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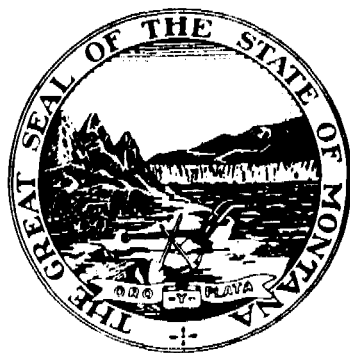
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JUN 14 1991

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER **OF MONTANA**

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 2.21.1801	) THE AMENDMENT OF ARM
through 2.21.1803, 2.21.1811,	) 2.21.1801 THROUGH 2.21.1803
and 2.21.1812 and the adoption	) 2.21.1811, and 2.21.1812
of new rules relating to leave	) AND THE ADOPTION OF NEW
administration for salaried	) RULES RELATING TO LEAVE
employees	) ADMINISTRATION FOR
	) SALARIED EMPLOYEES

TO: All Interested Persons.

1. On July 9, 1991, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.21.1801 through 2.21.1803, 2.21.1811, and 2.21.1812 and the adoption of new rules relating to leave administration for salaried employees.

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

2.21.1801 SHORT TITLE (1) This sub-chapter may be cited as the exempt compensatory time leave administration for salaried employees policy.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.1802 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to allow that agencies may designate state employees as "salaried" employees. Salaried employees must be who are exempt from the federal Fair Labor Standards Act of 1938 (FLSA, Title 29 USCA, Chap. 8, Sec. 201-219, as amended). Salaried employees will not have their salary reduced or be required to use accumulated leave for absences of less than one day. Salaried employees will be allowed to accrue and use exempt compensatory time in compliance with this policy and additional agency policy and procedures. State and federal law do not require the state to make the accrual or use of compensatory time available to exempt employees. Exempt compensatory time is not intended to provide any compensation in addition to the salaries established in statute. Rather, it is a means of providing greater flexibility in scheduling time for exempt, salaried employees.

(2) State employees who are not designated as salaried will be treated as non-exempt employees who are covered by the provisions of the Fair Labor Standards Act.

(3) Nothing in this policy guarantees that an exempt salaried employee will be allowed to work hours on days which result in the accrual or use of exempt compensatory time. Each request to work on such hours days shall will be approved or disapproved by the agency, in compliance with this policy and additional agency policy and procedures.

(4) The objective of this policy is to establish minimum standards for the administration of leave and exempt

compensatory time for salaried state employees not subject to the overtime provisions of the FLSA.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.1803 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Exempt compensatory time" means time accrued on an hour-for-hour basis for hours worked on a day outside the employee's regular work schedule, time in a pay status in excess of 40 hours in a workweek. Accrued exempt compensatory time may be taken as approved paid time off at a later date for absences of one day or longer.

(2) "Exempt employee" means an employee in a position designated as executive, administrative, or professional, which is not subject to the overtime pay provisions of the federal FLSA and its regulations. Exemptions are listed in Section 13 of the FLSA and further defined in 29 CFR 541.

(3) "Regular work schedule" means the schedule a salaried employee is normally expected to work.

(4) "Salaried employee" means an employee who is designated by the department director or designee as "salaried" under this policy and is not subject to the overtime provisions of the federal FLSA. A salaried employee must meet the definitions for executive, administrative or professional exemptions of the federal FLSA and its regulations. Exemptions are listed in Section 13 of the FLSA and are further defined in 29 CFR 541.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.1811 ADMINISTRATION OF EXEMPT COMPENSATORY TIME

(1) Only hours worked on days outside a salaried employee's regular work schedule. All hours in a pay status shall may be counted as hours worked for purposes of calculating exempt compensatory time earned. Absent time in a pay status, including holidays, paid leaves, and exempt compensatory time taken off is counted as hours worked.

(2) Hours worked in excess of 40 in a workweek on days outside the salaried employees regular work schedule shall must be reported on a time and attendance form, as prescribed by the agency, to be accrued as exempt compensatory time.

(3) - (5) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.1812 EXEMPT SALARIED EMPLOYEES AND EXEMPT COMPENSATORY TIME

(1) An exempt salaried employee must obtain approval from his or her supervisor, in advance whenever possible, to work hours which may result in the accrual of exempt compensatory time.

(2) The employee's supervisor determines whether hours worked by an exempt salaried employee on days outside the employee's regular work schedule which exceed 40 in a workweek will be accrued as exempt compensatory time under these rules. The supervisor may approve or deny the accrual of exempt compensatory time either before or after the hours are worked.

(3) Remains the same.

(4) The employee's supervisor decides whether hours on days outside the employee's regular work schedule in excess of 40 in a workweek which an exempt employee spends traveling or attending conferences, lectures, meetings, education, or training should be credited as exempt compensatory time under these rules.

(5) Accrued exempt compensatory time may be taken off by the employee at a mutually agreeable later date during the employee's regular working hours schedule, if the use of the compensatory time does not unduly disrupt the operations of the agency. Where the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest to take exempt compensatory time off. An agency may require an exempt employee to take accrued exempt compensatory time off during any workweek. Exempt compensatory time may only be taken off for leaves of absence of one day or longer.

(6) - (8) Remain the same.

(9) An agency may adjust the schedule of an exempt salaried employee within a workweek to avoid the accrual of compensatory time. An agency may require an exempt salaried employee to take accrued exempt compensatory time off during any workweek. Exempt compensatory time may only be taken for leaves of absence of one day or longer.

(10) - (13) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. The proposed new rules provide as follows:

RULE 1 LEAVES OF ABSENCE FOR SALARIED EMPLOYEES

(1) State employees designated as salaried will not have their salary reduced or be required to use accumulated leave for absences from work of less than one day in compliance with the "salary basis" of payment as provided in the FLSA (29 CFR, 541.118).

(2) Salaried employees are required to use accumulated annual leave, sick leave or exempt compensatory time for leaves of absence of one day or longer. If the salaried employee does not have adequate accumulated leave to cover an absence of one day or longer, the employee's salary will be reduced for any hours in excess of accumulated leave.

(3) State employees who are not designated as "salaried" are covered by the provisions of ARM 2.21.1701 et seq., the overtime and nonexempt compensatory time policy, regardless of whether they meet the definitions for executive, administrative or professional exemptions of the federal FLSA and its regulations.

(4) Salaried employees are required to keep a record of hours worked and any leaves of absence. Employees who fail to keep adequate time records, who fail to seek approval for leaves of absence, or who have excessive leaves of absence shall be subject to discipline under the discipline handling policy, ARM 2.21.6505 et seq.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II DISCRETIONARY LEAVE WITH PAY (1) Salaried employees who work an extraordinary schedule where they cannot be adequately compensated through the accrual of exempt compensatory time under ARM 2.21.1811 may be granted additional exempt compensatory time in one-day increments. A grant of discretionary leave with pay need not be on an hour-for-hour basis. A grant of discretionary leave with pay must be approved by the supervisor.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III CASH COMPENSATION IN LIEU OF DISCRETIONARY LEAVE

(1) Salaried employees, in rare circumstances, may be granted an equivalent amount of cash compensation in lieu of discretionary leave with pay, provided in Rule II, if:

(a) required to work substantial overtime over a long period of time,

(b) discretionary leave with pay is not a viable option, and

(c) cash compensation is approved by the department director.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

4. The amendment of rules and adoption of new rules is reasonably necessary to meet recent federal interpretations of the Fair Labor Standards Act (FLSA) pertaining to exempt employees (executive, administrative and professional), and defining under what circumstances an employee is or is not paid on a salary basis. The proposed amendments and new rules clarify which employees are salaried, and therefore exempt from the requirements of the Fair Labor Standards Act. The proposed amendments and new rules apply the U.S. Department of Labor definitions of salaried employees, at C.F.R. 541.118, to employees in state government.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments and new rules to Laurie Ekanger, Administrator, State Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than July 15, 1991.

6. James A. Edgcomb, personnel policy coordinator, State Personnel Division, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments and adoption is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.



Bob Marks, Director
Department of Administration

Certified to the Secretary of State June 3, 1991.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
adoption of a New Rule)	ADOPTION OF A NEW RULE
pertaining to the honeybee)	PERTAINING TO THE HONEYBEE
hourly inspection fee)	HOURLY INSPECTION FEE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 13, 1991, the Department of Agriculture proposes to adopt a new rule relating to honeybee hourly inspection fee.

2. The proposed new rule will read as follows:

RULE 1 HOURLY INSPECTION FEE (1) The hourly inspection fee authorized in HB66, 1991 Montana Legislative Session shall be \$20 per hour for actual inspection time. The fee shall be charged from the time inspection begins on site until inspection is completed at the final site. Travel time shall not be included except for that between apiary sites.

AUTH: HB66, 1991 Montana Legislative Session IMP: HB66, 1991 Montana Legislative Session


REASON The passage of HB66, 1991 Montana Legislative Session, authorized the Department of Agriculture to charge an hourly fee when inspecting honeybee hives which are being transported interstate, and are not covered by a compliance agreement. The purpose of the fee was two fold: (1) to recover the costs to the General Fund of providing such inspections, and (2) providing an incentive for beekeepers to qualify for and enter into compliance agreements, which are further authorized under HB66, 1991 Montana Legislative Session.

A \$20 per hour fee was proposed throughout the process of amending the law to allow for such a fee as was indicated in the fiscal note attached to HB66. The Montana State Beekeepers Association supported a \$20 fee at its annual meeting held in November, 1990. No objection to the fee is expected.

3. Interested persons may present their data, views, or arguments either orally or in writing to O. Roy Bjornson, Montana Department of Agriculture, Plant Industry, Ag/Livestock Building, Capitol Complex, Helena, MT 59620, no later than July 11, 1991.

4. If a person who is directly affected by the proposed adoption 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 O. Roy Bjornson, Administrator, Department of Agriculture, Ag/Livestock Building, Capitol Complex, Helena, MT 59620, no later than July 11, 1991.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any 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 and mailed to all interested persons.



O. ROY BJORNSON, ADMINISTRATOR
DEPARTMENT OF AGRICULTURE

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.36.403 APPLICATION FOR
to examinations) EXAMINATION AND 8.36.404
) EXAMINATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 13, 1991, the Board of Optometrists proposes to amend the above-stated rule.

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

"8.36.403 APPLICATION FOR EXAMINATION (1) Application blanks will be furnished by the department upon request and each applicant must file his completed application with the department at least 4 weeks before the examination shall be held. No application will be considered which is incomplete. The department shall notify each applicant as to the acceptance or refusal of his application at least one week prior to the regular July meeting. All candidates for examination shall file the appropriate application with the national board of examiners in optometry along with the proper fees as required by the national board of examiners in optometry in accordance with the clinical skills examination requirements.

(2)--No application fee for examination will be returned after the application has been accepted, regardless whether the applicant withdrew the application or failed to take the examination."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-302, MCA

REASON: This amendment is proposed to provide uniformity with the testing systems of other jurisdictions.

"8.36.404 EXAMINATIONS (1) The examination for admission to practice optometry in the state of Montana shall consist of two parts the following:

(a) will remain the same.

(b) Oral and practical examinations as given by the board, with a grade of not less than 75% required for each part for passing. All applicants must pass all parts of the clinical skills/VRICS examination administered by the national board of examiners in optometry.

(2)--Each candidate will be notified as to his success or failure in the examination at any time within 3 weeks after the examination has been completed."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-302, MCA

REASON: This amendment is necessary to facilitate the uniform national board of examiners in optometry examination by removing the board of optometrists from directly monitoring examinations.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Optometrists, 111 North Jackson, Helena, Montana 59620-0407, no later than July 11, 1991.

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 Optometrists, 111 North Jackson, Helena, Montana 59620-0407, no later than July 11, 1991.

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.

BOARD OF OPTOMETRISTS

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 3, 1991.

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.61.401 DEFINITIONS
to definitions)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 13, 1991, the Board of Social Work Examiners and Professional Counselors proposes to amend the above-stated rule.

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

"8.61.401 DEFINITIONS (1) "Psychosocial methods" means those professional techniques which are identified as clinical in nature and:

(1)(a) through (d) will remain the same."

Auth: Sec. 37-22-201, MCA; IMP, Sec. 37-22-102, 37-22-201, MCA

REASON: This amendment is necessary to further define psychosocial as being clinical.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Social Work Examiners and Professional Counselors, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than July 11, 1991.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Social Work Examiners and Professional Counselors, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than July 11, 1991.

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 17 based on the 179 social workers licensed in Montana.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
R. SIMONTON, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 3, 1991.

BEFORE THE WEIGHTS AND MEASURES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to scale pit clearance, fees, and voluntary registration of servicemen and service agencies and the proposed adoption of rules pertaining to weighing device license transfer, random inspection of packages, liquified petroleum gas and accessibility to stock scales)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE REGULATION OF WEIGHTS AND MEASURES
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TO: All Interested Persons:

1. On July 16, 1991, at 9:00 a.m., a public hearing will be held in the conference room of the Department of Natural Resources and Conservation building, 1520 East 6th Avenue, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to the above-listed subjects.

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

"8.77.101. SCALE PIT CLEARANCE (1) will remain the same.

(2) Scale pits shall not be required for fully electronic scales unless they the pit is are necessary for the installation, operation or maintenance of the particular scale.

(3) Electronic Scales which do not require a pit for their installation, operation, or maintenance shall be installed in strict compliance with the manufacturers specification for each specific model and with the U.S. Bureau of Standards Handbook 44.

(4) Scale pits must have concrete walls, surrounding the entire pit, substantial in both durability and strength to prevent soil, snow and other materials from entering the pit area and preventing the scale from operating properly. The requirements of this section will apply only to those scales installed after its adoption."

Auth: Sec. 30-12-202, MCA; IMP, Sec. 30-12-202, MCA

REASON: This amendment is being proposed to clarify when a scale pit is not required and further clarify that when a pit is required, how it shall be constructed to insure durability and continued accuracy of the scale.

"8.77.102. FEES FOR TESTING AND CERTIFICATION

(1) Special inspection fees:

(a) units over 5,000 pounds of testing weights \$0-60 \$1.00 a mile;

(b) all other units \$0-30 \$0.50 a mile;

(c) additional time for testing by inspection \$20-00 \$30.00 an hour.

(2) Where fees are not paid within thirty (30) days after inspection, the equipment will be sealed and removed from service by the sealer of weights and measures, or his deputies, until such fees have been paid. The weights and measures bureau will coordinate the special inspections, whenever possible, with other inspection activities in an effort to keep charges as reasonable as possible.

Auth: Sec. 30-12-202, 37-1-134, MCA; IMP, Sec. 30-12-203, MCA

REASON: These amendments are being proposed to make the fees commensurate with program area costs.

"8.77.104 VOLUNTARY REGISTRATION OF SERVICEMEN AND SERVICE (1) ~~Policy~~ It shall be the policy of the bureau chief of weights and measures, hereinafter referred to as "bureau chief" to accept voluntary registration of:

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

(c) this policy shall in no way preclude or limit the right and privilege of any qualified individual or agency not registered with the bureau chief to install, service, repair, or recondition a commercial weighing or measuring device.

(2) will remain the same.

(a) ~~Registered serviceman~~ The term "registered serviceman" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and who voluntarily registers himself as such with the bureau chief of weights and measures.

(b) ~~Registered service agency~~ "Registered service agency" means any agency, firm, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and which voluntarily registers itself as such with the bureau chief of weights and measures. Under agency registration, identification of individual servicemen shall not be required.

(c) ~~Commercial weighing and measuring device~~ The term "commercial weighing and measuring device" includes any weight or measure of weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchase, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

(3) ~~Reciprocity~~ The bureau chief may enter into an

informal reciprocal agreement with any other state or states that has or have similar voluntary registration policies. Under such agreement, the registered servicemen and the registered service agencies of the states party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of standards and testing equipment, in all states party to such agreement.

(4) ~~Registration-fee:~~ There ~~may~~ will be charged by the bureau chief an annual fee of ~~\$1.00~~ \$5.00 per registered serviceman and ~~\$5.00~~ \$10.00 per registered service agency to cover costs of administering the plan. Said fee shall be paid to the bureau chief at the time application for registration is made, and annually, during the month of January, thereafter.

(5) ~~Voluntary-registration:~~ An individual or agency may apply for voluntary registration to service weighing devices or measuring devices on an application form supplied by the bureau chief. Said form, duly signed and witnessed, shall include certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered; has in possession, or available for use, all necessary testing equipment and standards; and has full knowledge of all appropriate weights and measures laws; orders, rules and regulations. An applicant also shall submit appropriate evidence or references as to qualifications.

(6) ~~Certificate-of-registration:~~ Upon receipt and acceptance of a properly executed application form, the bureau chief shall issue to the applicant a "certificate of registration", including an assigned registration number, which shall remain effective ~~until either returned by the applicant or withdrawn by the bureau chief until December 31 each year unless revoked under subsection (10) below.~~

(7) ~~Privileges-of-a-voluntary-registrant:~~ A bearer of a certificate of registration shall have the authority to remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the bureau chief; place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected; and place in service, until such time as an official examination can be made, a new or used weighing or measuring device.

(8) ~~Placed-in-service-report:~~ The bureau chief shall furnish each registered serviceman and registered service agency with a supply of report forms to be known as "placed in service reports." Such a form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by a registered serviceman or by a serviceman representing a registered agency for each rejected device restored to service and for each newly installed device placed in service. Within 24 hours after a device is restored to service, or placed in service, the original of the properly executed placed in service report, together with any official rejection tag removed from the device, shall be mailed to the bureau chief at 1424-9th 1520 East 6th Avenue,

Room 50, Helena, Montana 59620. The duplicate copy of the report shall be left with the device, and the triplicate copy of the report shall be retained by the registered serviceman or agency.

(9) ~~Standards and testing equipment.~~ A registered serviceman and a registered service agency shall submit, at least biennially to the bureau chief for his examination and certification, any standards and testing equipment that are used, or are to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is measured. A registered serviceman or agency shall not use in servicing commercial weighing or measuring devices any standards or testing equipment that have not been certified by the bureau chief.

(10) ~~Revocation of certificate of registration.~~ The bureau chief may, for good cause after careful investigation and consideration, suspend or revoke a certificate of registration.

(11) ~~Publication of lists of registered servicemen and registered service agencies.~~ The bureau chief shall publish, from time to time as he deemed appropriate, and may supply upon request, lists of registered servicemen and registered service agencies."

Auth: Sec. 30-12-202, MCA; IMP, Sec. 30-12-202, MCA

REASON: These amendments are being proposed to clarify that authority lies with the Bureau rather than with a Bureau Chief; to clarify the licensing period; and to increase fees to make them commensurate with program area costs.

3. The proposed new rules will read as follows:

"I. WEIGHING DEVICE LICENSE TRANSFER (1) If ownership of a weighing device changes and the device remains at the same location, the license will transfer to the new owner and remain in effect until December 31 of that year.

(2) If ownership of a weighing device changes and the device is moved to a new location, the new owner will be required to apply for a new license which will expire on December 31 of that year."

Auth: Sec. 30-12-202, MCA; IMP, Sec. 30-12-203, MCA

REASON: This rule is being proposed to make consistent the license procedures for weighing and measuring devices within the Bureau.

"II. ACCESSIBILITY TO STOCK SCALES (1) All stock scales must be provided with access to the scale having a width at least equal to the width of the scale platform, having a length of at least five (5) feet from the scale platform enclosure, level with the deck of the scale platform and be constructed of concrete.

(2) A pathway must be provided to the scale access such that the test vehicle will not become mired down and such that the test vehicle can be parked in a relatively level position, both horizontally and vertically. The pathway is required to

have a width of from ten (10) to twelve (12) feet and a height clearance of at least fourteen (14) feet. This pathway must be continuous to the scale access concrete. All gates in the pathway must be in good working order."

Auth: Sec. 30-12-202, MCA; IMP, Sec. 30-12-203, MCA

REASON: Current standards provide authority for the Bureau to issue mandates requiring access to stock scales. The proposed rule formalizes the Bureau's requirements so that the public can be fully aware of what will be required of them.

"III RANDOM INSPECTION OF PACKAGES (1) As required by the statutes, the following implements a schedule for the random inspection of packages and commodities kept, offered or exposed for sale at randomly selected inspection sites throughout Montana.

(2) The state is divided into six (6) inspection regions and it is anticipated that each inspection region will complete approximately 800 random package inspections per year in random areas throughout the inspection region.

(3) The package inspections shall include all types of commodities as provided for in Title 30, chapter 12, parts 3 and 4, MCA, and Title 8, chapter 77, subchapter 2, Administrative Rules of Montana."

Auth: Sec. 30-12-202, 30-12-207, MCA, IMP, Sec. 30-12-207, MCA

REASON: This rule is being proposed to comply with a Legislative Audit Committee recommendation that packaging regulations be implemented. This recommendation resulted in legislation requiring a random schedule and this proposed rule implements that legislation.

"IV CHARGES FOR LIQUIFIED PETROLEUM GAS (1) As provided by section 82-15-109, MCA, liquified petroleum gas (LPG) shall be sold by liquid measure or weight as determined with a device licensed by the department. Customer charges for LPG purchase at retail shall be computed only on the basis of the net weight or liquid measure received by the purchaser. For sales of less than five gallons or twenty pounds, the retailer may charge, in addition to the charge for the LPG, a bottle filling service charge. If the retailer chooses to bill for a bottle filling service charge, the additional service charge must be clearly disclosed. The disclosure of the bottle filling service charge shall consist of the retailer's displaying the additional dollar amount for the filling service and the conditions under which the service fee will be charged. The disclosure shall be displayed in a clear and conspicuous manner on both the dispensing device and on all on-site signs advertising the availability of LPG at the site. Minimum transaction charges based on the size of the customer's LPG container or set at flat or fixed dollar amounts, without regard for the actual quantity of LPG remaining in the customer's container(s), are prohibited."


Auth: Sec. 82-15-102, MCA; IMP, Sec. 82-15-109, MCA

REASON: This rule is necessary to clarify charges for LPG to protect the consumers by requiring the full price declaration by the provider.

4. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Weights and Measures Bureau, 1520 East 6th Avenue, Room 50, Helena, Montana 59620, no later than July 13, 1991.

5. Steven J. Shapiro, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

WEIGHTS AND MEASURES BUREAU

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 3, 1991.

BEFORE THE BOARD OF COUNTY PRINTING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of ARM 8.91.303)	NOTICE OF PUBLIC HEARING
and 8.91.304 review to con-)	FOR REVIEW OF 8.91.303
sider increasing fees and)	OFFICIAL PUBLICATIONS AND
amending the schedule of)	LEGAL ADVERTISING AND
prices)	8.91.304 SCHEDULE OF PRICES

TO: All Interested Persons:

1. On Friday, July 12, 1991, at 9:30 a.m., a public hearing will be held in the downstairs conference room of the Montana Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to review ARM 8.91.303 and 8.91.304 and consider amendments.


2. The Board of County Printing will hold this hearing in response to a formal request from the Montana Newspaper Association to review the current maximum prices which may be charged for county printing and legal advertising, and to accept testimony, both orally and in writing, as to whether the current maximum prices should be changed.

3. Interested persons may present their views, data, or arguments either orally or in writing at the hearing. Written views, data or arguments may also be submitted to the Board of County Printing, Department of Commerce, Director's Office, 1424 - 9th Avenue, Helena, Montana 59620, no later than July 17, 1991.

4. Commerce Department Chief Legal Counsel. Annie Bartos, has been designated to preside over and conduct the hearing.

5. The authority and implementing section is 7-5-2402, MCA.

BOARD OF COUNTY PRINTING
DEPARTMENT OF COMMERCE
CHARLES A. BROOKE, DIRECTOR

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 3, 1991.

In the matter of the amendment) NOTICE OF PROPOSED
of Rule 11.7.604 pertaining to) AMENDMENT OF RULE 11.7.604
foster care support services) PERTAINING TO FOSTER CARE
) SUPPORT SERVICES
)
) NO PUBLIC HEARING
) CONTEMPLATED

1. On July 15, 1991, the Department of Family Services proposes to amend Rule 11.7.604 as it pertains to foster care support services provided in the form of clothing allowances.

11.7.604 FOSTER CARE SUPPORT SERVICES, CLOTHING ALLOWANCE

(d) ~~the child department has not previously received~~
~~already paid \$100 in clothing allowances during the year on~~
~~behalf of the child the maximum amount in clothing allowances~~
~~for the applicable and unexpired time period covering such~~
~~child as set out in subsection (2) of this rule.~~

(2) The amount of the clothing allowance is determined by the child's wardrobe and the extent to which clothing is needed, but in no case may the amount exceed \$100.00 per child per year for the consecutive 12 month period beginning on the date that the department makes the initial clothing allowance payment. The maximum amount of the clothing allowance may be paid in increments as determined by the department.

(3) The clothing allowance must be used to purchase necessary clothing for the child. The child's clothing, whether purchased with clothing allowance funds, or brought from home, goes with the child into each placement.

AUTH: Sec. 41-3-1103, MCA. IMP: Sec. 41-3-1103, MCA.

3. This rule change is necessary to implement the amendment of Section 41-3-1103, MCA (effective July 1, 1991), pertaining to maximum payments for clothing allowances. The amendment also clarifies the time period for determining payment of the maximum allowance, and attempts to ensure that clothing belonging to the child prior to initial placement, or clothing purchased with clothing allowances, remains in the child's possession when the child is moved to another placement.

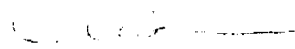
4. Interested parties may submit their data, views or arguments to the proposed amendment in writing to the Office of

Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 11, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 11, 1991.

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

DEPARTMENT OF FAMILY SERVICES



Tom L. Olsen, DIRECTOR

Certified to the Secretary of State, June 3, 1991.

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

In the matter of the adoption	)	NOTICE OF PROPOSED ADOPTION
of new Rules I through VI	)	OF NEW RULES I THROUGH VI
pertaining to fish health and	)	AND REPEAL OF ARM 12.7.501
importation rules and the)	
repeal of ARM 12.7.501)	

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On July 15, 1991, the Montana Department of Fish, Wildlife and Parks proposes to adopt the following rules.
2. The proposed rules are intended to replace ARM 12.7.501 currently found in the Administrative Rules of Montana.
3. The proposed new rules will read as follows:

RULE I DESIGNATED PATHOGENS (1) The following salmonid pathogens are determined by the department to pose a threat to existing fisheries for purposes of Montana's fish health and importation laws, 87-3-209, MCA et seq:

- (a) infectious hematopoietic necrosis virus (IHNV),
- (b) infectious pancreatic necrosis virus (IPNV),
- (c) viral hemorrhagic septicemia virus (VHSV),
- (d) Oncorhynchus masou virus (OMV),
- (e) Renibacterium salmoninarum (bacterial kidney disease),
- (f) Aeromonas salmonicida (furunculosis),
- (g) Yersinia ruckeri (type 1, common or Hagerman enteric redmouth disease),
- (h) Myxobolus cerebralis (salmonid whirling disease).

(2) The following non-salmonid fish pathogens are determined by the department to pose a threat to existing fisheries for purposes of Montana's fish health and importation laws, 87-3-209, MCA et seq:

- (a) Bothriocephalus acheilognathi (Asian tapeworm),
 - (b) White sturgeon virus (WSIV).
- (3) The department may add pathogens to the lists in subsections (1) and (2) as necessary to protect Montana fisheries from introduction or spread of disease.

AUTH: 87-3-223, MCA IMP: 87-3-209, MCA, et seq.

RULE II CERTIFICATION INSPECTION PROCEDURES Disease free certification inspections as required by 87-3-221, MCA shall be made using microbiological techniques and procedures which are equivalent to or more sensitive than procedures prescribed by the Fish Health Section of the American Fisheries Society in the "Fish Health Bluebook" Procedures for the Detection and Identification of Certain Fish Pathogens, Third Edition, 1985, Kevin Amos. A copy of this publication may be obtained from American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814-2199.

AUTH: 87-3-223, MCA IMP: 87-3-209, MCA, et seq.

RULE III APPROVED PATHOLOGISTS Disease free certifications and inspections required by 87-3-221, MCA, shall be conducted by individuals certified by the American Fisheries Society as Fish Health Inspectors or Fish Pathologists. All inspectors and pathologists are subject to approval by the director of the department. If an inspection is conducted by an inspector or pathologist not approved by the director, the inspection will not be accepted and another inspection must be conducted by an inspector or pathologist approved by the director prior to approving the importation. Inspectors or pathologists who own or have a financial interest in the hatchery or fish culture facility being inspected may not conduct the inspection for that facility. This does not preclude inspectors employed by state or federal agencies from conducting inspections for facilities operated by the employing agency.

AUTH: 87-3-223, MCA

IMP: 87-3-209, MCA, et seq.

RULE IV IMPORT PERMITS (1) Application for an import permit must be made by the owner of the destination facility. The application must be received at least 10 working days prior to the date of importation by the Fisheries Division of the Montana Department of Fish, Wildlife and Parks, Helena, Montana, 59620.

(2) A permit application shall specify species, number, size, source, destination, and date and method of shipment. If the destination is a private pond, the private pond license number shall also be included in the application. No import permit will be authorized to a private pond which is not licensed by the department for the species requested for importation. A copy of any required disease-free certification shall be submitted with the permit application, along with other disease or inspection information concerning the shipment that may be needed to evaluate the disease risk of the importation. Requests for a permit to import salmonid fish will not be considered unless a disease certification or fish health inspection report of the source of the importation is included with the application.

(3) No import permit for salmonid fish shall be issued unless the source is certified free of pathogens determined by the department to pose a threat to existing fisheries. No import permit for salmonid eggs shall be issued unless the source is certified free of pathogens determined by the department to pose a threat to existing fisheries with the following exceptions. Salmonid eggs from a source known to contain *Myxobolus cerebralis*, causative agent of salmonid whirling disease, *Yersinia ruckeri* (ERM disease agent); or *Aeromonas salmonicida*, causative agent of furunculosis, or from a source which is in a river drainage known to contain *Myxobolus cerebralis*, *Yersinia ruckeri*, or *Aeromonas salmonicida* may be imported into Montana under the following conditions, provided they are free of all other infectious agents listed in this rule:

(a) eggs must be water hardened in an iodophor containing a minimum of 75 mg/l active iodine for a minimum of 30 minutes;

(b) eggs must have been incubated from time of egg collection to date of shipping in water free of *Myxobolus cerebralis* spores;

(c) eggs must be disinfected with an iodophor solution containing a minimum of 100 mg/l active iodine for a minimum of 10 minutes before shipping and again upon arrival at their destination in Montana prior to entering any Montana water;

(d) all shipping containers must be burned and no water from the shipment may be allowed to enter any water in Montana; and

(e) eggs imported under this exception may only be imported with the recommendation of the department and authorization by the director of the department.

(4) In addition to the certification requirements, no live salmonid fish may be imported into Montana which are exhibiting clinical sign of any disease or are known to be infected with any infectious disease agent that may pose a threat of harm to native or existing fish populations in Montana.

(5) Import permit requests for live non-salmonid fish or eggs will be considered on a case-by-case basis. Disease certification inspections may be required prior to issuance of an import permit for live non-salmonid fish or eggs. Certification will be required under the following circumstances:

(a) fish from a source or drainage which is known to contain pathogens determined by the department to pose a threat to existing fisheries. The department may deny any request for a permit it considers a substantial disease risk.

(b) where salmonids are also raised at the source, the source must be inspected and certified free of designated salmonid pathogens.

(6) The import permit must be obtained prior to any importation and a copy of the import permit must accompany the importation.

(7) The department may deny any import permit request it determines poses a threat of harm to existing fisheries, even if the source or importation has been inspected and no designated pathogens were detected. For example, import permits for fish or eggs from anadromous stocks or drainages to which anadromous fish have access may be denied regardless of disease certification status of the importation or source.

(8) The department may condition the permit in order to prevent or reduce risk, as, for example, requiring iodophor disinfection of eggs.

AUTH: 87-3-223, MCA

IMP: 87-3-209, MCA, et seq.

RULE V SHIPMENT INSPECTIONS (1) Import permittees shall agree prior to issuance of the permit and the permit shall specify that the department may inspect shipments of imported fish or eggs at mutually convenient times and locations after entering Montana and prior to release or placement.

(2) When shipments are inspected pursuant to permit conditions or illegal shipments are inspected pursuant to 87-3-224, MCA, the department may order the shipment removed from the state or destroyed in a manner that will not contaminate any waters of the state when:

(a) designated pathogens are found in the shipment;

(b) fish in the shipment have visible symptoms of infectious diseases;

(c) the shipment is not authorized by permit or proper certification does not accompany the shipment; or

(d) false information was provided on the permit application or required certifications.

AUTH: 87-3-223, MCA

IMP: 87-3-209, MCA, et seq.

RULE VI. HATCHERY OR CULTURE FACILITY INSPECTION, QUARANTINE, AND DISINFECTION

(1) Upon inspection and discovery that a hatchery or facility is contaminated with designated fish pathogens, the facility or hatchery will be immediately quarantined and no fish will be allowed to leave the hatchery or facility. The quarantine shall allow time for additional testing, assessment of risk, and development of appropriate action.

(2) The owner of the facility may select the second lab required by 87-3-225, MCA, to confirm the infection, but the pathologist conducting the inspection must be certified as provided in [Rule III]. If the second lab is selected by the owner of the facility, the owner shall pay all fees and expenses for the inspection.

(3) During the quarantine and after confirmation by a second laboratory, the department shall conduct a hearing to determine the severity of the disease problem and develop recommendations for appropriate action. The facility owner may offer his own recommendations at the hearing or submit his recommendations to the director along with the recommendations of the department. Based on the hearing, the department shall make recommendations to the director within 15 days of the hearing and the director shall order the action within 10 days of receiving the department's recommendations. As directed by 87-3-225, MCA, this action may include continued quarantine, destruction of infected fish or eggs, or disinfection of all or part of the hatchery or facility.

AUTH: 87-3-223, MCA

IMP: 87-3-209, MCA, et seq.


4. 12.7.501 is proposed to be repealed and can be found on page 12-408 of ARM. AUTH: 87-3-223, MCA IMP: 87-3-209, MCA, et seq.

5. Rationale and reason for proposed rule: These new rules are a revision of Montana's fish disease and importation rules. This revision is intended to replace the current ARM 12.7.501, and the rules are being proposed to implement legislation passed during the 1989 legislative session (SB 260). The rules will protect Montana's fisheries resources from fish diseases.

6. Interested parties may submit their data, views or arguments, either orally or in writing, to Thurston Dotson, Hatchery Bureau Chief, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620, no later than July 11, 1991.

7. If a person who is directly affected by the proposed adoption 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 Thurston Dotson, Hatchery Bureau, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620, no later than July 11, 1991.

8. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any 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 and mailed to all interested persons.


Patrick Graham, Deputy Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State June 3, 1991.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.45.1219, 16.45.1220,) FOR PROPOSED AMENDMENT
16.45.1230 and 16.45.1232 relating) OF RULES
to inspection requirements for)
small farm and residential tanks)
(Underground Storage Tanks)

To: All Interested Persons

1. On July 8, 1991, at 9:00 a.m., the Department 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 provide less costly inspection fees for owners of small farm and residential underground storage tanks and home heating oil tanks. Application of the existing fee schedule would result in charges beyond what is necessary to provide adequate inspection of small tank closures and is contrary to the intent of the Legislature.

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

16.45.1219 PERMIT APPLICATION REVIEW FEES (1) Persons applying for an underground storage tank installation or closure permit or both shall pay to the department the applicable permit application review fee(s) provided in subsections (2) through (5 6) of this rule, and the applicable inspection fee(s) provided in ARM 16.45.1220 if a licensed installer is not used to conduct the installation or closure.

(2) Remains the same.

(3) For the installation or closure of an underground storage tank, the permit applicant shall pay the following permit application review fees:

(a) farm and residential tanks used for storing motor fuel for non-commercial purposes and heating oil tanks with a capacity of less than 1,100 gallons or less \$35/tank permit

(b)-(d) Remain the same.

(4) The permit application review fee shall be calculated using only the fee structure provided in subsection 3(b) of this rule, whenever the permit covers tanks identified in both (a) and (b) of this subsection.

(4)(5) Permit application review fees for installations, closures or both, at one facility or location shall not exceed \$500 per permit issued by the department.

~~45~~(6) For the issuance of a duplicate of any permit, the permittee shall pay \$10.

AUTH: 75-11-204; IMP: 75-1-204, MCA

16.45.1220 INSPECTION FEES (1) Except as provided in subsections (2) and (3) of this rule, an inspection fee deposit of \$120 \$65 for the use of a local inspector and \$160 \$80 for the use of a department inspector shall be submitted to the department for each installation or closure not conducted by a licensed installer. The inspection fee deposit must be submitted with the permit application in accordance with ARM 16.45.1214, 16.45.1216, 16.45.1217, and 16.45.1219 and must be paid in the form of a check or money order made payable to the Montana department of health and environmental sciences.

(2) Closures of small tanks;

(a) Owners of underground storage tanks identified in paragraph (b) of this subsection shall pay a total inspection fee of \$65 per permit for closures of such tanks whenever the closures are conducted without a licensed installer. The fee provided by this subsection covers inspections of all closures covered by a permit provided that:

(i) the \$65 inspection fee must be submitted with the permit application in accordance with ARM 16.45.1214, 16.45.1216, 16.45.1217, and 16.45.1619 and must be paid in the form of a check or money order made payable to the Montana department of health and environmental sciences; and

(ii) the permit does not cover any other tank handling operation or include underground storage tanks of any other category.

(b) The \$65 fee provided by this subsection applies only to underground storage tanks that are:

(i) farm and residential underground storage tanks with a capacity of 1,100 gallons or less used for the storage of motor fuel for non-commercial purposes; or

(ii) underground storage tanks with a capacity of 1,100 gallons or less used for storing heating oil for consumption on the premises where stored.

(3) Closures of underground piping attached to above-ground tanks:

(a) Owners of underground piping attached to aboveground tanks identified in paragraph (b) of this subsection shall pay a total inspection fee of \$35 per permit for closures of underground piping attached to such tanks whenever the closures are conducted without a licensed installer. The fee provided by this subsection covers inspections of all closures of underground piping covered by a single permit provided that:

(i) the \$35 inspection fee must be submitted with the permit application in accordance with ARM 16.45.1214, 16.45.1216, 16.45.1217, and 16.45.1619 and must be paid in the form of a check or money order made payable to the Montana department of health and environmental sciences; and

(ii) the permit does not cover other tank handling operations or include underground storage tanks or aboveground tanks of any other category.

(b) The \$35 fee provided by this subsection applies only to aboveground tanks that are:

(i) farm and residential aboveground storage tanks with a capacity of 1,100 gallons or less used for the storage of motor fuel for non-commercial purposes; or

(ii) aboveground storage tanks with a capacity of 1,100 gallons or less used for storing heating oil for consumption on the premises where stored.

~~(2)~~(4) If a permit applicant changes the method of installation or closure from inspection to use of a licensed installer or cancels the installation or closure, the department shall refund the inspection fee deposit to the applicant, without payment of interest, upon the applicant's request if:

(a) the applicant submits a written request for a refund which is received by the department not later than two weeks after the expiration of the permit; and

(b) the applicant surrenders the unused permit to the department.

~~(3)~~(5) Within five days after completion of the inspection, except for those inspections for which an inspection fee has been established in subsections (2) and (3) of this rule, the inspector shall send to the department a report on a form provided by the department of the total time required for the inspection, including the inspector's travel time to and from the inspection site. The time shall be reported to the nearest one-half hour. Upon receipt of the report, the department shall calculate the total inspection fee due to the department based upon the following formula for closures and installation inspections:

Type of Fee	Local Inspector	Department Inspector
Minimum fee (fee deposit)	\$-120 \$65	\$-160 \$80
Per Hour fee for each hour over 4 2 hours	\$ 30 \$32	\$ 40

~~(4)~~(6) Except for inspections for which an inspection fee has been established in subsections (2) and (3) of this rule, the total inspection fee shall be calculated by multiplying the actual inspection and travel time that is greater than ~~four~~ two hours, calculated to the nearest one-half hour, times the hourly fee provided in subsection ~~(3)~~ (5). Any amount calculated greater than the deposit paid to the department shall be billed by state invoice to the permittee and shall be paid by the permittee within 30 days of receipt of the state's invoice. Notwithstanding the provisions of ARM 16.45.1001(5), no person shall allow a regulated substance to be deposited into an underground storage tank unless the total inspection fee has been paid to the department.

AUTH: 75-11-204; IMP: 75-11-204, MCA

16.45.1230 DESIGNATION OF IMPLEMENTING AGENCIES

(1) Remains the same.

(2) Upon designation, an implementing agency may apply for and receive up to 80 percent of the ~~permit application~~

~~review and inspection fees collected, in accordance with ARM 16.45.1232.~~

(3)-(4) Remain the same.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-213, MCA

16.45.1232 INSPECTION REIMBURSEMENT (1) In accordance with section 75-11-213, MCA, within 30 days of receipt of a statement for services from a designated implementing agency, the department shall reimburse the agency ~~100% of the permit application review fee and~~ 80% of any inspection fee submitted for the inspection of an installation or closure conducted by that inspector. Inspections eligible for reimbursement under this rule are those scheduled in accordance with ARM 16.45.1215 and those short notice or compliance inspections conducted by a designated local inspector upon request of the department.


(2)-(3) Remain the same.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-213, MCA

4. The Department is proposing these amendments to the rules in order to adopt a flat inspection fee and a reduced permit review fee for the small tank owner in an attempt to impose costs that more accurately reflect the services provided by conducting less complex inspections. Adoption of these fees should eliminate some of the local agency's administrative costs for these inspections, as well as provide the necessary documentation to establish the absence or presence of contamination in the smaller tank's excavation zone.

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 John Geach, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 11, 1991.

6. Claudia Massman has been designated to preside over and conduct this hearing.


DENNIS IVERSON, Director

Certified to the Secretary of State June 3, 1991.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE PROPOSED
amendment of Rule 24.9.805,	)	AMENDMENT OF RULE
Records on age, sex, and	)	24.9.805, RECORDS ON AGE,
race, and Rule 24.9.1406,	)	SEX, AND RACE, AND RULE
Employment Applications	)	24.9.1406, EMPLOYMENT
	)	APPLICATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 19, 1991, the human rights commission proposes to amend ARM 24.9.805 and 24.9.1406. ARM 24.9.805 relates to the personnel records which employers must keep to facilitate administration of the human rights act and governmental code of fair practices. ARM 24.9.1406 relates to suspect and lawful pre-employment inquiries.

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

24.9.805 EMPLOYMENT RECORDS ON AGE, SEX, AND RACE. (1)

~~(a) Sections 49-2-102, 49-2-303, and 49-2-401, MCA, of the act require the state, employers, labor organizations, and employment agencies to maintain records on age, sex, and race in order to facilitate administration of the act. The function of such records is to aid both those keeping the records and those responsible for enforcing the act to identify, prevent, or remedy illegal discrimination and to make proof of the existence or absence of such discrimination easier for both employers and complainants in the event a complaint is filed.~~

~~(b) The following records shall be kept:~~

~~(i) Every employer, labor organization, employment agency, or state agency in Montana which is subject to the U.S. Equal Employment Opportunity Commission (EEOC) must keep records to fulfill its reporting requirements and meet the record keeping requirements of the act for reporting, with the exception that records must be kept of the age of all employees or union members. Reports required by EEOC will be obtained from it by the human rights commission, subject to any safeguards against publicizing the information that EEOC may impose. Requests for information on employee ages will be made separately by the human rights division.~~

~~(2) Any All employers, labor organizations, employment agencies, or and state government agencies which is not subject to EEOC record keeping requirements should shall keep adequate records to show:~~

~~(a) How many Negroes, Orientals, American Indians, and Spanish surnamed Americans The number of employees who are~~

white (not of hispanic origin), black (not of hispanic origin), hispanic, Asian or Pacific Islander, American Indian or Alaskan Native are employed in each particular job category;

(i) (b) How many The number of men and women males and females are in each racial group and each job category; and

(c) The age of each employee in each job category.

(b) (2) The records shall be compiled from a pay period in either February, March, or April of every year and reports on forms supplied by the human rights division, utilizing those records, shall be filled out by May 1 of each year, to be presented to the division upon request, as in connection with an investigation. The reports shall be kept on file for 5 years. Records which fulfill the requirements of the U.S. Equal Employment Opportunity Commission recordkeeping requirements are sufficient to meet the requirements of this rule.

(e) Records on age, sex and race must be made after employment and not when a prospective employee applies for employment.

(d) (3) Information about racial or ethnic identity may be acquired by visual survey of the work force, and, if at all possible, should not be by direct inquiry. The commission recommends such Such information shall be kept separately from other personnel records and shall be maintained as a running total numbers without identification of individuals.

(3) (4) Any All personnel or employment records made or kept by an employer, including, but not necessarily limited to, application forms submitted by applicants and other records having to do with related to hiring, promotion, demotion, transfer, layoff or termination, rates or of pay or other terms of compensation, and selection for training or apprenticeship, shall be preserved by the employer for a period of 6 months 2 years from the date of the making of the record is made and or from the date of the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 6 months from the date of termination.

(5) Where If a complaint of discrimination complaint has been is filed, the respondent shall preserve all personnel records relevant to the complaint until final disposition of the complaint. The term "personnel Personnel records relevant to the a complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers completed by an unsuccessful applicant or by and all other candidates for the same position as that for which the complainant applied and was rejected.

(6) A labor Labor organizations must shall preserve membership or referral records, including applications for them membership or referral, for 6 months 2 years from the date of their making the records are made. or if If a charge

of discrimination complaint is filed, it must a labor organization shall preserve all records relevant to the charging complaint until final disposition of the complaint.

(a) An individual, state agency, employer, employment agency, or labor organization who willfully fails to make, keep or preserve records or make reports in accordance with this rule after being informed by the division that it must maintain such records commits a misdemeanor under section 49-2-601, MCA.

(b) If the record-keeping requirement would impose undue hardship on one subject to it, the latter may apply to the human rights commission for a modification of the requirement. AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-102, 49-2-303, 49-2-401, 49-2-601, MCA.

24.9.1406 EMPLOYMENT APPLICATIONS PRE-EMPLOYMENT INQUIRIES (1) ~~(a) General principles. The following are guidelines for determining what kinds of inquiries on employment applications will automatically be suspect as unlawful discriminatory. The guidelines are based on the potential abuse of the inquiry balanced against its value in determining necessary qualifications for a particular job. A given employer might not, as a matter of fact, use the suspect inquiries below to discriminate against an applicant, but their potential for abuse is so high that their use should be discouraged.~~

~~It should be noted that this list is concerned with pre-employment inquiries. Some of the inquiries below may lawfully be made after employment, if the employer needs the information they produce — for example, to obtain information on race, sex, national origin and religion for reports required by the U.S. Equal Employment Opportunity Commission.~~

~~Any inquiry not inherently discriminatory may be unlawful in fact if it is utilized to discriminate against an individual in violation of law, e.g., an inquiry into schools attended which indirectly reveals religious affiliation, on which grounds employment is denied.~~

~~Any unlawful inquiry as listed below, subsection (b), may be lawful if it is necessary to determine a bona fide occupational requirement.~~

Any pre-employment inquiry made in connection with prospective employment which elicits information regarding race, color, national origin, religion, creed, physical or mental handicap, age, sex, marital status or, in the case of government employment, political beliefs, shall raise a suspicion of intent to unlawfully discriminate except when:

(a) the inquiry is required for implementation of a bona fide lawful affirmative action plan,

(b) the inquiry is required by court ordered or other government reporting or record-keeping requirements, or

(c) in the case of an inquiry concerning age, physical or mental handicap, marital status or sex, the reasonable demands of the position (bona fide occupational

qualifications) require an age, physical or mental handicap, marital status or sex distinction.

(2) Whether or not any pre-employment inquiry is actually unlawful depends upon whether the inquiry was intended to be used or was used to unlawfully discriminate. The following pre-employment inquiries may raise a suspicion that the employer intends to use the information to unlawfully discriminate and, therefore, should not be asked at any time during the hiring process, including, but not limited to, on application forms and during interviews. The list contains suspect pre-employment inquiries followed, when appropriate, by examples of lawful inquiries regarding the same information.

(b) Suspect pre-employment inquiries-

(a) General inquiry regarding race, color, national origin, religion, creed, physical or mental handicap, age, sex or marital status and, in the case of governmental employers only, political beliefs.

(i) (b) Inquiry into the regarding original name of an applicant whose name has been changed by court order or otherwise--race or religion may be indicated by the original name. It is lawful to inquire regarding change of name for purposes of checking employment and education records.

(ii) (c) Questions Inquiry regarding residency which requests information indicate indicating birthplace or place of foreign citizenship, former or present. It is lawful to inquire regarding present address, previous address in the U.S. and duration of residency in a particular city, county or state.

(iii) (d) Inquiry into age of applicant, unless necessary as a bona fide occupational qualification. When age is a bona fide occupational qualification, an inquiry which requires that age be proven by birth certificate or baptismal record. When age is a bona fide occupational qualification, it is lawful to require that age be proven by a record which does not indicate national origin, ancestry or religion.

(iv) Requirement that age be proven in the form of a birth certificate or baptismal record--these indicate place of birth, ancestry or religion. (Note No. iii above.)

(v) Inquiries into religious affiliation.

(vi) (e) Questions Inquiry regarding skin, hair or eye color--race is indicated, irrelevant to job performance.

(vii) (f) Requirement of a pre-hiring photograph, or a request for one, at the applicant's option.

(viii) (g) Inquiry into regarding military experience outside the U.S. Armed Forces--may indicate national origin.

(ix) (h) Request for the number of times arrested--members of minority racial groups are more likely, statistically, to be arrested than Caucasians, and since an innocent person may be arrested, an arrest in fact does not always lead to conviction, an arrest record is no proof of a criminal character and may in fact prejudice minorities unfairly. Inquiry regarding criminal arrests. It is lawful to inquire regarding criminal convictions.

~~(*) (i) Inquiry into regarding native language, or the manner in which a foreign language was acquired, indicates national origin. It is lawful to inquire regarding foreign languages spoken and degree of fluency.~~

~~(*) (j) Request for list of all clubs, societies and lodges of which applicant is a member may be used to determine religion, political affiliation, race, sex, age, or national origin and is rarely relevant to job performance. General inquiry regarding membership in organizations. It is lawful to inquire regarding membership in organizations the names of which do not indicate race, color, national origin, religion, creed, physical or mental handicap, age, sex or marital status. Additionally, government employers should not inquire regarding membership in organizations the names of which indicate political beliefs.~~

~~(*) (k) Names of relatives other than applicant's mother, father, spouse and children may indicate national origin. Inquiry regarding names of relatives.~~

~~(*) (l) Request of name of applicant's bishop, pastor, or religious leader.~~

~~(*) (m) Request for Inquiry regarding garnishment record--minorities suffer garnishment more than whites, and the record bears little or no relationship to job performance.~~

~~(*) (n) General question asking whether applicant is physically handicapped shows intent to bar all handicapped persons; should ask for particular kind of handicap, since some handicaps would not preclude adequate performance of particular jobs inquiry regarding physical or mental condition. It is lawful to make necessary and job-related inquiries regarding specific physical or mental conditions required by the reasonable demands of the position.~~

~~(n) Inquiry regarding pregnancy or childbearing plans.~~

~~(o) Inquiry of applicants of only one sex regarding childcare arrangements.~~

~~(p) Inquiry regarding citizenship.~~

~~(q) Inquiry regarding height and weight.~~

~~(e) Lawful pre-employment inquiries.~~

~~(i) Inquiry into different name used while previously employed by the same company, nickname, or any other change of name necessary to check work and educational records.~~

~~(ii) Inquiry into present address, previous address in the U.S., and duration of residency in the city, county or state.~~

~~(iii) Inquiry into age of applicant, if necessary as a bona fide occupational qualification.~~

~~(iv) Where age is a bona fide occupational qualification the requirement that age be proved by some form of document that does not indicate place of birth, ancestry or religion.~~

~~(v) Inquiries into religious affiliation if the occupation necessarily requires that the applicant work on Saturday.~~

~~(vi) Inquiry into an applicant's military experience in the U.S. Armed Forces or a state militia, and the particular branch of the military in which applicant served.~~

~~(vii) Request for conviction record, if any, and the disposition of the case or cases.~~

~~(viii) Request for foreign language spoken and degree of fluency.~~

~~(xi) Inquiry into the organizations of which an applicant is a member, excluding organizations the name or character of which indicates the race, creed, color, national origin, age, sex, or political affiliation of its members.~~

~~(x) Names of applicant's mother, father, spouse, and children.~~

~~(xi) Request for type and degree of physical or mental ability.~~

(4) Information necessary for tax, insurance, social security, compliance with garnishment or immigration laws or other legitimate business purposes may be obtained after employment.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-102, 49-2-303, 49-3-201, MCA.

3. The commission proposes to amend ARM 24.9.805 to eliminate the provision which prohibits employers from making pre-employment records regarding age, sex and race to allow employers to make pre-employment records regarding age, sex and race for lawful purposes such as compliance with lawful affirmative action plans and government reporting requirements. The commission proposes to add the requirement that employers keep records of the age of employees to facilitate enforcement of the provisions of the human rights act and governmental code of fair practices which prohibit age discrimination in employment. The commission proposes to eliminate the provision which requires all employers to file regular reports with the commission regarding the age, sex and race of employees because such regular reports are unnecessary in the absence of evidence of a discriminatory practice. The commission proposes to eliminate the provision which makes failure to maintain records a criminal misdemeanor because MCA 49-2-601 already specifies the acts which constitute a criminal violation of the human rights act. The commission proposes to eliminate the undue hardship exception from maintaining required records because the record keeping requirements are not onerous, an undue hardship exception has never been requested and there is no probable basis for such an exception. The other purposes of amending the rule are to clarify the rule and make it more concise. The Commission proposes to amend ARM 24.9.1406 to clarify the effect of a suspect pre-employment inquiry and to make the rule more concise.

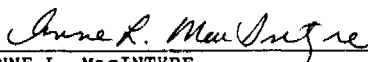
4. Interested parties may submit their data, views or arguments on the proposed rulemaking in writing to John B. Kuhr, Chair, Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728 no later than July 12, 1991.

5. If a person who is directly affected by the proposed rulemaking wishes to express data, views or arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to John B. Kuhr, Chair, Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728, no later than July 12, 1991.

6. If the agency receives requests for a public hearing on the proposed rulemaking from either 10% or 25, whichever, is less, of the persons who are directly affected by the proposed amendments, from the administrative code committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of potential parties to cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIR

By:


ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Certified to the Secretary of State June 3, 1991.


BEFORE THE BOARD OF BARBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF ARM
of rules pertaining to fees,	)	8.10.403, 8.10.405, 8.10.801,
general requirements, sanitation	)	8.10.802, 8.10.1003,
requirements, teaching staff,	)	8.10.1006, 8.10.1009; AND
college requirements, applica-	)	REPEAL OF ARM 8.10.401,
tions, procedure upon completion,	)	8.10.402, 8.10.407, 8.10.1002,
identification and sanitation	)	8.10.1005, 8.10.1008 AND
requirements and the repeal of	)	8.10.1010 PERTAINING TO THE
rules pertaining to preparation	)	PRACTICE OF BARBERING
and publication of posters,)	
notices, orders, new schools and)	
violation)	

TO: All Interested Persons:

1. On March 28, 1991, the Board of Barbers published a notice of proposed amendment and repeal of the above-stated rules at page 344, 1991 Montana Administrative Register, issue number 6.
2. The Board amended and repealed the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF BARBERS
EUGENE THOMAS, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 3, 1991.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the Matter of the)	Notice of Amendment of ARM
Proposed Amendment of ARM)	12.6.901 Establishing a No-
12.6.901 Pertaining to Water)	wake Restriction on Hyalite
Safety Regulations)	Reservoir

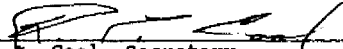
To: All Interested Persons

1. On February 28, 1991, the Fish and Game Commission gave notice of a proposed amendment of ARM 12.6.901 to establish a no-wake restriction on Hyalite Reservoir at page 221, Issue No. 4.

2. Written comments were received through March 29, 1991.

3. The commission has amended ARM 12.6.901 as proposed.

4. The commission received written comments from several persons, all of whom supported the proposed amendment. These comments indicated that no-wake restrictions for boats on Hyalite Reservoir were appropriate, as the reservoir is too small and public use too great to permit unrestricted use by power boats. Such a restriction will further the safety of all users of the reservoir.


K.E. Cool, Secretary
Montana Fish and Game Commission

Certified to the Secretary of State June 3, 1991.

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

In the matter of the	) NOTICE OF THE
amendments of 36.21.403 con-	) AMENDMENTS OF 36.21.403
cerning requirements for water	) REQUIREMENTS FOR CURRENT
well contractors, 36.21.634	) LICENSED WATER WELL
concerning definitions, 36.21.	) CONTRACTORS, 36.21.634
645 concerning plastic casing,	) DEFINITIONS, 36.21.645
36.21.650 concerning casing	) PLASTIC CASING, 36.21.650
perforations, 36.21.651 con-	) CASING PERFORATIONS,
cerning movement of casing	) 36.21.651 MOVEMENT OF CASING
after grouting, 36.21.654 -	) AFTER GROUTING, 36.21.654 -
36.21.656, 36.21.659	) 36.21.656, 36.21.659
concerning sealing, 36.21.661	) SEALING OF WELLS,
concerning temporary capping,	) 36.21.661 TEMPORARY CAPPING,
36.21.662 concerning disinfection	) 36.21.662 DISINFECTION,
of the well, 36.21.670	) 36.21.670 PERMANENT ABANDON-
abandonment, 36.21.677 con-	) MENT, 36.21.677 METHOD OF
cerning placement of concrete	) PLACEMENT OF CONCRETE OR
or cement, 36.21.701 concern-	) CEMENT GROUT, 36.21.701 VER-
ing verification of experience	) IFICATION OF EXPERIENCE, 36.
for monitoring well construc-	) 21.702 APPLICATION APPROVAL
tor applicants, 36.21.702 con-	) AND EXAMINATION, 36.21.801
cerning application approval,	) DEFINITIONS, 36.21.806
36.21.801 concerning defini-	) INSTALLATION OF SEALS, 36.
tions, 36.21.806 installation	) 21.810 ABANDONMENT, AND
of seals, 36.21.810 concerning	) PROPOSED ADOPTION OF NEW
abandonment, and the proposed	) RULES - 36.21.641A CASING
adoption of new rules concern-	) DEPTH, 36.21.701A VERIFICA-
ing casing depth, verification	) TION OF EQUIVALENT EDUCATION
of equivalent education and	) AND EXPERIENCE, AND
experience for monitoring	) 36.21.669A TYPES OF WELLS
well constructors, and types of	) REQUIRING ABANDONMENT
wells requiring abandonment.)

TO: ALL INTERESTED PERSONS:

1. On February 28, 1991, the Board of Water Well Contractors published a notice of proposed amendments of the above-stated rules at page 223, 1991 Montana Administrative Register, issue number 4.

2. One telephoned comment was received. The rules are being amended and adopted as proposed with the following changes: (new matter underlined, deleted matter interlined)

36.21.634 DEFINITIONS (1) ...

(22) "Sealing material" means neat cement, heavy bentonite water slurry or grout, bentonite chips or pellets, and ~~bentonite-slay-grout~~. Heavy ~~bentonite~~ bentonite water slurry shall be mixed according to the manufacturer's instructions as a sealing material, and shall in no case contain less than 1.5 pounds of bentonite per gallon of fresh water. ~~slurry when~~

~~used-as-sealing-material-shall-be-of-sufficient-viscosity-to require-a-time-of-at-least-70-seconds-to-discharge-one-quart of-the-material-through-an-American-Petroleum-Institute-(API) marsh-funnel-viscometer--Bentonite-water~~ The mixed slurry shall weigh not less than nine pounds per gallon.

(a) ...

(c) Any slurry or cement shall be pumped from the bottom up. Chip or pellet placement may be gravity fed at a controlled rate that equals or is slower than the manufacturer's recommendation and in such a manner that will prevent bridging.

(23)..."

36.21.810 ABANDONMENT (1) ...

(2) Monitoring wells, that have outlived their useful purpose shall be abandoned by one of the following methods:

(a) If the casing and screen are left in place, the casing and screen shall be sealed from the bottom up using a pump and hose or tremie pipe to conduct the sealing material to the bottom of the well or by filing the casing and screen with bentonite pellets or chips placed in a manner that will prevent bridging.


(i) ..."

These two changes are designed to make it clear that pellets can be used, but in those cases where pellets and chips are used, caution must be taken to prevent bridging and an inadequate seal.

The rule containing definitions will also be re-alphabetized because of the change from "grout" to "sealing material".

3. No written comments or testimony were received.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY: 
DONALD D. MACINTYRE,
CHIEF LEGAL COUNSEL
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State, June 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-) NOTICE OF AMENDMENT of ARM
MENT of ARM 42.21.106;) 42.21.106; 42.21.107; 42.21.113;
42.21.107; 42.21.113; 42.21.) 42.21.122; 42.21.123; 42.21.131;
122; 42.21.123; 42.21.131;) 42.21.132; 42.21.137; 42.21.138;
42.21.132; 42.21.137; 42.21.) 42.21.139; 42.21.140; 42.21.151;
138; 42.21.139; 42.21.140;) 42.21.155; 42.21.161; 42.21.301;
42.21.151; 42.21.155; 42.21.) 42.21.302; 42.21.303; 42.21.304;
161; 42.21.301; 42.21.302;) 42.21.305; 42.21.307; and REPEAL
42.21.303; 42.21.304; 42.21.) of ARM 42.21.114; 42.21.120;
305; 42.21.307 and REPEAL of) 42.21.306; 42.21.311; and
ARM 42.21.114; 42.21.120;) 42.21.312 relating to Trending
42.21.306; 42.21.311; and) and Depreciation Schedules
42.21.312 relating to Trend-) for Personal Property Tax.
ing and Depreciation)
Schedules for Personal)
Property Tax.)

TO: All Interested Persons:

1. On April 11, 1991, the Department of Revenue published notice of the proposed amendments and repeal of certain rules pertaining to trending and depreciation schedules in the Property Tax Division rules as specified above, at page 396 of the 1991 Montana Administrative Register, issue no. 7.

2. A public hearing was held on May 8, 1991, where written and oral comments were received.

3. As a result of the comments received the Department has repealed the five rules as proposed. ARM 42.21.122; 42.21.123; 42.21.131; 42.21.137; 42.21.140; 42.21.151; 42.21.153; 42.21.154; 42.21.155; 42.21.156; 42.21.157; 42.21.158; 42.21.161; 42.21.301; 42.21.302; 42.21.303; 42.21.304; 42.21.305; and 42.21.307 are adopted with the amendments as proposed in the notice on April 11, 1991. Additional amendments have been made for the rules listed below:

42.21.106 TRUCKS (1) through (3) remains as proposed.

(4) The trended depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for the ~~1990~~ 1991 tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in subsection (1).

(5) and (6) remains as proposed.

42.21.107 TRAILERS (1) through (2)(d) remains as proposed.

~~(8)~~ (3) This rule is effective for tax years beginning after December 31, 1990.

42.21.113 LEASED AND RENTED EQUIPMENT (1) Leased or rental equipment which meets the criteria of 15-6-136(1)(b) will be valued in the following manner:

(a) For equipment that has an acquired cost of \$0 to \$500, the department shall use a three-year trended depreciation schedule.

(b) For equipment that has an acquired cost of GREATER THAN \$501 to ~~\$1,500~~, the department shall use a five-year trended depreciation schedule.

~~(c) For equipment that has an acquired cost of \$1501 or greater, the department shall prepare use a seven-year five-year trended depreciation schedule.~~

(2) through (5) remain the same.

42.21.132 MINING EQUIPMENT (1)(a) remains as proposed.

(b) Mining machinery and equipment, ~~except that which is listed in the "Green Guide"~~, is valued by trending the original installed cost to a current replacement cost, then depreciating on an age/life basis to compensate for ordinary physical wear and tear and obsolescence.

(2) Mobile equipment used in the mining operation for extraction will be valued by using the procedures established for heavy equipment (ARM 42.21.131).

(3) Mobile mining equipment ~~as found in the "Green Guide"~~, is equipment that moves freely about under its own power and/or on its own wheels and chassis, including any attachments used with or attached to such equipment. Mobile equipment does not include equipment that requires a foundation for the performance of the function for which it was designed and built.

42.21.158 PROPERTY REPORTING TIME FRAMES (1) Taxpayers having property in the state of Montana on January 1 of each year must complete the statement as provided for in 15-8-301, MCA. With the exception of livestock owners, the taxpayer has 30 days from the date of receipt of any request for information to respond to the department of revenue or its agent's request for information. The department or its agent may grant a 30 day extension if the taxpayer requests such an extension during the 30 day period. UPON REQUEST FROM THE TAXPAYER, THE DEPARTMENT SHALL PROVIDE A COPY OF THE ASSESSED VALUE OF INDIVIDUAL PIECES OF PERSONAL PROPERTY.

4. The Department has determined the implementing sections 15-6-139 and 15-6-140, MCA shown in the histories for ARM 42.21.106; 42.21.107; 42.21.131; 42.21.132; 42.21.151; 42.21.154; 42.21.155; 42.21.156; and 42.21.157 were repealed in 1989. Therefore, 15-6-138, MCA is the new implementing section for those rules.

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

Supporting comments have come from representatives of organizations whose members use heavy equipment such as the Montana Coal Council, individual taxpayers, business owners, equipment dealers, and equipment appraisers. Companies submitting comments supporting the rule change are:

<u>Name</u>	<u>City</u>
Peabody Coal Company	Flagstaff, AZ
Golden Sunlight Mines, Inc.	Whitehall, MT
Century Construction Company	Lewistown, MT
Independence Mining Co., Inc.	Helena, MT
ASARCO, Inc.	Troy, MT
Stillwater Mining Company	Nye, MT
James Talcott Construction, Inc.	Great Falls, MT
Montana Coal Council	Helena, MT
Jensen Paving and Gravel Sales	Missoula, MT
L. S. Jensen and Sons Construction Co.	Missoula, MT
Livingston Rebuild Center, Inc.	Livingston, MT
Washington Construction Company	Missoula, MT
Industrial Constructors Corporation	Missoula, MT
Lewis Construction Company	Great Falls, MT
Concrete Service Company	Great Falls, MT
Envirocon, Inc.	Missoula, MT
Montana Rail Link, Inc.	Missoula, MT
Modern Machinery	Missoula, MT
Martel Construction, Inc.	Bozeman, MT
Montana Resources	Butte, MT
Harp Line Constructors Company	Kalispell, MT
Braden-Pehlke Construction Co., Inc.	Glasgow, MT
Montana Tunnels Mining, Inc.	Jefferson City, MT
Knife River Coal Mining Company	Bismarck, ND
Max Rouse and Sons, Inc.	Casper, WY
Fisher Industries	Dickinson, ND
Schellinger Construction Co, Inc.	Columbia Falls, MT
Western Energy Company	Billings, MT
Noranda Minerals Corporation	Missoula, MT
Dick Anderson Construction	Helena, MT
Western Materials, Inc.	Missoula, MT
Prince, Inc.	Forsyth, MT
Omo Construction, Inc.	Billings, MT
Modern Machinery	Billings, MT
Cop Construction Company	Billings, MT
Kiewit Mining Group, Inc.	Sheridan, WY
United Materials of Great Falls, Inc.	Great Falls, MT
Swank Enterprises	Kalispell, MT
Pioneer Ready Mix, Inc.	Bozeman, MT
Canyon Logging Company	Columbia Falls, MT
Midland O'Leary, Inc.	Billings, MT
Barnard Construction Company, Inc.	Bozeman, MT
United Industry, Inc.	Billings, MT
Ureco, Inc.	Columbia Falls, MT
One Way Sign and Construction, Inc.	Billings, MT
Mor Berg, Inc.	Lewistown, MT
A-1 Paving, Inc.	Kalispell, MT
Falls Construction Company	Great Falls, MT
Empire Sand and Gravel Co., Inc.	Billings, MT
William R. Hansen, P.E.	Cooke City, MT
Crown Butte Mines, Inc.	Billings, MT
Mineral Hill Mine	Gardiner, MT

American Asphalt, Inc.	Missoula, MT
Blahnik Construction, Inc.	Hamilton, MT
Gilman Construction	Butte, MT
Riverside Contracting, Inc.	Missoula, MT
SK Construction, Inc.	Helena, MT
W. M. Vaughey, Jr.	Havre, MT
Peter Kiewit Sons', Inc.	Omaha, NE

Opposing comments have come from county government representatives, the Office of Public Instruction, and the Democratic party. The 13 counties objecting to the rule change are: Beaverhead, Big Horn, Cascade, Dawson, Fallon, Fergus, Glacier, Jefferson, Madison, Phillips, Pondera, Rosebud, and Wibaux.

RESPONSES TO OPPOSING COMMENTS:

Comment: The "quick sale" (wholesale) values in the Green Guides are a true reflection of market values on heavy equipment.

Response: The Green Guide books are designed to represent a nationwide average value for equipment in average working condition. Values shown in the Green Guide are updated on a staggered basis throughout the year. There is no common date on which all equipment values are established. Any dollar amount shown in the Guide must be adjusted to fit the mechanical condition of a specific unit. Market conditions also have a bearing on the value of equipment and can vary in different areas. The Green Guide has a value modification map, and wherever sufficient data exists a percentage change from average values is indicated by region. Also, the value of extras must be added to the value of the standard machine in order to complete the valuation process.

Under current rules, the Green Guide "Quick Sale" values are used. The average "Quick Sale" value represents the national average of units sold at auction or under quick-sale/liquidation conditions. It is the price a dealer might pay for a used machine on a trade-in or the best price in the open market which may be obtained within a shorter period of time. "Quick Sale" does not reflect the prices paid for equipment by those dealing exclusively within an established wholesale market.

The "acquired cost" method reflects the price paid for the piece of equipment adjusted for both inflation and depreciation. These two adjustments together are called "trended depreciation." A sample of equipment is selected each year. The Green Guide current "Quick Sale" selling price is divided by the original Green Guide purchase price to arrive at average depreciation percentages for each year. Trending is inherent since old dollars are divided into new dollars. The average depreciation percentages are then applied to acquired cost to determine market value.

Industry personnel involved in buying and selling heavy equipment in Montana say that the Green Guide is approximately 15 to 25 percent higher than the average auction price. Most

used heavy equipment is sold at auction. Calculations show an estimated 22 percent difference in market value of the equipment if the acquired cost method is used rather than the Green Guide.

Table 1 compares various pieces of equipment purchased in 1990 to the Green Guide value for this equipment in 1990. As shown, the Green Guide purchase price is higher than actual cost on five of the seven items by 1 to 20 percent. For the other two items, the Green Guide purchase price is below the actual purchase price by 4 and 5 percent.

Table 1
Comparison of Green Guide Values to Actual Purchase
Price of Heavy Equipment in Tax Year 1990

Equipment	Green Guide	Actual	Dollar	Percent
Excavator, Hydraulic	1,261,850	1,332,627	(\$70,777)	(5)
Forklift	56,240	55,500	740	1
Loader, Wheel	896,930	813,637	83,293	10
Loader, Wheel	119,220	123,700	(4,480)	(4)
Loader, Wheel	212,420	191,759	20,661	11
Loader, Wheel	435,750	362,405	73,345	20
Loader, Wheel	896,930	807,818	89,112	11

Comment: Market value as defined in 15-8-111(2)(c), MCA, states that the market value for machinery is the average wholesale value shown in national appraisal guides and manuals; and that the Department shall prepare valuation schedules when no appraisal guide exists.

Response: The term "machinery" in 15-8-111(2)(c) is modified by the term "agricultural". In other words, the limitations concerning use of national appraisal guides and manuals only apply to agricultural machinery. This is obvious based on the punctuation in the first sentence of subsection (2)(c).

Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning the profit margin.

A semicolon follows the word "trucks", a comma follows after "agricultural tools", and "implements" and a semicolon again follows the word "machinery". There would be no reason for this unique punctuation except to indicate that the term "agricultural" modifies "tools", "implements" and "machinery". The Department has adopted a separate rule concerning agricultural machinery which complies with this statutory

directive.

Comment: The Department's information regarding the percentage of valuations being determined by the field staff using Green Guides was incorrect. Opponents contend that approximately 50% of the valuations done on heavy equipment statewide are done with the use of the Green Guides.

Response: Table 2 shows the percent of equipment items valued by the acquired cost method for six companies. As shown, a majority of the equipment pieces were not assessed using the Green Guides in tax year 1990. Montana Talc had 50 percent of their equipment prices assessed by the acquired cost method and Empire Sand and Gravel had 75 percent of their equipment prices assessed by the acquired cost method. Individual statistics by company are shown in Attachment A.

Table 2
Percent of Equipment Determined by the Acquired Cost Method
Tax Year 1990

<u>Company</u>	<u>Percent</u>
Montana Talc	50
Golden Sunlight Mine Co.	64
Cyprus Mines Corporation	51
Gilman Construction	62
N. A. Degerstrom	62
Empire Sand and Gravel	75

Table 3 shows the percent of value of the equipment items which was assessed using the acquired cost method versus the Green Guides. As shown in this table, the value of the equipment assessed by the acquired cost method rather than the Green Guide ranges from 8 percent to 78 percent.

Table 3
Percent of Heavy Equipment Value Assessed by Using
Acquired Cost Rather Than Green Guides

<u>Company</u>	<u>Percent</u>
Montana Talc	39
Golden Sunlight Mine Co.	78
Cyprus Mines Corporation	24
Gilman Construction	8
N. A. Degerstrom	40
Empire Sand and Gravel	46

Table 4 shows the percent and dollar change in taxes if all pieces of equipment were valued by the acquired cost method rather than the Green Guide. The range of decrease for each company's individual pieces of equipment being changed from the Green Guide to the acquired cost method is between 10 and 37 percent. The companies' overall value decrease for all heavy equipment ranges from 4 to 36 percent.

Table 4
Dollar Change In Tax and Percentage Change
In Market Value and Tax Liability
Impacted Equipment Subject To Valuation Changes,
and All Heavy Equipment

Company	Percentage Change in Market Value and Tax Liability			
	Individual Equip. Pieces Affected	Total Company Heavy Equip. Value	Change in Tax Dollars % Change	
Montana Talc	(10)	(4)	(\$ 869)	(4)
Golden Sunlight Mine Co.	(21)	(5)	(10,180)	(5)
Cyprus Mines Corporation	(27)	(23)	(15,606)	(23)
Gilman Construction	(37)	(36)	(2,649)	(36)
N. A. Degerstrom	(22)	(17)	(23,873)	(17)
Empire Sand and Gravel	(21)	(8)	(4,221)	(8)

A comparison of Table 2 and 3 to Table 4 does not show a correlation between the number of pieces assessed, or the amount of equipment value assessed by the acquired cost method rather than the Green Guide, and the change in the companies total heavy equipment assessed value. This illustrates the variation among companies and types of equipment in the assessed value assigned by the Green Guides in relationship to the actual purchase price trended for inflation and depreciation. The statistics show that in tax year 1990, approximately 52 percent of the equipment valuation and 30 percent of the equipment items were assessed under the Green Guide; thus, 48 percent of the equipment valuation and 70 percent of the equipment pieces were assessed under the acquired cost method. The Green Guides, on average, value equipment 22 percent higher than the acquired cost method. Using the acquired cost method for all heavy equipment assessed will decrease the total heavy equipment assessed value about 11 percent, resulting in \$811,000 less revenue in tax year 1991.

Comment: The estimated tax loss to local governments and schools is significant.

Response: It is estimated that the total revenue change

statewide for government entities is (\$811,000). This is (\$289,000) for the school foundation program, (\$18,000) for the university six mill levy, (\$11,000) for state welfare assumption, (\$289,000) for local school budgets, and (\$204,000) for county and city governments.

Of the total taxes levied in Montana in 1990 of \$542,138,875, this change represents less than a one percent reduction.

Comment: The Green Guides give the county an idea of what they can budget. This method will not provide that.

Response: The Department of Revenue is required by law (15-8-111, MCA) to value heavy equipment at 100% of market value. The acquired cost method of valuing heavy equipment meets that requirement. Previously, the department has used this method for valuing 70% of the heavy equipment without problem. The values are provided to local governments each year in time to set their budgets.

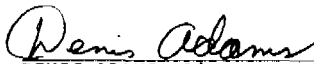
Comment: This method will allow the owner to value his machinery. This invites dishonesty. Taxing the acquired cost is not consistent with any fair tax system.

Response: Under both the current and proposed rule, taxpayers report the make and model, the year acquired, and the acquired cost for each piece of equipment. No evidence was presented to indicate that the information currently being collected is reported inaccurately. It is estimated that 70 percent of heavy equipment items were valued using acquired cost rather than the Green Guide in tax year 1990. Under the proposed rule, no additional information is requested to value the remaining 30 percent of the heavy equipment pieces at acquired cost.

In 1990, class 8 personal property was valued at \$2,455.4 million. Of the total personal property, \$1,598.2 million or 65 percent is valued using acquired cost as the basis. By using acquired cost as the first method rather than the second method for valuing heavy equipment, there will be approximately \$1,893.8 million or 77 percent of the personal property valued according to acquired cost.

Comment: The Department should go through the legislature to make these changes, not through the administrative process. The Department should make a presentation to the Revenue Oversight Committee in the interim and try to get the law revised.

Response: The Department presented the rule changes to the Revenue Oversight Committee on March 31, 1991.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State June 3, 1991.

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 46.10.506	)	RULE 46.10.506 PERTAINING
pertaining to nonrecurring	)	TO NONRECURRING GIFTS AND
gifts and excluded unearned	)	EXCLUDED UNEARNED INCOME
income)	

TO: All Interested Persons

1. On April 25, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.506 pertaining to nonrecurring gifts and excluded unearned income at page 503 of the 1991 Montana Administrative Register, issue number 8.

2. The Department has amended Rule 46.10.506 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 30, 1991.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
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 lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1991. This table includes those rules adopted during the period April 1, 1991 through June 30, 1991 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1991, this table and the table of contents of this issue of the MAR.

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