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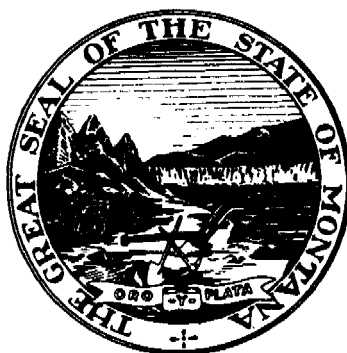
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APR 27 1990

OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

1990 ISSUE NO. 8
APRIL 26, 1990
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APR 27 1990

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensing requirements, contracts and penalties, boxing contestants, physical examination and ring - equipment and adoption of new rules pertaining to disciplinary actions and the relationship of managers and boxers)	NOTICE OF PROPOSED AMENDMENT OF 8.8.2004, 8.8.2805, 8.8.2901, 8.8.2903 AND 8.8.3201, AND ADOPTION OF NEW RULES PERTAINING TO DISCIPLINARY ACTIONS AND THE RELATIONSHIP OF MANAGERS AND BOXERS
--	---	---

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 26, 1990, the Board of Athletics proposed to amend and adopt the above-stated rules.

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

"8.8.2804 LICENSING REQUIREMENTS (1) through (9) will remain the same.

(10) The board must be notified of any-proposed ~~contests, together with~~ the names and weights of all contestants, at least 10 days before such contest or exhibition.

(11) and (12) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, MCA

REASON: This amendment is necessary to clarify that notification of names and weights of contestants is due in the board office at least 10 days prior to the contest. Present language causes confusion whether this same information is due 21 days in advance under subsection (3) or 10 days in advance as the board intends. Promoters need flexibility in arranging fight cards.

"8.8.2805 CONTRACTS AND PENALTIES (1) Terms of all contracts between promoters, boxing and wrestling organizations and contestants shall be completed on forms approved by the board at least 7-days 24 hours prior to the date of the event, unless specific, individual delay is approved by the board. Contestants must sign contracts with their legal names.

(2) through (7) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, MCA

REASON: This amendment is needed to give promoters more time to file contracts with the board in order to better accommodate last minute substitutions on the fight card.

"8.8.2901 BOXING CONTESTANTS (1) through (10) will remain the same.

(11) Before a license is issued to any boxer, the boxer shall satisfy the board that the boxer has the ability to compete and is fit to participate in a boxing match. If, at any time, a boxer's ability to perform is questionable, whether from causes of illness, mental condition or loss of capacity and the ability to compete, or for any other reason, the board may, upon being satisfied of the boxer's lack of capacity and ability to compete, refuse to permit the boxer to participate, retire the boxer from further competition or suspend the license. Applicants for boxers license or renewal, shall furnish verified records of their last six boxing contests."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, 23-3-501, MCA

REASON: This amendment is necessary to provide grounds and circumstances for suspension or retirement of a boxer's license because of illness, mental condition or lack of ability to perform in order to protect the health and safety of the boxer.

"8.8.2903 PHYSICAL EXAMINATION (1) through (3) will remain the same.

(4) The board may request the following of any boxer or wrestler:

- (a) electroencephalogram (EEG);
- (b) computerized axial tomography (CAT-scan); or
- (c) electrocardiogram (EKG).

(4) and (5) will remain the same but will be renumbered (5) and (6)."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, MCA

REASON: This amendment is necessary to protect the health and safety of boxers or wrestlers through the use of modern technology to assure they are physically fit and able to participate in a boxing or wrestling event, especially boxers who have been knocked out and could have suffered brain damage.

"8.8.3201 RING - EQUIPMENT (1) through (4)(e) will remain the same.

(f) adrenaline 1:1000, thrombostat and 2% adrenaline hydro-chloride

(g) through (6) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: The amendment is needed to clarify the medical terminology on substances allowed in the ring for the benefit of the boxer.

3. The new rules will read as follows:

I DISCIPLINARY ACTIONS (1) The board reserves the discretion to take appropriate disciplinary action provided for in section 37-1-136 and 23-3-603, MCA, against a licensee who has violated any law or rules of the board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

- (a) the seriousness of the infraction;
 - (b) the detriment to the health, safety and welfare of professional boxers, wrestlers and the people of Montana; and
 - (c) disciplinary actions relating to the licensee.
- (2) The board may impose one or more of the following sanctions in appropriate cases:
- (a) revocation of a license;
 - (b) suspension of the right to participate for a period not exceeding 1 year;
 - (c) placing a licensee on probation;
 - (d) public or private reprimand or censure of a licensee;
 - (e) limitation or restriction of the license and the licensee's privileges;
 - (f) retirement of the licensee from further competition;
- or
- (g) deferral of disciplinary proceedings or imposition of disciplinary sanctions."

Auth: Sec. 23-3-405, 37-1-136, MCA; IMP, Sec. 23-3-405, 23-3-603, MCA

REASON: This rule is needed to provide the board with more options for disciplinary sanctions in cases of violation of boxing and wrestling standards.

II MANAGERS (1) A manager is a person who is in overall charge of a boxer, who has the executive function of planning, organizing, coordinating, directing, contracting and supervising any scheduling or business activity of a boxer and is responsible for the results of such activity.

(2) A contract between a manager and a boxer is not valid unless both parties appear at the same time before the board or a designated member of its staff and receive approval of the contract.

(3) All contracts between managers and boxers shall be filed with the board within 48 hours after execution of such contracts and at least 48 hours prior to any bouts to which they may relate.

(4) No manager shall be allowed to contract for services of a boxer under his management for a bout to take place after the expiration of the contract between the manager and his boxer, unless such bout has been approved in advance by the board.

(5) Copies of all contracts executed between managers and their boxers must be filed with and submitted to the board for approval. A contract, however, becomes null and void at any time the manager or the boxer loses his license through disciplinary action of the board or by refusal of the board to renew a license.

(6) A boxer is permitted to have one manager only.

(7) Contracts to participate in a boxing event must be signed by the boxer's manager, on the boxer's behalf, or personally by the boxer when he has no licensed manager of record."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-501, MCA

REASON: This rule is necessary to more clearly define the duties and responsibilities of managers, as well as their relationships with boxers.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Athletics, 1424 - 9th Avenue, Helena, Montana 59620, no later than May 24, 1990.

5. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Athletics, 1424 - 9th Avenue, Helena, Montana 59620, no later than May 24, 1990.

6. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 6 based on the 60 licensees in Montana.

BOARD OF ATHLETICS
DR. JOHN R. HALSETH, CHAIRMAN

BY: 

ANDY POOL, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1990.

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.12.601 AND 8.12.606 AND
to applications and renewal) ADOPTION OF NEW RULE I FEE
fees and to the adoption of a) SCHEDULE
new rule consolidating board)
fees into one central rule)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 26, 1990, the Board of Chiropractors proposes to amend and adopt the above-stated rules.

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

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS

(1) and (2) will remain the same.

~~(3)--An application fee of \$125 shall be paid prior to the examination, \$25 of which shall be non-refundable for board administrative costs.~~

~~(4)--A \$50 re-examination fee shall be paid for a subsequent examination for each section."~~

Auth: Sec. 37-1-134, 37-12-201, MCA; IMP, Sec. 37-1-134, 37-12-302, MCA

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) ~~An annual renewal fee of \$100 is due on or before September 1 of each year.~~ The licensee must present evidence, satisfactory to the board, that they have in the year preceding the application for renewal, attended at least 12 hours of education. Failure for a licensee to comply with this rule will constitute reason for denial of license renewal.

(2) and (3) will remain the same.

(4) Licensees who have not renewed by October 1 of each year shall pay a late renewal fee of ~~\$35.00~~.

(5) ~~An inactive status annual renewal fee of \$50.00 is due on or before September 1 of each year. The late fee provided in (4) is applicable to inactive practitioners."~~

Auth: Sec. 37-1-134, 37-12-201; IMP, Sec. 37-1-134, 37-12-307, MCA

3. The proposed new rule will read as follows:

"I FEE SCHEDULE

(1) Application fee (\$25 shall be retained for administrative costs) \$125.00

(2) Re-examination fee per section (written/practical) 50.00

(3) Renewal fee

(a) Active license	100.00
(b) Inactive license	50.00
(4) Late renewal fee	35.00
(5) Original license fee	75.00
(6) Temporary permit	25.00"

Auth: Sec. 37-1-134, 37-12-201, MCA; JMP, Sec. 37-1-134, 37-12-302, 37-12-303, 37-12-304, 37-12-307, MCA

4. The proposed rule amendments and new rule are needed to organize all board fees into a single schedule for easier access to information and to establish separate fees for original licenses and for temporary permits due to large number of applicants for temporary permits pending licensure, which imposes additional costs for processing license and permit applications.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Chiropractors, 1424 - 9th Avenue, Helena, Montana 59620, no later than May 24, 1990.

6. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Chiropractors, 1424 - 9th Avenue, Helena, Montana 59620, no later than May 24, 1990.

7. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed adoption from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having 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 31 based on the 310 licensees in Montana.

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

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1990.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of a rule pertaining) ON THE PROPOSED AMENDMENT
to traineeship requirements) OF 8.20.401 TRAINEESHIP
and standards) REQUIREMENTS AND STANDARDS

TO: All Interested Persons:

1. On June 26, 1990, at 1:00, p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS (1)
will remain the same.

(a) peruse every fitting made by the trainee. The supervisor shall approve the selection of the ear mold, aid and choice of ear to fit prior to fitting, during the trainee's first-60-days-of-the training period.

(b) through (5) will remain the same.

~~(6) -- Trainees shall affix the designation "trainee" after his or her name on all business cards, correspondence, advertising or any written material concerning the hearing aid field.~~

(7) will remain the same but will be renumbered (6)."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301,
37-16-405, MCA

3. A hearing was requested on the above amendments by a member of the public who is also a licensee. Reasons given for the request are:

8.20.401(1)(a) should be amended to make clear that the trainee and his practice conduct is the responsibility of the supervising and sponsoring licensee for the entire training period, not just for the first 60 days.

8.20.401(6) With subsection (1)(a) amended this subsection is not needed. The responsibility for the trainee's dispensing and supervision will be placed on the supervisor throughout the training period. If the supervisor takes full responsibility for dispensing the aid, either through himself or an extension of himself, the safety of the public is protected.


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

the Board of Hearing Aid Dispensers, 1424 - 9th Avenue,
Helena, Montana 59620-0407, no later than May 24, 1990.

5. Geoffrey L. Brazier, attorney, has been designated to
preside over and conduct the hearing.

BOARD OF HEARING AID DISPENSERS
BYRON RANDALL, CHAIRMAN

BY:



ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1990.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.48.902, 8.48.1102 AND
to statements of competency,) 8.48.1206 PERTAINING TO THE
land surveyor nonresident) PRACTICE OF PROFESSIONAL
practice in Montana and) ENGINEERING AND LAND
avoidance of improper solici-) SURVEYING
tation of professional employ-)
ment)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 26, 1990, the Board of Professional Engineers and Land Surveyors proposes to amend the above-stated rules.

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

"8.48.902 STATEMENT OF COMPETENCY (1) At the time the registrant applies for renewal, he the registrant is to submit to the board a verified verifiable statement that he has maintained his of maintenance of professional competency.

(a) The statement by the registrant that he has practiced engineering or land surveying for a professional engineer, a statement of the practice of engineering for a minimum of 520 hours during each of the 2 years preceding renewal is acceptable as evidence of maintained competency.

(b) For a professional land surveyor, a statement of the practice of land surveying for a minimum of 520 hours during each of the 2 years preceding renewal is acceptable as evidence of maintained competency.

(c) For a professional engineer and land surveyor, a statement of practice of engineering and land surveying for a minimum of 520 hours in one profession and a minimum of 260 hours in the other profession for a total minimum of 780 hours during each of the 2 years preceding renewal is acceptable as evidence of maintained competency.

(2) If the registrant has not continued to practice as in (1)(a) above, he must provide evidence to the board that he has completed a minimum combined time of 520 hours per year of practice, formal course work, home study, and/or group study. Statements that the preceding requirement has been met will be accepted as evidence of maintained competency. If the registrant has not continued in practice as in (1)(a), (b), or (c) above, the registrant must provide evidence to the board of completion of the minimum time required in (1)(a), (b) or (c) above through a combination of practice, engineering/surveying management, formal course work, home study, or group study. A verifiable statement that these requirements have

been met will be acceptable as evidence of maintained competency.

(3) will remain the same."

Auth: Sec. 37-1-131, 37-67-202, MCA; IMP, Sec. 37-67-315, MCA

REASON: The proposed increase in competency hours is necessary to assure the continuing professional competency of the registrants who hold registrations in both the engineering and surveying professions. Also, the addition of "engineering/surveying management" recognizes an area of competency for those registrants who work in administrative/managerial positions. The national trend in regulation of these professions is toward increase in competency hours to maintain and demonstrate competency. These professions do not maintain competency through continuing professional education. They maintain it through continuing experience. The trend in both approaches is a tightening of standards.

"8.48.1102 LAND SURVEYOR NONRESIDENT PRACTICE IN MONTANA

(1) No firm, corporation, partnership, or individual may establish or maintain within this state an office, or branch office, to engage in the practice of land surveying unless such office is under the reasonable control and direct supervision of a resident professional land surveyor registered in this state."

Auth: Sec. 37-1-131, 37-67-202, MCA; IMP, Sec. 37-67-103, 37-67-301, 37-67-320, MCA

REASON: This amendment is necessary to harmonize the rule with statutes dealing with exemptions from the licensing requirements of the practice act and to clarify that control and supervision of a firm engaged in the practice of land surveying in this state must be by a professional land surveyor registered to practice in this state.

"8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT (1) will remain the same.

~~(b) (2) Registrants shall not offer or give, solicit or receive either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, but may be reasonably construed by the public as having the effect of intent to influence the award of a contract to an elected, appointed or hired person in government service who has the authority, or who may be in a position to influence another official who has the authority, for the purpose of soliciting, recommending, voting upon or awarding contracts for, work of the nature that is performed by the registrant.~~

(3) Registrants shall not derogatorily discuss the attributes of other persons or firms who may be seeking the same work the registrant is seeking. Registrants shall not attempt to supplant other registrants or firms from work which

is in progress. This prohibition shall not preclude an engineer/surveyor from responding to a client/owner initiated solicitation for a second opinion.

(4) Registrants shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other registrants, nor indiscriminately criticize other registrants' work."

Auth: Sec. 37-1-131, 37-67-202, MCA; IMP, Sec. 37-67-301, 37-67-331, MCA

REASON: These amendments are necessary to remove ambiguities in the existing rule and clarify the professional and ethical responsibilities of registrants. The proposals are consistent with the current nationally-recognized NCEES model code.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Professional Engineers and Land Surveyors, 1424 - 9th Avenue, Helena, Montana 59620, no later than May 24, 1990.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Professional Engineers and Land Surveyors, 1424 - 9th Avenue, Helena, Montana 59620, no later than May 24, 1990.

5. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 290 based on the 2,921 licensees in Montana.

BOARD OF PROFESSIONAL
ENGINEER AND LAND SURVEYORS

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY PATROLMEN
AND INVESTIGATORS

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining	)	THE PROPOSED AMENDMENT,
to definitions, temporary	)	REPEAL AND ADOPTION OF RULES
employment, applications,	)	PERTAINING TO PRIVATE
examinations, insurance,	)	SECURITY PATROLMEN AND
applicant fingerprint check,	)	INVESTIGATORS
fees, probationary private)	
investigators, firearms safety)	
tests, and unprofessional)	
conduct standards; repeal of)	
rules pertaining to record)	
keeping, code of ethics for)	
licensees, code of ethics for)	
employees, powers of arrest)	
and initial procedures; and)	
adoption of a new rule per-)	
taining to disciplinary)	
actions)	

TO: All Interested Persons:

1. On Wednesday, May 16, 1990, at 1:00 p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of the above-stated rules.

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

"8.50.423 DEFINITIONS As used in Title 37, Chapter 60, MCA, and these rules, the following word and phrases will be construed to have the following meanings:

(1) "Casual employment" means employment which comes about fortuitously and is for no fixed duration of time. An engagement or employment is not "casual" where a person is employed to do a particular service or class of service recurring somewhat regularly, or with a fair expectation of continuance for a more-or-less-extended sequence or period of time, such as every Saturday night, a week, or a month.

(a) A peace officer so engaged in casual employment desiring to be exempt from the provisions of 37-60-406, MCA, must file with the board when requested, a copy of the casual employment authorized by his sheriff or chief of police.

(b) and (c) will remain the same.

(2) As used in section 37-60-303, MCA, "Dishonorable discharge" means any military discharge which specifically states that it is a dishonorable discharge.

(3) For the purpose of evaluating experience qualifications for licensure the word "Experience",-the term "year" shall mean 12 consecutive average work months

(including leaves for vacation with pay) during which the individual was engaged in full time employment. In this context, Full full-time employment is considered to be employment for compensation when the work schedule constitutes at least 1800 hours annually or more. Self employment must be verified by someone that who knows of your experience and self employment condition.

(4) For purposes of section 37-60-321 (4), MCA, any crime involving moral turpitude means generally anything done contrary to justice, honesty, modesty, or good morals, including acts of baseness, viciousness or depravity in the private or social duties which a man owes to his fellow man and to society in general,--Such acts include, but are not limited to, assault or evidence of assaultive behavior, assault and battery, larceny or embezzlement, shoplifting, crimes involving fraud or misrepresentation, obscenity, public indecency, any firearm violation, sexual offenses, resisting an officer or legal process, vandalism, aiding in an escape, chronic alcoholism, alcohol addiction, any crime enumerated in Title 45, MCA, or any other crime involving venality, dishonesty, obstructin of justice, lack of integrity, abuse of alcohol, and or use of dangerous drugs, or a third conviction of driving under the influence over any five-year period and drug addiction.

----- (5) -- For purposes of exemption from licensure under Title 37, Chapter 60, MCA, "insurance adjuster" refers to any person, employed by an insurance company, who is licensed by the state of Montana as an insurance adjuster, who shall be exclusively under the control and supervision of his employer, subject to a master-servant relationship and not as an independent contractor and performs no surveillance activities.

----- (6) -- "Unprofessional conduct" means the failure to conform to and abide by all the standards, rules and regulations set forth in Title 37, Chapter 60, Montana Codes Annotated and Title 8, Chapter 50, Administrative Rules of Montana, which regulates the security patrolmen and private investigator professions in the state of Montana.

(7) will remain the same but will be renumbered (5).

----- (8) -- Alarm installer employees, other than alarm response runners must be licensed as alarm installer employees.

49) (6) "A retail merchant" is means any person who operates a store for the purpose of making sales of goods to other persons who purchase the goods for their own use and not for resale.

(7) For the purposes of applying sections 37-60-101(12), MCA, and 37-60-105(4)(b), MCA, the word "paralegal" will be interpreted to mean a paralegal employed by only one law firm. Paralegals employed by more than one firm at the same time will be required to be licensed under Title 37, chapter 60, MCA."

Auth: This rule is advisory only, but may be a correct interpretation of the law. Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-303, 37-60-321, 37-60-406, MCA

REASON: These amendments are needed primarily for clarification purposes, but also delete archaic phraseology and punctuation, to delete a definition of insurance adjuster that is provided by statute, to delete a reference to "unprofessional conduct" so that it doesn't conflict with later rules and become a source of confusion, and to publish the board's interpretation of the word "paralegal" as it appears in a recent statutory amendment, for regulatory purposes.

"8.50.424 TEMPORARY EMPLOYMENT WITHOUT IDENTIFICATION CARD The board may authorize a licensee to employ security guards or alarm installer employees temporarily without first obtaining an identification card under the following conditions:

(1) The licensee must is employing the person under an apprenticeship or training program.

~~-----+2+---This provides the licensee an opportunity to evaluate the person's performance to determine if the person can adequately perform the duties assigned.~~

(3) will remain the same but will be renumbered (2).

~~+4+~~ (3) Any person hired by a licensee under the provisions of 37-60-308, MCA, shall be issued a temporary license by the board. Within 5 days of hiring such person, the licensee must provide the employee's name and address to the board, and the licensee must submit a quarterly report to the board detailing the cumulative number of days or hours the temporary employees have has been employed.

(5) through (8) will remain the same but will be renumbered (4) through (7)."

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-308, MCA

REASON: These amendments are needed to clarify who may be employed temporarily without a license and under what conditions, and to delete unnecessary explanatory language from the rule.

8.50.427 REQUIRED INFORMATION FOR APPLICATION (1) through (3) will remain the same.

(4) No person convicted of a felony in this state or elsewhere shall be eligible for a license while under a federal or state jurisdiction (i.e. probation/parole), ~~or for 5-years-thereafter-and-then-only-with-specific-approval-of-the board.~~

(5) through (7) will remain the same."

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-304, MCA

REASON: This amendment is needed to delete a prohibition against licensure of persons who have been convicted of felonies which probably is unconstitutional.

"8.50.429 WRITTEN EXAMINATION (1) All applicants must successfully pass a written examination in their area

of licensure with a score of 70% or more on each part of the exam.

(2) and (2)(a) will remain the same.

(b) ~~armed-private-investigator, armed-private-security guard, contract security company and , private-investigator, private-security-guard, proprietary security organization~~ - private investigator law and rules, principles of or management and supervision, report writing, legal procedures, electronics, applicable federal law and rules, and other related material in the licensure area.

(c) security alarm installers - law and rules, principles of management and supervision, report writing, legal procedures, electronics, applicable federal law and rules, and other related material in the licensure area.

(3) through (5)(a) will remain the same.

(6) Examinations will be held in Helena by appointment.
~~daily.~~ Special examinations may be made available by prior arrangements with the department."

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-303, MCA

REASON: These rules are necessary to clarify the board's requirements for passing licensing exams, to clarify exam content for prospective contract security companies, proprietary security organizations and security alarm installers, and to permit administration of licensing exams by appointment for the convenience of the applicant.

"8.50.431 INSURANCE REQUIREMENTS (1) All licensees regulated by Title 37, chapter 60, MCA, except private investigators and security alarm installers who do not employ response runners, shall file with the board, a certificate of insurance evidencing a comprehensive general liability coverage for both licensees and employees for bodily injury, and property damage on a ~~the board~~ form of comprehensive general liability endorsement which covers includes the following: personal injury and property damage with ~~endorsement for including~~ assault and battery and personal injury, ~~including~~ false arrest, false imprisonment, malicious prosecution, invasion of privacy, wrongful eviction or wrongful entry, mental anguish, defamation and discrimination. Security alarm installers shall only be required to have a comprehensive general liability insurance, but if the alarm installer employs alarm response runners, the alarm installer must then have the same insurance coverage as a contract security company is required to have.

(2) Persons licensed as private investigators must carry coverage for omissions and errors, ~~destruction, damage or loss of property entrusted to their custody, care and control,~~ as well as coverage for defamation, malicious prosecution and invasion of privacy.

(3) will remain the same.

(4) Each licensee shall sign a release allowing its ~~their~~ insurance carrier to inform the board in the event coverage is cancelled or allowed to lapse.

(5) In lieu of an insurance policy, proof of financial responsibility acceptable to the board requires a minimum showing by the licensee of a property bond, a fiduciary bond, trust fund, escrow account or a combination of these, in the amount of at least \$25,000, and established for the this purpose of satisfying this rule."

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-202, MCA;

REASON: These amendments are needed to remove archaic and confusing language from the board's rule on insurance requirements and to clarify minimum alternatives to liability insurance for demonstrating financial responsibility.

"8.50.435 APPLICANT FINGERPRINT CHECK (1) The licensee ~~will~~ must submit an the application for each employee to the department and provide 2 classifiable sets of each employee's their fingerprints. The department will provide the licensee with information as to the applicant's employability. ~~Applications shall contain such information as required to process the application."~~

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-302, 37-60-304, MCA

REASON: These amendments are needed to clarify the fingerprint requirement for employees of licensees.

"8.50.437 FEE SCHEDULE

(1) License application fees		
(a) Contract security company	\$200.00	75.00
(b) Proprietary security organization	200.00	75.00
(c) Private investigator employer	200.00	75.00
(d) Qualifying agents and resident managers	200.00	75.00
(e) Security alarm installer	200.00	75.00
ff) License renewals-----	50.00	
One-half-price-on-renewals-only-for-each-additional-license-for-dual-or-multiple-licenses		
fg) Duplicate licenses-----	15.00	
(2) Employee registration application fees		
(a) Armed contract security employee	75.00	15.00
(b) Armed proprietary security employee	75.00	15.00
fe) Armed-private-investigator-employee-----	75.00	
fd) Renewals-----	25.00	
f3) Employee-identification-application-fees		
fa) (c) Unarmed contract security employee	25.00	10.00
fb) (d) Unarmed proprietary security employee	25.00	10.00
fe) Unarmed-private-investigator-employee-----	25.00	
fd) (e) Unarmed installer employee	25.00	10.00
(3) Licensee and employee renewals		
ff) (a) Unarmed Licensee renewals	50.00	25.00

(b) <u>Armed Licensee renewals</u>	35.00
One-half price on renewals only for each additional license for dual or multiple licenses	
(d) <u>Armed employee Renewals</u>	25.00 10.00
(e) <u>Renewals-for-unarmed Unarmed contract and</u>	
proprietary security employee	10.00 5.00
(f) <u>Renewals-for-unarmed-private investigator-employee-----</u>	10.00
(g) <u>(e) Renewals-for-unarmed Unarmed alarm installer employee</u>	10.00 5.00
(4) <u>Miscellaneous fees</u>	
(a) Re-exams	20.00 15.00
(b) Late renewals	25.00 5.00
(c) Branch office application	30.00 10.00
(d) Duplicate licenses	15.00 5.00
(5) Exam Re-exam fee	25.00 15.00
(6) Temporary ID card	10.00
(7) <u>Process Servers</u>	
(a) <u>Handbook</u>	5.00
(b) <u>Examination</u>	60.00

(7) (8) Request for refunds:

(a) through (c) will remain the same."

Auth: Sec. 37-1-134, 37-60-202, MCA; IMP, Sec. 37-1-134, 37-60-304, 37-60-312, MCA

REASON: These amendments are needed to conform the board's fees to program area costs and reduce overall fund balances.

"8.50.438 PROBATIONARY PRIVATE INVESTIGATOR (1) Any person who does not meet the requirements for age, employment experience and written examination, as required by 37-60-303(2) and (3), MCA, may be sponsored by a licensed private investigator to apply for a probationary registration or I.D. card. In addition to the information listed in an application for licensure, the sponsor shall detail the age, experience or examination qualifications which are lacking and explain how training and experience and direct supervision will be provided during the probationary period, and how long the probationary period is expected to last. A probationary private investigator shall operate only under the authority and permission of the sponsor listed on his probationary registration or I.D. card. The probationary period shall last until the statutory requirements have been met or the probationary card has been terminated by the board. Conditions of the probation shall be that, if the applicant violates the provisions of Title 37, Chapter 60, MCA, or the rules of the board during probation, or fails to qualify for full licensure at the appropriate time, his probationary license shall automatically be revoked."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, MCA

REASON: This amendment is needed to clarify what the terms and conditions for probationary status are for prospective private investigators.

"8.50.501 FIREARMS SAFETY AND PROFICIENCY TEST - MINIMUM REQUIREMENTS (1) Persons applying for certification of firearms training programs or firearms instructors must pass a test administered by a certified firearms instructor certified by this board in order to qualify. The test shall be comprised of two parts:

(a) A written test including, but not limited to, gun safety, weapon handling, mechanical operations, shoot-don't shoot situations, liability, federal and state statutes regarding limitations (total of ten hours minimum instruction); and

(b) and (2) will remain the same."

Auth.: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, MCA

REASON: These proposed amendments are essentially style and drafting, but are needed to clarify who the rule applies to.

"8.50.801 CODE OF ETHICS FOR A PRIVATE INVESTIGATOR For the purpose of implementing sections 37-60-202 and 37-60-321, MCA, the term "unprofessional conduct" is defined to include the following:

~~(1) it is the responsibility of each private investigator to:~~

~~(a) strive to keep informed of developments and techniques affecting the profession;~~

~~(b) conduct themselves in a businesslike manner befitting a professional;~~

~~(c) keep informed of laws and ordinances affecting the profession;~~

~~(d) make no claims to qualifications the licensee does not possess;~~

~~(e) be loyal to the client and divulge the information obtained only to the client or his representative;~~

~~(f) (1) will not become Becoming involved in investigations on behalf of a client with intent to break the law or to use the information unlawfully unethically;~~

~~(g) (2) will not provide Providing clients with advice or counsel of a discipline in which the licensee is not qualified;~~

~~(h) (3) will not use Using the professional position of trust for illegal unethical gains;~~

~~(i) (4) will not accept Accepting investigations which conflict with previous or current investigations;~~

~~(j) (5) be Not being honest, accurate, factual, timely and complete in reporting;~~

~~(k) (6) will not represent Representing themselves oneself as a member of law enforcement;~~

~~(l) (7) will charge Charging the client according to a fee in violation of mutual agreement;~~

~~(m) (8) honor Not honoring verbal agreements as if they were written;~~

- ~~(9) avoid-engaging Engaging in the unauthorized practice of law;~~
~~(10) obey Violating the laws of the United States, the state of Montana or any of its political subdivisions;~~
~~(11) avoid-intermingling Intermingling client's business funds with the licensee's personal funds;~~
~~(12) avoid-engaging-in-deceptive-double-billings+ Double billing.~~
~~(13) Failing to cooperate with bona fide law enforcement and other criminal justice agencies.~~
~~(14) Not respecting and protecting the confidential and privileged information of employers and clients beyond the term of their employment, except where their interests are contrary to law.~~
~~(2)--Any-violation-of-the-above-shall-constitute unprofessional-conduct."~~
Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, 37-60-321, 37-60-401, MCA

REASON: These amendments are needed to clarify past licensing conduct standards of licensees and their agents and employees which subject the licensee to license discipline sanctions. Revisions include deletion of archaic and vague language.

3. The following rules are being proposed for repeal.

"8.50.434 RULES FOR RECORD KEEPING Full text of the rule is located at page 8-1383, Administrative Rules of Montana. The authority section is 37-60-202, MCA and the implementing section is 37-60-404, MCA."

REASON: This rule is considered redundant and unnecessary as the subject is adequately covered by statute.

"8.50.802 CODE OF ETHICS FOR PRIVATE SECURITY LICENSEES Full text of the rule is located at pages 8-1395 and 8-1396, Administrative Rules of Montana. The authority-section is 37-60-202, MCA; and the implementing sections are 37-60-202, 37-60-321, 37-60-401, MCA."

"8.50.803 CODE OF ETHICS FOR PRIVATE SECURITY EMPLOYEES Full text of the rule is located at pages 8-1396 and 8-1397, Administrative Rules of Montana. The authority section is 37-60-202, MCA and the implementing sections are 37-60-202, 37-60-321, 37-60-401, MCA."

"8.50.804 POWERS OF ARREST Full text of the rule is located at page 8-1397, Administrative Rules of Montana. The authority section is 37-60-202, MCA and the implementing sections are 37-60-202, 37-60-321, 37-60-401, MCA."

"8.50.902 INITIAL PROCEDURES Full text of the rule is located at page 8-1399, Administrative Rules of Montana.

The authority section is 37-60-202, MCA and the implementing sections are 37-60-202, 37-60-321, 37-60-401, MCA."

REASON: ARM 8.50.802, 8.50.803, 8.50.804 and 8.50.902 are being repealed because they are deemed redundant. Codes of ethics are addressed in ARM 8.50.801, as herein proposed for amendment. Powers of arrest and initial procedures are addressed in the Montana Criminal Code and the Montana Administrative Procedure Act.

4. The proposed new rule will read as follows:

"I DISCIPLINARY ACTIONS (1) The board reserves the discretion to take appropriate disciplinary action provided for in 37-60-321, MCA, against a licensee violating any law or rule of the board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

- (a) the seriousness of the infraction;
- (b) the detriment to the health, safety and welfare of the people of Montana; and
- (c) past or pending disciplinary actions relating to the licensee.

(2) The board may impose one or more of the following sanctions in appropriate cases:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) public or private reprimand or censure of a licensee;
- (f) limitation or restriction of the scope of the license and the licensee's practice;
- (g) deferral of disciplinary proceedings or imposition of disciplinary sanctions; and
- (h) ordering the licensee to successfully complete appropriate professional training.

(3) Any order of license discipline, when final, including those reached by settlement agreement, may be published locally and statewide."

Auth: Sec. 37-1-136, MCA; IMP, Sec. 37-1-136, 37-60-321, MCA

REASON: This rule is being proposed to implement section 37-1-136, MCA, and provide the board with more options for disciplinary sanctions in cases of violation of practice standards.

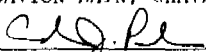
5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoption at the hearing. Written data, views or arguments may also be submitted to the Board of Private Security Patrolmen

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and Investigators, 1424 - 9th Avenue, Helena, Montana
59620-0407, no later than May 24, 1990.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1990.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.97.1302, 8.97.1303 AND
to seller/servicer approval) 8.97.1416
procedures and forward commit-)
ment fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1990, the Board of Investments proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.97.1302 SELLER/SERVICER APPROVAL PROCEDURES - GENERAL REQUIREMENTS (1) will remain the same.

(2) Any financial institution interested in becoming a seller/servicer must submit a written request for such approval. If the financial institution is a federally or state regulated institution it must submit its most recent quarterly consolidated report of condition and income or its most recent quarter-end balance sheet and income statement, plus, if available, copies of its previous three years' consolidated reports of condition and income or audited financial statements, including both balance sheets and income statements. If the financial institution is not regulated by a federal or state agency, it must have been in business a minimum of three years and must submit copies of its last three years' audited financial statements, including both balance sheets and income statements plus its most recent quarter-end balance sheet and income statement. In addition, a copy of the last three years consolidated report of condition and income or audited financial statements, including both the balance sheet and income statement must also be submitted. If approved as a seller/servicer, the financial institution must sign a sale and servicing agreement and show proof of financial responsibility which may include errors and omissions insurance coverage.

(3) through (5) will remain the same."

Auth: Sec. 17-5-1521, 17-6-324; IMP, Sec. 17-5-1521 17-6-211, MCA

REASON: This rule amendment is needed to clarify the board's information requirements from financial institutions and reports to qualify as seller/servicers and to differentiate between the requirements for regulated and non-regulated seller/servicers.

"8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS (1)(a) through (c) will remain the same.

(d) extensions of the commitment period will be considered for reasonable purposes and only in consideration of additional commitment fees (as set forth in (2)(a) and (3)(c) below and net yield adjustments. Fees for extensions must be mailed within 15 working days after the expiration date of the commitment to keep the commitment in force provided that the extended period does not exceed the maximum days allowed for the commitment.

(2) through (3)(b) will remain the same.

(c) the forward commitment fees charged, exclusive of the net yield requirement, are:

<u>Forward Commitment Period</u>	<u>Fee</u>
1 to 90 calendar days	1/4% of the amount committed
1 to 1280 calendar days	1/2% of the amount committed
181 to 270 calendar days	an additional 1/2% of the amount committed
271 to 360 calendar days	an additional 1/2% of the amount committed
361 to 450 calendar days	an additional 1/2% of the amount committed
451 to 540 calendar days	an additional 1/2% of the amount committed
<u>541 to 1,080 calendar days</u>	<u>an additional 1/2% of the amount committed for each 90 day increment</u>

(d) through (f) will remain the same.

(g) the 541 to 1,080 calendar days commitment period is only available when the board determines that the project completion date will reasonably extend beyond 540 days."

Auth: Sec. 17-5-1504, 17-5-1521, 17-6-315, 17-5-324, MCA; IMP, Sec. 17-6-211, 17-6-315, MCA

REASON: The amendment to (1)(d) is needed to provide a "grace period" before cancelling a commitment in order to allow the seller/servicer time to collect the extension fee and forward the fee to the board. Subsections (3)(c) and (g) are needed because requests have been made for longer commitment periods in order to allow borrowers sufficient time to complete construction of major plant facilities. Delays in construction are beyond the control of the borrower and lender.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Investments, Department of Commerce, 555 Fuller Avenue, Helena, Montana 59620, no later than June 29, 1990.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written

request for a hearing and submit this request along with any comments he has to the Board of Investments, Department of Commerce, 555 Fuller Avenue, Helena, Montana 59620, no later than June 29, 1990.

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

MONTANA BOARD OF INVESTMENTS

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 16, 1990.

STATE OF MONTANA
BEFORE THE MONTANA ARTS COUNCIL

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of rules pertaining	)	AMENDMENT OF 10.111.701,
to Cultural and Aesthetic	)	10.111.702, 10.111.704
Project Grant proposals	)	THROUGH 10.111.706 AND
	)	10.111.708

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 16, 1990 the Montana Arts Council proposes to amend the above stated rules.

2. The proposed amendment of 10.111.701, 10.111.702, 10.111.704 through 10.111.706 and 10.111.708 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules is located on pages 10-1351 through 10-1359, Administrative Rules of Montana)

"10.111.701 ELIGIBLE APPLICANTS (1) Any person, association, or representative of a governing unit may submit an application for funding of a cultural and aesthetic project from the income of the trust fund. The term "governing unit" includes state, regional, county, city, town, or Indian tribe. The governing unit may itself seek funds or sponsor the application of other persons, organizations, associations or coalitions of organizations.

(a) The applicant is defined as the governing unit submitting the application and having fiscal and legal responsibility for the project.

(b) The benefitting organization is defined as the organization directly benefitting from the grant whether it is the applicant or another organization, association or coalition of organizations."

Auth: Sec. 22-2-303 MCA; IMP, Sec. 22-2-301 MCA;

"10.111.702 APPLICATION FORM FOR GRANT PROPOSALS (1) The Committee shall have prepared a standard application form for grant proposals to the committee and shall include requests for information from the applicant benefitting organization concerning the following:

(1)(a) through (e) remain the same

(f) A statement of the end result of the project as intended by the applicant benefitting organization, and a plan for evaluation upon termination of the project;

(1)(g) through (j) remain the same

(i) In-kind goods and services are contributions specifically identified with the project which are provided to the applicant benefitting organization by volunteers or their parties at no cash cost to the applicant benefitting organization. These may include but are not limited to donations of food and housing for guest artists and speakers, office space, facilities or equipment rental, and materials voluntarily contributed which otherwise would have been paid for. Volunteer time may be claimed as an in-kind contribution, but it must be calculated at a "fair market" price, that is, minimum wage that a person paid to do the same work would

be paid. The in-kind contribution used as a match for a particular project may not be used as a match for any other project requesting cultural and aesthetic project grant assistance.

(ii) Matching funds are funds (other than any cultural and aesthetic grants) which are allocated or received by the grantee benefitting organization during the two fiscal years of the grant period and used exclusively for the project receiving cultural and aesthetic grant funds.

(iii) For all grants with the exception of challenge grants for permanent endowment development, documentation that matching funds are being committed by the grant-recipient benefitting organization or will be available, must be received by the last day of the first fiscal year of the grant period.

(1)(j)(iv) through (vii) remain the same

(A) The applicant benefitting organization must provide information regarding the ownership of the cultural facility, i.e., private-profit making, private non-profit, city, county, state or federal.

(B) The applicant benefitting organization must provide documentation from the local government sponsor regarding:

(1)(j)(vii)(B)(I) remains the same

(II) The level of cash support. If mill levy funds have been appropriated, the sponsor should indicate the number of mills and the dollar amount this millage annually provides for the applicant's benefitting organization's facility and the total mills and dollar amount this millage annually provides for all cultural facilities in the county.

(1)(j)(vii)(B)(III) remains the same

(IV) If any indirect costs are included in the budget, the applicant benefitting organization must indicate if these costs are to be used as match or if they are intended to be paid from coal tax funds.

(k) Additional information may be required by the committee of the applicant benefitting organization.

Auth: Sec. 22-2-303 MCA; IMP, Sec. 22-2-303 MCA & 22-2-308 MCA;

"10-111.704 ELIGIBLE PROJECTS (1)(a) through (i) remains the same

(ii) Applicants Benefitting organizations will be required to submit a project budget and an organizational operations budget for the grant period. If grant funds are being requested for a project which has been conducted in prior years, financial statements of the project from the most recent two full years must be provided.

(1)(b) through (ii) remains the same

(iii) The applicant benefitting organization will be required to demonstrate a need which may include:

(1)(b)(iii)(A) through (C) remain the same

(D) well managed and established organizations in confronting unforeseen emergency situations, ~~e.g. a reduction of substantial funding sources;~~

(1)(b)(iii)(E) remain the same

(v) Applicants Benefitting organizations will be required to submit financial statements for:

(1)(b)(v)(A) through (C) remain the same

(vi) For ~~organisations applying applications~~ for of \$20,000 or more in operational support, submission of a current audit of the benefitting organization is ~~requested~~ required. If none exists, an unaudited financial review signed by an independent accountant will suffice.

(1)(b)(vi)(A) through (c) remain the same

(i) Any ~~applicant application~~ for funds which may in any way affect prehistoric or historic properties must ~~cooperate~~ document cooperation with the State Historic Preservation Office in evaluating the possible impact on these properties and the appropriateness of plans for project activity.

(ii) A letter from the State Historic Preservation Office, stating their recommendations and any agreements reached with the ~~applicant~~ benefitting organization is necessary. No funds will be released until such a letter is received by the Montana Arts Council.

(iii) ~~Applicants~~ Benefitting organizations will be required to provide three dollars in cash or in-kind donations of goods and services specifically for the capital expenditure project for each grant dollar.

(iv) ~~These applicants Applications~~ requesting funds for facility acquisition, construction or renovation will need to provide include:

(1)(c)(iv)(A) through (d) remain the same"

Auth: Sec. 22-2-303 MCA; IMP, Sec. 22-2-303 MCA & 22-2-308 MCA;

"10.111.705 CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT (1) through (a) remain the same

(b) are able to document their ability to match the grant ~~from private or other sources or have a reasonable chance of doing so~~ within the grant period, and

(1)(c) remains the same

(2) ~~Applicants~~ Benefitting organizations must provide three dollars in cash or irrevocable planned or deferred gifts for each grant dollar.

(2)(a) through (ii) remain the same

(iii) not currently held in a permanent endowment ~~trust~~ account.

(b) All forms of deferred or planned giving will be valued according to IRS practices and principles except as otherwise noted. Deferred and planned gifts will qualify as matching funds only to the extent that they are legally irrevocable on the date of their valuation for such matching purposes.

(2)(c) through (i) remain the same

(ii) Gifts of marketable securities will be eligible as match when they have been converted to cash and deposited in the ~~grant recipient's~~ benefitting organization's permanent endowment ~~trust~~ account. Documentation of this deposit must be furnished to the Montana Arts Council.

(iii) Gifts of real estate will be eligible as match when the property has been converted to cash and deposited in the ~~grant recipient's~~ benefitting organization's permanent endowment ~~trust~~ account. Documentation of this deposit must be furnished to

the Montana arts council.

(2)(c)(iv) through (A) remain the same

(d) Life insurance will be eligible as match if the policy is owned by the charity, the charity is the beneficiary, and all premiums for the policy have been paid. Life insurance will be valued for matching purposes as follows:

(i) Where the insured is not a minor, the valuation is the minimum guaranteed death benefit of the paid-up portion of the policy. The benefitting organization will hold the policy until the death of the insured or until the cash value equals the minimum guaranteed death benefit.

(ii) Where the insured is a minor, the valuation is the cash value of the paid-up portion as of the last day of the grant period.

(e) Life estates and real property, which is only the remainder interest in a residence, farm or ranch, are eligible as match if irrevocably assigned to the benefitting organization. If the trust was executed prior to the grant period, and the benefitting organization becomes the irrevocable beneficiary during the grant period, the match value is calculated as if the trust were created at the later date of irrevocable assignment. This match should be calculated by an independent source, such as the donor's tax preparer, according to IRS practices and principles. The trust must be restricted for use in the benefitting organization's permanent endowment account. The property must be in Montana, without lien and owned outright by the donor.

(f) Only cash gifted in a will, devise or bequest is eligible as match. The will, devise or bequest must indicate that the benefitting organization is the beneficiary, the amount or type of bequest, and that these funds will be deposited directly in the benefitting organization's permanent endowment account.

(3) Payment of challenge grants will be made upon the applicant benefitting organization meeting the specified match requirement. Organizations which fail to meet the total match requirement within the grant period, will be eligible to receive that portion of the grant that has been matched. The review committee will be apprised of their inability to meet the total matching requirements.

(a) Applicants Benefitting organizations establishing permanent endowments may use available cash to meet the matching requirement.

(b) Applicants Benefitting organizations which have an existing permanent endowment must use funds not currently held in these endowments to meet part or all of the matching requirement.

(3)(c) remains the same

(d) Funds raised to match the challenge grant must not reduce the funds raised annually by the applicant benefitting organization. Information establishing base annual contributions will be requested in the application. Applicants Benefitting organizations will be required to submit:

(3)(d)(i) through (e)(iii) remains the same

(f) Trustees will have and other authorized endowment holders shall observe the powers and duties as specified in Montana ~~Trustees' Powers Act (72-21-101 through 72-21-104 and 72-21-201-~~

through 72-21-206, MCA, Management of Institutional Funds Act (72-30-206, MCA).

(g) through (g)(vii) remains the same

(viii) that if the holder of an endowment is an authorized trust agent, the matching funds and undistributed interest income earned by those funds of the grantee benefitting organization undergoing dissolution will be distributed to the beneficiary named in the endowment agreement;

(3)(g)(ix) through (xiii) remain the same"

Auth: Sec. 22-2-303 MCA; IMP, 22-2-301 and 22-2-308 MCA;
"10.111.706 EVALUATION CRITERIA (1) through (a) remain the same

(i) whether the technical, artistic and administrative abilities and experience of the applicant benefitting organization, its staff and/or volunteers makes probable the completion and implementation of the project within the grant period;

(1)(a)(ii) through (b)(ii) remain the same

(iii) whether the project has stated goals that are within the resource capability of the applicant benefitting organization and whether there is a reasonable likelihood that the goals will be attained;

(1)(b)(iv) through (vi) remain the same"

Auth: Sec. 22-2-303 MCA; IMP, Sec. 22-2-302 and 22-3-306 MCA;

"10.111.708 INCREMENTAL DISBURSEMENTS OF GRANTS (1) through (d) remain the same

(e) Five percent of the total grant award must be withheld pending receipt of final reports by the Montana arts council. With regard to benefitting organizations who in the past have submitted late reports, thirty-percent of the grant award may be held pending receipt of final reports by the council.

(f) For recipients of challenge grants, grant payments will be deposited directly in the grant recipient's benefitting organization's endowment ~~trust~~ account as matching requirements are met and in accordance with stipulations ARM 10.111.708(1)(a)-(1)(e)." Auth: Sec. 22-2-303 MCA; IMP, Sec. 22-2-305 and 22-2-306 MCA;

REASON: Current legislation allows paid-up life insurance, wills, bequests and devises to be eligible as matching funds for Challenge Grants for Endowment Development. Rules have been written to specify these matching requirements. In addition a number of terms have been clarified and language made more consistent.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Arts Council, 48 North Last Chance Gulch, New York Block, Helena, MT 59620, no later than June 14, 1990.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Arts Council, 48 North Last Chance Gulch, New York Block, Helena, MT 59620, no later than June

14, 1990.

5. If the Montana Arts Council receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 based on the approximately 100 applicants for Cultural and Aesthetic Project Grants in Montana.

BY: 

DAVID E. NELSON
EXECUTIVE DIRECTOR
MONTANA ARTS COUNCIL

BY: 

LAWRENCE SOMMER
DIRECTOR
MONTANA HISTORICAL SOCIETY

Certified to the Secretary of State, April 16, 1990.

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

In the matter of the proposed)
adoption of new rules for a) NOTICE OF PUBLIC HEARING
River Restoration Program)

TO: All interested persons

1. On May 23, 1990 at 7:00 o'clock p.m., a public hearing will be held at the Fish, Wildlife and Parks Building, Commission Room, 1420 East Sixth Avenue, Helena, Montana to consider the adoption of these rules.

2. The proposed rules would establish a river restoration program to preserve rivers and streams for recreational and economic importance to Montana.

3. The rules as proposed provide as follows:

Rule I PURPOSE (1) To preserve rivers and streams for recreational and economic importance to Montana by providing financial assistance for design, planning and construction of projects to restore streambeds, banks and associated adjacent lands to conserve and enhance fish and wildlife habitat.

AUTH: 87-1-201(7), MCA IMP: 87-1-257, MCA

Rule II DEFINITIONS As used in these rules, the following definitions apply:

(1) "Account" means river restoration account as provided under Section 8, Chapter 636, sections 87-2-301, 87-2-302, and 87-2-711.

(2) "Associated Lands" means the beds, banks and immediate adjacent lands associated with a river.

(3) "Department" means the Department of Fish, Wildlife and Parks.

(4) "program" means the river restoration program.

(5) "Restoration" means to restore to a good condition, regenerate, or make over in an improved form.

(6) "River" means a river, stream, creek or other naturally occurring body of flowing water.

AUTH: 87-1-201(7), MCA IMP: 87-1-257, MCA

RULE III ELIGIBILITY (1) Participants eligible for program funding include private, conservation district, city, county, state, tribal and federal organizations and land occupiers as defined by the Soil Conservation Act.

AUTH: 87-1-201(7), MCA IMP: 87-1-257, MCA

Rule IV PROJECT APPLICATION (1) Application for program funding must be submitted on forms supplied by the Department. Completed applications must be submitted to the Fisheries Division at one of the Department regional headquarters. Offices are located in Kalispell, Missoula, Bozeman, Great Falls, Billings, Glasgow, Miles City and Helena.

(2) Plans, technical designs, detailed sketches and/or maps must accompany the application. Applications without adequate project description will be returned to the applicant as incomplete.

(3) Applications will be reviewed twice each year. Applications must be received by March 1 and September 1 of each year.

(4) Applicants proposing more than one project must submit a separate application for each proposal.

(5) Applicants proposing projects on lands other than their own must include written consent of the landowner and/or lessee for the project.

AUTH: 87-1-201(7), MCA IMP: 87-1-257, MCA

RULE V PROJECTS (1) Program funding may be provided for costs of design, planning and construction of projects. Potential projects may include but are not restricted to the following:

- (a) Fish habitat improvement;
- (b) Barrier removal or other improvements to provide fish passage;
- (c) Riparian enhancement or protection;
- (d) Stream channel rehabilitation and stabilization;
- (e) Clean up of debris and trash in river corridors;
- (f) Watershed enhancement (sediment source abatement, grazing management systems, vegetative development);
- (g) Stabilization or modification of irrigation diversions presently in use, including innovative techniques not presently used in Montana;
- (h) Bank stabilization (vegetative, sloping, rip-rap).

AUTH: 87-1-201(7), MCA IMP: 87-1-257, MCA

RULE VI PROJECT REVIEW AND ASSESSMENT (1) Applications for program funding will be reviewed in March and September of each year. A program committee of three Department personnel will review, evaluate and approve projects for funding. The Fisheries Division administrator will give the final approval for project funding. The following criteria will be used for evaluating restoration projects:

- (a) The degree to which the project optimizes benefits to public fisheries;
- (b) The degree to which the project promotes the beneficial public use and productivity of other river resources;
- (c) The level of in-kind services or cost sharing from other sources;
- (d) The severity of the problem and need;
- (e) The importance of the river or stream (determined from the Montana Interagency data base);
- (f) The level of local support for the project;
- (g) The potential for statewide application (demonstration projects);
- (h) Public fishing allowed on or near the project area.

(2) All applicants will receive written notification of action taken on their project proposal within 60 days after the submittal deadline.

(3) Projects will be approved for funding only if account money is available to complete the project. There is no dollar limit on projects.

(4) Projects will be funded at 100 percent of cost, except that installation of permanent irrigation diversions will be limited to 50 percent of the total cost. The project applicant's share may consist of "in-kind" services, other funding sources or both.

(5) When deemed necessary, the department will solicit outside technical design review of projects.

(6) No project conducted under the program may restrict or interfere with the exercise of any water right.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

RULE VII PERMITS (1) Projects approved for account funding that require a permit under the Natural Streambed and Land Preservation Act (75-7-101 et. seq., MCA) must be submitted to the respective county conservation district for review. The project applicant is responsible for obtaining these permits and all other necessary permits. Permits must be obtained prior to project initiation to qualify for payment of funds.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

RULE VIII INSPECTION AND PAYMENT BY DEPARTMENT (1) Funds granted from the account shall be used only for purposes described in the application. Accurate records must be kept by the project applicant or sponsor. An itemized invoice of expenses approved by the applicant must be submitted to the department for payment.

(2) Payment may be made in installments for completed work as the project progresses. Upon completion of a project, a final inspection and payment will be made within 45 days by the department. If the department determines after inspection that the project is not complete, final payment shall be withheld pending completion and reinspection.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

RULE IX PROJECT MAINTENANCE (1) Projects funded under the program such as fences, bridges, culverts, irrigation diversions, bank rock rip-rap or other channel stabilization measures will become the property of the landowner. Fish habitat improvement projects such as spawning channel development, fish barrier removal or modification and structural cover development must be maintained for the useful life of the project by the applicant.

(2) Projects with demonstrated benefits to public fisheries and conservation of rivers may be eligible for maintenance funding under this program. Maintenance funding may be requested by submitting a completed program application form to the department. These requests will compete with other projects for funding.

(3) Additional funding may be available to complete a project if a natural catastrophic event has damaged or destroyed the project during construction. Requests for additional funding will be evaluated by the program committee. The committee may allocate funds outside of the normal review process depending on the urgency of the situation.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

RULE X EVALUATION (1) Restoration projects involving devices to improve fish habitat, such as digger logs, K-dams, wing deflectors, trash collectors, boulder placement, bank cover, gabions, jetties, or any variations thereof, shall be subject to evaluation by the applicant. An evaluation plan shall be submitted along with the program application form in order to be considered for project funding. The applicant shall submit an annual report to the department of evaluation and/or monitoring activities for three years after project completed.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

RULE XI RECORDS (1) Records will be kept on each funded project and a fiscal year report will be prepared by the department.

AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

RULE XII EFFECT OF RULE VIOLATIONS (1) Any person or organization found in violation of any of the river restoration program rules will be disqualified from further participation in the program and will be required to reimburse the department for compensation received.

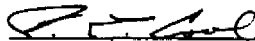
AUTH: 87-1-201(7), MCA

IMP: 87-1-257, MCA

4. These rules are being proposed because the Legislature in 1989, mandated that the department administer a river restoration program funded by resident and nonresident anglers. These rules are necessary for the department to comply with that mandate.

5. Interested persons may present their data, views or arguments either orally or in writing, at the hearings. Written data, views or arguments may also be submitted to Al Wipperman, Program Officer, Fisheries Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than May 28, 1990.

6. Al Wipperman, has been designated to preside over and conduct the hearing.


K.L. Cool, Director
Montana Department of Fish,
Wildlife, and Parks

Certified to the Secretary of State April 16, 1990.

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

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING
rules I through X relating to	)	FOR ADOPTION OF NEW RULES
procedures and criteria regarding	)	I THROUGH X RELATING TO
the wastewater treatment works	)	THE WASTEWATER TREATMENT
revolving fund	)	WORKS REVOLVING FUND

(Water Quality)

To: All Interested Persons

1. On June 8, 1990, at 9:00 am, the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules I through X relating to procedures and criteria regarding the wastewater treatment works revolving fund.

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

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

RULE I PURPOSE (1) The purpose of this subchapter is to implement the Wastewater Treatment Revolving Fund Act pursuant to Title 75, chapter 5, part 11, and sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1381 through 1387, as amended.

(2) This program creates a perpetual financing mechanism for wastewater treatment projects and certain non-point source control pollution projects through use of loans and other financial incentives.

(3) The board of natural resources and conservation may also adopt rules that address measures for protecting the financial solvency of the wastewater treatment works revolving fund, including measures requiring debt security requirements for loans.

AUTH: 75-5-1105, MCA; IMP: 75-5-1105, MCA

RULE II DEFINITIONS In this subchapter, the following terms have the meanings indicated below and are supplemental to the definitions contained in section 75-5-103 and 75-5-1102, MCA, and sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, as amended.

(1) "EPA" means the United States environmental protection agency.

(2) "Federal act" means the federal act as defined in section 75-5-1102(3), MCA.

(3) "Municipality" means municipality as defined in section 75-5-1102(5), MCA.

(4) "Non-point source" means a diffuse source of pollutants resulting from the activities of man over a relatively large

area, the effects of which normally must be addressed or controlled by a management or conservation practice.

(5) "Private concern" means a private concern as defined in section 75-5-1103(6), MCA.

(6) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA.

(7) "Revolving fund" means the revolving fund as defined in section 75-5-1103(9), MCA.

(8) "Sewage system" means any device for collection or conducting sewage, industrial wastes or an ultimate disposal point.

(9) "Wastewater" means sewage, sewage sludge, industrial waste, other wastes, or any combination thereof.

(10) "Wastewater system" means a public sewage system or other system that collects, transports, treats or disposes of wastewater.

AUTH: 75-5-1105, MCA; IMP: 75-5-1102, MCA

RULE III USE OF THE FUND -- ELIGIBLE ACTIVITIES FOR FUND ASSISTANCE

(1) The fund may be used to:

(a) Provide financial assistance to municipalities for development of publicly owned treatment works as described in section 212 of the federal act, including but not limited to:

(i) preliminary planning to determine the feasibility of the treatment works, engineering or architectural designs, plans and working drawings; or

(ii) construction of treatment works, including devices and systems used in the storage, conveyance, treatment, recycling and reclamation of municipal waste, storm water runoff, or combined sewer overflows.

(b) Make loans to private concerns for projects that are consistent with the non-point source pollution control management program under section 319 of the federal act;

(c) Earn interest prior to disbursement, although the fund may not be managed primarily for this purpose;

(d) Secure additional bonds, thereby increasing the value of the fund without additional investment by the state; and

(e) Pay reasonable expenses incurred in administering the fund, except that funds used for this purpose may not exceed 4%, or the maximum amount allowed under the federal act, of the capitalization grants received from the EPA.

AUTH: 75-5-1105, MCA; IMP: 75-5-1107, MCA

RULE IV TYPES OF FINANCIAL ASSISTANCE

(1) The department may provide financial assistance from the fund by:

(a) Making a direct loan for eligible project costs, subject to the following requirements:

(i) the interest rate may not exceed the state's interest rates incurred in borrowing money for the state match;

(ii) the term may not exceed twenty years;

(iii) repayment must begin not later than one year after project completion with all principal and interest payments credited directly to the fund; and

(iv) the loan recipient shall establish a dedicated source of revenue for repayment of the loan.

(b) Purchasing or refinancing an existing municipal debt obligation for construction of a wastewater system begun after March 7, 1985, subject to all applicable requirements of the federal act;

(c) Purchasing bond insurance or guaranteeing full and timely payment of principal and interest on a debt obligation, except the fund may not be used to fund a reserve account for a municipal bond issue; or

(d) Guaranteeing a revolving fund established by a municipal or intermunicipal entity that is similar to the state fund.
AUTH: 75-5-1105, MCA; IMP: 75-5-1107, MCA

RULE V CRITERIA FOR FINANCIAL ASSISTANCE TO MUNICIPALITIES

(1) To be eligible for financial assistance from the fund, a municipality must:

(a) Meet financial capability requirements set by the board of natural resources and conservation or the department of natural resources and conservation that ensure sufficient revenues will be available to operate and maintain the facility for its useful life and to repay the loan;

(b) Agree to operate and maintain the wastewater system so that the facility will function properly over its structural and material design life, which may not be less than 20 years;

(c) Maintain proper financial records in accordance with generally accepted governmental accounting standards, and agree to periodic audits by the department or a contractor to the department;

(d) Meet the statutory requirements listed in section 602(b)(6) of the federal act for projects constructed with funds made available directly by federal capitalization grants;

(e) Provide legal assurance that the necessary property titles, easements, and rights-of-way have been obtained to construct, operate and maintain the facility;

(f) Prepare an engineering report evaluating the proposed project, including an analysis of cost-effectiveness and environmental effects;

(g) Meet the plan and specification requirements for public wastewater systems, as described in ARM 16.20.401;

(h) Utilize proper construction inspection and project management procedures; and

(i) Meet all applicable state and federal laws and authorities.

AUTH: 75-5-1105, MCA; IMP: 75-5-1105, 75-5-1113, MCA

RULE VI CRITERIA FOR LOANS TO PRIVATE CONCERNS (1) A private concern is eligible for a loan from the fund if its project proposal meets the following criteria:

(a) the project is identified in an approved non-point source management plan pursuant to section 319 of the federal act;

(b) appropriate technical and administrative assistance is available for the project;

(c) public or landowner support for the project is demonstrated;

(d) adequate funding sources are available to completely finance the project; and

(e) meets the criteria for loans as stated in section 75-5-1113, MCA.

AUTH: 75-5-1105, MCA; IMP: 75-5-1113, MCA

RULE VII APPLICATION PROCEDURES (1) A complete application package must be submitted to the department no later than October 1 to be considered for the subsequent fiscal year.

(2) A municipality that seeks direct loan assistance, a loan guarantee, or insurance for a municipal obligation must submit:

(a) a completed revolving fund application form;

(b) an engineering or technical report that includes an assessment of the environmental impacts associated with the proposed project;

(c) plans and specifications of the project, if available;

(d) a project schedule;

(e) an engineering contract with information concerning procurement of services; and

(f) other information needed for evaluating the project, as determined by the department or the department of natural resources and conservation.

(3) A municipality that seeks loan assistance to refinance projects previously constructed and subject to outstanding indebtedness must submit:

(a) a completed revolving fund application form;

(b) a project description that includes a construction schedule;

(c) cost information, including a description of existing indebtedness;

(d) documentation indicating how the requirements listed in RULE V were satisfied when the project was originally constructed; and

(e) other information needed for evaluating the project, as determined by the department or the department of natural resources and conservation.

(4) A private concern that seeks financial assistance must submit the following:

(a) a completed revolving fund application form;

(b) a project work plan;

(c) an implementation schedule; and

(d) other information needed for evaluating the project, as determined by the department or the department of natural resources and conservation.

AUTH: 75-5-1105, MCA; IMP: 75-5-1111, MCA

RULE VIII MONTANA PROJECT PRIORITY LIST (1) The Montana project priority list is established for rating and ranking possible projects for fund assistance.

(2) The department shall list all potential eligible projects on the Montana project priority list, including projects

proposed by project applicants and projects that the department determines are needed.

(3) The Montana project priority list must include:

(a) A category assignment for each project based on the type of construction anticipated;

(b) An assignment of a numerical score for each project through use of the Montana priority rating and ranking system, which shall rate and rank projects according to:

(i) the severity of public health hazard addressed by the project;

(ii) the extent to which water quality impacts are reduced by the project;

(iii) the extent to which aesthetic or nuisance problems would be addressed by the project;

(iv) the need for the project in order to maintain existing high-quality water;

(v) the extent to which the project will improve system reliability; and

(vi) other considerations developed under authority of the federal act or the Montana water quality act.

(c) A system by which limited funds are allocated on an annual basis; and

(d) A system for evaluating non-point source control projects under section 319 of the federal act.

(3) The priority list must be revised at least annually to consider new projects and changes in project status, and to allocate available revenues from the fund for eligible uses.

AUTH: 75-5-1105, MCA; IMP: 75-5-1112, MCA

RULE IX INTENDED USE PLAN -- RANKING FOR FUNDING PURPOSES

(1) The department shall prepare an intended use plan (IUP) that describes the projects being considered for fund financial assistance for the upcoming fiscal year and establishes a preliminary project ranking.

(2) A project selected for funding is subject to denial by the department of natural resources and conservation based on its review for financial capability, as required under section 75-5-1113, MCA.

(3) The following factors must be considered in developing the IUP:

(a) ability of each listed project to proceed within the fiscal year;

(b) each project's position on the project priority list;

(c) long-term health and viability of the fund, and the ability of the fund to support the project; and

(d) financial need of the project applicant.

AUTH: 75-5-1105, MCA; IMP: 75-5-1112, MCA

RULE X PUBLIC PARTICIPATION

(1) The Montana priority rating and ranking system, Montana project priority list, and intended use plan are subject to full public scrutiny. Each year the draft priority list must be circulated throughout the state by general mailing to interested parties and by publishing notice of its availability in at least two newspapers of general

circulation.

(2) After preparation of the draft Montana rating and ranking system, the draft Montana project priority list, and the draft intended use plan, a formally advertised public hearing must be held to allow public comment concerning the rating and ranking system, list and intended use plan. All public comments received by the department must be addressed in a written summary.

AUTH: 75-5-1105, MCA; IMP: 75-5-1112, MCA

4. The Board is proposing these rules in order to establish a process for providing loans and other financial assistance to municipalities for new or improved wastewater treatment facilities and to private concerns for certain non-point source pollution control projects.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Scott Anderson, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 8, 1990.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

By


DONALD E. PIZZINI, Director

Certified to the Secretary of State April 16, 1990.

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
rules 16.8.921, 16.8.925, 16.8.927,))	FOR AMENDMENT OF RULES
16.8.928, 16.8.941)	16.8.921, 16.8.925,
)	16.8.927, 16.8.928,
)	16.8.941

(Air Quality Bureau)

To: All Interested Persons

1. On June 8, 1990, at 9:30 am, the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments would require the department to enforce recently promulgated federal requirements involving new major stationary sources of air pollution which are planning to locate in any portion of Montana which is attaining the national ambient air quality standards. The proposed facility will be required to demonstrate that emissions of nitrogen dioxide from the facility, in conjunction with other affected facilities, will not degrade ambient air quality beyond specific ambient air quality increments. The proposed rules will preclude the department from issuing a permit unless such a demonstration is made.

3. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.8.921 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1)-(5) Remains the same.

(6)(a) "Baseline date" means:

(i) Remains the same.

(ii) for particulate matter, for each baseline area, the date of the first complete application after August 7, 1977, to construct a stationary source or modification which is major for particulate matter and which is subject to this subchapter or required to obtain a permit under Part C of the federal Clean Air Act-₁

(iii) for nitrogen dioxide, February 8, 1988, for all areas in the state.

(b) Remains the same.

(7)-(23) Remains the same.

(24) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a)-(c) Remains the same.

(d) An increase or decrease in actual emissions of sulfur

dioxide, or particulate matter, or nitrogen dioxide which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increase remaining available.

(25)-(31) Remains the same.

AUTH: Sec. 75-2-111, 75-2-203, MCA

IMP: Sec. 75-2-202, 75-2-203, MCA

16.8.925 AMBIENT AIR INCREMENTS (1) The maximum allowable increases over the baseline concentrations for sulfur dioxide, or particulate matter, and nitrogen dioxide are:

(a) For any Class I area: micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)

Total suspended particulate:

Annual geometric mean	5
Twenty-four hour maximum	10

Sulfur dioxide:

Annual arithmetic mean	2
Twenty-four hour maximum	5
Three-hour maximum	25

Nitrogen dioxide:

Annual arithmetic mean	2.5
------------------------	-----

(b) For any Class II area: ($\mu\text{g}/\text{m}^3$)

Total suspended particulate:

Annual geometric mean	19
Twenty-four hour maximum	37

Sulfur dioxide:

Annual arithmetic mean	20
Twenty-four hour maximum	91
Three-hour maximum	512

Nitrogen dioxide:

Annual arithmetic mean	25
------------------------	----

(c) For any Class III area: ($\mu\text{g}/\text{m}^3$)

Total suspended particulate:

Annual geometric mean	37
Twenty-four hour maximum	75

Sulfur dioxide:

Annual arithmetic mean	40
Twenty-four hour maximum	182
Three-hour maximum	700

Nitrogen dioxide:

Annual arithmetic mean	50
------------------------	----

(2) Remains the same.

AUTH: Sec. 75-2-111, 75-2-203, MCA

IMP: Sec. 75-2-202, 75-2-203, MCA

16.8.927 AIR QUALITY LIMITATIONS (1) Remains the same.

(2) In the event that the emissions from any proposed major stationary source or major modification would have an impact greater than or equal to one microgram per cubic meter, annual average, of sulfur dioxide, or particulate matter, or nitrogen dioxide in any other state, the owner or operator must submit, by registered mail, a copy of the application of the proposed major stationary source or major modification and public notice of the permit application to the appropriate air pollution control agency of the affected state at the time the application is submitted to the department.

AUTH: Sec. 75-2-111, 75-2-203, MCA

IMP: Sec. 75-2-202, 75-2-203, MCA

16.8.928 EXCLUSIONS FROM INCREMENT CONSUMPTION

(1) Remains the same.

(2) The following concentrations are excluded in determining compliance with a maximum allowable increase:

(a)-(c) Remains the same.

(d) Concentrations attributable to the temporary increase in emission of sulfur dioxide, or particulate matter, or nitrogen dioxide from stationary sources which are affected by revisions of the state implementation plan, approved or conditionally approved by EPA, provided that:

(i)-(ii) remains the same.

(3)-(4) Remains the same.

AUTH: Sec. 75-2-111, 75-2-203, MCA

IMP: Sec. 75-2-202, 75-2-203, MCA

16.8.941 CLASS I VARIANCES -- GENERAL

(1) The owner or operator of a proposed major stationary source or major modification may demonstrate to the federal land manager that the emissions from such source or modification would have no significant adverse impact on the air quality-related values of Class I lands under the federal land manager's jurisdiction, including visibility, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may, provided that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, and particulate matter, and nitrogen dioxide would not exceed the following maximum allowable increases over baseline concentration for such pollutants:


Maximum allowable increase
(micrograms per cubic meter)

- (a) Total suspended particulate:
Annual geometric mean 19
Twenty-four hour maximum 37
- (b) Sulfur dioxide:
Annual arithmetic mean 20
Twenty-four hour maximum 91
Three-hour maximum 325
- (c) Nitrogen dioxide:
Annual arithmetic mean 25

AUTH: Sec. 75-2-111, 75-2-203, MCA
IMP: Sec. 75-2-202, 75-2-203, MCA

4. The Board is proposing these amendments to the rules in order to protect those areas of Montana with good air quality from significant degradation by nitrogen dioxide emissions, and thereby protect public health and welfare.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jeff Chaffee, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 8, 1990.


DONALD E. PIZZINI, Director

Certified to the Secretary of State April 16, 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

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

TO: All Interested Persons

1. On May 16, 1990 at 1:00 P.M., a public hearing will be held at the Montana Law Enforcement Academy, 620 South Sixteenth Avenue, Bozeman, Montana, to consider the adoption of new rules concerning the Montana Law Enforcement Academy.

2. The proposed rules establish the qualifications and conditions for admission, attendance and completion of courses at the Academy, and provide procedures for evaluating Academy students.

3. The proposed rules provide as follows:

RULE I REQUIREMENTS FOR SWORN PEACE OFFICERS TO ATTEND BASIC PROGRAMS (1) An applicant to attend MLEA basic programs must be employed by a law enforcement agency within the state of Montana as a peace officer, detention officer, or as a reserve officer as defined in 7-32-303, MCA; 44-4-302(3), MCA; and 7-32-201(5), MCA.

(2) Applicants will be accepted on a first come, first served basis. If the specific course roster that an applicant applies to attend has been filled, the applicant will be placed on a waiting list for that course and also placed on the roster for the next available course. To meet statewide needs, the academy administrator may adjust the placement of applicants to certain course rosters.

(3) Reserve officers or detention officers who apply to attend the peace officer basic course must meet the qualifications and requirements for pre-service applicants.

Auth: 44-10-202, MCA Imp: 44-10-301, MCA

RULE II PEACE OFFICER BASIC COURSE ATTENDANCE REQUIREMENTS FOR PRE-SERVICE APPLICANTS (1) Pre-service applicants are persons not employed as bona fide law enforcement officers. Pre-service applicants shall be selected to attend the MLEA basic course based on their ability to meet minimum qualifications. This includes successfully completing the pre-test screening, a written and physical ability test and post-test screening. Successful applicants will be ranked in accordance with New Rule VI. Scheduled attendance by the successful applicants to the basic course will be by order of

rank from the applicant list and by course availability. Pre-service applicants scheduled to attend the basic course shall receive reporting instructions and other information from the academy administrator. Qualified pre-service applicants to the basic course are not qualified to be accepted into any other basic programs presented at the law enforcement academy.

Auth: 44-10-202, MCA Imp: 44-10-301, MCA

RULE III MINIMUM QUALIFICATIONS FOR TESTING AND PRE-TEST SCREENING (1) Pre-service applicants must meet the minimum qualifications for peace officers as stated in 7-32-303 with the following exceptions:

(a) applicants must be at least twenty (20) years of age at the date of the test, and

(b) applicants must possess a valid drivers license issued by any state.

(2) Applicants must furnish all personal history information and documentation that may be required by the Montana law enforcement academy on forms furnished by the academy. These include signed release and waiver clauses.

(3) Upon receiving an application, the academy will conduct a records check before the applicant is tested.

Auth: 44-10-202, MCA Imp: 44-10-301, MCA

RULE IV TESTING PROCEDURES (1) The pre-service applicant tests shall be administered by the academy and shall be conducted whenever it is deemed necessary by the academy administrator. Applicants shall be notified of the test date, time and location at least thirty (30) days in advance of the test.

(2) The pre-service applicant tests shall consist of the P.O.S.T. J-2 multi-jurisdictional peace officer selection test, the P.O.S.T. R-2 law enforcement officer reading skill examination, the P.O.S.T. W-2 multi-jurisdictional peace officer writing skills examination and the P.O.S.T. Montana law enforcement physical ability test.

Auth: 44-10-202, MCA Imp: 44-10-301, MCA

RULE V POST-TEST SCREENING PROCEDURES (1) Post-test screening shall be conducted for those applicants who have successfully completed the testing procedures, who have been ranked according to the ranking procedures, and in accordance with the space available in the basic courses to be presented by the academy in the year following the test date. The availability of space shall be determined by the academy administrator.

(2) All pre-service applicants shall be required to provide two (2) sets of classifiable fingerprints and a photograph of not less than 1 1/2 inches by 1 1/2 inches of the applicant's full face, head and shoulders at the time an application is submitted.

(3) The academy administrator shall conduct criminal history, prior employment, character and background checks on each applicant selected for post-test screening.

(4) An oral interview board shall be created consisting

of the academy administrator, the basic programs bureau chief, a sheriff, a chief of police and a member of the general public. An alternate sheriff, chief of police 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) The oral interview board shall interview all pre-service applicants who successfully pass the background checks. Applicants who fail the interview will not be considered for admission to any basic course scheduled for the year following this process.

(6) Total possible points for applicants who pass the oral interview will be fifty-five (55) points. Applicants who pass will be granted from 1 - 55 points based upon their interview performance.

(7) Any information discovered during any portion of the post-test screening process that is contrary to the qualifications and requirements of 7-32-303, MCA, or of these rules will result in no further consideration of the applicant for attendance in a basic course.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE VI RANKING OF PRE-SERVICE APPLICANTS FOR ELIGIBILITY TO ATTEND THE BASIC COURSE (1) Pre-service applicants who pass the J-2, R-2, W-2 written tests shall be ranked according to the sum total of the three scores achieved in these tests and this score shall be converted to a percentage of the total possible score on all three tests of 207. Total possible percentage points will be 100.

(2) A maximum of forty (40) points will be added to this written test score in the following manner according to credits earned from a post-secondary institution that is accredited by a national or regional accrediting agency:

(a) five points for 30 college semester credits or 45 college quarter credits;

(b) ten points for 60 college semester credits or 90 college quarter credits;

(c) fifteen points for 90 college semester credits or 135 college quarter credits;

(d) twenty points for 120 college semester credits or 180 college quarter credits;

(e) twenty points is the maximum number of points that can be added without having earned a degree;

(f) an additional five points will be added for an associate degree;

(g) an additional ten points will be added for a baccalaureate degree;

(h) an additional fifteen points will be added for a masters degree;

(i) an additional twenty points will be added for a doctoral degree;

(j) twenty points is the maximum number of points that can be added for a college degree.

(3) Five additional points will be added to the written

test score of a person who is a reserve officer of a law enforcement agency and is sponsored by the agency's administrator.

(4) A maximum of fifty-five (55) points will be added to the applicant's written test score based on performance during the oral interview.

(5) Based on this maximum total of 200 points, applicants will be ranked in order by score.

(6) This ranking is meant only to qualify the applicants for attending the MLEA basic course and is not meant to qualify these individuals for employment as peace officers.

Auth: 44-10-202, MCA Imp: 44-10-301, MCA

RULE VII PROCEDURES FOR REGISTRATION, ATTENDANCE, AND FEES FOR PRE-SERVICE APPLICANTS

(1) In order of rank, pre-service applicants will be given an opportunity to register for those basic course sessions that are scheduled by the academy. Applicants shall be considered eligible to attend any basic course session scheduled to commence within one year from the date of their ranking.

(2) Once the scheduled pre-service roster is full for a particular basic course session, applicants will be placed on a waiting list by order of rank.

(3) Registered applicants who decline to participate in a basic course session may be required to retest but may be allowed to re-register for another session at the discretion of the academy administrator.

(4) At least thirty (30) days before a basic course session is scheduled to begin, registered applicants will be required to complete and pass a medical examination which will be conducted by a physician appointed by the academy and paid for by the applicant.

(5) At least thirty (30) days before a basic course session is scheduled to begin, registered applicants will be required to provide proof of medical insurance coverage for the period of the basic course. Other final documentation required by the academy must also be provided at least thirty (30) days in advance.

(6) A \$1,500 tuition fee will be required from each pre-service applicant to be paid in full by the first day of the basic course session to be attended. Proof of tuition subsidies, grants or scholarships will be accepted in lieu of cash payment.

(7) Pre-service students who leave a basic course voluntarily or who are dismissed will be granted a tuition refund on the following basis:

(a) seventy-five (75) percent of the tuition fee will be refunded to applicants who leave during the first week of the basic course;

(b) fifty (50) percent of the tuition fee will be refunded to applicants who leave during the second week of the basic course;

(c) no refund will be made to applicants who leave the basic course after the second week of training.

(8) At least thirty (30) days before the starting date of

a basic course session, registered applicants will receive a packet of information that includes reporting information and the name and address of the course manager for the particular basic course session.

(9) Registered applicants will also receive a copy of the student handbook and student agreement (conduct rules) at this time.

Auth: 44-10-202, MCA Imp: 44-10-301, MCA

RULE VIII RULES OF CONDUCT FOR STUDENTS ATTENDING BASIC PROGRAMS (1) Students must agree in writing to accept and act in accordance with the rules as stated in the Montana law enforcement academy student agreement governing their conduct and behavior while attending basic bureau programs.

(2) The student agreement for basic students shall specifically address the following rules:

(a) students are prohibited from consuming or possessing any alcoholic beverages on the academy campus;

(b) students are prohibited from gambling of any kind while on the academy campus.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE IX STUDENT ACADEMIC PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) A student must achieve a final grade score of seventy (70) percent of a total possible 100 percent as required by rule 23.14.313 of the administrative rules of Montana to pass the course. The total possible score is based on the following criteria:

(a) weekly spelling exams, 10% of final grade;

(b) notebook grade, 10% of final grade;

(c) other exams, 10% of final grade;

(d) mid-term exam, 30% of final grade;

(e) final exam, 40% of final grade.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE X OTHER STUDENT PERFORMANCE MEASURES (1) Written and practical assignments will be scored. Student scores will be used in the following manner:

(a) the scores will not be part of the final grade, but will be used to establish class ranking of the student;

(b) the scores achieved by a student will be documented in the student's file;

(c) when applicable, a summary of the student's scores will be sent to the student's agency administrator.

(2) Performance evaluations will be conducted on a weekly basis by the academy administrator. Performance evaluations will be summarized orally and in writing and will be based upon the following behavioral categories:

(a) work habits;

(b) appearance;

(c) interpersonal skills;

(d) motivation;

(e) effectiveness under stress; and

(f) overall rating of personal qualities.

(3) The evaluation will consist of four levels of

performance:

- (a) exceeds demands;
- (b) meets demands;
- (c) needs to improve; and
- (d) not acceptable.

(4) Pass/fail requirements for student performance evaluations are:

(a) a total of three "needs to improve" evaluations in any one specific category or a total of any two "not acceptable" evaluations will result in immediate dismissal from the basic course by the academy administrator.

(5) A copy of the written summary of a student's performance evaluation will be provided to the student each week, to the student's agency administrator when applicable and to any potential employer who inquires. A copy will be kept on file in the student's record maintained by the academy administrator.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE XI MLEA FIREARMS PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) A student must achieve a qualification score of not less than eighty (80) percent of a possible 100 percent in the MLEA firearms qualification course.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE XII PHYSICAL PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) All students will be required to perform the following physical tests:

- (a) push-ups;
- (b) sit-ups;
- (c) one and one half mile run; and
- (d) sit and reach.

(2) The student must pass every test category by placing in the fortieth (40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. Failure to perform at the fortieth (40th) percentile level during any one of the following testing times will result in immediate dismissal from the basic course:

- (a) entry assessment;
- (b) midterm assessment; and
- (c) final assessment.

(3) A manual detailing what is expected and how to prepare for the physical performance tests will be furnished to all students registered for the basic course.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE XIII STUDENT'S FINAL RANKING IN THE BASIC COURSE CLASS (1) This will be determined by the following personal achievements of each student:

- (a) final grade;
- (b) class ranking for written and practical assignments;
- (c) ranking based on the performance evaluations;
- (d) final firearms rank;
- (e) ranking by total aggregate of fitness tests; and
- (2) Final class ranking will be reported to the student,

to the student's agency administrator when applicable, and to any potential employer who inquires.

(3) The academy administrator will keep a record of the student's class ranking in the student's academy training file.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

RULE XIV BASIC COURSE ACHIEVEMENT AWARDS (1) Achievement awards will be presented by the academy administrator to students in each basic course class in the following categories:

(a) Academic--awarded to the student that successfully passes all phases of training and attains the highest final grade in the class.

(b) Firearms--awarded to the student that has the highest score on the firearms qualification course.

(c) Physical fitness--awarded to the student that achieves the highest aggregate total of the four fitness tests in all three times it is taken.

(d) Academy staff--awarded to the student that demonstrates all the requisite skills to become an exceptional law enforcement officer. The recipient is selected by a vote of the class students.

(e) Representative--is selected by the class students to represent them as a body and deliver a graduation address at the graduation ceremonies.

Auth: 44-10-202, MCA Imp: 44-10-202, MCA

4. The department is proposing the adoption of new rules to conform with the change in statute which occurred in the 1989 legislative session authorizing the department to establish qualifications for individuals, other than law enforcement officers, to attend the Montana law enforcement academy.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views and arguments may also be submitted to the department by addressing these to Gregory A. Noose, Administrator, Montana Law Enforcement Academy, 620 South Sixteenth Avenue, Bozeman, Montana, 59715 before May 25, 1990.

6. Gregory A. Noose, Administrator, Montana Law Enforcement Academy shall preside over and conduct this public hearing.

By Judy Brown
Certified to the Secretary of State April 16, 1990

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of a new rule regarding travel)	ON THE PROPOSED ADOPTION
expense reimbursement)	OF A NEW RULE REGARDING
)	TRAVEL EXPENSE REIMBURSE-
)	MENT

TO: All Interested Persons

1. On May 22, 1990, at 10:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room 303 of the Peg Condon Building, 5 South Last Chance Gulch, Helena, Montana to consider the adoption of a new rule regarding travel expense reimbursement in workers' compensation claims.

2. The proposed rule provides as follows:

NEW RULE I TRAVEL EXPENSE REIMBURSEMENT

(1) The insurer shall reimburse the injured worker for reasonable travel expenses incurred for treatment of an injury according to the requirements of this rule. Travel is reimbursable only when the medical services obtained are payable by the insurer.

(2) Reimbursement for travel expenses shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. When the travel coincides in whole or in part with the injured worker's regular travel to or from his employment, the coincident mileage may be subtracted from the reimbursable mileage. For purposes of travel reimbursement, automobile mileage shall be calculated using the towns listed as the post office addresses of the injured worker, the provider, and the employer.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees. A meal is eligible for reimbursement only when the one-way mileage as determined in subsection (2)(a) is greater than 15 miles, and when the travel time falls within the time ranges established for meal reimbursement for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain

a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(3) (a) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the injured worker, or when less costly forms of travel are not suitable to the injured worker's medical condition.

(b) If an injured worker chooses to use commercial transportation when a less costly form of travel suitable to his medical condition is available, reimbursement shall be made according to the rates associated with the least costly form of travel.

(4) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer.

(5) The department shall make available to interested parties the specific information referenced in this rule concerning rates for transportation, meals, and lodging; meal time ranges; and designations of high cost cities. The department shall inform interested parties in a timely manner of all applicable updates to this information.


AUTH: Section 39-71-203 MCA

IMP: Section 39-71-704 MCA

3. Rationale: Sec. 4, Ch. 333, L. 1989, (HB 347) amended section 39-71-704, MCA, Payment of medical, hospital, and related services - fee schedules and hospital rates. This amendment provides: "The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the Department. Reimbursement must be made at the rates allowed for reimbursement of travel by state employees." The proposed new rule implements this statutory change.

4. Interested parties may submit their data, views or arguments concerning these changes either orally or in writing at the hearing. Written arguments, views or data may also be submitted to Gwen Kloeber, Standards Bureau, Employment Relations Division, Department of Labor & Industry, P.O. Box 8011, Helena, Montana 59604 no later than May 29, 1990.

5. The Hearings Unit, Legal Services Division, Department of Labor & Industry has been designated to preside over and conduct the hearing.


Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: April 16, 1990

MAR Notice No. 24-16-24

8-4/26/90

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-) NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.20.420;) of ARM 42.20.420; 42.20.429
42.20.429 and 42.20.453 re-) and 42.20.453 relating to the
lating to the Sales Assess-) Sales Assessment Ratio Study.
ment Ratio Study.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 15, 1990, the Department of Revenue proposes to amend ARM 42.20.420; 42.20.429 and 42.20.453 relating to the sales assessment ratio study.

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

42.20.420 PROPERTY VALUE ADJUSTMENTS (1) The department shall increase or decrease the value of individual taxable properties as the result of the completion of the stratified sales assessment ratio study required under 15-7-111(4), MCA. A sales assessment ratio is the relationship of sales prices and the appraised value of properties at the time of its their sale.

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

42.20.429 CRITERIA FOR REDUCING OR INCREASING PROPERTY VALUE (1) and (2) remain the same.

~~(3)---The department shall not adjust property values in deference to the stratified sales assessment ratio study except as provided in sections (4) through (8) of this rule.~~

~~(4)---The property owner of record or his agent must make application to the department of revenue property assessment division, in order to secure consideration of arms length sales as market value. In order to be considered for the current tax year, an application must be filed on the form required by 15-7-102(4), MCA before April 1 of the current tax year. For tax year 1990 only, the application deadline will be May 4, 1990. The form is available from and must be filed with the county appraisal/assessment office.~~

~~(5)---The county appraiser will review the application and may conduct a field evaluation. The county appraiser will approve or deny the application, and will return a copy of the form to the property owner or his agent. A copy of the form will be provided to the county assessor.~~

~~(6)---The department shall consider arms length sale transactions which have been filed with the clerk and recorder after January 1 of the previous year through January 1 of the current year of assessment in determining value for property tax purposes, provided:~~

~~(a)---the sale transactions meet the requirements of ARM 42.20.432, and~~

~~(b)---the sale transactions occurred within the time frames specified in this section;~~

~~(7)---All valuation considerations which result from implementation of section (6) shall be adjusted through December 31, 1993 by all percentage adjustments which result from the~~

~~annual sales assessment ratio studies.~~

~~(8) -- All adjusted valuation considerations referenced in section (7) shall be replaced with new reappraisal values, effective January 17, 1994.~~

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

42.20.453 TREATMENT OF CERTAIN PROPERTIES (1) For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, residential condominiums are considered residential properties.

(2) through (4) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

3. The authority of the Department to amend these rules is found at 15-1-201, MCA and implements 15-7-111, MCA.

4. Amendment to ARM 42.20.429 is necessary because it was the intent of the Legislature to make adjustments in property value based upon market trends in similar areas using statistically valid sales assessment ratio studies. It was not the intent to revalue individual properties differently than other properties in the same area. The department is concerned that the U.S. Supreme Court decision in Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia, 109 S.C. 633, (1989), may prohibit revaluation based solely upon whether or not property was recently sold. Amendments to ARM 42.20.420 and 42.20.453 are housekeeping.

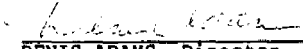
5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to:

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

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


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State April 16, 1990

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF RULE
amendment of Rule 8.79.301	)	8.79.301
regarding licensee)	
assessments	)	LICENSEE ASSESSMENTS
)	
	)	DOCKET #99-90

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

1. On March 15, 1990, the Montana board of milk control published notice of a proposed amendment of rule 8.79.301 regarding licensee assessments and reporting of those results. It was published at page 426 of the 1990 Montana Administrative Register, issue No. 5, as MAR Notice No. 8-79-27.

2. The bureau has amended the rule as proposed. No comments or testimony were received.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By:


Charles A. Brooke, Director
Montana Department of Commerce

Certified to the Secretary of State April 16, 1990.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF AMENDMENT OF RULE
ment of Rule 8.86.301 as it) 8.86.301
relates to class I price)
formula and class I wholesale) PRICING RULES
prices)
) DOCKET #97-89

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

1. On December 21, 1989, the Montana board of milk control published notice of proposed amendment of rule 8.86.301(6)(b),(g)(C)(II). Notice was published at page 2101 of the 1989 Montana Administrative Register, Issue No. 24, as MAR Notice No. 8-86-35.

2. A hearing was held on January 30, 1990, at 10:00 a.m., in the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. Seventeen persons appeared at the hearing to offer data, views and arguments on the proposed amendments. Sixteen people spoke in favor of the proposed amendments and one other person participated.

3. After thoroughly considering all of the testimony, the board is adopting the proposed rule amendments. (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)-(6)(a) remains the same.

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of class I milk in the state of Montana utilizes a November 1969 base equalling 100, an interval of 5.3 and consists of five (5) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

	<u>FACTOR</u>	<u>WEIGHT</u>	<u>CONVERSION</u> <u>FACTOR</u>
(i)	Weekly wages - total private revised	50%	.4035187
(ii)	Wholesale price index (US)	28%	+.2607076 <u>.7806202</u>
(iii)	Pulp, paper and allied products (US)	12%	+.142057 <u>.3299850</u>

(iv)	Industrial machinery (US)	6%	<u>.0556586</u>	<u>.1550846</u>
(v)	Motor vehicle and equipment (US)	4%	<u>.0376294</u>	<u>.0945103</u>

100%

NOTE: The reported revised weekly wages - total private is seasonally adjusted by dividing each months revised figures by the factors listed above in paragraph (6)(a).

The following table will be used in computing distributor prices.

TABLE II

Handler incremental deviation from last official reading of present formula. (December 1973 - 122.10; Formula Base = November 1969; Interval = 5.3.)

FORMULA INDEX	HANDLER INCREMENTAL DEVIATION
143.70---147.94	-\$ 0.02
149.00---153.24	- 0.01
154.30---158.54	0.00
159.60---163.84	0.01
164.90---169.14	0.02
170.20---174.44	0.03
175.50---179.74	0.04
180.80---185.04	0.05
186.10---190.34	0.06
191.40---195.64	0.07
196.70---200.94	0.08
202.00---206.24	0.09
207.30---211.54	0.10
212.60---216.84	0.11
217.90---222.14	0.12
223.20---227.44	0.13
228.50---232.74	0.14
233.80---238.04	0.15
239.10---243.34	0.16
244.40---248.64	0.17
249.70---253.94	0.18
255.00---259.24	0.19
260.30---264.54	0.20
265.60---269.84	0.21
270.90---275.14	0.22
276.20---280.44	0.23
281.50---285.74	0.24
286.80---291.04	0.25
196.70 - 200.94	0.26
202.00 - 206.24	0.27
207.30 - 211.54	0.28
212.60 - 216.84	0.29
217.90 - 222.14	0.30
223.20 - 227.44	0.31
228.50 - 232.74	
233.80 - 238.04	
239.10 - 243.34	
244.40 - 248.64	
249.70 - 253.94	
255.00 - 259.24	
260.30 - 264.54	
265.60 - 269.84	
270.90 - 275.14	
276.20 - 280.44	
281.50 - 285.74	
286.80 - 291.04	

(NOTE: This chart is amended to reflect a two cent (\$0.02) reduction in the distributor's margin based on a half (1/2) gallon of whole milk, as ordered by the board of milk control on March 3, 1990.

292.10 - 296.34	0.32
297.40 - 301.64	0.33
302.70 - 306.94	0.34
308.00 - 312.24	0.35
313.30 - 317.54	0.36
318.60 - 322.84	0.37
323.90 - 328.14	0.38

(c)-(f) remains the same.

(g) The minimum wholesale price will be marked up ten percent (10%) to arrive at minimum retail prices.

~~(i) Special wholesale price for retail grocery stores will be based on the procedures provided in subsections (A), (B) and (C) below. All milk purchased under one of the procedures indicated below must be paid within fifteen (15) days after invoicing unless there is a different time frame specified in the applicable rule section. Retailers are prohibited from purchasing milk at more than one level of service from any one distributor and distributors are prohibited from offering more than one level of service to any one retailer in any single billing period. This does not prohibit a retailer from changing levels of service in subsequent billing periods.~~

(i) Special wholesale prices for retail grocery stores. Special wholesale prices for retail grocery stores will be based on the provisions contained in subsections (A), (B), (C) and (D) below.

~~(A) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty-nine percent (89%) for full service delivery by a distributor. Any milk purchased herein must be paid for within fifteen (15) days after invoicing.~~

(A) Full service wholesale prices for retail grocery stores. The minimum full service wholesale price for retail grocery stores will be calculated by multiplying the minimum retail prices by a factor of eighty-seven percent (87%). The minimum wholesale prices charged to retail grocery stores by distributors and paid by retail grocery stores to distributors shall be at this price if the distributor provides any ordering services, shelf-stocking services, outdated product credit services, or retail price marking services to the retail grocery store. All fluid milk purchased by retail grocery stores pursuant to this subsection (A) must be paid within fifteen (15) days after invoicing.

~~(B) Wholesale drop service for retail stores.~~

~~(I) Deliveries shall be limited to a maximum of four (4) times per week, with a one hundred-fifty dollar (\$150.00) minimum sale per billing period.~~

~~(II) The minimum retail price will be marked down by sixteen percent (16%) to arrive at a minimum wholesale drop service price.~~

(B) Drop shipment wholesale prices for retail grocery stores. The minimum drop shipment wholesale price for retail grocery stores that purchase their fluid milk without the provision of any of the services outlined in (A) shall be calculated by multiplying the minimum retail prices by a factor of eighty-three percent (83%). Distributors selling fluid milk to retail grocery stores at this price will not be allowed to provide services to retail grocery stores, other than delivery of the fluid milk products to the back room refrigerated storage area of the retail stores. In the event the distributor or his agents provide any other service to the retail grocery store, the minimum wholesale price paid for the milk products by the retail grocery store to the distributor shall be the full service wholesale price as set forth in (A) above. Distributors selling fluid milk to retail grocery stores at this price will be allowed to make deliveries of fluid milk products no more than four (4) times per week. In the event a distributor or his agents provide delivery of fluid milk products more than four (4) times per week, the minimum wholesale price paid for the fluid milk products by the retail grocery store to the distributor shall be the full service wholesale price set forth in section (A) above. All fluid milk purchased by retail grocery stores pursuant to this subsection (B) must be paid within fifteen (15) days after invoicing.

- {E} Wholesale-dock-pickup-price;
- {F} Delivery-shall-be-FOB-the-processing-plant's-dock-or-processing-plant's-warehouse-dock;
- {G} The-minimum-retail-price-will-be-marked-down-by-twenty-two-and-three-tenths-percent-(22.3%) to arrive at the minimum-wholesale-dock-pickup-or-delivery-price;
- {H} Any-milk-purchased-herein-must-be-paid-for-within-ten-(10)-days-after-invoicing;
- {I} Resale-will-be-based-upon-the-wholesale-full-service-price-or-wholesale-drop-service-price, whichever-is-applicable;
- {J} A-minimum-quantity-will-be-five-hundred-(500)-gallons-per-billing-period;

(C) Special wholesale prices for retail grocery stores at the distributor's dock. The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the distributor's dock. The distributor shall not provide any service of any type to retail grocery stores purchasing milk pursuant to this section (C). In order for a retail store to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a

minimum of seven hundred fifty (750) gallons of fluid milk products per week.

(D) Retailers must limit purchases to one service level. Retailers are prohibited from purchasing fluid milk at more than one pricing level as set forth in subsections (A), (B) and (C) from any one distributor in any single billing period which constitutes a period of at least two weeks. Distributors are prohibited from selling fluid milk to any retail grocery store at more than one pricing level as set forth in sections (A), (B) and (C) to any one retailer in any single billing period.

(E) Special wholesale prices for wholesale grocery distribution centers. The minimum wholesale price for fluid milk purchased by wholesale grocery distribution centers will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by wholesale grocery distribution centers must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the wholesale grocery distribution center's dock or distributor's dock. A wholesale grocery distribution center must purchase a minimum of seven hundred fifty (750) gallons of fluid milk products per week from a distributor to be eligible to purchase fluid milk products at this pricing level. The minimum resale price to retail grocery stores will be a full service or a drop-shipment wholesale price.

(f) Minimum-jobber-prices-will-be-calculated-by multiplying-the-difference-between-the-applicable-wholesale price-and-raw-product-cost-times-a-factor-of-55.597%-with-the resulting-answer-being-added-to-the-current-raw-product-cost. The-jobber-prices-calculated-will-be-the-minimum-jobber-prices.

(h) Jobber prices. Minimum jobber prices will be calculated by multiplying the minimum retail prices by a factor of seventy percent (70%). The jobber prices so calculated will be the minimum jobber prices.

(i)-(14) remains the same."

AUTH: 81-23-302

IMP: 81-23-302

5. The update of the formula index readings does not represent an amendment to the distributor formula. It is updated so present formula calculations will reflect in the rule.

6. Principle reasons given for the adoption of the amendment to the rule were as follows:

a. Prices of milk in adjacent and surrounding states, and sales of milk within the state indicate that there is room for adjustment.

b. There are cost savings occasioned by changes in the current distribution system of milk in this state that should be passed on to the consumer in the form of lower retail prices.

c. Cost evidence published in the notice was stale and did not justify the current price levels, but there was no empirical cost evidence presented to the board at the hearing which would support a conclusion of different or higher specific costs.

d. The current price structure is valid, based on distributor costs and service levels.

e. No witnesses testified in opposition to the current wholesale price structure or in support of changing it.

f. Requested changes to school and institutional milk pricing and jobber pricing were not noticed.

g. Petitioners failed to support their contentions with empirical data.

7. Principle reasons given against the adoption of the amendments to the rule were as follows:

a. The preponderance of testimony, data, views and arguments opposed a decrease in the retail price of milk from historic levels.

b. Costs of production and distribution historically have been higher in Montana than in other states.

c. Processors and jobbers are losing money at current minimum prices and are experiencing inadequate financial returns.

d. The small processors and several jobbers testified that a decrease in the retail price would quickly put them out-of-business.

e. If small processors and jobbers are put out-of-business, it is likely that some rural areas and small accounts in Montana, including schools, hospitals and rest homes, will no longer receive direct service or will have to pay a premium for such service.

f. A decrease in the official retail and wholesale price of milk in Montana may bring an immediate decrease in consumer costs, but it probably would result in less competition in the long run, after which the price to consumers probably would increase.

g. The compromise price and service structure uniform proposal could help small producers and jobbers return to profitability.

h. Reductions in retail and wholesale prices cannot be justified based upon current prices in adjacent and surrounding states. Milk prices in surrounding states are as high as, or higher than, they are in Montana at this time.

8. The principle reasons for rejecting objections were as follows:

a. The board agrees with the contention that costs of production and distribution are higher in Montana than in surrounding states, but, that circumstance in and of itself, does not support any specific price level.

b. The board rejects the contentions of distributors and jobbers that their financial statements support higher prices. The financial statements reflected many cost items besides

fluid milk handling. The financial statements did not support a specific price level, which is desirable in setting prices.

c. The board does not dispute that some small processors or jobbers could be put out-of-business, but they deny that possibility should be a basis for setting prices. Even with the demise of some jobbers and distributors, the public will still be adequately served with milk. Prices resulting from this order are minimum prices. Any distributor or retailer can raise prices if need be. The board feels that its official minimum prices should not guarantee an economic existence to everyone. The history of milk control has always been a decline of the number of licensees resulting from their inability to stay competitive.

d. The board rejects the contention that, with the demise of some small processors or jobbers, some rural areas will go without service. The board has no knowledge of that happening in other states, nor was there any evidence submitted at this hearing to verify that it would happen in Montana.

e. The board rejects the contention that a decrease in price would ultimately lead to higher prices for consumers. There was no evidence which would support conclusions that markets would not be adequately served or that of out-of-state milk would replace local supplies.

f. The board rejects the contention that wholesale and retail prices in adjacent and surrounding states cannot justify a price decrease. The petitioners failed to provide a range of prices at which milk is sold in other areas. Information about prices in neighboring and adjacent states is limited at best and very sketchy.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

MONTANA DEPARTMENT OF COMMERCE

BY: Charles A. Brooke
Charles A. Brooke, Director

Certified to the Secretary of State April 16, 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer,) NOTICE OF ADOPTION
amendment and adoption of rules) OF RULES
regulating gambling)

TO: All Interested Persons

1. On December 21, 1989, the Department of Justice published notice of public hearing on the proposed transfer, amendment, and adoption of rules regulating gambling at page 2127, of the 1989 Montana Administrative Register, issue number 24.

2. A public hearing was held on January 22, 1990, and was attended by approximately 40 people. Nine people commented on the rules. A summary of the testimony is included in the file on the proposed rules. The department received written comments from ten people. In addition, the department convened a committee of bingo and keno operators to assist it in the development of recordkeeping rules for the new bingo and keno tax. Finally, additional comments were submitted on behalf of the Administrative Code Committee (ACC). Specific comments are discussed below in conjunction with the particular rule which was the subject of comment.

3. The following rules were repealed before being transferred to the department of justice; they are retained for research purposes: 23.16.1804, 23.16.1821, 23.16.1925 and 23.16.1926.

4. As a result of the oral and written comments received, as well as the department's review of the proposed rules and the comments, the department has adopted all of the proposed rules and has adopted those rules with the changes set forth below.

8.124.101 (23.16.~~1701~~1801) No comment was received on this rule; it is hereby repealed.

8.124.102 (23.16.~~1702~~1802) DEFINITIONS (1) "Act" is adopted as proposed.

(2) "Applicant" is adopted as proposed.

~~11~~(3) "Designated representative" is adopted as proposed.

~~12~~(4) "Destruction of a machine" is adopted as proposed.

~~13~~(5) "Draw poker" means a game of poker in which the player makes a wager, then ~~is dealt 5 cards~~ THEN THE INITIAL CARDS ARE DEALT. After the initial deal, the player may raise his wager (if that option is available), discard and replace any unwanted cards prior to playing out the hand. VARIETIES OF POKER SIMULATED BY VIDEO GAMBLING MACHINES MUST BE FOUND IN THE DEPARTMENT'S AUTHORITY REFERENCE USED FOR THE LIVE GAME OF DRAW POKER.

(6) "EPROM" MEANS AN ERASABLE AND PROGRAMMABLE READ-ONLY MEMORY.

(7) "LOGIC" MEANS A DIGITAL INTEGRATED CIRCUIT.

~~7~~(8) "Machine" means an electronic video gambling

machine.

48+(9) "Machine permit" means a permit issued by the state of Montana which authorizes a specific machine to be operated as an electronic video gambling machine.

(10) "PAL" MEANS A PROGRAMMABLE ARRAY LOGIC OR DIGITAL INTEGRATED CIRCUIT.

(11) "PROM" MEANS PROGRAMMABLE READ-ONLY MEMORY.

49+(12) "Simulates the game of draw poker" means plays by or mimics the generally accepted rules or methods of any of the various card games known as "draw poker", whether played against another player or the house. Methods include, but are not limited to, symbols used for or in place of images of playing cards, description, and wagering techniques. For purposes of this definition, a determination that a machine plays the game of draw poker is not solely based on the name of the game.

49+(13) "Valid ticket voucher" is a ticket produced by a machine that is the result of bonafide play of a gambling machine and not the result of player tampering, manipulation, OR A MACHINE MALFUNCTION THAT CAN BE DOCUMENTED.

44+(14) "Video bingo" means the game of bingo as defined in Montana law when offered by a video gambling machine which uses video images and a random number generator rather than authorized equipment AS DEFINED IN 23-5-112, MCA.

46+(15) "Video gambling machine" is MEANS a video draw poker, video-keno, or video bingo machine AS DEFINED IN 23-5-112, MCA.

45+(16) "Video keno" means the game of keno as defined in Montana law when offered by a video gambling machine which uses video images and a random number generator rather than authorized equipment AS DEFINED IN 23-5-112, MCA.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-602, MCA
Sec. 23-5-603, MCA
Sec. 23-5-612, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that the definition of "video gambling machine" appeared unnecessary. The department attempted to cure this while providing readers of the rules with a reference.

Counsel for the ACC also commented that two sections of the MCA should be added as implemented. The department adopts this change.

Both the Montana Tavern Association (MTA) and the Gaming Industry Association of Montana (GIA) commented that (13) should be amended so that a "valid ticket voucher" cannot be produced by machine malfunction. The department accepts this suggestion and has adopted additional language to address this comment.

The other definitions were either adopted at the suggestion of Counsel for the ACC or the Gambling Control Division staff in the interests of clarity.

8.124.103 (23.16.17031803) APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS (1) An application to permit an electronic video gambling machine must be submitted to the gambling control division of the department of justice upon forms prescribed by the department. FORM 5 IS A VIDEO GAMBLING MACHINE PERMIT

APPLICATION; FORM 5 IS INCORPORATED BY REFERENCE AND IS AVAILABLE UPON REQUEST FROM THE DEPARTMENT AT 2687 AIRPORT ROAD, HELENA, MT 59620. The application is not complete unless it is dated and signed by the applicant, and contains all information and statements required by the department.

(2) and (3) are adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-611, MCA

COMMENT AND RESPONSE: Both the MTA and the GIA requested that the rule specify the content of the application form. The department has incorporated the form by reference.

8.124.105 (23.16.17051805) REFUND OF PERMIT FEE This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-612, MCA

COMMENT AND RESPONSE: Both the GIA and the MTA suggested a more extensive system of refunds. The department rejects their arguments because Section 23-5-612(3), MCA, explicitly disallows the proration of fees.

8.124.106 (23.16.17061806) DISTRIBUTION OF NET MACHINE INCOME TAX TO LOCAL GOVERNING BODY No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-610, MCA

8.124.107 (23.16.17071807) ISSUANCE OF PERMIT DECAL is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-603, MCA
Sec. 23-5-611, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that section 23-5-611, MCA, should be added as implemented. The department agrees.

8.124.108 (23.16.17081808) LICENSES ISSUED UNDER TEMPORARY AUTHORITY (1) When temporary authority to operate an establishment licensed for on-premises consumption of alcoholic beverages is granted by the department of revenue, liquor division, pursuant to 16-4-404(6), MCA, the gambling control division may issue an A CONDITIONAL operator license to the recorded holder of "temporary authority" if that holder:

(a) supplies written proof of temporary authority at time of application;

(b) provides written proof of all extensions of temporary authority (prior to expiration of authority).

(2) When the liquor division issues a "final agency decision" in the transfer of the alcohol beverage license all machines permits issued under these provisions will be final.

(3) is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-611, MCA

Sec. 23-5-115, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that section 23-5-115, MCA, should be added as implemented. The department agrees that granting a conditional gambling license to the holder of temporary liquor authority is appropriate.

8.124.122 (23.16.17221822) PERMIT NOT TRANSFERABLE (1)
EXCEPT AS PROVIDED BELOW, A ANY permit to operate an electronic video gambling machine is only valid for the permit holder and the premises identified on the permit application.

(2) A permit is further ALSO restricted to the particular machine approved by the department and identified on the permit application. No additional permit fee will be charged when a licensed establishment-PREMISES changes its location and its permitted video gambling machines also move to the new location.

(3) A machine may not be moved from a licensee's establishment PREMISES and placed in service at another establishment-PREMISE unless application is made for an A NEW electronic video gambling machine permit, the permit fee is paid, and a new license permit is issued. A new license permit is required even if a machine has a current, unexpired license permit for the former location.

(4) is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-603, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested changes in the interests of clarity. The department agrees; it adopts the above changes in an attempt to clarify.

8.124.123 (23.16.17231823) EXPIRATION -- RENEWAL OF PERMIT
No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-612, MCA

RULE 8.124.124 (23.16.17241824) No comment was received on this rule; it is repealed as proposed.

RULE 8.124.125 (23.16.17251825) No comment was received on this rule; it is repealed as proposed.

8.124.126 (23.16.17261826) QUARTERLY REPORTING REQUIREMENTS
licensee OPERATOR quarterly reporting requirements are as follows:

(1) For each machine the licensee OPERATOR or his designated representative must file with the department a quarterly tax report signed by the licensee OPERATOR or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes and the winning percentage of the machine as required by the act. The following requirements apply:

(a) is adopted as proposed;

(b) the meter readings must be taken and recorded for the

report within 7 days of the close of the licensee's OPERATOR'S last day of business in the reporting quarter;

(c) is adopted as proposed.

(2) If an licensee-OPERATOR leases, rents, or shares machine ownership, or a machine's revenues with another person or business entity, the licensee-OPERATOR or his designated representative must provide upon the same quarterly tax form prescribed by the department in subsection (1) above, information for each machine as follows:

(a) through (c) are adopted as proposed.

(D) FORM 6 IS A QUARTERLY VIDEO GAMBLING MACHINE TAX REPORT; FORM 6 IS INCORPORATED BY REFERENCE AND IS AVAILABLE UPON REQUEST FROM THE DEPARTMENT AT 2687 AIRPORT ROAD, HELENA, MT 59620.

~~{3}--Machine-income-losses-resulting-from-theft,-tampering, etc.-must-be-reported-on-the-quarterly-report-and-accompanied by-a-copy-of-the-police-report-or-other-official-documentation regarding-the-incident.--Credit-will-be-given-only-for-the-amount of-the-loss-less-any-insurance-recovery.~~

{4}(3) Failure for late filing and payment of the required machine income tax will result in the following penalty schedule being applied:

(a) 0 - 30 days late = 10% of tax due;

(b) 30 - 60 days late = 25% of tax due;

(c) 61 - 90 days late = 50% of tax due;

(d) 91 days or more = 100% of tax due;

{5}(4) The imposition of these penalties does not preclude the department from taking further action against the licensee OPERATOR.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-610, MCA
Sec. 23-5-115, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that in several places in the rule, "operator" should be substituted for "licensee"; that was done.

The GIA and the MTA had two comments on subsection (2). They felt that the tax form should be adopted in the rule; that was done. They also felt that (2) was burdensome, intrusive, and in excess of statutory authority. The department overrules these objections. It has a duty to protect the integrity of gambling tax collection and the integrity of the regulation of gambling. By requiring the information it does in subsection (2)(b) the department is better able to pursue tax evaders, keep its licensing information current, and protect the public from unscrupulous gambling operators.

Counsel for the ACC commented that subsection (3) has no statutory authority and conflicts with Sections 23-5-602(5) and 610. The department agrees; that subsection has been deleted.

The GIA and the MTA commented they felt that the penalties in subsection (4) were punitive; they proposed alternatives. The division overrules this proposal; the proposed penalties are from an existing rule which was adopted after a hearing on that rule alone.

8.124.127 (23.16.17271827) RECORD RETENTION REQUIREMENTS (1)

is adopted as proposed.

(2) The records must, ~~but are not limited to~~, include:

(a) is adopted as proposed;

(b) the exact copy of the printed ticket vouchers ~~as provided by department rules~~; and

(c) through (d) are adopted as proposed.

(e) if the operator does not keep records as required in this rule the department may estimate tax by utilizing the best available method, E.G. AVERAGE NET DAILY INCOME FOR A REGION, ESTIMATE BASED ON HISTORICAL PERFORMANCE, OR A GROSS-UP BASED ON ESTABLISHED PAYOUTS. THE DEPARTMENT IS NOT LIMITED TO THE AFOREMENTIONED METHODS OF ESTIMATING INCOME. HOWEVER, ANY METHOD USED MUST BE JUSTIFIABLE GIVEN THE FACTUAL CIRCUMSTANCES, AND IS SUBJECT TO ADMINISTRATIVE AND JUDICIAL REVIEW.

(F) IN CASES OF DISPUTE CONCERNING THIS RULE, THE DEPARTMENT MAY ACT BY MEANS OF TEMPORARY CEASE AND DESIST ORDER OR BY EMERGENCY RULE.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-610, MCA

COMMENT AND RESPONSE: Regarding (2), counsel for the ACC as well as the GIA and the MTA were uncomfortable with "but are not limited to", they commented that all required records should be enumerated. The department agrees; it has deleted the objectionable language. Subsection (f) has been added in an attempt to better address the problem of record retention disputes.

Regarding subsection (2)(b), counsel for the ACC commented that the preferable term is "valid" ticket voucher. The department disagrees, here, ~~all~~ ticket vouchers should be kept.

The GIA and the MTA commented about subsection (2)(e) that the phrase "best available method" needed clarification. The department agrees and has adopted additional language.

8.124.201 (23.16.1901) GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1)(a) and (b) are adopted as proposed.

(c) not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game. The machine may not have any functions or parameters adjustable by and through any separate video display or input codes except for the adjustment of features that are wholly cosmetic OR OTHER OPERATIONAL PARAMETERS AS APPROVED BY THE GAMBLING CONTROL DIVISION. This is to include devices known as "knockoff switches;"

(d)(i) is adopted as proposed.

(ii) in the case of DRAW poker, after the ~~first-five~~ INITIAL cards have been dealt, the player may be allowed to raise his wager but the player may not exceed the overall statutory bet limit;

(iii) through (xi) are adopted as proposed.

(xii) the machine must issue by activation of an external key switch, an accounting ticket containing a performance synopsis of the machine. The printing of all totals from the electronic meters shall occur automatically ~~by means of a switch attached to the door or the look-for-that-door~~ each time access occurs to either the logic compartment or any compartment where

cash is collected. WHENEVER ELECTRONIC METERS ARE RESET, each machine must produce a full accounting ticket BOTH BEFORE AND AFTER EACH RESETTING ~~whenever electronic meters are reset~~. The ticket must be in the format prescribed by the department and contain:

(A) through (G) are adopted as proposed.

(xiii) the machine must have an identification tag permanently affixed to the machine by the manufacturer. The tag must be on the right-hand side, upper left corner of the machine OR IN ANOTHER LOCATION APPROVED BY THE DEPARTMENT and must include the following information:

(A) through (D) are adopted as proposed.

~~(E)--any other information required by the department;~~

~~(F)(xiv)~~ the face of the machine must be clearly labeled so as to inform the public that no person under the age of 18 years is allowed to play;

~~(G)(xv)~~ no machine may offer for play more than one pay table per program;

~~(H)(xvi)~~ each machine must pass a static test that is determined by the department;

~~(I)(xvii)~~ the owner of a gambling machine that is capable of producing an audit ticket, must produce, in each machine owned an audit ticket at least every seven days; and

~~(J)(xviii)~~- a machine shall be equipped with a surge protector that will feed all A.C. electrical current to the machine and a battery backup power supply capable of maintaining for a 30-day period the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine. Manufacturers incorporating either the use of E2 proms or a lithium battery for memory retention will be considered to meet this requirement.

(2) is adopted as proposed.

(3) The department may suspend, or revoke a license PERMIT or revoke approval of a machine at any time when it finds that any machine or machine component does not comply with statutes and rules governing electronic video gambling machines in effect at the time of approval. The department may also suspend, or revoke the licenses or revoke approval of other similar model machines or machine components in use in the state.

AUTH: Sec. 23-5-621, MCA.

IMP. Sec. 23-5-136, 621, MCA.

COMMENT AND RESPONSE: Extensive comments were made to this rule most in an attempt to clarify the rule. Comments urging clarification were made by counsel for the ACC (implementation note, (1)(d)(i), (1)(d)(ii), (1)(d)(xiii), (E) through (J), and (3)); IGT ((1)(c)); Bally Gaming ((1)(d)(ii), (1)(d)(v) and (1)(d)(xiii)(J)); Heron Ltd. ((1)(d)(v)); and the division staff ((1)(c), (1)(d)(xii), and (1)(d)(xiii)). All these comments were adopted.

IGT suggested bill acceptors allowing larger denominations; this suggestion is overruled, as the department is bound by statute on this question.

Bally, the GIA, and the MTA expressed concern about the availability of machine keys on premises. The department

overrules the suggestions that keys remain with service personnel., If machine owners do not desire to leave keys on the premises, they may leave keys with the division investigators.

Bally, the GIA, and the MTA also expressed concerns about subsection (1)(a)'s reference to "substantial modifications". They requested clarification. The department believes that it has clarified this phrase as much as it can and urges concerned persons to check in advance with the division staff when questions arise.

Video Lottery Consultants (VLC) complained that subsection (1)(d)(v) discriminated against it as the only manufacturer of a video gambling machine not accessible from the front. The department rejects VLC's suggestion that this rule be deleted; the rule is necessary to the enforcement duties of the gambling control division.

VLC also commented that the lockout requirement (1)(d)(vi)(A) was unnecessary. The department rejects this suggestion; lockouts are a necessary player protection when a machine is unplugged.

8.124.202 (23.16.18021905) SAFETY SPECIFICATIONS No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-621, MCA. IMP: Sec. 23-5-621, MCA.

8.124.208 (23.16.18031906) GENERAL VIDEO GAMING MACHINE SOFTWARE SPECIFICATIONS This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-621, MCA
Sec. 23-5-621, MCA Sec. 23-5-607, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that EPROM should be defined and that sections be added to AUTHORITY and IMPLEMENTING. The division agrees; these have been done here and in 23.16.1802.

8.124.203 (23.16.18041907) VIDEO DRAW POKER SOFTWARE (1)(a) is adopted as proposed.

(b) deal the first-5 INITIAL cards from the top of the frozen field;

(c) through (e) adopted as proposed.

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

8.124.207 (23.16.18051908) SOFTWARE SPECIFICATIONS FOR VIDEO KENO MACHINES This rule is adopted as proposed.

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

COMMENT AND RESPONSE: International Game Technology (IGT) commented that subsection (1)(a) "prohibits development of specialty versions of keno that would use playing fields of other than 80 numbers." The department agrees but must overrule the objection; the department is limited in its definition of keno by Section 23-5-112(16), MCA.

8.124.206 (23.16.18091909) SOFTWARE SPECIFICATIONS FOR

VIDEO BINGO MACHINES No comments were received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-621, MCA

IMP: Sec. 23-5-621, MCA

8.124.205 (23.16.18071910) RESTRICTIONS ON OPTIONAL GAME FORMAT OR FEATURES This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-621, MCA

COMMENT AND RESPONSE: Bally gaming commented that the final sentence of this rule unnecessarily limited the introduction of optional game formats. The division overrules this objection on the grounds that it's rulemaking authority is limited by Section 23-5-602(3), MCA.

8.124.204 (23.16.18081911) SOFTWARE INFORMATION TO BE PROVIDED TO THE DEPARTMENT (i)(a) through (j)(i) are adopted as proposed.

(ii) poker = the-number-of-winning-hands-with-the-first-five-cards-dealt THE OCCURRENCES OF EACH CARD UTILIZING THE FIRST TEN CARDS DEALT,

(k)--through (o) are adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-621, MCA

COMMENT AND RESPONSE: The revised rule on poker was suggested by the division staff to meet the concerns of Bally Gaming. It is adopted.

RULE 23.16.18091912 No comment was received on this rule; it is repealed as proposed.

RULE I (23.16.1913) USE OF TEMPORARY REPLACEMENT OR LOANER MACHINES - PERMIT REQUIRED - REPORTING (1) is adopted as proposed.

(2) Any operator placing a temporary replacement machine in service must notify the department on a form prescribed by the department. AN APPLICATION TO PLACE A TEMPORARY REPLACEMENT MACHINE IN SERVICE IS INCORPORATED BY REFERENCE AS FORM 7 AND IS AVAILABLE UPON REQUEST FROM THE DEPARTMENT AT 2687 AIRPORT ROAD, HELENA, MT 59620.

(3) and (4) are adopted as proposed

(5) In no case may the number of machines authorized by the number of permits issued the operator be exceeded by the use of temporary replacement machines. A temporary replacement machine may not be used for more than ninety (90) days IN A SINGLE LOCATION.

(6) A MACHINE REPLACED BY A TEMPORARY REPLACEMENT MACHINE MUST BE REMOVED FROM PUBLIC ACCESS.

AUTH: Sec. 23-5-603, MCA.

IMP: Sec. 23-5-603, MCA.

COMMENT AND RESPONSE: The GIA and the MTA suggested that the form be included in the rule and that the rule be clarified

to limit temporary replacement machines to 90 days "in a single location". The department agrees; these two suggestions have been adopted. Subsection (6) was inserted for purposes of clarification.

8.124.213 (23.16.18131916) MANUFACTURERS/DISTRIBUTORS AND PRODUCERS OF ASSOCIATED EQUIPMENT OF VIDEO GAMBLING MACHINES (1) The department may issue to an applicant for a manufacturers/distributors license or an applicant for a producer of associated equipment license for video gambling-machines a provisional CONDITIONAL license pending the results of the investigation into their suitability for licensure. A provisional CONDITIONAL license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the applicant does qualify for licensure the bureau DIVISION will issue final approval and remove the license from provisional CONDITIONAL status. This license fee is nonrefundable once the bureau DIVISION has begun processing the license.

(2) and (3) are adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-625, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that "bureau" should be changed to "division" and that "provisional" should be changed to "conditional" pursuant to Section 23-5-115(5), MCA. The department agrees; these suggestions have been adopted.

8.124.214 (23.16.18141917) GENERAL REQUIREMENTS OF MANUFACTURERS, SUPPLIERS, AND DISTRIBUTORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OR ASSOCIATED EQUIPMENT (1) is adopted as proposed.

(2) A manufacturer/distributor or producer of associated equipment must provide the bureau DIVISION with a current list of all video gambling machines kept in their HIS OR HER storage in Montana at the time of application and provide monthly-updates thereafter STATUS REPORTS AS REQUIRED BY THE DEPARTMENT. These reports must include the following information:

- (a) manufacturer;
 - (b) model;
 - (c) serial number;
 - (d) location machine is stored.
- (3) is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-625, MCA
Sec. 23-5-115, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested the addition to the implementation note. The department agrees; this suggestion has been adopted.

8.124.215 (23.16.18151918) VIDEO GAMBLING MACHINES TESTING FEES (1) Each entity PERSON submitting a video gambling machine or a modification that changes the play or operation of a video draw-poker GAMBLING machine for testing and department approval must:

(a) and (b) are adopted as proposed
~~4c(2)~~ This account will be charged at the rate of \$40.00 per hour.

~~4d(3)~~ The division will provide an accounting to the submitting person for charges assessed to them and will refund any overpayment at the time department final approval is given. The department will notify the submitting person of any underpayment and collect that money prior to giving any department approval.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-631, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented on the incorrect use of the terms "video draw poker machine" and "entity". The department agrees; the suggestions have been adopted.

Counsel for the ACC commented that this rule should have a subsection (2). The department adopts this suggestion, as it fits with the comments of the division staff that (2)(c) and (2)(d) should be renumbered in the interests of clarity.

8.124.216 (23.16.18161924) PROHIBITED MACHINES This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-613, MCA
Sec. 23-5-603, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested the addition to the implementation note. The department agrees; the suggestion has been adopted.

The GIA and the MTA suggested that this rule be limited to "video gambling machines". The department rejects this suggestion as unduly restrictive in light of the department's duties.

8.124.217 (23.16.18171925) POSSESSION OF UNLICENSED MACHINES BY MANUFACTURER, SUPPLIER, DISTRIBUTOR, OWNER, OR REPAIR SERVICE
This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-613603, MCA
Sec. 23-5-616, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested the addition to the implementation note. The department agrees; this suggestion has been adopted.

8.124.218 (23.16.18181926) LOCATION OF MACHINES ON PREMISES
(1) An electronic video gambling machine must be placed in such a manner that:

~~4a)--each-machine-remains-within-the-sight-and-control-of-the-licensee-or-employees-of-the-licensee;~~

~~4b)(A) each machine is segregated from amusement machines~~
MUST BE PLACED in such a manner that a minor who tries to play a machine is immediately observed by the licensee or the licensee's employees; and

(c)(B) public access is, to the greatest extent possible, limited to persons over the age of 18.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-603, MCA
Sec. 23-5-158, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested the changes as more accurately reflecting statutory authority. The department agrees; these suggestions have been adopted.

8.124.219 (23.16.18191927) APPROVAL OF VIDEO GAMBLING MACHINES BY DEPARTMENT (1) through (3) are adopted as proposed.
~~(4) -- New rules may be adopted which redefine or set forth new specifications that previously approved machines do not comply with, -- in such cases, and only in such cases, the department shall allow up to 90 days for a licensee to bring a machine into compliance with a new or modified specification --~~

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-631, MCA

COMMENT AND RESPONSE: Counsel for the ACC, IGT, the MTA, and the GIA all expressed concerns about subsection (4). Their suggestions ranged from urging deletion of the rule (GIA & MTA), to noting an apparent conflict with the statutes (ACC), to suggesting language requiring negotiated compliance (IGT). The department agrees that it lacks statutory authority for (4); it has been deleted.

8.124.220 (23.16.18201928) DISSEMINATION OF INFORMATION
Only a definitional comment was received on this rule; that suggestion was adopted, rule 23.16.1802. This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-115, MCA

8.124.221 (23.16.18211929) REPAIRING MACHINES - APPROVAL
This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-631, MCA
Sec. 23-5-603, 616, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested this change to the implementation note. The department agrees; the suggestion is adopted.

RULE 8.124.222 (23.16.18221930) No comments were received on this rule; it is repealed as proposed.

8.124.223 (23.16.18231931) INSPECTION AND SEIZURE OF MACHINES This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-115, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested this change to the implementation note. The department agrees; the suggestion is adopted.

8.124.224 (23.16.18241932) INVESTIGATION OF LICENSEE This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: 23-5-613113, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested this change to the implementation note. The department agrees; the suggestion is adopted.

RULE 8.124.227 (23.16.18271935) No comment was received on this rule; it is repealed as proposed.

8.124.228 (23.16.18281936) TRANSPORTATION OF MACHINES INTO STATE No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-621, MCA

RULE 8.124.229 (23.16.18291937) No comment was received on this rule; it is repealed as proposed.

RULE II (23.16.1940) VIDEO GAMBLING MACHINES - TRADE SHOWS This rule is adopted as proposed.

AUTH: Sec. 23-5-621, MCA

IMP: Sec. 23-5-621, MCA

COMMENT AND RESPONSE: The GIA and the MTA oppose the 20 day limitation contained in subsection (3) and propose that video gambling machines brought into the state for trade shows be allowed to remain indefinitely. The department overrules this suggestion for several reasons. First, as is well known, the attraction of being able to offer the public a new type of video gambling would be very great. Second, the division has no way of knowing where any particular video gambling machine is at any time. Third, indefinite presence in the state of an unauthorized video gambling machine would serve only to diminish the effective regulation of gambling and would not serve the purposes for which this law was passed.

RULE III (23.16.2001) MANUFACTURER OF DEVICES NOT LEGAL IN STATE - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS A manufacturer of gambling devices in Montana which are not authorized for use in Montana and intended for use outside of Montana must be licensed by the department. The administrative fee for this license is \$1000 annually IF THE MANUFACTURER IS NOT LICENSED AS A MANUFACTURER UNDER 23-5-625, MCA. A license issued under this section shall for all purposes expire at midnight on June 30 each year. A person licensed under this section must provide a monthly report listing kinds and amounts of devices manufactured, number of shipments of these devices, destinations of all shipments and method of shipment including carrier used.

AUTH: Sec. 23-5-152, MCA

IMP: Sec. 23-5-152, MCA

COMMENT AND RESPONSE: John Poston questioned whether or Montana Administrative Register

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not the department intended to require manufacturers that are licensed to produce equipment that is legal in Montana and also produces equipment for export purposes to pay double the administrative fee. The department did not intend to impose a double fee and thus, the change is made.

RULE IV (23.16.2401) DEFINITIONS As ~~throughout~~ throughout this subchapter, the following definitions apply:

(1) through (8) are adopted as proposed.

(9) "Outside keno cards" mean the cards on which players' selections are recorded by a keno caller and issued to the player as a receipt. These cards must contain the premise-name, card manufacturer name, game-number, and a PURCHASE series number.

(10) through (14) are adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-409, MCA

COMMENT AND RESPONSE: The amendment to definition (9) was suggested by the GCD staff after consultation with the industry committee.

RULE V (23.16.2402) LIVE KENO AND BINGO RECORD KEEPING (1) A record of live keno and bingo gross proceeds, must be maintained separate and distinct from other sources of operator revenue. Unless designated otherwise the operator of a live keno or bingo game must retain daily accounting records for a period of three years from the due date of the associated net live game income tax return. The records must remain legible and be kept in the state of Montana and accessible by the department from the licensee.

(a) The following records must be maintained ~~on-a-form prescribed-by-the-department~~ BY OPERATORS OF LIVE KENO AND BINGO GAMES:

(i) and (ii) are adopted as proposed.

(iii) records documenting the starting and ending cash bank which must be verified by ~~at-least-two-persons-by~~ a signature. THE AMOUNT OF THE STARTING BANK MUST BE VERIFIED BY THE SIGNATURE OF AT LEAST ONE PERSON RESPONSIBLE FOR COUNTING OR MANAGING THE STARTING GAME BANK. THE ENDING BANK MUST BE VERIFIED BY THE SIGNATURE OF AT LEAST ONE PERSON RESPONSIBLE FOR COUNTING OR MANAGING THE ENDING GAME BANK. IN NO CASE MAY THE SAME PERSON VERIFY BOTH STARTING AND ENDING CASH BANK AMOUNTS.

(iv) and (v) are adopted as proposed.

(B) THE FORM(S) ON WHICH DAILY LIVE KENO AND BINGO RECORDS ARE KEPT MUST, AT A MINIMUM, PROVIDE FOR THE REQUIREMENTS OF SUBSECTION (1)(A). IF NECESSARY, THE FORM(S) MUST ALSO PROVIDE FOR THE FOLLOWING:

(I) IF LIVE GAME CASH IS USED TO PAY EXPENSES OTHER THAN PRIZE PAYOUTS, THE DAILY RECONCILIATION FORM(S) MUST INCLUDE AN ENTRY FOR THESE EXPENSES. IN ADDITION TO THE RECONCILIATION ENTRY, COPIES OF THE EXPENSE RECEIPTS MUST BE ATTACHED TO AND KEPT WITH THE ASSOCIATED DAILY RECORDS.

(II) IF ADJUSTMENTS ARE MADE TO INCREASE OR DECREASE THE STARTING BANK BALANCE FOR THE NEXT DAY OR SESSION OF PLAY, THE ADJUSTMENTS MUST BE ACCOUNTED FOR ON THE OPERATOR'S DAILY RECONCILIATION FORM(S).

(2)(a) and (b) are adopted as proposed.

(c) ~~once-a-week, gross income from one-day's play must be verified by the game manager/owner by counting the inside cards retained for receipting purposes for one-day's play, segregated by card prices, and totalling payout slips. Any variations in excess of \$5.00 between the gross income figures calculated using the card count and actual bank record must be investigated. A log must be maintained detailing the findings of the card count and comparison with the actual bank. The log must indicate the number of cards sold and pay-outs by card price. The log must also detail the conclusions reached in the investigation of variations between the card count and actual bank.~~ IF, IN THE GAME BANK RECONCILIATION PROCESS, THE OPERATOR EXPERIENCES A NET CASH OVERAGE OR SHORTAGE IN EXCESS OF 1% OF GROSS GAME INCOME FOR A ONE MONTH PERIOD, THE OVERAGE OR SHORTAGE MUST BE INVESTIGATED. A RECORD DETAILING THE FINDINGS OF THE INVESTIGATION MUST BE MAINTAINED WITH OTHER REQUIRED RECORDS;

(d) through (h) are adopted as proposed.

(3)(a) and (b) are adopted as proposed.

~~(e) a record of the total number of bingo cards sold;~~

(d) is adopted as proposed.

(e) the day's gross proceeds must be reconciled with the ending bank balance. Any variation in excess of \$5.00 must be investigated. A log must be kept detailing the findings of these investigations. IF, IN THE BANK RECONCILIATION PROCESS, THE OPERATOR EXPERIENCES A NET CASH OVERAGE OR SHORTAGE IN EXCESS OF 1% OF THE GROSS GAME INCOME FOR A ONE MONTH PERIOD, THE OVERAGE OR SHORTAGE MUST BE INVESTIGATED. A RECORD DETAILING THE FINDINGS OF THE INVESTIGATION MUST BE MAINTAINED WITH OTHER REQUIRED RECORDS. For the purposes of calculating gross proceeds, promotional game prizes must be subtracted from the total payouts.

(f) and (g) are adopted as proposed.

AUTH: SEC. 23-5-115, MCA

IMP: SEC. 23-5-409, MCA

COMMENT AND RESPONSE: Committees called together by the division for input on recordkeeping rules objected to the requirement that the form be supplied by the division in section (1). The division agrees and added minimum form standards under (1)(b).

The committees also felt that the requirement that differences found in the cash reconciliation process of \$5.00 or more each day be investigated was burdensome, in section (2)(c) and (3)(e). The division agrees and changes the amount of the difference to a lesser amount, 1% of gross income for a one month period.

RULE VI (23.16.2403) EXPENSES ALLOWED IN CALCULATING NET LIVE KENO OR BINGO TAXABLE INCOME This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-409, MCA

COMMENT AND RESPONSE: The GIA requested clarification of expenses incurred for the production of the live game only. The

department overrules this request on the grounds that the rule specifies types of expenses to the extent of its statutory authorization.

Rich Miller objects that the rule exceeds statutory authority. The department overrules this objection on the grounds that this rule only implement Section 23-5-409, MCA.

RULE VII (23.16.2406) PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES All-live-game-operators-must-provide-a-pay-table-listing the-prizes-awarded-to-winning-cards. All-valid-winning-cards must-be-paid-in-full-as-per-the-pay-table. In-no-case-may-the total-prize-exceed-\$100-per-individual-bingo-award-or-\$100-per card-in-a-keno-game. Bingo-games-may-not-be-extended-in-any manner-so-as-to-exceed-the-prize-limitations-nor-may-identical cards-be-played-so-as-to-exceed-prize-limitations. In-keno-players-may-not-make-multiple-bets-on-a-single-card.

(1) ALL LIVE KENO OPERATORS MUST PROVIDE A PAY TABLE LISTING PRIZES AWARDED ON WINNING CARDS. ALL VALID WINNING KENO CARDS PRESENTED TO THE KENO CALLER BEFORE THE NEXT GAME MUST BE PAID IN FULL AS PER THE PAY TABLE. IN NO CASE MAY THE TOTAL PRIZE EXCEED \$100 PER KENO CARD. IN NO CASE MAY MULTIPLE BETS BE MADE ON A SINGLE KENO CARD.

(2) ALL LIVE BINGO OPERATORS MUST PROVIDE A LIST OF GENERAL GAME RULES AND NORMAL PRIZE PAYOUTS. THIS PROVISION DOES NOT PRECLUDE BINGO OPERATORS FROM CONDUCTING GAMES NOT LISTED IN THEIR RULES OR ADJUSTING PAYOUTS, AS LONG AS THE GAMES ARE LEGAL UNDER THE PROVISIONS OF THE STATUTES AND ADMINISTRATIVE RULES AND THE CHANGES ARE ANNOUNCED TO THE PLAYERS BEFORE THE GAME BEGINS. ALL VALID WINNING BINGO CARDS MUST BE PAID IN FULL AS PER THE LISTED OR ANNOUNCED PRIZES. IN NO CASE MAY THE PRIZES PAID OUT EXCEED \$100 PER INDIVIDUAL BINGO AWARD. IN NO CASE MAY BINGO GAMES BE EXTENDED IN ANY MANNER SO AS TO EXCEED THE PRIZE LIMITATIONS; IDENTICAL CARDS MAY NOT BE PLAYED SO AS TO EXCEED PRIZE LIMITATIONS.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-412, MCA

COMMENT AND RESPONSE: Counsel for the ACC, the GIA, and Rich Miller all commented that this rule should be amended to harmonize with Section 23-5-412, MCA. The department agrees; the revision of this rule attempts to do this.

The GIA commented that the term "pay table" needed clarification in the context of manager discretion to offer unique games. The department agrees; the revision of this rule attempts to do this.

Rich Miller commented that winners should be required to collect before the next game (excepting successive games played pursuant to Section 23-5-412, MCA). The department agrees; the second sentence of subsection (1) addresses this.

RULE VIII (23.16.2407) ACTUAL CASH PROFIT BANK DEPOSIT REQUIRED BY LICENSED OPERATOR (1) The actual cash profit of live keno and bingo games, less the increase or plus the decrease in the normal cash bank for the next keno or bingo day's play, must be deposited intact in the operator's bank account at least twice a month. Receipts-must-be-retained-for-any-cash-expenses

~~paid-out-of-the-gross-proceeds---A-copy-of-the-receipt-must-be retained-with-the-live-keno-or-bingo-game-records-at-all-times.~~ If the operator prepares a deposit slip for the deposit of actual cash profit from only one day's activity, the validated deposit slip or receipt must contain a reference to the date of the occasion, AND deposit amount, and be included as part of the daily accounting records. If the operator prepares one deposit slip for the deposit of ~~actual-gross-proceeds-from~~ more than one ~~keno-or-bingo-day~~ DAY'S ACTIVITY or other gambling activity, or both, the deposit slip must contain a reference to, the dates played, deposit subtotals by activity, and be included as part of the daily accounting records.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-409, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that the bank deposit requirements in the rule do not appear to have a statutory basis. The department disagrees. The net income/gross proceeds tax is established by statute and the department is given authority to make rules specifying recordkeeping requirements (Section 23-5-409, MCA). The department is also charged with the duty of protecting the integrity of gambling taxes (Section 23-5-110, MCA). In order to protect the integrity of the gross proceeds/net income tax, either an extensive receipting system or a bank deposit system must be used. After extensive consultations with industry representatives it was agreed that the bank deposit system was preferable. It was adopted.

Rich Miller objected to the rule as burdensome and intrusive. While this may be true, the Legislature has established this tax, and there are very few taxes which are not burdensome and intrusive. The department has consulted extensively with industry representatives in an attempt to minimize the burden and intrusion.

RULE IX (23.16.2410) PENALTIES This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-409, MCA
SEC. 23-5-115, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested the addition to the implementation note. The department agrees; the suggestion is adopted.

The GIA and Rich Miller found the penalty structure punitive. These objections are overruled for the reasons given by the department regarding the penalties in 23.16.1726, ARM. That rule was the source of this penalty structure.

RULE X (23.16.2801) DEFINITIONS This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-221, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that the definition of "calcutta pool" differed from that in Section

23-5-221, MCA. That is true. The department did not wish to run afoul of Section 2-4-305(2), MCA, but desired to supplement the statutory definition.

RULE XI (23.16.2802) RESTRICTIONS ON CALCUTTA POOLS (1)
~~Calcutta pools must meet all of the following restrictions:~~
~~(a)--The organization conducting the pool must be authorized by the department;~~
~~(b)--The rules of the pool must be publicly posted in advance of the auction;~~
~~(c)--At least 50 percent of the total pool of wagers must be paid out in prizes; and~~
~~(d)--The proceeds from the pool must be contributed to a charitable or nonprofit corporation, association, or cause.~~
~~(2)--No calcutta pool may be based upon an underlying elementary or high school sports event.~~

(1) CALCUTTA POOLS MUST MEET ALL THE REQUIREMENTS OF SECTION 23-5-221, MCA.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-221, MCA

COMMENT AND RESPONSE: Counsel for the ACC found that this rule ran afoul of Section 2-4-305(2), MCA. The department agrees; the rule is amended.

RULE XII (23.16.2803) APPLICATION FOR AUTHORIZATION TO CONDUCT A CALCUTTA POOL (1)(a) is adopted as proposed.
(b) the number of competitors in the underlying event (ACTUAL NUMBER OR BEST ESTIMATE);
(c) through (f) are adopted as proposed.
(2) adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-221, MCA

COMMENT AND RESPONSE: The GIA suggested a clarification, since the number of competitors in an underlying event may not be known. The department agrees; it adopts the suggestion.

RULE XIII (23.16.2806) MISREPRESENTATION - PENALTIES
(1) If, upon investigation, the department determines that an organization authorized to conduct a calcutta pool has failed to comply with the laws of the state of Montana or the rules of the department or has misrepresented any material fact in its application for an authorization to conduct a calcutta pool, the department may:
~~----(a)--deny any future application by said organization for authorization to conduct a calcutta pool; or~~
~~(b)--take any other action authorized by law.~~
(2) and (3) are adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-221, MCA
SEC. 23-5-136&223, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that subsection (1)(a) appeared to lack a statutory basis. The department agrees; subsection (1)(a) is deleted. Counsel for the ACC also proposed the changes to the implementation note; they

are adopted.

RULE XIV (23.16.3001) ILLEGAL GAMBLING--PRESUMPTION This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-111, MCA
Sec. 23-5-151, MCA

COMMENT AND RESPONSE: This rule and Rule XV were adamantly opposed by the GIA and considered redundant by the MTA. The GIA felt that the department was shifting the burden of proof by rule. The MTA felt that there was no need for a standard of probable cause. The department overrules these objections. In light of Art. III, Section 9 of the Montana Constitution and Section 23-5-110, 151, 152, and 153, MCA, the department believes it is its duty to address the issue of illegal gambling. A rebuttable presumption based on probable cause with full rights of administrative and judicial review was felt to be the best method of carrying out this duty while respecting the rights of the people.

RULE XV (23.16.3002) PROCEDURE UPON PRESUMPTION This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-111, MCA
Sec. 23-5-151, MCA
Sec. 23-5-113&136, MCA

COMMENT AND RESPONSE: Counsel for the ACC suggested the additions to the implementation note; the suggestion is adopted. Also, see comments on previous rule (XIV).

RULE XVI (23.16.2601) DEFINITION This rule is adopted as proposed.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-405, MCA

COMMENT AND RESPONSE: Counsel for the ACC commented that the rule differed from Section 23-5-114(28), MCA. This is true. The department believed that the statutory definition needed to be supplemented. The rule definition is taken from Gambling Devices (Cheyenne Elks) v. State, 694 P.2d 711, 718 (Wyo. 1985).

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State: April 16, 1990.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA
IN AND FOR THE AREA OF

In the matter of the adoption)
of Rules 24.5.302 and 24.5.305,)
amendment of Rules 24.5.101,)
24.5.301, 24.5.303, 24.5.308,) NOTICE OF ADOPTION,
24.5.309, 24.5.310, 24.5.316,) AMENDMENT AND REPEAL
24.5.317, 24.5.318, 24.5.322,) OF RULES OF THE
24.5.323, 24.5.324, 24.5.330,) WORKERS' COMPENSATION
24.5.331, 24.5.343, 24.5.344) COURT
24.5.348, and 24.5.350, and)
repeal of Rule 24.5.359 of the)
Workers' Compensation Court.)

TO: All Interested Persons

1. On February 22, 1990, the Workers' Compensation Court published a Notice of Proposed Amendment of ARM 24.5.101, 24.5.301, 24.5.303, 24.5.308, 24.5.309, 24.5.310, 24.5.316, 24.5.317, 24.5.318, 24.5.322, 24.5.323, 24.5.324, 24.5.330, 24.5.331, 24.5.343, 24.5.344, 24.5.348, and 24.5.350; adoption of Rules ARM 24.5.302 and 24.5.305 and repeal of Rule ARM 24.5.359 at page 349, Montana Administrative Register, Issue No. 4 of 1990.

2. No public hearing was held but interested parties were asked to submit their data, views or arguments to the court in writing by March 26, 1990. The court has considered all written commentary received subsequent to the original notice date and responds to those comments as follows:

COMMENT: 24.5.101 ORGANIZATION RULE, subsection (2)(j). The proposed language provides that "no further disqualification procedures shall be permitted except as provided in Section 3-1-803, MCA." Section 3-1-803, MCA, does not apply to the workers' compensation judge; if the court wishes to provide that no additional disqualification may be permitted for the reasons stated in that statute the language should be amended to so state.

RESPONSE: The court agrees with the above comment and will amend the rule.

COMMENT: 24.5.308 JOINING THIRD PARTIES, subsection (3). The new language provides that if joinder of a third party results in delay of a trial, the court must order the insurer allegedly responsible at the time of the accident to pay benefits pending the trial. Section 2-4-201, MCA, gives the court rulemaking authority only in the area of establishing court procedures. The provision that an insurer pay benefits pending the outcome of the trial appears to be a substantive requirement that the court does

not have the authority to adopt.

RESPONSE: Subsection (3) is added to advise the parties of the action that the court will take to assure that a claimant is not without benefits when a motion for joinder is made which may result in a delay of the trial date. Generally this action is followed by the insurers without the need for the court to make an order.

The court will amend this rule by changing the first sentence as follows: "If the joinder of a third party results in the trial being vacated and good cause is shown, the court ~~must~~ may order that the insurance company on risk at the time of the accident alleged by the claimant to be responsible for his disability to pay benefits pending the trial." With this change the rule is discretionary and the court will be exercising its inherent power to control its proceedings without penalizing a claimant with a delay in the trial date.

COMMENT: 24.5.317 MEDICAL RECORDS, subsection (2). This section could be construed to automatically grant a party the ability to take a post trial deposition which is not the court's normal practice. Permission of the court is necessary for the taking of post trial depositions.

RESPONSE: The court agrees and amends the rule to require permission for the taking of a post trial deposition as set forth in 24.5.322 (1).

COMMENT: 24.5.322 DEPOSITIONS. This rule does not set forth the court's usual practice of requiring leave of court to take post trial depositions.

RESPONSE: The court will amend 24.5.322 (1) by inserting the language, "The taking of post trial deposition requires leave of court."

COMMENT: 24.5.322 DEPOSITIONS, subsection (5). Court practice has been to allow a party that makes an objection during the taking of a deposition, to present argument regarding that objection upon the filing of proposed findings of fact and conclusions of law. The requirement that objections be presented at the time of trial does not take into consideration post trial depositions.

RESPONSE: The rule will be amended to allow objections to also be presented upon the filing of proposed findings of fact and conclusions of law.

conclusions of law.

COMMENT: 24.5.324 MOTIONS TO PRODUCE. The catchphrase is inconsistent with the rule in its usage of word motion. By entitling this document as a motion, the court automatically calendars for a ruling, conceivably creating confusion and delay. More appropriately, parties should make a request to produce.

RESPONSE: The court agrees and will amend the catchphrase.

3. The Office of the Workers' Compensation Judge has adopted, amended and repealed the rules as proposed with the following changes:

24.5.101 ORGANIZATION ORGANIZATIONAL RULE (1) Same as existing rule.

(2) (a-i) Same as existing rule.

(2)(j) Recusal of workers' compensation judge. Upon the filing of a petition requesting that a settlement previously reviewed by the judge be set aside on basis of fraud, lack of capacity, mutual mistake or other matters previously reviewed by the compensation judge, the compensation judge shall accept jurisdiction unless an interested party, within twenty days of receipt of notice of the proceeding, shall show good cause for the judge to recuse himself. In the event of recusal, either for good cause shown by an interested party or sua sponte because the basis asserted for setting aside the settlement involves matters from the settlement documents previously reviewed, the judge shall require the parties to confer and agree on the names of three district judges or retired judges to be submitted to the compensation judge within ten days of the date of recusal. The compensation judge shall select one of those so named and extend an invitation to assume jurisdiction over the matter. Should the invitation be refused, it shall be extended to another judge or retired judge, on the list, and thereafter to the third judge or retired judge. The selection from the list is in the sole discretion of the compensation judge, until a judge or retired judge agrees to assume jurisdiction over the matter. Once jurisdiction of the case has been assumed under this rule, no further disqualification procedures shall be permitted except as provided for the reasons stated in section 3-1-803, MCA.

(3) Same as existing rule.

(4) Same as existing rule.

(5) Same as existing rule.

AUTH: Sec. 2-4-201, MCA IMP: 2-4-201, MCA

24.5.308 JOINING THIRD PARTIES (1) Same as existing rule.

(2) Same as existing rule.

(3) If the joinder of a third party results in the trial being vacated and good cause is shown, the court ~~must~~ may order that the insurance company on risk at the time of the accident alleged by the claimant to be responsible for his disability to pay benefits pending the trial. That insurer has a right to seek indemnity from the responsible insurer if it is later determined that it was not responsible.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.317 MEDICAL RECORDS (1) Same as existing rule.

(2) Medical records based on an examination of the claimant and exchanged by the parties or their attorneys by the exchange deadline are admissible without the necessity of foundation testimony. A party may object to those reports being admitted into evidence and the objecting party will be allowed to depose or subpoena the author of any such records for purposes of cross-examination. An objecting party may subpoena the author for trial, or deposition before or subsequent to trial as provided in 24.5.322 (1).

(3) Same as existing rule.

(4) Same as existing rule.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.322 DEPOSITIONS (1) Any party may take the testimony of any person, including a party, by deposition upon oral examination after the petition has been filed. Leave of court, granted with or without notice, must be obtained only if the claimant seeks to take a deposition prior to the expiration of twenty-three days from the date of filing of the petition. The taking of a post trial deposition requires leave of court. The attendance of witnesses may be compelled by subpoena as provided by ARM 24.5.331.

(2) Same as existing rule.

(3) Same as existing rule.

(4) Same as existing rule.

(5) Same as existing rule.

(6) Same as existing rule.

(7) Same as existing rule.

(8) Same as existing rule.

(9) Same as existing rule.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.324 MOTIONS REQUEST TO PRODUCE (1) Same as existing rule.

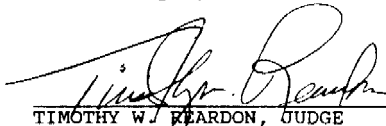
(2) Same as existing rule.

(3) Same as existing rule.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

The amendments to, adoption of and repeal of these rules are necessary in order to comply with Supreme Court decisions regarding procedures and those changes to the workers compensation act which were made during the 1987 and 1989 legislative sessions.

4. These rules become effective May 1, 1990.


TIMOTHY W. REARDON, JUDGE

Certified to the Secretary of State April 16, 1990

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION
adoption of rules concerning	)	OF RULES ESTABLISHING
Montana's minimum hourly	)	MONTANA'S MINIMUM
wage rate	)	HOURLY WAGE RATE;
		24.16.1509, 24.16.1510

TO: All interested persons:

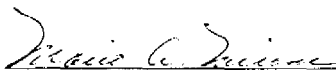
1. On March 15, 1990, the Department of Labor and Industry published a notice of proposed adoption of rules concerning Montana's minimum hourly wage rate. The notice can be found on pages 454 through 455 of the 1990 Montana Administrative Register, Issue No. 5.

2. No comments concerning the proposed rules were received.

3. The Department has adopted the rules as proposed.

4. The authority of the Department to adopt the proposed rules is based on section 39-3-403, MCA and the rules implement section 39-3-409, MCA.

Certified to the Secretary of State April 16, 1990



Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule	)	RULE 46.12.3803 PERTAINING
46.12.3803 pertaining to	)	TO MEDICALLY NEEDY INCOME
medically needy income	)	LEVELS
levels)	

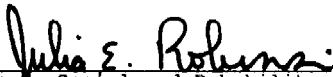
TO: All Interested Persons

1. On February 22, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.3803 pertaining to medically needy income levels at page 368 of the 1990 Montana Administrative Register, issue number 4.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.

4. This rule will be applied retroactively to January 1, 1990.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 16, 1990.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements, of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

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To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1989, this table and the table of contents of this issue of the MAR.

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