No public hearing was held and no comments were received. However, the department has determined that an additional minor change is necessary. The department amends ARM 42.20.438 as originally noticed with the following changes:

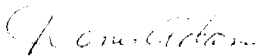
42.20.438 DESIGNATED AREAS - RESIDENTIAL (1) through (4) remain the same.

(5)(a) remains as originally proposed.

(b) Great Falls South - Area General Description.

(i) Beginning at 10th Avenue South and 52nd Street then south to southeast corner of section 16, then west to 26th Street and 24th Avenue South, then south to southeast corner of Section 30 19, then west to southwest corner of section 25 24, ~~then north to northwest corner of section 25,~~ then west to east bank of the Missouri River, then north along the Missouri River to 10th Avenue South, then east along 10th Avenue South to the point of beginning.

(6) through (47) remain the same.

  
\_\_\_\_\_  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State June 18, 1990

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1990. This table includes those rules adopted during the period April 1, 1990 through June 30, 1990 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, 1990, 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 1989 and 1990 Montana Administrative Registers.

### ADMINISTRATION, Department of, Title 2

- I-XIII and other rules - Veteran's Employment Preference - Veteran's and Handicapped Person's Employment Preference, p. 1361, 478
- 2.13.102 Use of the State Telecommunication Systems, p. 397, 928
- 2.21.8017 and other rule - Grievances, p. 1997, 377 (Public Employees' Retirement Board)
- 2.43.302 and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999, 994A (Workers' Compensation Court)
- 2.52.101 Transfer of Organizational and Procedural Rules of the Workers' Compensation Court to the Department of Labor & Industry, p. 2177

### AGRICULTURE, Department of, Title 4

- 4.12.1012 Grain Fee Schedule, p. 1056
- 4.12.1202 and other rules - Alfalfa Leafcutting Bees, p. 1, 378, 704

### STATE AUDITOR, Title 6

- I-VII Establishment and Operations of a Prelicensing Education Program, p. 8, 487
- I-IX Establishment and Operations of a Surplus Lines



Stamping Office - Imposition Upon Transactions of Surplus Lines Insurance of a Stamping Fee - Compulsory Membership in a Surplus Lines Advisory Organization, p. 2008, 218

COMMERCE, Department of, Title 8

(Board of Architects)

- 8.6.406 and other rules - Reciprocity - Qualification Required for Branch Office - Examinations - Individual Seal - Renewals - Standards of Professional Conduct - Fee Schedule - Architect Partnerships to File Statement with Board Office - Board Meetings - Seal - Governor's Report - Financial Records and Other Records - Grant and Issue Licenses - Duplicate License - Public Participation, p. 250, 583

(Board of Athletics)

- 8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Boxing Contestants - Physical Examination - Ring - Equipment - Disciplinary Actions - Relationship of Managers and Boxers, p. 765, 1143

(Board of Chiropractors)

- I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification and Fees of Impairment Evaluators, p. 255  
I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification - Fees of Impairment Evaluators, p. 399

- 8.12.601 and other rules - License Applications - Educational Standards for Licensure - License Examinations - Temporary Permits - Renewals - Unprofessional Conduct Standards - Reinstatement of Licenses - Disciplinary Actions - Recordation of License - Definitions, p. 258, 995

- 8.12.601 and other rules - Applications - Renewal Fees - Consolidating Board Fees Into One Central Rule, p. 769, 1144

(Board of Cosmetologists)

- 8.14.401 and other rules - Practice of Cosmetology - Booth Rentals, p. 658, 1145

(Board of Dentistry)

- I Prior Referral for Partial Dentures, p. 1065, 222  
8.16.101 and other rules - Board Organization - Examinations - Allowable Functions - Minimum Qualifying Standards - Minimum Monitoring Standards - Facility Standards - Reporting Adverse Occurrences - Fees - Oral Interview - Applications - Mandatory CPR, p. 942, 2179  
8.16.402 and other rules - Examination - Permit Required for Administration or Facility, p. 1066, 2187

(Board of Hearing Aid Dispensers)

- 8.20.401 Traineeship Requirements and Standards, p. 771

- (Board of Horse Racing)  
I-VI Superfecta Sweepstakes - Tri-superfecta Wagering,  
p. 1693, 2191  
8.22.301 and other rules - Simulcast Horse Racing - Simulcast  
Race Meets Under the Parimutuel System for Wagering,  
p. 1683, 2189  
(Board of Landscape Architects)  
8.24.409 Fee Schedule, p. 1062  
(Board of Medical Examiners)  
8.28.402 and other rules - Definitions - Reinstatement -  
Hearings and Proceedings - Temporary Certificate -  
Annual Registration and Fees - Approval of Schools -  
Requirements for Licensure - Application for  
Licensure - Fees - Supervision of Licensees -  
Application for Examination - Reciprocity, p. 867  
(Board of Morticians)  
8.30.406 and other rules - Examinations - Fee Schedule -  
Itemization, p. 1624, 2193  
(Board of Professional Engineers and Land Surveyors)  
8.48.902 and other rules - Statements of Competency - Land  
Surveyor Nonresident Practice in Montana - Avoidance  
of Improper Solicitation of Professional Employment,  
p. 773  
(Board of Private Security Patrolmen and Investigators)  
8.50.423 and other rules - Definitions - Temporary Employment  
- Applications - Examinations - Insurance - Applicant  
Fingerprint Check - Fees - Probationary Private  
Investigators - Firearms Safety Tests -  
Unprofessional Standards - Record Keeping - Code of  
Ethics for Licensees - Code of Ethics for Employees -  
Powers of Arrest and Initial Procedures -  
Disciplinary Action, p. 776  
(Board of Public Accountants)  
8.54.204 and other rules - Licensing of Public Accountants,  
p. 1870, 584  
8.54.817 and other rules - Credit for Service as Report  
Reviewer - Definitions - Filing of Reports -  
Alternatives and Exemptions Reviews and Enforcement,  
p. 1866, 586  
(Board of Radiologic Technologists)  
8.56.602 and other rules - Permit Applications - Course  
Requirements - Permit Examinations - Temporary  
Permits - Permit Restrictions, p. 402  
(Board of Realty Regulation)  
8.58.401 and other rules - Administration, Licensing and  
Conduct of Real Estate Licensees - Registration and  
Sales of Subdivisions, p. 405, 1156  
8.58.412 Inactive Licenses - Reactivation of Licenses -  
Continuing Education, p. 467, 1339  
(Board of Social Work Examiners and Professional Counselors)  
8.61.404 and other rule - Fees, p. 424, 1171  
(Board of Speech/Language Pathologists and Audiologists)  
8.62.404 and other rules - Speech/Language Pathology and

- Audiology, p. 1699, 2194  
(Building Codes Bureau)  
8.70.104 Incorporation by Reference of the Model Energy Code,  
p. 1070, 1909  
(Milk Control Bureau)  
8.79.301 Licensee Assessments, p. 426, 820  
(Financial Division)  
I Investment Securities, p. 1377, 2196  
I-III Application Procedure for Authorization to Engage In  
the Escrow Business - Change of Ownership in Escrow  
Businesses - Examination of Escrow Business, p. 2015,  
929  
8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be  
Applied, p. 981  
(Board of Milk Control)  
8.86.301 Class I Price Formula - Class I Wholesale Prices,  
p. 2101, 821  
8.86.301 Class I Resale Pricing Formula, p. 710, 2047  
8.86.505 Quota Rules for Producers Supplying Meadow Gold  
Dairies, Inc., p. 2099, 502  
8.86.506 and other rules - Statewide Pooling Arrangements as  
it Pertains to Producer Payments, p. 2109, 705, 931  
(State Banking Board)  
I Application Procedure for a Certificate of  
Authorization to Establish a New Branch, p. 1380,  
2201  
I Application Procedure for Approval to Merge  
Affiliated Banks, p. 1302, 2198  
(Local Government Assistance Division)  
I Administration of the 1990 Federal Community  
Development Block Grant (CDBG) Program, p. 682, 997  
(Board of Investments)  
I-IX Montana Economic Development Act - The Conservation  
Enhancement Program, p. 1634, 2204  
8.97.802 and other rules - Montana Capital Company Act -  
Investments by the Montana Board of Investments,  
p. 1881, 503, 716  
8.97.1101 and other rule - Names and Addresses of Board Members  
- Conventional Loan Program - Purpose and Loan  
Restrictions, p. 182, 589  
8.97.1101 and other rules - Organizational Rule - Forward  
Commitment Fees and Yield Requirements for All Loans  
- Loan Programs Assumptions, p. 1631, 2203  
8.97.1302 and other rules - Seller/services Approval Procedures  
Forward Commitment Fees, p. 786  
(Board of Science and Technology Development)  
I-XX and other rules - Loans Made by the Montana Board of  
Science and Technology Development, p. 428, 1000  
(Montana State Lottery Commission)  
8.127.203 and other rules - Definitions - Retailer Bonding -  
Duties - Revocation or Suspension of Licensed -  
Prizes - On-line Endorsement, p. 2017, 226

EDUCATION, Title 10

(Superintendent of Public Instruction)

- I-IV Spending and Reserve Limits, p. 24, 508
- I-V Guaranteed Tax Base, p. 15, 507
- I-VI Special Education Cooperatives, p. 872
- I-VII Permissive Amount, Voted Amount and School Levies, p. 29, 510, 723
- I-XVII Special Education Due Process Matters, p. 440, 934
- I-XXII and other Rules - Tuition and Accounting Practices, p. 330, 717
- 10.6.101 and other rules - All School Controversy Contested Cases Before County Superintendents of the State of Montana, p. 436, 933
- 10.13.101 and other rules - State Equalization, p. 184, 505
- (Board of Public Education)
- 10.55.804 and other rules - Gifted and Talented - Experience Verification - Class 3 Administrative Certificate, p. 1072, 2050
- 10.57.107 and other rules - Emergency Authorization of Employment - Test for Certification, p. 875
- 10.57.301 and other rule - Endorsement Information - Endorsement of Computer Science Teachers, p. 2116, 1064
- 10.57.401 Class I Professional Teaching Certificate, p. 1640, 725
- 10.57.601 Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action, p. 690
- 10.65.101 and other rule - Policy Governing Pupil Instruction-Related Days Approved for Foundation Program Calculations - Program of Approved Pupil Instruction-Related Days, p. 2118, 725
- 10.67.101 and other rules - State Aid Distribution Schedule - Reporting Requirements - Notice and Opportunity for Hearing - Hearing in Contested Cases - After Hearing, p. 684
- (Montana Arts Council)
- 10.111.701 and other rules - Cultural and Aesthetic Project Grant Proposals, p. 789

FAMILY SERVICES, Department of, Title 11

- 11.5.605 Access to Department Records, p. 693, 1001
- 11.7.402 and other rules - Composition of and Criteria for Approving Recommendations of Youth Placement Committees - Composition of Foster Care Review Committees, p. 265, 728
- 11.12.104 and other rule - Licensure of Youth Care Facilities, p. 263, 590
- 11.14.314 and other rule - Group Day Care Home Health Care Requirements, p. 2020
- 11.16.120 and other rules - Licensure of Adult Foster Care Homes, p. 1706, 2207

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Restricting Public Access and Fishing Near Montana Power Company Dams - Specifically Hebgen Dam, p. 878
- I-VI Paddlefish Egg Donations, Marketing and Sale, p. 1383, 2051
- I-VI Upland Game Bird Habitat Enhancement Program, p. 1386, 2054
- I-XII River Restoration Program, p. 795
- 12.6.801 and other rule - Restricting Public Access and Fishing Near Montana Power Company Dams - Boating Closures, p. 449, 1003
- 12.6.901 Establishing A No-Wake Restriction Below Canyon Ferry Dam, p. 983
- 12.6.901 Water Safety Regulations, p. 452, 1002
- 12.6.901 Water Safety Regulations - Closing Certain Waters, p. 35, 514
- 12.6.901 Water Safety Regulations, p. 1257, 1910
- 12.9.205 Manhattan Game Preserve, p. 985
- 12.9.210 Warm Springs Game Preserve, p. 38, 515

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-III Living Will Procedures for Emergency Medical Services Personnel, p. 1737, 2232
- I-V Reports of Unprotected Exposure to Infectious Disease, p. 1733, 2229
- I-VIII Emergency Adoption - Underground Storage Tanks - Licensing of Underground Tank Installers - Permitting of Underground Tank Installations and Closures, p. 731
- I-X Water Quality - Procedures and Criteria Regarding Wastewater Treatment Works Revolving Fund, p. 799, 879
- I-XI Handicapped Children's Services Program - Eligibility for the Handicapped Children's Program - Payment for Services - Covered Conditions - Record-Keeping - Application Procedure - Advisory Committee - Fair Hearings, p. 881
- I-XV Pretreatment Standards for Discharges Into Publicly Operated Treatment Works, p. 1457, 2063
- I-XXIV Petroleum Tank Release Compensation Program, p. 40, 516
- I-XXXII Occupational Health - Asbestos Control, p. 1740, 2234
- I-XXXVIII and other rules - Licensing of Emergency Medical Services, p. 1712, 2212
- 16.8.807 and other rule - Monitoring and Reporting of Air Quality Data, p. 1259, 2059
- 16.8.921 and other rules - Air Quality - Definitions - Ambient Air Increments - Air Quality Limitations - Exclusions from Increment Consumption - Class I Variances - General, p. 805, 880
- 16.10.606 Temporary Licensing of Tourist Homes During the

- 16.20.901 Montana Centennial Cattle Drive, p. 1390, 2211  
and other rules - Montana Pollutant Discharge  
Elimination System, p. 1391, 2060
- 16.26.102 and other rules - Women, Infants and Children,  
p. 2022, 227
- 16.32.308 and other rule - Retention of Medical Records by  
Health Care Facilities, p. 891
- 16.45.101 and other rules - Underground Storage Tanks -  
Reimbursement for Petroleum Storage Tank Release  
Clean Ups, p. 1075, 1308, 1912

HIGHWAYS, Department of, Title 18

- I-XX Installation of Motorist Information Signs Along  
Interstate and Primary Highways, p. 1641, 111
- 18.8.510B and other rules - Convoy Moves of Oversize Vehicles -  
Flag Vehicle Requirements, p. 2027, 591
- 18.8.1101 Movement of Houses, Buildings and Other Large  
Objects, p. 578

INSTITUTIONS, Department of, Title 20

- 20.3.202 and other rules - Definitions - Clients' Rights -  
Outpatient Component Requirements - Certification  
System for Chemical Dependency Personnel - Chemical  
Dependency Education Course Requirements - ACT,  
p. 2121, 737
- 20.7.102 Prisoner Application Procedure, General Statute  
Requirement, p. 1767, 285
- 20.7.1101 Conditions on Probation or Parole, p. 695

JUSTICE, Department of, Title 23

- I-XIV Admission - Attendance - Conduct - Evaluations and  
Requirements for Graduation from the Montana Law  
Enforcement Academy, p. 809
- I-L Gambling, p. 1769, 286
- 8.124.101 and other rules - Gambling, p. 2127, 828, 1172  
(Board of Crime Control)
- 23.14.401 and other rules - Administration of Peace Officer  
Standards and Training - Minimum Standards for the  
Employment of Detention Officers - Requirements for  
Detention Officer Certification - Referenced Rules to  
Apply to Full-time and Part-time Detention Officers,  
p. 1559, 2064
- 23.14.404 and other rule - General Requirements for  
Certification - Requirements for the Basic  
Certificate, p. 1557, 2065

LABOR AND INDUSTRY, Department of, Title 24

- I Travel Expense Reimbursement, p. 816
- I-II Establishing Montana's Minimum Hourly Wage Rate,

- p. 454, 852  
(Workers' Compensation Judge)  
24.5.101 and other rules - Procedural Rules of the Court,  
p. 349, 847  
(Human Rights Commission)  
24.9.212 Confidentiality - Procedure on Finding of Lack of  
Reasonable Cause - Contested Case Record - Exceptions  
to Proposed Orders, p. 2157, 525  
24.9.225 and other rules - Procedure on Finding of Lack of  
Reasonable Cause - Issuance of Right to Sue Letter  
When Requested by a Party - Effect of Issuance of  
Right to Sue Letter, p. 1065  
24.16.9007 Amendment of Prevailing Wage Rates, p. 986  
24.16.9009 and other rule - Prevailing Wage Enforcement -  
Placing All Prevailing Wage Cases Under Wage Claim  
Proceedings, p. 1654, 2249  
(Board of Personnel Appeals)  
I-VIII Review of Wage Claims by the Board of Personnel  
Appeals, p. 1656, 2250  
(Workers' Compensation)  
24.29.101 and other rules - Transfer of Part of the  
Organization and Function of the Division of Workers'  
Compensation to the Employment Relations Division,  
p. 2151  
24.29.1415 Impairment Rating Dispute Procedure, p. 456, 1004

STATE LANDS, Department of, Title 26

- I-III Investigation of Complaints Regarding Effects of Hard  
Rock Blasting Operations, p. 458  
I-VII Authorizing Permitting and Requiring Reclamation of  
Hard Rock Mills and Operations that Reprocess  
Tailings and Waste Rock from Previous Operations,  
p. 267, 1008  
I-XII and other rules - Disposal of Underground Coal Mine  
Waste - Individual Civil Penalties - Restrictions on  
Financial Interests of Multiple Interest Advisory  
Boards, p. 1309, 366A, 936  
26.4.724 and other rules - Revegetation of Land Disturbed by  
Coal and Uranium Mining Operations, p. 1885, 964

LIVESTOCK, Department of, Title 32

- 32.2.401 and other rules - Requiring a Sheep Permit before  
Removal of Sheep from County or State - Fees,  
p. 1894, 300  
32.3.201 and other rules - Regulating Sheep, Bison and Llamas,  
p. 1660, 300

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Reject or Modify Permit Applications for Consumptive  
Uses and to Condition Permits for Nonconsumptive Uses

- in Walker Creek Basin, p. 893
- I-II Reject Permit Applications for Consumptive Uses -  
Modify Permits for Nonconsumptive Uses in Rock Creek  
Basin, p. 1334, 301
- I-II Reject Permit Applications for Consumptive Uses and  
to Modify Permits for Nonconsumptive Uses in Grant  
Creek Basin, p. 959, 228  
(Board of Natural Resources and Conservation)
- 36.16.118 Voluntary Transfer of A Reserved Water Right,  
p. 1564, 2066  
(Board of Water Well Contractors)
- I Mandatory Training, p. 896
- I Abandonment of Monitoring Wells, p. 273, 739
- 36.21.415 Fee Schedule, p. 1790, 119  
(Board of Oil and Gas Conservation)
- I Incorporating by Reference Rules Pertaining to the  
Montana Environmental Policy Act, p. 2164, 531
- 36.22.307 and other rules - Issuance of Oil and Gas Drilling  
Permits - Public Notice Requirements - Change of  
Ownership Requirements - Bond Release, p. 1792, 305

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-III and other rules - Motor Carrier Status - Class C  
Contracts - Class C Pickups and Delivery - Contract  
and Common Carrier Distinction - Insurance - Transfer  
of Authority - Carrier Rate Increases - Vehicle  
Identification, p. 467
- 38.4.105 and other rules - Intrastate Rail Rate Proceedings,  
p. 1796, 2252
- 38.5.2202 and other rule - Federal Pipeline Safety Regulations  
Including Drug-Testing Requirements, p. 275, 698
- 38.5.3332 Customer Billing, p. 192, 593

REVENUE, Department of, Title 42

- I Gasoline From Refineries, p. 1071
- I Property Tax for Co-op Vehicles, p. 1805, 233
- I Prepayment of Motor Fuel Taxes, p. 1264, 2068
- I-III Property Tax - Reappraisal of Real Property Dealing  
With Statistical Procedures and Results, p. 198, 596
- I-V Property Tax - Reappraisal of Real Property, p. 54,  
202, 367, 596
- 42.5.101 and other rules - Bad Debt Collection, p. 1080
- 42.12.205 and other rule - Requirements When Licensing Is  
Subject to Lien, p. 194
- 42.15.106 Personal Income Tax Surcharge, p. 1801, 120
- 42.17.105 Computation of Withholding Taxes, p. 1803, 121
- 42.18.101 and other rules - Property Tax - Reappraisal Plan,  
p. 2031, 594
- 42.19.301 Clarification of Exception to Tax Levy Limit, p. 1070
- 42.20.401 and other rules - Property Tax - Sales Assessment  
Ratio, p. 2039, 596



- 42.20.420 and other rules - Sales Assessment Ratio Study, p. 818
- 42.20.438 Sales Assessment Ratio Study, p. 700
- 42.22.1311 Updating Trend Factors for Industrial Machinery and Equipment, p. 1074
- 42.23.117 Surtax for Corporations, p. 2044, 234
- 42.23.413 Carryover of Net Operating Losses - Corporation License Tax, p. 2166, 645
- 42.24.101 and other rules - Subchapter S Elections for Corporations, p. 1082
- 42.27.102 Distributors Bond for Motor Fuels, p. 1799, 122
- 42.27.604 Payment of Alcohol Tax Incentive, p. 1072
- 42.28.321 Required Records - Audits - Motor Fuels Tax, p. 580, 1174

SECRETARY OF STATE, Title 44

- 1.2.419 Filing, Compiling, Printer Pickup and Publication for the Montana Administrative Register, p. 1806, 2253
- 44.9.103 and other rules - Mail Ballot Elections, p. 2168, 308
- (Commissioner of Political Practices)
- 44.10.331 Limitations on Receipts From Political Committees to Legislative Candidates, p. 203, 532

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I and other rules - Orthodontia and Dentures, p. 917
- I and other rule - Transfer of Resources for General Relief Eligibility Purposes, p. 1905, 127
- I-II Transitional Child Care, p. 207, 533
- I-III Freestanding Dialysis Clinics, p. 1086
- I-VIII Skilled Nursing and Intermediate Care Services In Institutions for Mental Diseases, p. 278, 1175
- I-LXV and other rules - Child Support Enforcement Procedures and Administration, p. 74, 375
- 46.10.407 Transfer of Resources Rule for the AFDC Program, p. 1896, 123
- 46.10.701 and other rules - Montana JOBS Program, p. 1122
- 46.12.303 Medicaid Billing - Reimbursement - Claims Processing and Payment, p. 901
- 46.12.303 Medicaid Overpayment Recovery, p. 2175, 379
- 46.12.304 Third Party Eligibility, p. 912
- 46.12.505 Diagnosis Related Groups (DRGs), p. 904
- 46.12.522 and other rules - Two Percent (2%) Increase in Medicaid Fees for Provider Services, p. 923
- 46.12.532 Reimbursement for Speech Therapy Services, p. 596, 876
- 46.12.541 and other rule - Hearing Aid Services, p. 898
- 46.12.545 and other rules - Occupational Therapy Services, p. 370, 582
- 46.12.552 Reimbursement for Home Health Services, p. 474, 1042
- 46.12.571 and other rules - Coverage Requirements and Reimbursement for Clinic Services - Psychological Services - Clinical Social Work Services, p. 71, 534,

- 740
- 46.12.590 and other rules - Inpatient Psychiatric Services, p. 1117
- 46.12.703 Reimbursement for Outpatient Drugs, p. 906
- 46.12.802 Prosthetic Devices, Durable Medical Equipment and Medical Supplies, p. 987
- 46.12.1011 and other rules - Specialized Nonemergency Medical Transportation, p. 1811, 2254
- 46.12.1201 and other rules - Payment Rate for Skilled Nursing and Intermediate Care Services, p. 1107
- 46.12.1201 and other rules - Reimbursement of Nursing Facilities for Nurse Aide Wage Increases - Oxygen Equipment - Incorporation of the Patient Assessment Manual - Other Matters, p. 1814, 2255
- 46.12.1401 and other rules - Medicaid Home and Community Based Program for Elderly and Physically Disabled Persons, p. 1090
- 46.12.1823 and other rule - Hospice Services, p. 205, 539
- 46.12.2003 Reimbursement for Obstetrical Services, p. 702, 1179
- 46.12.2013 Reimbursement for Certified Registered Nurse Anesthetists, p. 214, 540
- 46.12.3206 and other rule - Third Party Attorney Fees - Assignment of Benefits, p. 1088
- 46.12.3207 Ineligibility for Certain Medicaid Benefits Following Certain Transfers of Resources, p. 1898, 124
- 46.12.3401 Transitional Medicaid Coverage, p. 210, 541
- 46.12.3401 Medicaid Coverage for Pregnant Women and Children up to Age Six, p. 212, 542
- 46.12.3803 Medically Needy Income Levels, p. 908
- 46.12.3804 Medically Needy Income Levels, p. 368, 853
- 46.12.4002 and other rules - Group Eligibility Requirements for Inpatient Psychiatric Services, p. 1104
- 46.12.4008 Earned Income Disregards for Institutionalized Individuals, p. 216, 543
- 46.12.4101 Qualified Medicare Beneficiaries Eligibility for Medicaid, p. 910
- 46.25.101 and other rules - General Relief, p. 1825, 2271