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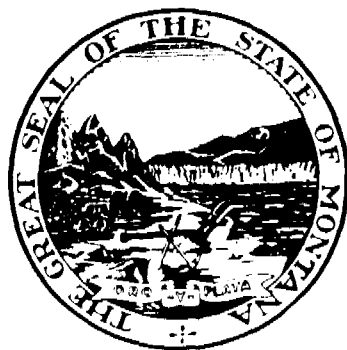
JUN 11 1993

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**DOES NOT
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

JUN 11 1993

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED ADOPTION OF
adoption of New Rules on civil	)	NEW RULES ON CIVIL PENALTIES,
penalties, inspection fees,	)	INSPECTION FEES, ASSESSMENT
assessment fees, and produce	)	FEES, AND PRODUCE GRADES
grades relating to the	)	RELATING TO THE DISTRIBUTION OF
distribution of produce in	)	PRODUCE IN MONTANA; AMEND ARM
Montana; amend ARM 4.12.2615 on	)	4.12.2615 ON VERIFICATION OF
verification of produce grown in	)	PRODUCE GROWN IN MONTANA;
Montana; repealing Title 4,	)	REPEALING TITLE 4, CHAPTER 12,
Chapter 12, Sub-Chapter 18	)	SUB-CHAPTER 18 COMMODITY GRADE
Commodity Grade and Charges;	)	AND CHARGES; REPEALING TITLE 4,
repealing Title 4, Chapter 12,	)	CHAPTER 12, SUB-CHAPTER 22
Sub-Chapter 22 Control of	)	CONTROL OF APPLES; REPEALING
Apples; repealing Title 4,	)	TITLE 4, CHAPTER 12, SUB-
Chapter 12, Sub-Chapter 23	)	CHAPTER 23 GRADING OF CHERRIES;
Grading of Cherries; and	)	AND REPEALING TITLE 4, CHAPTER
repealing Title 4, Chapter 12,	)	12, SUB-CHAPTER 26 WHOLESALERS
Sub-Chapter 26 Wholesalers and	)	AND ITINERANT MERCHANTS EXCEPT
Itinerant Merchants except for	)	FOR ARM 4.12.2607 AND ARM
ARM 4.12.2607 and ARM 4.12.2615	)	4.12.2615

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 12, 1993, the Department of Agriculture proposes to adopt, amend, and repeal rules pertaining to the distribution and sale of produce in Montana resulting from the passage of the Montana Produce Act (Chapter 553, 1993 Laws of Montana). The department proposes to adopt new rules on civil penalties, inspection fees, assessment fees, and produce grades; amend ARM 4.12.2615 regarding verification of produce grown in Montana; repeal Title 4, Chapter 12, Sub-Chapter 18, Commodity Grade and Charges, and replace with new rules; repeal Title 4, chapter 12, sub-chapter 22, control of apples, and replace with new rules; repeal Title 4, chapter 12, sub-chapter 23, grading of cherries, and replace with new rules; and repeal Title 4, chapter 12, sub-chapter 26 wholesalers and itinerant merchants except for ARM 4.12.2607 and ARM 4.12.2615. The rules being proposed for repeal are no longer necessary based on the passage of the Montana Produce Act.

2. The proposed new rules will read as follows:

RULE I CIVIL PENALTIES - ENFORCEMENT (1) Whenever the department has reason to believe that a violation of [Chapter 553, 1993 Laws of Montana] or any adopted rule thereunder has occurred and the department finds it in the public interest to assess a civil penalty, it may initiate a civil penalty action pursuant to the Administrative Procedure Act.

(2) Each violation shall be considered a separate offense and is subject to a separate penalty not to exceed \$1,000. A repeat violation shall be considered a first violation if it occurred two or more years after the previous violation.

(3) The penalty matrixes set forth in this rule establish the basic penalty value for each offense. Factors dealing with the violation may cause the matrix penalty to increase or decrease. Examples of such factors would be the firm's history of compliance or non-compliance, or the extent of the harm to agriculture or environment.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 6
1993 Laws of Montana

RULE II CIVIL PENALTIES - MATRIX

<u>Type of Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>Subsequent Offenses</u>
(1) Operating without a produce dealer's license or refusal to pay the license or assessment fee required after being fully advised of its requirement.	\$100	\$300	\$1000
(2) Misrepresenting information supplied regarding exemption from licensing or assessment reporting requirements.	\$100	\$300	\$1000
(3) Failure or refusal to allow inspection of or to maintain and provide records, reports or other information required by the department.	\$100	\$300	\$1000
(4) Intentional or consistent failure to advertise, grade, or mark produce as required.	\$100	\$300	\$1000

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 6
1993 Laws of Montana

RULE III SHIPPING POINT INSPECTION FEES

- (1) All produce (with exception of potatoes and cherries)..... 3.5¢ per unit.
- (2) Potatoes; seed or table stock..... 4¢ per cwt.
Cherries; 17.5¢ per cwt.
- (3) Minimum inspection fee per requested inspection trip.....\$10.00
- (4) Inspection tags..... 5¢ per tag.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 11
1993 Laws of Montana

RULE IV ASSESSMENT FEES ON ALL PRODUCE (1) The assessment fee on all produce except produce grown in Montana and inspected at shipping point shall be 5.5¢ per each produce unit.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 10
1993 Laws of Montana

RULE V PRODUCTS DESIGNATED AS PRODUCE--PRODUCE UNIT QUANTIFIED (1) The following fruits, vegetables and natural products are designated as produce. This list is not all inclusive. Any product commonly recognized as a fruit or vegetable shall also be considered to be produce for assessment purposes.

(2) The following quantities shall be used as the standard produce unit for the produce listed below. Containers of approximately the same quantity may be considered a produce unit for each container.

PRODUCE	POUNDS OR ITEMS PER UNIT
Asian Pears	20 lbs.
Apples	40 lbs.
Apricots	28 lbs.
Asparagus	30 lbs.
Artichokes	15 lbs.
Avocados	60-70 count
Bananas	40 lbs.
Beans, green	28 lbs.
Beets	24 bunches
Blackberries	12-- $\frac{1}{2}$ pint baskets
Boysenberries	12-- $\frac{1}{2}$ pint baskets
Blueberries	12--1 pint baskets
Broccoli	25 lbs.
Broccoflower	25 lbs.

Bok Choy	12 count
Brussel Sprouts	25 lbs.
Cabbage	50 lbs.
Cantaloupes	35 lbs.
Carrots	50 lbs.
Cauliflower	28 lbs.
Celantro	12 lbs.
Celery	45 lbs.
Cherries	20 lbs.
Chicory	10 lbs.
Coconuts	25 lbs.
Collard greens	24 count
Corn	60 ears
Cranberries	25 lbs.
Cucumbers	30 lbs.
Currants	12-- $\frac{1}{2}$ pint baskets
Egg Plant	25 lbs.
Endive	24 count
Garlic	10 lbs.
Ginger Root	10 lbs.
Grapefruit	35 lbs.
Grapes	20 lbs.
Honeydew Melons	20 lbs.
Horseradish roots	10 lbs.
Jicama	20 lbs.
Kale greens	24 count
Kiwifruit	10 lbs.
Leeks	24 count
Lemons	35 lbs.
Lettuce	
Head	24 count
Butter	24 count
Endive	24 count
Escarole	24 count
Green Leaf	24 count
Red Leaf	24 count
Romaine	24 count
Limes	35 lbs.
Mangos	12 lbs.
Mushrooms	10 lbs.
Mustard greens	24 count
Nectarines	20 lbs.
Okra	10 lbs.
Onions, Dry	50 lbs.
Onions, Green	48 bunches
Oranges	37 lbs.
Papayas	12 lbs.
Parsley	60 bunches
Parsnips	25 lbs.
Peaches	20 lbs.
Pears	35 lbs.
Peas, Green/Sweet	12 lbs.

Peppers	28 lbs.
Pineapple	35 lbs.
Plums	24 lbs.
Potatoes	100 lbs.
Prunes	24 lbs.
Pumpkins	100 lbs.
Radishes	48 bunches
Raspberries	12-- $\frac{1}{2}$ pint baskets
Rhubarb	20 lbs.
Rutabagas	25 lbs.
Shallots	10 lbs.
Spinach	24 count
Sprouts	12 count
Squash	
Summer type	20 lbs.
Winter type	50 lbs.
Star fruit	15 lbs.
Strawberries	12--1 pint baskets
Sweet Potatoes	40 lbs.
Tangelos	35 lbs.
Tangerines	35 lbs.
Tomatoes	28 lbs.
Turnips	25 lbs.
Watermelons	100 lbs.
Yams	40 lbs.
Miscellaneous	50 lbs.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 2
1993 Laws of Montana

RULE VI MONTANA APPLE GRADE STANDARDS (1) The following Montana apple grades are established in addition to the United States Standards for Grades of Apples in Montana.

- (a) Montana Extra Fancy;
- (b) Montana Fancy;
- (c) Montana Combination;
- (d) Montana Extra Fancy Hail;
- (e) Montana Fancy Hail.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 7
1993 Laws of Montana

RULE VII APPLES - MONTANA GRADES DEFINED (1) Montana extra fancy and Montana fancy shall be equivalent to U.S. extra fancy and U.S. fancy respectively with the following exceptions:

- (a) color percentage requirements shall refer to the area of the surface which must be colored with a good shade of red characteristic of the variety and shall not allow for compensating color;
- (b) Montana extra fancy color for McIntosh and Red

Delicious shall be 66 2/3 percent;

(c) Montana extra fancy shall be well formed;

(2) Montana combination must contain at least 50 percent of the apples which grade Montana extra fancy and the remainder to grade Montana fancy.

(3) Montana extra fancy hail and Montana fancy hail shall be equivalent to the Montana extra fancy and Montana fancy respectively with the following exceptions:

(a) hail marks shall not affect more than one-tenth of the surface aggregate area where skin has not been broken;

(b) well healed hail marks where the skin had been broken shall not affect more than one-half inch of aggregate surface area;

(c) un-healed hail marks shall not be permitted.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 7
1993 Laws of Montana

RULE VIII MONTANA SWEET CHERRY GRADE STANDARDS

(1) The following Montana cherry grade is established in addition to the United States standards for grades of sweet cherries in Montana.

(a) Montana No. 1.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 7
1993 Laws of Montana

RULE IX SWEET CHERRIES - MONTANA GRADES DEFINED

(1) Montana No. 1 shall be equivalent to U.S. No. 1 with the exception of tolerances for defects en route or at destination. Montana No. 1 shall allow 24 percent for cherries in any lot which fail to meet the requirements of this grade: PROVIDED, that included in this amount not more than the following percentages shall be allowed for defects listed:

(a) Eight percent for cherries which fail to meet the requirements for this grade because of permanent defects; or

(b) Six percent for cherries which are seriously damaged, including therein not more than four percent for cherries which are seriously damaged by permanent defects and not more than two percent for cherries which are affected by decay.

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 7
1993 Laws of Montana

3. 4.12.2615 VERIFICATION OF "PRODUCE OF HIS OWN PRODUCTION" - "LEASED PREMISES" - "ACTUALLY GROWN" is amended as follows: "4.12.2615 VERIFICATION OF "PRODUCE OF HIS OWN PRODUCTION" - "LEASED PREMISES" - "ACTUALLY GROWN" 'MONTANA-GROWN' PRODUCE OR PRODUCE 'GROWN' IN MONTANA

(1) "Produce of his own production Montana-grown"

produce or produce "grown" in Montana shall mean produce actually grown by ~~him~~ a person upon owned or leased premises in Montana.

(2) "Leased premises" for the purpose of this act rule, shall mean premises over which the lessee has complete jurisdiction ~~or for the crop season~~.

(3) The term "actually grown" shall mean that the ~~applicant~~ person, or those actually in his paid employ shall have done all things necessary ~~to for~~ the production of such crops and produce, including irrigation, planting, pruning, and harvesting throughout the entire crop season. ~~A certified copy of the lease shall accompany the application.~~

AUTH: Chapter 553, Sec. 3
1993 Laws of Montana

IMP: Chapter 553, Sec. 3
1993 Laws of Montana

4. Title 4, Chapter 12, Sub-Chapter 18 Commodity Grade and Charges, ARM 4.12.1801 AUTH: 80-3-110, MCA, IMP: 80-3-101, MCA; ARM 4.12.1802 AUTH: 80-3-110, MCA, IMP: 80-3-107, MCA; ARM 4.12.1803 AUTH: 80-3-110, MCA, IMP: 80-3-102, MCA; ARM 4.12.1804 AUTH: 80-3-103, MCA, IMP: 80-3-104, MCA; ARM 4.12.1805 AUTH: 80-3-106, MCA, IMP: 80-3-110, MCA; ARM 4.12.1806 AUTH: 80-3-110, MCA, IMP: 80-7-111, MCA; and ARM 4.12.1807 AUTH: 80-3-110, MCA, IMP: 80-7-111, MCA; is hereby repealed in its entirety. These rules are found on pages 4-441 through 4-444 of the ARM.

Title 4, Chapter 12, Sub-Chapter 22 Control of Apples, ARM 4.12.2201 AUTH: 80-3-201, MCA, IMP: 80-3-202, MCA; ARM 4.12.2202 AUTH: 80-3-201, MCA, IMP: 80-3-203, MCA; ARM 4.12.2203 AUTH: 80-3-201, MCA, IMP: 80-3-202, MCA; and ARM 4.12.2204 AUTH: 80-3-201, MCA, IMP: 80-3-202, MCA; is hereby repealed in its entirety. These rules are found on pages 4-459 through 4-463 of the ARM.

Title 4, Chapter 12, Sub-Chapter 23 Grading of Cherries, ARM 4.12.2301 through ARM 4.12.2306 AUTH: 80-3-110, MCA, IMP: 80-3-103, MCA; ARM 4.12.2307 AUTH: 80-3-110, MCA, IMP: 80-3-101, MCA; ARM 4.12.2308 AUTH: 80-3-110, MCA, IMP: 80-3-103, MCA; and ARM 4.12.2309 AUTH: 80-3-110, MCA, IMP: 80-3-101, MCA; is hereby repealed in its entirety. These rules are found on pages 4-463 through 4-466 of the ARM.

Title 4, Chapter 12, Sub-Chapter 26 Wholesalers and Itinerant Merchants, ARM 4.12.2601 AUTH: 80-3-610, MCA, IMP: 80-3-601, MCA; ARM 4.12.2602 AUTH: 80-3-610, MCA, IMP: 80-3-306, MCA; ARM 4.12.2603 AUTH: 80-3-610, MCA, IMP: 80-3-607, MCA; ARM 4.12.2604 AUTH: 80-3-610, MCA, IMP: 80-3-605, 608, 609, MCA; ARM 4.12.2605 AUTH: 80-3-610, MCA, IMP: 80-3-608, MCA; ARM 4.12.2606 AUTH: 80-3-610, MCA, IMP: 80-3-601, MCA; ARM 4.12.2607 AUTH: 80-3-610, MCA, IMP: 80-3-602, MCA; ARM 4.12.2608 AUTH: 80-3-610, MCA, IMP: 80-3-603, MCA; ARM 4.12.2609 AUTH: 80-3-610, MCA, IMP: 80-3-603, MCA; ARM 4.12.2610 AND ARM 4.12.2611 AUTH: 80-3-610, MCA, IMP: 80-3-602, MCA; ARM 4.12.2612 AUTH: 80-3-610, MCA, IMP: 80-3-603; ARM 4.12.2613 AUTH: 80-3-603, 610, MCA, IMP: 80-3-603, MCA; ARM

4.12.2614 AUTH: 80-3-209, MCA, IMP: 80-3-701, MCA; ARM 4.12.2615 AND ARM 4.12.2616, AUTH: 80-3-709, MCA, IMP: 80-3-701, MCA; ARM 4.12.2617 AUTH: 80-3-704, MCA, IMP: 80-3-704, MCA; ARM 4.12.2618 AUTH: 80-3-709, MCA, IMP: 80-3-705 and ARM 4.12.2619 and 4.12.2620 AUTH: 80-3-603,610,705,709, MCA, IMP: 80-3-603,705, MCA; is hereby repealed in its entirety except for ARM 4.12.2607 and ARM 4.12.2615. These rules are found on pages 4-481 through 4-486 of the ARM.

Reasons: The reason for adopting, amending, and repealing rules pertaining to the sale and distribution of produce in Montana is to implement the new Montana produce act passed during the 1993 53rd session of the Montana legislature. The new Montana produce act repealed and replaced the old statutes regulating Montana produce. The act greatly changed the manner in which Montana produce dealers are licensed, produce is graded and inspected, and how the department's produce program is funded. As such it is necessary to adopt new rules and amend certain rules to implement the new Act. It is also necessary to repeal many obsolete rules which do not comply with the new Act.

The reason for rule I and rule II is to adopt a civil penalty matrix required in the new Montana Produce Act. The civil penalty matrix establishes specific fines for specific violations of Montana's Produce Act and rules.

Rule III implements shipping point inspection fees as required in the new Act. These inspection fees remain the same as was charged under the old produce statutes.

Rule IV establishes a produce assessment fee as provided for in the new Montana Produce Act. The fee replaces the 3.5¢ per unit inspection fee in ARM 4.12.1806 which is being repealed. The assessment fee is being set at 5.5¢ per unit to generate revenue for the licensing, enforcement, and administration of the produce program as noted in the fiscal note which accompanied the passage of the Montana produce act. The Montana Produce Act established a special revenue account to fund the expenses of the department's produce program.

Rule V designates which products are defined as produce under the Montana produce act, and also quantifies what the unit size is for each type of produce (e.g. weight, volume, or unit count).

Rule VI and VII adopt Montana apple grade standards. The Montana standards are the same as the U.S. standards except as noted in the proposed rules.

Rule VIII and IX adopt Montana cherry grade standards. The Montana standards are the same as the U.S. standards except as noted in the proposed rules.

Title 4, chapter 12, sub-chapter 18, commodity grade and charges, is being repealed since all the rules in this sub-chapter do not implement or relate to the new Montana produce act. Analogous rules implementing the new Montana produce act are proposed rules I, II, III, IV, and V listed above.

Title 4, chapter 12, sub-chapter 22, control of apples, pertaining to apple grades is being repealed since the rules therein reiterate the U.S. grades for apples. The new Montana Produce Act adopts the U.S. grades by reference making the rules in sub-chapter 22 unnecessary. Montana apple grades are adopted in rules VI and VII listed above.

Title 4, chapter 12, sub-chapter 23, grading of cherries, which establishes cherry grades is being repealed since the rules therein reiterate the U.S. grades for cherries. The new Montana produce act adopts the U.S. grades by reference making the rules in sub-chapter 23 unnecessary. Montana cherry grades are adopted in rules VIII and IX listed above.

Title 4, chapter 12, sub-chapter 26 wholesalers and itinerant merchants is being repealed except for ARM 4.12.2607 and ARM 4.12.2615. All the rules in this sub-chapter except ARM 4.12.2607 and ARM 4.12.2615 do not implement or relate to the new Montana produce act.

4.12.2615 VERIFICATION OF "PRODUCE OF HIS OWN PRODUCTION" - "LEASED PREMISES" - "ACTUALLY GROWN" is amended to clarify the terms Montana-grown and produce grown in Montana as referenced in the new Montana produce act. The amendment is necessary to change the terminology in the rule to correspond to the terminology in the new act.

5. Interested persons may present their data, views, or arguments either orally or in writing to Willard A. Kissinger, Administrator, Plant Industry Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT. 59620-0201, no later than July 8, 1993.

6. 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 Willard A. Kissinger, Administrator, Plant Industry Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT. 59620-0201, no later than July 8, 1993.

7. 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.



W. Ralph Peck
Deputy Director



Timothy J. Meloy, Attorney
Rule Reviewer
Department of Agriculture

Certified to the Secretary of State Office June 1, 1993.

BEFORE THE CLASSIFICATION AND RATING COMMITTEE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED ADOPTION
of temporary rules on matters)	OF TEMPORARY RULES
subject to notice and hearing)	
before the classification and)	NO PUBLIC HEARING
rating committee.)	CONTEMPLATED

TO: All Interested Persons.

1. On July 12, 1993, the classification and rating committee proposes to adopt and file with the secretary of state temporary rules on matters subject to rulemaking with respect to the committee, adopted pursuant to section 2-4-303(2), MCA. On April 24, 1993, H.B. 587 became effective. H.B. 587 revises sections 33-16-1011 and 33-16-1012, MCA, to, among other things, provide that the classification and rating committee (1) makes the final determination regarding the establishment of classifications and (2) makes rules necessary for the conduct of business subject to notice and hearings, including review of employer objections to classifications assigned to the employer by an insurer. The classification and rating committee finds it necessary to adopt temporary rules in order to implement H.B. 587 as nearly as possible to its effective date.

2. The temporary rules will be effective until October 1, 1993.

3. The proposed temporary rules provide as follows:

RULE I AGENCY ORGANIZATION (1) History. The classification and rating committee is created by statute. The district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E. Developers, Inc., decided August 14, 1992, that the classification and rating committee is a state agency defined by 2-4-102, MCA. As a state agency, the classification and rating committee is required to promulgate procedural rules pursuant to the Montana Administrative Procedure Act. In 1993, the legislature amended 36-16-1012, MCA, to give the committee express rulemaking authority.

(2) Nature of committee. The classification and rating committee is a state agency as defined by 2-4-102, MCA. Documents and other information concerning the classification and rating committee's actions are made available for public review at the office of the commissioner of insurance. The classification and rating committee consists of five members, of whom four are appointed by the commissioner of insurance and one is appointed by the executive director of the state fund, as provided in 36-16-1011, MCA. The classification and rating committee is staffed as determined necessary by the National Council on Compensation Insurance or such other workers'

compensation rating organization as the classification and rating committee may designate.

(3) Inquiries and submissions. Unless otherwise provided in these rules or by special notice, all inquiries and submissions to the classification and rating committee should be made to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231.

AUTH: Sec. 33-16-1012, MCA.

IMP: Sec. 2-4-201; 33-16-1011; and 33-16-1012, MCA.

RULE II ADOPTION OF MODEL RULES (1) The classification and rating committee adopts and incorporates by reference the following of the attorney general's Model Procedural Rules:

- (a) 1.3.102;
- (b) 1.3.203 through 1.3.211;
- (c) 1.3.216;
- (d) 1.3.218; and
- (e) 1.3.222 through 1.3.233.

The attorney general's Model Procedural Rules are adopted on a selective basis because certain of the rules are not consistent with the requirement contained in 33-16-1012, MCA, which provides that a hearing conducted before the committee must be an informal proceeding as provided in 2-4-604, MCA.

(2) A copy of the model rules adopted by the classification and rating committee may be obtained from the committee.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1012; 2-4-201; 2-4-202, MCA

RULE III DEFINITIONS The following definitions apply to this subchapter, unless context or the particular rule requires otherwise:

(1) "Classification" means a category of risk assigned by an insurer based on the nature of the work performed.

(2) "Committee" means the classification and rating committee created under 33-16-1011, MCA.

(3) "Insurer" means an insurer writing workers' compensation coverage in this state, including the state compensation mutual insurance fund.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1011; 33-16-1012, MCA

RULE IV ADMINISTRATIVE APPEAL OF CLASSIFICATION DECISION

(1) An employer requesting an administrative appeal of a classification decision by an insurer must file with the committee a written notice of administrative appeal within 30 days after notice of the classification decision was mailed to the employer's last known address. The notice of classification decision shall contain a reference to these rules, and shall state that the employer may appeal the classification decision before the committee, the time within which the administrative appeal must be made, and the address to which the administrative

appeal must be made.

(2) The notice of administrative appeal must contain a short statement of the reasons for the appeal.

(3) The notice of administrative appeal must be filed with the classification and rating committee. The employer must provide a copy of the notice of administrative appeal to the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, P.O. Box 200301, Helena, MT 59620-0301.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1011; 33-16-1012; 2-4-201, MCA

RULE V GENERAL HEARING PROCEDURE (1) This rule implements 33-16-1012, MCA, by setting forth procedural steps that shall be followed in hearings for administrative appeals involving classification determinations.

(2) Classification determination hearings must be informal proceedings held pursuant to 2-4-604, MCA. Classification determination hearings are conducted in such a manner as to ascertain the substantial rights of the parties. All issues relevant to the classification determination are considered and passed upon. Any party and any witness may, under oath or affirmation, present pertinent evidence subject to examination by the committee and to cross-examination by the opposing party.

(3) With the consent of the committee, the parties may stipulate in writing the facts of the case. A hearing may nevertheless be held if the committee finds such a stipulation inadequate for decision in the administrative appeal.

(4) If any party fails to appear at the hearing, and no emergency justifying continuance is shown, the committee may decide the issues and make a decision on the best evidence available. The hearing may be postponed only for emergencies upon application to the committee orally or in writing before the hearing is concluded.

(5) The committee may adjourn any hearing for a reasonable period of time, in order to secure all the evidence that is necessary and to be fair to the parties.

(6) The committee may appoint a hearing examiner to decide all pre-hearing matters and to conduct the hearing.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1012; 2-4-603; 2-4-604, MCA

RULE VI NOTICE OF HEARING (1) A hearing must be scheduled at a regular or special meeting of the committee.

(2) Written notice of a hearing or pre-hearing conference must be mailed to the parties at least 20 days before the hearing or conference.

(3) A hearing notice must comply with section 2-4-601, MCA, except that the hearing notice shall not contain a statement that a formal proceeding may be waived pursuant to 2-4-603, MCA. The hearing notice must contain a statement that the hearing must be an informal proceeding as provided in 2-4-604, MCA.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1012; 2-4-201; 2-4-601; 2-4-604, MCA

RULE VII PRE-HEARING EXCHANGE OF INFORMATION (1) At least 10 days before a hearing, each party must mail or deliver the following information or documents to the committee and to all other parties:

(a) accurate copies of all documentary evidence;
(b) the names, addresses and telephone numbers of all proposed witnesses; and

(c) the telephone numbers where the parties and witnesses may be reached at the time of the hearing.

(2) Telephone numbers may be updated by either party at any time prior to hearing.

(3) The committee may prescribe a form to be used in providing the information required by this rule.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1012; 2-4-201; 2-4-602, MCA

RULE VIII TELEPHONE HEARINGS (1) A hearing may be held by telephone conference call.

(2) An in-person hearing shall be scheduled in Helena if a party requests in writing such a hearing at least 5 days before a scheduled telephone conference call hearing.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1012; 2-4-201, MCA

RULE IX ESTABLISHMENT OF CLASSIFICATIONS (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1980 ed., as supplemented through May 1, 1993, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, P.O. Box 200301, Helena, MT 59620-0301. Copies of the Basic Manual for Workers' Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231. Persons obtaining a copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) The committee may amend the definition of a rate classification, establish a new rate classification, or delete an existing rate classification pursuant to the rulemaking procedures as provided in Title 2, chapter 4, part 3, Montana Code Annotated and the applicable attorney general's Model Procedural Rules adopted by the committee.

AUTH: Sec. 33-16-1012, MCA

IMP: Sec. 33-16-1012; 2-4-103, MCA

4. The rationale for the temporary rules is set forth in paragraph 1.

5. Interested persons are invited to submit their data, views, or arguments concerning the proposed rules in writing to:

John Riley, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance
Two Tamarac Square, Suite 613
7535 East Hampden Avenue
Denver, CO 80231

Comments must be received no later than July 9, 1993. A standard rulemaking procedure with full public participation will be initiated for the final rules which will include and replace these temporary rules.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and argument 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:

John Riley, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance
Two Tamarac Square, Suite 613
7535 East Hampden Avenue
Denver, CO 80231

Requests must be received no later than July 9, 1993.

7. If the agency receives requests for a public hearing on the proposed adoption from 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having 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 the number of persons who are directly affected by the proposed adoption is in excess of 25.

By: John T. Riley
John Riley, Chairperson
Classification and Rating Committee

By: Geoffrey L. Brazier
Geoffrey L. Brazier, Rule Reviewer
State Auditor's Office

Certified to the Secretary of State June 1, 1993.

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

In the matter of the amendment of)	NOTICE OF
rule 16.32.302 dealing with)	PROPOSED AMENDMENT
updating references to national)	OF ARM 16.32.302
construction codes)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

(Licensing &
Certification)

To: All Interested Persons

1. On July 10, 1993, the department proposes to adopt the above-mentioned rules.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY -- ADDITION, ALTERATION, OR NEW CONSTRUCTION -- GENERAL REQUIREMENTS (1) Except as may otherwise be provided in section (2) of this rule, a health care facility and the construction of, alteration, or addition to a facility shall comply with:

(a) all standards set forth in: ~~"Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" Publication No. (HRA) 79-14500, as revised August, 1979~~

(i) the 1992-1993 "Guidelines for the Construction and Equipment for Hospitals and Medical Facilities", and NFPA 101, Life Safety Code, 1991 edition, except that a facility already licensed under an earlier edition of the "Life Safety Code 1967" published by the National Fire Protection Association ~~(21st edition)~~, is not required to comply with later editions of the Life Safety Code. Copies of the cited editions are available at the department.

(ii) the 1992 "American National Standards Institute A117.1"

(b)-(c) remain the same.

(2)-(3) Remain the same.

(4) The department hereby adopts and incorporates by reference:

(a) ~~"Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" Publication No. (HRA) 79-14500, as revised August, 1979~~ The 1992-1993 "Guidelines for the Construction and Equipment for Hospitals and Medical Facilities", which set forth minimum construction and equipment requirements deemed necessary by the federal department of health and human services to ensure health care facilities can be efficiently maintained and operated to furnish adequate facilities.

(b) "NFPA 101. Life Safety Code 1967 1991 edition", published by the National Fire Protection Association (21st edition), which sets forth construction and operation requirements designed to protect against fire hazards.

(c)-(d) Remain the same.

(e) The 1992 "American National Standards Institute A117.1", which sets forth standards for buildings and facilities -- providing accessibility and usability for physically handicapped individuals.

(f) Copies of the materials cited above are available from ~~at the Licensing and Certification Bureau Health Facilities Division~~, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.
AUTH: 50-5-103, MCA; IMP: T. 50, Ch. 8, 50-5-103, 50-5-201, 50-5-204, MCA

4. The proposed amendment is necessary in order to update references to national construction standards and life safety codes.

5. Interested persons may submit their written data, views, or arguments concerning this amendment to Mike Craig, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 8, 1993.

6. If a party who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mike Craig, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 8, 1993.

7. If the department receives requests for a public hearing under Section 2-4-315, MCA, on the proposed amendment, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25, based on the estimated number of health facilities, architects, engineers and health planners in the state.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 1, 1993

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF
LIVESTOCK OF THE STATE OF
MONTANA

In the matter of the Amendment)	NOTICE OF PROPOSED FEE
of Rule 32.2.401 pertaining to)	UNDER ARM 32.2.401, ARM AS TO
Department of Livestock License))	A SLAUGHTERHOUSE, MEAT
Fees)	PACKING HOUSE, OR MEAT DEPOT
	LICENSE.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 12, 1993 the Montana Board of Livestock acting through the Montana Department of Livestock proposes to amend Rule 32.2.401, ARM at subsection (21) by increasing the license fee for a slaughterhouse, meat packing house, or meat depot.

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

32.2.401 DEPARTMENT OF LIVESTOCK FEES, PERMIT FEES, AND MISCELLANEOUS FEES

Subsections (1) through (20) remain the same.
(21) for a slaughterhouse, meat packing house, or meat depot license as required by 81-9-201, MCA, a fee of \$5 25;
Subsections (22) through (38) remain the same.
AUTH: 81-1-102, MCA IMP: 81-9-201

3. The proposed amendment is necessary to implement a provision of House Bill 2, enacted in the last regular legislative session which deleted general funds from the meat inspection program of the Department of Livestock and required that fees for licenses in this area be raised to compensate for that loss.

4. Interested parties may submit their data, views, or arguments in writing to E.E. "Cork" Mortensen, Executive Secretary to the Board of Livestock at the Montana Department of Livestock, Capitol Station, Helena, Montana 59620, no later than July 11, 1993.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected; a hearing will be held at a later

date. Notice of the hearing will be published in the Montana Administrative Register.

Lon Mitchell
LON MITCHELL
Rule Reviewer
Department of Livestock

Jack Salmond
JACK SALMOND, Chairman
Montana Board of Livestock

Certified to the Secretary of State June 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING ON
of ARM 42.18.105; 42.18.108;)	THE PROPOSED AMENDMENT of
42.18.111; 42.18.114; 42.18.)	ARM 42.18.105; 42.18.108;
117; 42.18.120; 42.18.123; and)	42.18.111; 42.18.114; 42.
42.18.126 and the ADOPTION of)	18.117; 42.18.120; 42.18.
NEW RULES I, II, III, IV, V,)	123; and 42.18.126 and the
VI, and VII, relating to)	ADOPTION of NEW RULES I, II,
Property Reappraisal of Tax-)	III, IV, V, VI and VII
able Property in Montana)	relating to Property Re-
)	appraisal of Taxable Property
)	in Montana

TO: All Interested Persons:

1. On July 1, 1993, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of the above-referenced rules and the adoption of New Rules I through VII relating to property reappraisal of taxable property in Montana.

2. The amendments to ARM 42.18.105; 42.18.108; 42.15.111; 42.18.114; 42.18.117; and 42.18.123 relate to tax years prior to December 31, 1996. ARM 42.18.120 is being amended to clarify the training requirements. Amendments to ARM 42.18.126 are housekeeping.

3. The proposed new rules I through VI will replace ARM 42.18.105; 42.18.108; 42.15.111; 42.18.114; 42.18.117; and 42.18.123 for tax years beginning after December 31, 1996. New rule VII is proposed to set out the valuation periods. The Department will use the proposed new rules while performing reappraisals during the period January 1, 1993, through December 31, 1996. ARM 42.18.105; 42.18.108; 42.15.111; 42.18.114; 42.18.117; and 42.18.123 must remain in place for property assessment and appeals occurring prior to 1997.

4. The amendments to the current rules are as follows:

42.18.105 MONTANA REAPPRAISAL PLAN (1) and (2) remain the same.

(3) This rule applies to tax years from January 1, 1993, through December 31, 1996.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-7-111, 15-7-133 and 15-7-134 MCA.

42.18.108 RESIDENTIAL APPRAISAL PLAN (1) through (9) remains the same.

(10) This rule applies to tax years from January 1, 1993, through December 31, 1996.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.18.111 COMMERCIAL APPRAISAL PLAN (1) through (9) remains the same.

(10) This rule applies to tax years from January 1, 1993, through December 31, 1996.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.18.114 AGRICULTURAL/FOREST LAND APPRAISAL PLAN (1) through (7) remains the same.

(8) This rule applies to tax years prior to January 1, 1997.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.18.117 INDUSTRIAL PROPERTY APPRAISAL (1) and (2) remain the same.

(3) This rule applies to tax years prior to January 1, 1997.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.18.120 CERTIFICATION AND TRAINING REQUIREMENTS

(1) Residential and commercial appraisers are required to be certified in accordance with ARM 42.18.201 and ARM 42.18.202. Agricultural and timber appraisers/classifiers are required to be certified in accordance with ARM 42.18.203. Industrial appraisers are required to be certified in accordance with ARM 42.18.204.

~~(2) Instruction is required for employees capturing agricultural data. Instruction will be given at the county offices. Training began on January 1, 1989 and concludes on March 31, 1990.~~

~~(3) The first phase of training for CAMAS is on residential valuation and system administration. This training session prepares staff to use the computer terminals and computerized files. This training will teach staff to create individual property files, update component listings, review 1982 base year cost values, update and delete records, and backup, store and process data on the computer file. This training began on July 18, 1989.~~

~~(4) Designated appraisal staff will attend a second phase, one week long, on residential valuation for reappraisal, use of the cost approach, system reporting features, development of market models and computer assisted land pricing (CALP) models. This will prepare the appraisal staff to use CAMAS for accomplishing reappraisal. The appraiser will learn how to develop both the cost approach and the market data approach for each property. This training began on September 11, 1989 and will continue until the designated staff is trained.~~

~~(5) The third phase is a one week session covering commercial/industrial data entry and data management, use of the commercial cost approach, review of CALP modeling and residential market valuation. This training will begin on December 4, 1989.~~

~~(6) The fourth and final phase is a one week session on~~

~~commercial valuation for reappraisal and the collection, analysis and input of commercial property income/expense information. The instruction will also include an overview of prior training sessions. This training session will begin on January 2, 1990.~~

~~(7) The firm of Cole, Leyer and Trumble Co. is providing training in the use of CAMAS to 25 division employees. These 25 employees will serve as trainers for the remainder of the field staff. Approximately 100 individuals will receive training at the Property Assessment Division Office in Helena, Montana. Employees trained in Helena will return to their offices and provide training for the remainder of the staff.~~

~~(2) Initial training for new appraisers and property tax clerks for CAMAS is on residential valuation and system administration. That training prepares staff to use the computer terminals and computerized files. It will teach staff to create individual property files, update component listings, review values, update and delete records, and backup, store and process data on the computer file.~~

~~(3) Designated appraisal staff will attend a training session on residential valuation for reappraisal, use of the cost approach, system reporting features, development of market models and computer assisted land pricing (CALP) models. This will prepare the appraisal staff to use CAMAS for accomplishing reappraisal. The appraiser will learn how to develop both the cost approach and the market data approach for each property.~~

~~(4) Staff who work on commercial appraisal work will receive training that includes commercial/industrial data entry and data management, use of the commercial cost approach, review of CALP modeling and residential market valuation.~~

~~(5) Certain staff will also receive advanced training on commercial valuation for reappraisal and the collection, analysis and input of commercial property income/expense information. The instruction will also include an overview of prior training sessions.~~

~~AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.~~

~~42.18.123 MANUALS (1) through (5) remains the same.~~

~~(6) This rule applies to tax years prior to January 1, 1997.~~

~~AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.~~

~~42.18.126 PROGRESS REPORTING (1) Daily work progress reports will be completed and submitted monthly by each county appraisal office. The work progress reports will assess planned performance against actual accomplishments, and identify those factors that directly affect the appraisal performance in any given month. Movement of staff between counties or permanent reallocation of staff will be considered to ensure work is completed on schedule. The work progress reporting forms will be provided to the offices by the department.~~

~~(2) Workplans, which identify the task assignments~~

~~required to complete reappraisal, will be developed for each staff member. The workplans must identify at a minimum all task assignments identified in the Montana reappraisal plan.~~

(2) County progress report information is summarized each month and shall be available by the third week of the following month for use in making presentations before the revenue oversight committee.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

5. The new rules proposed are as follows:

NEW RULE I 1997 MONTANA REAPPRAISAL PLAN (1) The 1997 Montana reappraisal plan consists of seven parts: residential appraisal, commercial appraisal, agricultural and timber appraisal, industrial appraisal, certification and training requirements, manuals, and progress reporting. The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and timberland property, and industrial property. A computer assisted mass appraisal system (CAMAS) is used to assist in the valuation process. The department's plan is to determine a new appraised value for each parcel of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls for tax year 1997.

(3) The results of this plan apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-7-111 and 15-7-133 MCA.

NEW RULE II RESIDENTIAL REAPPRAISAL PLAN (1) The reappraisal of residential property consists of limited field reviews; comprehensive field reviews; the collection, verification and analysis of sales information; the data entry of missing or updated information, new improvements, and sales information; the development and review of computer assisted land pricing (CALP) models; the development of market models/benchmarking; the generation and review of inventory contents sheet; and final determinations of value. Multiple field reviews of each property will be kept to an absolute minimum. Workplans must reflect that position.

(2) The reappraisal plan provides for limited field reviews to be conducted from January 1, 1993 through December 31, 1994. Limited field review of residential property consists of an external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review grade and depreciation assignment; and collect additional data.

(3) The reappraisal plan provides for comprehensive field

reviews to be conducted from January 1, 1993 through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection, and/or external inspection of the residential property. No call-backs will be made to the property unless specifically requested by the taxpayer, the appraisal supervisor, or area manager.

(4) Residential property data entry consists of correcting; updating, and adding residential property data on the department of revenue's computer assisted mass appraisal system (CAMAS). The process will also include the review of edit reports; the addition of supplementary data to CAMAS; and sketch vectoring.

(5) The collection, verification, analysis and data entry of sales information is an important component of CAMAS. Procedures for collection, verification, and validation of sales information shall be formulated by the department of revenue. Accuracy of sales information is critical to the development of accurate, land valuation; benchmarking; the development of accurate market models; individual property final value determinations; and the defense of final value estimates.

(6) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values.

(7) The development of market models using CAMAS is a requirement for property valuation during the reappraisal cycle. The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. Staff may develop separate market models for each neighborhood.

(8) Inventory contents sheets are generated and reviewed by appraisal staff. These sheets include physical characteristics and component information; sales, basic ownership, and valuation information. The review will consist of analyzing and collecting component information such as condition, desirability and utility (CDU) factors and style of improvements. This review will allow the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of CAMAS data.

(9) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for residential property may include indicators of value using: the cost approach and the sales comparison approach. The appraised value supported by defensible market data, when available, serves as the value for ad valorem tax purposes.

(10) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

NEW RULE III COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of limited field reviews; comprehensive field reviews; collection, verification and analysis of sales and income information; data entry of sales and income information; development and review of computer assisted land pricing (CALP) models; development of income models/benchmarking; generation and review of inventory contents sheets; and final determinations of market value. Multiple field reviews will be kept to an absolute minimum. Workplans must reflect that position.

(2) The reappraisal plan provides for limited field reviews to be conducted from January 1, 1993 through December 31, 1994. A limited field review of commercial property consists of an external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review depreciation assignment; and to collect additional data.

(3) The reappraisal plan provides for comprehensive field reviews to be conducted from January 1, 1993 through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection and/or external inspection of the commercial property. No call-backs will be made to the property unless specifically requested by the taxpayer, the appraisal supervisor, or area manager.

(4) Commercial property data consists of correcting, updating and adding commercial property data on the department of revenue computer assisted mass appraisal system (CAMAS).

(5) The collection, verification, analysis and data entry of sales and income information is an important component of CAMAS. Procedures for collection, verification, and validation of sales and income information shall be formulated by the department of revenue. Accuracy of sales information and income information is critical to accurate land valuation; to benchmarking; to the development of accurate income models; to individual property final value determinations; and to the defense of final value estimates.

(6) Commercial lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values.

(7) The development of income models using CAMAS is a component for property valuation during the reappraisal cycle. Staff may develop separate income models for each neighborhood.

(8) Inventory contents sheets are generated and reviewed by appraisal staff. These sheets include physical characteristics and component information, income information, sales information, basic ownership information, and valuation information. The review will consist of analyzing and

collecting component information. This review will allow the appraiser to review and compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of CAMAS data.

(9) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using: the cost approach, the income approach; and, when possible, the sales comparison approach. The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

(10) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

NEW RULE IV AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) Agricultural and forest lands are valued in accordance with administrative rules adopted by the department of revenue in chapter 20. Use changes are updated annually on both agricultural and forest lands. For agricultural land the valuation methodology and agricultural land valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values will reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA. Agricultural and forest land values will be placed on the tax rolls for tax year 1997.

(2) The reappraisal of agricultural/forest lands consists of limited field reviews; comprehensive field reviews of agricultural/forest lands improvements; agricultural/forest lands property data collection and analysis; the data entry of agricultural/forest lands information; the generation and review of inventory contents sheets; and final determinations of value. The plan provides for multiple field reviews of each property to be kept to an absolute minimum. Workplans must reflect that position.

(3) The reappraisal plan provides for limited field reviews to be conducted from January 1, 1993 through December 31, 1994. A limited field review consists of an external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review grade and depreciation assignment; to review agricultural and forest lands classification; and to collect additional data required to implement CAMAS.

(4) The reappraisal plan provides for comprehensive field reviews to be conducted from January 1, 1993 through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection and/or external inspection of the agricultural/forest lands

improvements. No call-backs will be made to the property unless specifically requested by the taxpayer, the appraisal supervisor or the area manager.

(5) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to the department of revenue's computer assisted mass appraisal system (CAMAS). The correction, updating and addition process also consists of reviewing edit reports which result from that process, the manual entry of agricultural/forest lands information to CAMAS, the addition of improvement data (outbuildings and residences) to CAMAS; and sketch vectoring.

(6) Inventory contents sheets are generated and reviewed by appraisal staff. The inventory contents sheets include physical characteristic and component information for agricultural/forest lands improvements; productivity information for agricultural/forest lands; basic ownership information; and valuation information. The review consists of analyzing; collecting component information on improvements; and reviewing productivity information on agricultural/forest lands. This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(7) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for agricultural/forest lands property improvements includes an estimate of market value using the cost approach and, when possible, the market data approach.

(8) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

NEW RULE V INDUSTRIAL PROPERTY REAPPRAISAL

(1) Approximately 1,500 industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate county appraisal/assessment offices. Each industrial property will be reappraised.

(2) The reappraisal plan provides for industrial property to be valued as an entity. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. The industrial appraisal bureau will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.

(3) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

NEW RULE VI VALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the January 1, 1992 Montana Appraisal Manual will be used through tax year 1996.

(2) For the reappraisal cycle ending December 31, 1996, the 1996 Montana Appraisal Manual will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will reflect January 1, 1996 cost information.

(3) For commercial and industrial new construction the January 1, 1992 Montana Appraisal Manual will be used through tax year 1996. If the property is not listed, other construction cost manuals such as Marshall Valuation Service, Boeckh or Means will be used with a publication date as close to the Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, 1996, the 1996 Montana Appraisal Manual will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, 1996 cost information.

(5) Copies of the valuation manuals used by the department of revenue may be reviewed in the county appraisal offices or purchased from the department at the Property Assessment Division, Helena, Montana 59620.

(6) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

NEW RULE VII CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103(5), MCA:

(a) For the taxable years from January 1, 1986, through December 31, 1992, all property classified in 15-6-134, MCA, (Class Four) must be appraised at its market value as of January 1, 1982.

(b) For the taxable years from January 1, 1993, through December 31, 1996, all property classified in 15-6-134, MCA, (Class Four) must be appraised at its market value as of January 1, 1992.

(c) For the taxable years from January 1, 1997, through December 31, 1999, all property classified in 15-6-134, MCA, (Class Four) must be appraised at its market value as of January 1, 1996.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-134; 15-7-103; and 15-7-111 MCA.

6. The Department is proposing the amendments to clarify that the current rules apply to tax years prior to December 31, 1996. The Department is proposing the new rules to clarify the criteria which will be used in valuing property after January 1, 1993 and placed on the tax roles beginning in 1997.

7. Interested parties may submit their data, views, or

arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:


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

no later than July 16, 1993.

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



CLEO ANDERSON
Rule Reviewer



MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING ON
of NEW RULE I relating to)	PROPOSED ADOPTION OF RULE I
Tax Information Provided to)	relating to Tax Information
the Department of Revenue)	Provided to the Department
)	of Revenue

TO: All Interested Persons:

1. On July 1, 1993, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I relating to Tax Information Provided to the Department of Revenue.

2. The proposed new rule I, does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The new rule as proposed to be adopted provides as follows:

NEW RULE I TREATMENT OF TAXPAYER INFORMATION (1) The Montana Constitution guarantees individuals and corporations the right to privacy in Article II, Section 10. Under this provision of the Constitution, and in conjunction with various statutes in the Montana Code Annotated, the department will protect the privacy interests of taxpayers with regard to information they submit to the department.

(a) A protected privacy interest exists when a person expects the information they submit to remain private and that expectation of privacy is reasonable by social standards.

(b) It is generally accepted that most taxpayers have a reasonable expectation that income and financial data and other information provided to the department will remain private, unless courts or the legislature has specifically recognized that the information is subject to public disclosure.

(2) The Montana Constitution guarantees the public's right to know. The right to know provision of the Montana Constitution is intended to keep the public informed about the workings of state government. The public's right to know must be balanced against the individual right of privacy.

(3) Information, such as tax returns, that taxpayers are required to provide to the department, and department prepared documents, such as audit reports, that identify taxpayers are confidential, unless it is clear that a taxpayer does not have a protected privacy interest in information found in the documents. If there is any doubt as to whether or not a taxpayer has a protected privacy interest in the information, the department will resolve the doubt in favor of privacy.

(4) Documents prepared by the department that do not identify taxpayers and their associated private information are

not confidential and will be released.

(5) (a) The department considers the following to be confidential information based on the Montana Constitution:

(i) tax returns, reports and audits for natural resource taxes such as net and gross proceeds and severance taxes;

(ii) tax returns, reports and audits for miscellaneous taxes such as cigarettes, lodging facilities, and dangerous drugs; and

(iii) tax returns, reports and audits of alcoholic beverage taxes.

(b) The department considers the following to not be confidential information based on the Montana Constitution:

(i) information describing the physical characteristics of property which is used to determine values for property tax assessments;

(ii) information the department obtains from public sources rather than the taxpayer; and

(iii) statistical compilations of confidential information which do not identify taxpayers.

(c) The list of taxes is not intended to be all inclusive but simply provide examples of information which is not covered by a specific statute. Statutes which require confidentiality will be presumed to be constitutional.

(6) Confidential information may be provided to the taxpayer themselves, or to their designee. Requests for this information must be submitted by the taxpayer in writing to the department. These requests will be maintained in the files of the department.

AUTH: 15-1-201, MCA; IMP: Montana Constitution, Art. II, Sections 8, 9, & 10; Attorney General Opinions 38-59 and 39-17; 2-4-501; 2-4-623; 2-6-109; 15-7-308; 15-30-303; 15-31-507; 15-35-205; 15-38-109; 15-50-205; 15-50-206; 15-50-207; 16-3-211; 16-3-404; 16-11-120; and 16-11-122, MCA.


4. The Department is proposing New Rule I to clarify how the department interprets the Montana Constitution regarding the taxpayer's right to privacy and the public's right to know regarding information which is held by the department. Documents required by law to be filed with the department, such as tax returns, contain sensitive information. It is reasonable by societal standards that taxpayers expect such information to remain private.


5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than July 16, 1993.

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


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 1, 1993.

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

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of rules 46.25.101,	)	THE PROPOSED REPEAL OF
46.25.705, 46.25.707,	)	RULES 46.25.101, 46.25.705,
46.25.711, 46.25.714,	)	46.25.707, 46.25.711,
46.25.720 through 46.25.722,	)	46.25.714, 46.25.720
46.25.724 through 46.25.731,	)	THROUGH 46.25.722,
46.25.733, 46.25.734,	)	46.25.724 THROUGH
46.25.738, 46.25.740 through	)	46.25.731, 46.25.733,
46.25.742, 46.25.746,	)	46.25.734, 46.25.738,
46.25.751 through 46.25.756	)	46.25.740 THROUGH
pertaining to general relief	)	46.25.742, 46.25.746,
assistance and general	)	46.25.751 THROUGH 46.25.756
relief medical	)	PERTAINING TO GENERAL
	)	RELIEF ASSISTANCE AND
	)	GENERAL RELIEF MEDICAL

TO: All Interested Persons

1. On June 30, 1993, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed repeal of rules 46.25.101, 46.25.705, 46.25.707, 46.25.711, 46.25.714, 46.25.720 through 46.25.722, 46.25.724 through 46.25.731, 46.25.733, 46.25.734, 46.25.738, 46.25.740 through 46.25.742, 46.25.746, 46.25.751 through 46.25.756 pertaining to general relief assistance and general relief medical.

2. The rules as proposed to be repealed are as follows of the Administrative Rules of Montana:

46.25.101 on pages 46-7825 through 46-7831.

AUTH: Sec. 53-2-201, 53-2-803, 53-3-102, 53-3-109 and 53-3-114 MCA

IMP: Sec. 53-2-201, 53-2-301, 53-2-802, 53-3-109, 53-3-122, 53-3-304, 53-3-305 and 53-3-321 MCA

46.25.705 on page 46-7905.

AUTH: Sec. 53-2-201, 53-3-114 and 53-2-803 MCA

IMP: Sec. 53-2-601, 53-2-803 and 53-3-113 MCA

46.25.707 on page 46-7905.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-501, et seq., 53-2-601, 53-2-609, 53-2-803 and 53-3-112 MCA

46.25.711 on page 46-7911.
AUTH: Sec. 53-2-201, 53-2-803, 53-3-114 and 53-3-212 MCA
IMP: Sec. 53-3-205, 53-3-206, 53-3-209, 53-3-211 and
53-3-212 MCA

46.25.714 on page 46-7912.
AUTH: Sec. 53-3-114 and 53-3-309 MCA
IMP: Sec. 53-3-309 MCA

46.25.720 on page 46-7917
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-201, 53-2-803, 53-3-112, 53-3-301 and
53-3-208 MCA

46.25.721 on page 46-7917.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-201, 53-3-205, 53-3-208, 53-3-301 and
53-2-803 MCA

46.25.722 on page 46-7918.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-109 and 53-3-205 MCA

46.25.724 on page 46-7919.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-206 MCA

46.25.725 on pages 46-7919 and 7920.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-205 MCA

46.25.726 on pages 46-7920 through 7923.
AUTH: Sec. 53-2-201, 53-2-801, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-601, 53-3-102, 53-3-204, 53-3-205 and
53-2-803 MCA

46.25.727 on page 46-7925.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-205 and 53-3-206 MCA

46.25.728 on pages 46-7926 and 46-7927.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-109, 53-3-205, 53-3-206, 53-3-209 and
53-3-311 MCA

46.25.729 on page 46-7927.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-207 MCA

46.25.730 on page 46-7928.
AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-206, 53-3-209 and 53-3-321 MCA

46.25.731 on pages 46-7928 through 7932.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-822, 53-3-304, 53-3-305 and 53-3-321 MCA

46.25.733 on page 46-7932.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

46.25.734 on page 46-7933.

AUTH: Sec. 53-3-201 MCA

IMP: Sec. 53-3-205 MCA

46.25.738 on page 46-7935.

AUTH: Sec. 53-2-803, 53-2-201 and 53-3-114 MCA

IMP: Sec. 53-3-205, 53-3-206, 53-3-208, 53-3-103 and
53-2-803 MCA

46.25.740 on page 46-7935.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-205 MCA

46.25.741 on page 46-7936.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-207 and 53-3-208 MCA

46.25.742 on page 46-7937.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-206, 53-3-209 and 53-3-318 MCA

46.25.746 on page 46-7938.

AUTH: Sec. 53-2-803 and 53-6-111 MCA

IMP: Sec. 53-2-803 MCA

46.25.751 on pages 46-7941 and 46-7942.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-313 MCA

46.25.752 on page 46-7943.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-313 MCA

46.25.753 on page 46-7943.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-803, 53-3-310 and 53-3-313 MCA

46.25.754 on page 46-7944.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-803, 53-3-310 and 53-3-313 MCA

46.25.755 on page 46-7944.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-312, 53-3-102 and 53-2-803 MCA

46.25.756 on page 46-7944.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-803 and 53-3-310 MCA


3. The 53rd Montana Legislature, in House Bill 427, eliminated the General Relief Assistance and General Relief Medical programs. This elimination also applies to the Project Work program, the employment and training portion of the General Assistance program. These programs are no longer statutorily mandated. Counties have the option of offering an indigent relief program of their own choosing. The department, however, was not provided any funds for an indigent assistance program. In light of the mandate of HB 427, the department is repealing all the rules governing these programs.

4. The repeal of these rules is effective July 1, 1993 to comply with House Bill 427.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than July 8, 1993.

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


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1993.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of 2.43.418 relating to the)
accrual and payment of interest for)
previous periods of elected service)

TO: All Interested Persons.

1. On April 15, 1993, the Public Employees' Retirement Board published notice of a public hearing on the proposed amendment of the above rule concerning the accrual and payment of interest for previous periods of elected service at page 496 of the 1993 Montana Administrative Register, issue number 7.

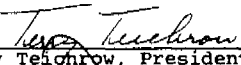
2. The board has amended the rule as proposed.

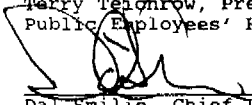
3. No written or oral comments or testimony were received from any interested party.

4. The amendment of this rule will be effective on July 1, 1993.

5. The authority for the rule is found in sections 19-3-304, 19-5-201, and 19-7-201, MCA, and the rule implements Title 19, Ch. 3, part 5 and Chs. 5 and 7, part 3, MCA.

By:


Terry Teichrow, President
Public Employees' Retirement Board


Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on June 1, 1993.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of 2.43.609 relating to the)
funding available for post-)
retirement adjustments)

TO: All Interested Persons.

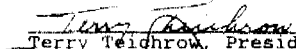
1. On March 25, 1993, the Public Employees' Retirement Board published notice of a public hearing on the proposed amendment of the above rule concerning the funding available for post-retirement adjustments at page 359 of the 1993 Montana Administrative Register, issue number 6.


2. The board has amended the rule as proposed.

3. No written or oral comments or testimony were received from any interested party.

4. The authority for the rule is found in sections 19-3-304, 19-7-201, and 19-8-201, MCA and the rule implements 19-3-1110, 19-7-709 and 19-8-809, MCA.

By:


Terry Telchrow, President
Public Employees' Retirement Board


Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on June 1, 1993.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of) ARM 2.44.201, 2.44.503, 2.44.505, 2.44.506,) 2.44.519, 2.44.520 and 2.44.521 for) the purpose of adopting the current) model procedure rules, clarifying) the retirement effective date,) correcting benefit amount quoted,) requiring copies of member's) contracts be submitted when) applying for retirement benefits,) clarifying investment earning) available for post retirement) adjustments, and implementing) amendments to SB 226 adopted by the) first 1992 special legislative) session relating to the Teachers') Retirement System)	NOTICE OF THE AMENDMENT OF RULES, 2.44.201, 2.44.503, 2.44.505, 2.44.506, 2.44.519, 2.44.520 and 2.44.521
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TO: All Interested Persons.

1. On April 15, 1993, the Teachers' Retirement Board published notice of proposed amendment to rules: 2.44.201, 2.44.401, 2.44.503, 2.44.505, 2.44.506, 2.44.519, 2.44.520 and 2.44.521 as they relate to the Teachers' Retirement System at page 492 through 495 of the 1993 Montana Administrative Register, issue number 7.

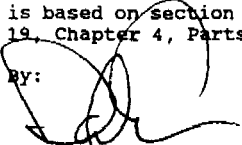
2. The Board has amended Rules 2.44.201, 2.44.503, 2.44.505, 2.44.506, 2.44.519, 2.44.520 and 2.44.521, as proposed.

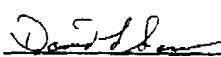
3. Based upon comments received, proposed amendments to rule 2.44.401 are not adopted.

4. At a public hearing a representative of the Montana Education Association opposed the amendments to rule 2.44.401. He was concerned that members would receive less service credit in the future for the same number of hours worked.

5. The authority of the Board to make the proposed rules is based on Section 19-4-201, MCA. and the rules implement Title 19, Chapter 4, Parts 102, 201, 703, 711, 801 and 802, 1001, MCA.

By:


Dal Smilie, Chief Legal Counsel
Rule Reviewer


David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State June 1, 1993.

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to foreign) 8.32.406 LICENSURE FOR
nurses and prescribing practices) FOREIGN NURSES AND
) 8.32.1505 PRESCRIBING
) PRACTICES

1. On March 25, 1993, the Board of Nursing published a notice of proposed amendment of the above-stated rules at page 385, 1993 Montana Administrative Register, issue number 6.

"9.32.1505 PRESCRIBING PRACTICES (1) through (2) (g) will remain the same as proposed.

(3) through (8) will remain the same as proposed."

3. One comment was received from the Montana Hospital Association expressing its support for the rule amendment. No other comments or testimony were received.

BY:

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1993.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of promulgation) NOTICE OF EMERGENCY
of an emergency rule as it) ADOPTION
relates to calculating the)
class I milk paid to milk)
producers)

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

1. On Tuesday, June 1, 1993, the board of milk control (board) proposes to amend ARM 8.86.301(6)(a) on the board's own motion. The action is in response to house bill 516, passed by the 1993 legislature. In that law, which is effective on July 1, 1993, the legislature mandated that the collection of an assessment from the milk producer begin on July 1, 1993. The legislature determined that the actual cost be assessed on the consuming public and that this was in the best interest and welfare of the public as a whole.

H.B. 516 mandates the class I producer's formula to be amended to reflect a \$.1497 per hundredweight (CWT) increase in the producer's price. This requirement directs the board to issue an immediate order amending the producer formula to pass the cost through to the consuming public because it is the only procedure by which the action can be completed within the allotted time frame.

In order to implement the new price structure, immediate action is necessary. Such action cannot be completed within the normal time frame of rule adoption. Because of the legislative mandate of public interest and welfare, an emergency situation exists which requires the adoption of the appropriate rule under the procedures for adoption of emergency rules.

2. Current milk control board rules require the July producer price to be announced on June 10, 1993. The board finds it is necessary to adopt an emergency rule in order to implement the statute as nearly as possible to its effective date. [81-23-102 and 81-23-302, MCA]

3. Section 2-4-303, MCA, (1) provides if the agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than thirty (30) day's notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds

practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302 is not precluded. (emphasis supplied)

4. Based on the above findings, there is imminent peril to the public welfare.

5. The emergency rule will be effective June 1, 1993.

6. The text of the emergency rule is as follows:

"8.86.301 PRICING RULES

(1)-(6) remains the same.

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin series plus ~~three dollars (\$3.00)~~ three dollars and fifteen cents (\$3.15) whichever price is lower. The flexible economic formula utilizes a November 1969 base equalling 100, an interval of 4.5 and consists of seven (7) factors. The factors and their assigned weights are as follows:

	<u>FACTOR</u>	<u>WEIGHT</u>	<u>CONVERSION FACTOR</u>
(i)	Unemployment US (6.67 (3.8 - C) + 100) .05	5%	
(ii)	Unemployment MT. (6.67 (6.1 - C) + 100) .10	10%	
* (iii)	Weekly Wages - Total private (Revised and seasonally adjusted)	15%	.13297873
(iv)	Prices Received by Farmers - MT. ('47 - '49 = 100)	15%	.22960139
(v)	Mixed Dairy Feed	20%	.32258065
(vi)	Alfalfa Hay	12%	.48000000
(vii)	Prices Paid by Farmers - US ('67 = 100)	23%	.41990335
		<u>100%</u>	

*Note: The reported revised weekly wage - total private is seasonally adjusted by dividing each months revised figures by the following factors: Jan. - .9867; Feb. - .9832; March - .9809; April - .9822; May - .9911; June - 1.0053; July - 1.0165; August - 1.0261; Sept. - 1.0136; Oct. - 1.0192; Nov. - 1.0047; Dec. - .9905.

The following table will be used in computing producer prices:

TABLE I

Producer price determination using above formula with November, 1969 - 100 and an interval - 4.5

<u>FORMULA INDEX</u>	<u>PRICE PER CWT</u>
201.5 - 205.1	\$12.86 <u>13.01</u>
206.0 - 209.6	13.09 <u>13.24</u>
210.5 - 214.1	13.32 <u>13.47</u>
215.0 - 218.6	13.55 <u>13.70</u>
219.5 - 223.1	13.78 <u>13.93</u>
224.0 - 227.6	14.01 <u>14.16</u>
228.5 - 232.1	14.24 <u>14.39</u>
233.0 - 236.6	14.47 <u>14.62</u>
237.5 - 241.1	14.70 <u>14.85</u>
242.0 - 245.6	14.93 <u>15.08</u>
246.5 - 250.1	15.16 <u>15.31</u>
251.0 - 254.6	15.39 <u>15.54</u>
255.5 - 259.1	15.62 <u>15.77</u>
260.0 - 263.6	15.85 <u>16.00</u>
264.5 - 268.1	16.08 <u>16.23</u>
269.0 - 272.6	16.31 <u>16.46</u>
273.5 - 277.1	16.54 <u>16.69</u>
278.0 - 281.6	16.77 <u>16.92</u>
282.5 - 286.1	17.00 <u>17.15</u>
287.0 - 290.6	17.23 <u>17.38</u>

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

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA


7. It is hereby ordered that the emergency rule hereto be and hereby is adopted effective June 1, 1993, for a period of 120 days ending September 28, 1993.

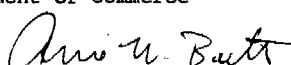
8. The rationale for the emergency rule is as set forth in paragraphs 1 and 2.

9. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

10. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Milk Control Bureau, 1520 East Sixth Avenue-Room 50, PO Box 200512, Helena, MT 59620-0512.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: 
Andy J. Poole, Deputy Director
Department of Commerce

By: 
Annie M. Bartos, Rule Reviewer
Commerce Chief Legal Counsel

Certified to the Secretary of State May 21, 1993.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to income	)	8.111.405 INCOME-LIMITS
limits and loan amounts and	)	AND LOAN AMOUNTS, AND
cash advances and the reverse	)	8.111.409 CASH ADVANCES
annuity mortgage loan provisions)	)	AND THE REVERSE ANNUITY
	)	MORTGAGE ACT

TO: All Interested Persons:

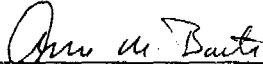
1. On April 15, 1993, the Board of Housing published a notice of proposed amendment at page 503, 1993 Montana Administrative Register, issue number 7.

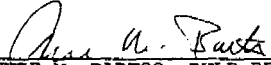
2. The Board has amended the rules as proposed but with the following change. The language "or to third parties as directed by the borrower," currently exists in the first sentence of subsection (1) of ARM 8.111.409 but was inadvertently omitted in the proposal. The language should remain in the rule.

3. No comments or testimony were received.

BOARD OF HOUSING
TOM MATHER, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.7.313 pertaining to) 11.7.313 PERTAINING TO
foster care payments.) FOSTER CARE PAYMENTS

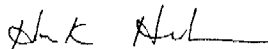
TO: All Interested Persons

1. On April 29, 1993, the Department of Family Services published notice of the proposed amendment of Rule 11.7.313 pertaining to foster care payments, at page 589 of the 1993 Montana Administrative Register, issue number 8.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, June 1, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.12.101 pertaining) 11.12.101 PERTAINING TO THE
to the definition of youth.) DEFINITION OF YOUTH.

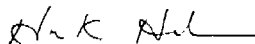
TO: All Interested Persons .

1. On April 29, 1993, the Department of Family Services published notice of the proposed amendment of Rule 11.12.101 pertaining to the definition of youth, at page 591 of the 1993 Montana Administrative Register, issue number 8.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, June 1, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULES
of Rules 11.14.103, 11.14.105,)	11.14.103, 11.14.105;
11.14.109, 11.14.301,)	11.14.109, 11.14.301,
11.14.316, 11.14.401, and)	11.14.316, 11.14.401, and
11.14.414, pertaining to day)	11.14.414 PERTAINING TO DAY
care facility licensing and)	CARE FACILITY LICENSING AND
registration requirements.)	REGISTRATION REQUIREMENTS.

TO: All Interested Persons.

1. On March 11, 1993, the Department of Family Services published notice of the proposed amendment of Rules 11.14.103, 11.14.105, 11.14.109, 11.14.301, 11.14.316, 11.14.401 and 11.14.414 pertaining to day care facility licensing and registration requirements at page 333, of the 1993 Montana Administrative Register, issue no. 5.

2. The department has amended Rules 11.14.103, 11.14.105, 11.14.109, 11.14.301, and 11.14.401 as proposed. Rules 11.14.316 and 11.14.414 have been amended as proposed with the following changes:

11.14.316 GROUP DAY CARE HOMES, HEALTH CARE REQUIREMENTS

(1) ~~All persons family members and children~~ residing in the facility shall be immunized as required in regard to children in care under subsection (2) of this rule. ~~Medical and immunization history will be recorded as required under subsection (2) of this rule on forms provided by the department and be kept on file by the provider.~~

(2) ~~No child shall be admitted to a group day care home except in an emergency before obtaining from the parent a completed Montana Certificate of Immunization form (HES)-101 documenting that the child is free from communicable disease and that the child has been immunized or is in the process of being immunized against~~ Prior to allowing attendance of a child at a group day care home, the provider must obtain an immunization record for the child documenting that the child has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, measles (rubeola), rubella, mumps and, if under 5 years of age, haemophilus influenza type "b" if under 5 years of age. A pertussis vaccination is not required for a child 7 years of age or older. ~~Any child with a history of measles is considered immunized.~~ These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. ~~Such medical records shall be on file at the home for each child. The immunization record required under this subsection shall be the completed Montana Certificate of Immunization form (HES)-101. The (HES)-101 shall be completed by the provider using the "official parent-maintained immunization record."~~ Under this subsection,

the official parent-maintained immunization record means a standard document distributed by a state's principal health or education agency to record the immunization status of a child as part of that state's immunization maintenance system and designed to be retained and maintained by the parents of that child. Once the provider has completed the (HES)-101 from the official parent-maintained immunization record, the provider shall keep the completed (HES)-101 on file and shall up-date the (HES)-101 as needed.

Subsections (3) through (16) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-735, MCA.

11-14-414. FAMILY DAY CARE HOMES, HEALTH CARE REQUIREMENTS (1) All persons family members and children residing in the facility shall be immunized as required in regard to children in care under subsection (2) of this rule. Medical and immunization history will be recorded as required under subsection (2) of this rule on forms provided by the department and be kept on file by the provider.

(2) No child shall be admitted to a family day care home except in an emergency before obtaining from the parent a completed Montana Certificate of Immunization form (HES) 101 documenting that the child is free from communicable disease and that the child has been immunized or is in the process of being immunized against. Prior to allowing attendance of a child at a family day care home, the provider must obtain an immunization record for the child documenting that the child has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, measles (rubeola), rubella, mumps and, if under 5 years of age, haemophilus influenza type "b" if under 5 years of age. A pertussis vaccination is not required for a child 7 years of age or older. Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child. The immunization record required under this subsection shall be the completed Montana Certificate of Immunization form (HES) 101. The (HES) 101 shall be completed by the provider using the "official parent-maintained immunization record." Under this subsection, the official parent-maintained immunization record means the standard document distributed by a state's principal health or education agency to record the immunization status of a child as part of that state's immunization maintenance system and designed to be retained and maintained by the parents of that child. Once the provider has completed the (HES)-101 from the official parent-maintained immunization record, the provider shall keep the completed (HES)-101 on file and shall up-date the (HES)-101 as needed.

Subsections (3) through (9) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704;

52-2-735, MCA.

3. The department has thoroughly considered all comments received:

COMMENT: (Dick Paulsen, Elaine Fordyce, Beth Cottingham, Immunization Program, Montana Department of Health and Environmental Sciences) Subsections (1) of both ARM 11.14.316 and ARM 11.14.414 should not be altered as proposed. Requiring all family members and children residing in the home to document immunization history is a good idea. However, the subsection should simply state that all persons residing in the home should be immunized to prevent the exclusion of any individual who may not be a family member but who nevertheless resides in the home. Documentation of immunization of residents of the home should occur under the same procedures for documenting immunization of children attending the facility. Adults who cannot locate immunization histories may receive all vaccinations free of charge from local health authorities.

In regard to subsections (2) of these rules, the proposed amendments state that the (HES)-101 will document that the child is free from communicable disease. This is incorrect. The form documents immunization history. A child may be immunized and not be free from communicable disease.

Also on subsections (2), all immunizations which are appropriate for the child's age should be recorded on the (HES)-101. The (HES)-101 should be filled out by the provider using the official immunization record of the child. In Montana, the official immunization records of children are recorded on the wallet-size cards printed by DHES which are entitled "OFFICIAL MONTANA IMMUNIZATION RECORD." Other official immunization records from out-of-state should also be recognized as appropriate documents from which the provider may obtain the needed information for filling out the (HES)-101. Therefore, the rule should indicate that the (HES)-101 is filled out using an official immunization record from the state in which the vaccinations were received. To define official immunization records so that any state's official records are included, the department should use the language in ARM 16.28.701(5) defining what constitutes an "Official parent-maintained immunization record."

RESPONSE: As revealed by the comment following this response, there is some controversy over immunization documentation for adults and older children in the home of the provider. However, the department agrees with DHES that the benefits of preventable health procedures for day care facilities are substantial, and that any inconvenience caused by implementation of these procedures is outweighed by the health benefits. Therefore, the rules on immunization for group and family day care homes have been changed in response to the DHES comment.

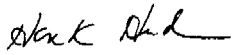
COMMENT: (Department of Family Services Resource Specialist,

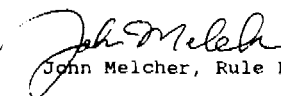
Debra Unruh) ARM 11.14.316(1) and ARM 11.14.414(1) address immunizations required of the provider and the family of the provider. Imposing on adult members of the family the requirement of documenting their immunization histories is unrealistic. Day Care Center staff are not required to document their immunization history. A requirement for production of immunization records of the members of the provider's family should be limited to children of the provider who are not yet of school age.

RESPONSE: (See response to previous comment.)

4. The effective date of the amendments adopted pursuant to this rule-making is July 1, 1993.

DEPARTMENT OF FAMILY SERVICES


Hank Hudson, Director


John Melcher, Rule Reviewer

Certified to the Secretary of State, June 1, 1993.

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

In the matter of the amendment of)	NOTICE OF ADOPTION,
rules 16.28.701-704, 706-708, 712,)	AMENDMENT, AND
and 714, the adoption of new rules)	REPEAL OF RULES
I-III, and the repeal of 16.28.705)	
concerning school immunization)	
requirements.)	(School Immunization)

To: All Interested Persons

1. On April 15, 1993, the department published notice of the proposed adoption of new rules I-III, amendments to rules 16.28.701-704, 706-708, 712 and 714, and the repeal of rule 16.28.705 concerning school immunization requirements at page 505 of the 1993 Montana Administrative Register, issue No. 7.
2. The department has amended the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

16.28.701 DEFINITIONS The following definitions, together with the definitions contained in 20-5-402, MCA, apply throughout this subchapter:

(1) "Adequate documentation" means that documentation required by either ARM 16.28.703, or 16.28.704, or 16.28.705, depending upon the school year in question the date when school attendance commenced or is to commence.

(2)-(11) same as proposed

(12) "Pupil" means:

(a) in a school other than a postsecondary school, a person who receives instruction in classes at a the school, including a foreign exchange student, regardless of the length of attendance or whether credit is received;

(b) in a postsecondary school, a person attending classes on the school's campus who has either matriculated into a degree program or is registered for more than one-half of the full-time credit load that is normal for that school.

(13)-(15) Same as proposed.

16.28.702 REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A SCHOOL OFFERING ANY PORTION OF GRADES KINDERGARTEN THROUGH 12

(1) A school, other than a preschool or a post-secondary school, may not allow a pupil to attend that school without restriction unless that school receives adequate documentation that the following immunizations were performed on the schedule and with the agents noted below:

(a)-(b) same as proposed

(c) Live measles vaccine must be administered to pupils attending kindergarten through 12th grade in accordance with [Rule I(4)] and as follows:

(i)-(ii) same as proposed

(iii) A person who is entering middle school or junior high; a student entering the sixth grade in a school system

without a middle school or junior high; and a person who reaches age 13 must either:

- (A)-(C) same as proposed
- (iv) same as proposed
- (d)-(e) same as proposed
- (2) same as proposed

16.28.703 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE FOR THE FIRST TIME PRIOR TO AUGUST 1, 1980. AT A SCHOOL OFFERING ANY PORTION OF GRADES KINDERGARTEN THROUGH 12 Same as proposed.

16.28.704 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE FOR THE FIRST TIME AFTER JULY 31, 1980
Same as proposed.

16.28.706 REQUIREMENTS FOR CONDITIONAL ENROLLMENT

(1) A person who does not meet school immunization entry requirements for a school other than a post-secondary school may be admitted to school under the following conditions:

- (a)-(d) Same as proposed.
- (e) If the person who is attending school conditionally fails to receive vaccines on the date they are due, as stated on the conditional exemption form, s/he must either qualify for and claim an exemption from the immunizations not received and documented, or be excluded immediately from school by the school administrator or by their designee.
- (f) same as proposed.

(2) A person entering post-secondary school who ~~does has~~ not meet school entry immunization requirements as stated in [Rule II] had measles disease or received two doses of live measles (rubeola) vaccine under the conditions specified in [Rule II(1)(a)(i)] may be admitted to school under the following conditions:

~~(a) The person must provide the school with adequate documentation that s/he has already received one measles and one rubella vaccination and that one month has not lapsed since they received the measles vaccination.~~

~~(b)(a) The person must receive the a second dose of live measles vaccine as soon as one month has passed since before the beginning of the succeeding school term and no earlier than one month after administration of the first dose of measles vaccine.~~

~~(c)(b) The conditional exemption enrollment form must be signed by the student, acknowledging the measles immunization schedule and deadline date for compliance.~~

~~(d) If a person is exempt from any of the foregoing vaccinations, the requirements of this rule apply to the remaining immunizations for which no exemption exists.~~

~~(e)(c) If the person who is attending school conditionally fails to complete measles immunization within the time period indicated in (2)(b)(a) above, s/he must either qualify for and claim an exemption from measles immunization or be excluded immediately from school by the school administrator or that person's designee.~~

~~(f)~~(d) A person who is excluded from school due to failure to receive the second dose of measles vaccine by the deadline specified in (2)~~(b)~~(a) above, may continue school only after s/he has received a second dose of measles vaccine or claims an exemption from immunization.

16.28.707 MEDICAL EXEMPTION Same as proposed.

16.28.708 RELIGIOUS EXEMPTION Same as proposed.

16.28.712 REPORT OF IMMUNIZATION STATUS Same as proposed.

16.28.714 REPORT OF NON-COMPLIANCE Same as proposed.

3. The department has adopted new rules I-III with the following changes:

RULE I (16.28.701A) GENERAL IMMUNIZATION REQUIREMENTS FOR ALL SCHOOLS (1)-(2) Same as proposed.

(3) Immunity testing in lieu of vaccine use may not be specifically allowed in [Rule II(1)(b)(ii)] and ~~{Rule III(4)}~~ ARM 16.28.702(c)(i) and (iii)(B).

(4) Same as proposed.

RULE II (16.28.701C) REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A POST-SECONDARY SCHOOL (1) Same as proposed.

(a) Any of the following documentation is acceptable proof of measles immunity:

(i) Certification by a physician of the fact that the person has had measles disease and the date of diagnosis; or

(ii) The documentation required by ARM 16.28.704 of the fact that the person was administered either one or two doses of live measles vaccine separated by at least one month, both of which were administered at or after 12 months of age and after the year 1967, along with the month, day, and year each dose was administered. In the case of two doses, the doses must have been administered at least one month apart.

(b) Same as proposed.

(c)(i) A prospective pupil who was born prior to January 1, 1957, must:

(A)-(B) Same as proposed.

(ii) Same as proposed.

(2) With the exception noted in (3) below, a person who enters a postsecondary school who has not had measles disease and has had only one dose of live measles vaccine is conditionally enrolled and must receive a second dose in accordance with the conditional enrollment requirements of ARM 16.28.706(2).

~~(2)~~(3) The requirements of (1) above apply equally to a person who entered a Montana post-secondary school as a pupil prior to June 11, 1993, with the sole exception of the requirement of ~~(1)~~(a)~~(1)~~(2) for two doses of live measles vaccine; a pupil to whom this paragraph applies needs to have only one dose of live measles vaccine rather than two.

RULE III (16.28.701B) REQUIREMENTS FOR ATTENDANCE AT A PRESCHOOL (1) Before a child may attend a Montana preschool, that school must be provided with the documentation required by (2)-(3) below that the child has been immunized as required below for his/her age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B (Hib), unless s/he qualifies for conditional attendance in accordance with (7) below or the school has been provided with a record of an appropriate exemption from one or more of the required immunizations, in which case documentation must be provided of those immunizations for which no exemption is on file:

Table same as proposed.

(2)-(7) Same as proposed.

4. The department has repealed rule 16.28.705, found on page 16-1285 of the Administrative Rules of Montana.

AUTH: 20-5-407, MCA; IMP: 20-5-406, MCA

5. The department received several comments on the rule-making proposals. Summaries of those comments and the department's responses to them follow, along with notations of changes made at the department's initiative to eliminate inconsistencies and errors and to clarify language:

COMMENT: LeRoy Schramm, on behalf of the Montana University System, requested a definition of "pupil" for postsecondary schools that would limit it to the generally-understood meaning of pupil in that context in order to avoid the difficulty, if not impossibility, of requiring measles and rubella vaccination of everyone participating in programs such as continuing education for professionals, extension courses, long-distance learning via telecommunications, and occasional on or off-campus classes that may or may not be for credit.

RESPONSE: The department agreed the proposed definition was reasonable on both legal and public health grounds, and, therefore, added the requested language.

COMMENT: Mr. Schramm also requested the rules allow conditional enrollment of those having only one dose of measles vaccine, with the second dose having to be received before the beginning of the subsequent term. Laela Shimer of the University of Montana Student Health Services shared his concern, in that postsecondary schools appear to be unable to register foreign or out-of-state students, etc., who have not had the second dose at the time of registration.

RESPONSE: The department had already allowed conditional enrollment in ARM 16.28.706, but the comment highlighted the fact that its provisions were unclear and erroneously required the second dose to occur within 30 days after the first. The rules were amended to correct the error and clearly allow the requested conditional enrollment.

COMMENT: The Gallatin City-County Health Department felt the wording of ARM 16.28.706(1)(e) appeared to leave the impression that anyone claiming an exemption would automatically get it.

RESPONSE: The department altered the language to make clear that an exemption has to be merited before it is effective.

COMMENT: Gallatin County also felt that MMR vaccine should be administered at no earlier than 15 months of age.

RESPONSE: The immunization requirements for preschool children include the administration of MMR vaccine before 16 months of age. In accordance with recommendations by both the U.S. Public Health Service's Advisory Committee on Immunization Practices (ACIP) and the American Academy of Pediatrics, any immunization given before 12 months of age is not considered valid. Since, nationally, the recommendation of administration of MMR at 15 months is still a recommendation only and doses given on or after the first birthday are still considered to be acceptable, the department will retain the 12-month minimum requirement until national authorities more forcefully state that only doses given at 15 months of age are acceptable.

COMMENT: Gallatin County questioned whether any 6-year-old child in a preschool should receive a booster, presumably of DTP and polio.

RESPONSE: National standards require the booster to be administered at any time during the period from the 4th birthday until the child turns seven years of age. State law effectively requires children to be enrolled in elementary school at least by age seven, and the department's rules require the boosters in question to be administered before attendance in any K-12 school begins. The immunization status of a 6-year-old child who is still in preschool but has not had the boosters yet is still in accord with national standards, and the child will, according to the current rules, have to have the boosters before s/he turns seven, once again in compliance with national standards. Therefore, no change was made.

COMMENT: Laela Shimer of University of Montana Student Health Services was uncertain about when these rules would take effect and concerned that it would be costly and otherwise difficult to bring into compliance those already admitted for the 1993-94 academic year, especially since the Board of Regents policy currently being followed for rubella vaccination requires it to occur after 1968, whereas the rule requires vaccination after 1969.

RESPONSE: The rules will be in effect as of June 1, 1993. Since free vaccine will be available from the federal government for immunizations this fall, minimizing if not eliminating their cost; relatively few people would be affected by the one-year difference in minimum dates of administration for measles and rubella, given the years in question; and the difficulty of

making sure that all facets of the university system are aware of the change in minimum rubella requirements should be minor and one-time, the department declined to delay the effective date.

COMMENT: Laela Shimer also questioned the need for a second measles dose in postsecondary schools, especially in view of the potential added cost to students.

RESPONSE: The Centers for Disease Control are providing funding to all states for second dose MMR vaccination of two age cohorts--college students and school age children. As a result, Montana colleges and universities will be provided with a free supply of MMR vaccine ample enough to immunize new enterers with the second dose of vaccine. In addition, from a public health standpoint, the second dose is recommended nationally for maintenance of full immunity and postsecondary campuses have been a source of measles outbreaks in recent years. Therefore, the second dose requirement was retained.

COMMENT: Dr. Steven Berberet pointed out differences of opinion between the American Academy of Family Physicians and the American Academy of Pediatrics concerning whether a second MMR dose should be given in preschool years or later at middle school age; he himself recommended preschool administration.

RESPONSE: The department recognizes the differences of opinion between the American Academy of Family Physicians and the American Academy of Pediatrics regarding the timing of the booster dose. However the ACIP points out that administering the second dose of measles vaccine at school entry will not have an immediate effect on the incidence of measles. It also states, "Because many of the vaccine failures in recent outbreaks of measles have occurred among 10- to 19-year-old children and adolescents, administering the second dose at the time of school entry may not achieve full impact of the incidence of measles for five to 15 years. For impact to occur more rapidly, some localities may choose to give students the second dose at an older age (e.g., when they enter middle school or junior high school). In deciding when to administer the second dose, health officials should consider how they can best achieve a high vaccination rate since this is essential to assure maximum impact of a two-dose schedule."

The administrative ease of administering the second dose MMR at school entry must be balanced against concerns regarding the impact on schools, the community, and the health delivery system that measles outbreaks create. In Montana's case, measles outbreaks have tremendous impact on all of the above, have diverted the public health focus from prevention efforts to outbreak control, and have served to create social divisions within Montana's communities when the outbreaks occur.

Although it may be administratively easier to deal with the second dose of MMR at school entry, for purposes of early elimination of measles outbreaks in Montana schools the department continues to recommend administering the MMR booster

dose prior to a child's entry into middle school/junior high and post-secondary schools. Since 1985 Montana has had more measles outbreaks affecting schools than any other state in federal Region VIII. Measles outbreaks affecting Montana schools included Browning (1985), Great Falls and Billings (1986), and Kalispell and Butte (1988). In each of these situations, once measles was introduced into either the middle school or high school it spread predominantly in those school settings and produced multiple generations of measles cases. At the same time, elementary schools in those cities suffered very few cases, although many of the older children had siblings attending elementary schools and had multiple exposures to other older children with measles in the community. The typical case ratio for Montana's middle school/junior high/high school vs. elementary students is approximately 30 or 35 to 1, as was seen in both the Great Falls and Kalispell measles outbreaks.

By initiating the second dose of measles at the later age, the evidence is that measles outbreaks will be eliminated in Montana schools about six years earlier than if the kindergarten students are targeted for the booster dose. Additionally, there is a remaining concern that measles immunity may wane over time, which is more likely to occur if the booster dose is given earlier. If vaccine immunity does in fact wane over time, it is more likely that measles outbreaks in colleges and universities will be reduced in the future if the booster dose is administered at the middle school/junior high age.

Therefore, given the above analysis, the department did not adopt Dr. Berberet's requested change.

The following changes were made by the department on its own initiative:

1. In Rule III, the department corrected an erroneous internal reference and inserted inadvertently omitted language in paragraph (1) concerning exemptions. The reinsertion of the language was necessary to ensure consistently with statutory requirements and paragraph (7) of Rule III.

2. The department amended the language of ARM 16.28.702(1)(c)(iii) to make clear that the requirement that a student be inoculated with measles vaccine when entering the sixth grade applies only when the school system in question lacks a junior high or middle school.


3. The department also deleted an overlooked reference in ARM 16.28.701(1) to the rule repealed in this notice (16.28.705), which, of course, is no longer relevant, and edited the remaining language to clarify its meaning.

4. Paragraph (2)(d) of ARM 16.28.706, which states that even if the pupil is exempt from measles vaccination s/he remains subject to the "remaining immunizations for which no exemption exists", was deleted as unnecessary because there would be no remaining immunizations, since the only other required vaccination, for rubella, is a single dose which would have been administered at or before admission to the school.

5. The department also corrected the reference in ARM

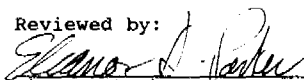
16.28.706(2)(c) [now (b)] to the "conditional exemption form", which should have read "conditional enrollment form".

6. The department corrected the erroneous reference in Rule I(3) to "Rule III(4)" and substituted the proper references.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 1, 1993 .

Reviewed by:


Eleanor Parker, DHES Attorney

William E. Hileman, Jr.
HEDMAN, HILEMAN & LACOSTA
433 Second Street
Whitefish, Montana 59937
406-862-2528

BEFORE THE DEPARTMENT OF JUSTICE, GAMBLING CONTROL
DIVISION, OF THE STATE OF MONTANA

* * * * *)
In the Matter of the Application of) PETITION FOR
R.M.F., INC., d/b/a BEST BET CASINO,) DECLARATORY RULING
for a declaratory ruling re:)
Correction Notice(s).)
* * * * *

COMES NOW R.M.F., INC., Petitioner, and alleges as follows:

JURISDICTION

This matter is brought pursuant to MCA Section 2-4-501 and the Administrative Rules of Montana Section 1.3.226, et seq. This is an action for declaratory ruling for the purpose of determining a question of actual controversy between the parties as more fully appears below.

PARTIES

1. R.M.F., INC., Petitioner, is a corporation organized under the laws of the State of Montana, with its principal place of business in Helena, Lewis and Clark County, Montana. Petitioner's registered agent is Roger M. Frampton and registered office is 115 E. Bluegrass, Kalispell, Montana 59901.

2. Respondent is the State of Montana, Department of Justice, Gambling Control Division; involved in the promulgation and enforcement of the Video Gaming Machine Control Law, MCA Section 23-5-602, et seq.

COMMON ALLEGATIONS

3. The Petitioner, R.M.F., INC., is the owner and operator of The Best Bet Casino, Helena, Lewis and Clark County, Montana; and is the owner/licensee of Gaming License No. 05-4053 for use in connection with said facilities.

4. That on August 22, 1991, Petitioner's establishment was issued a correction notice, describing the alleged violation as "5 of 5 promotion on video keno machines awards a prize in addition to the players' own play of the machine." That said notice of correction alleges a violation of MCA Section 23-5-602(2), (3) and (4), as well as MCA Section 23-5-608.

5. The question presented for declaratory ruling is whether petitioner's activities and similar "add-on" promotions for video gambling machine players are violative of the code section cited as the basis for issuance of the notice of correction. Petitioner contends that it has been very careful to structure video keno promotions so as to be in compliance with all relevant statutory provisions.

DECLARATORY RULING

Petitioner requests a declaratory ruling that he may continue the 5-out-of-5 promotion and similar "add-on" promotions for video gambling machine players without violation of MCA Section 23-5-602(2), (3), and (4) or MCA Section 23-5-608.

Petitioner knows that other operators similarly situated throughout the State of Montana are similarly affected.

RELIEF

WHEREFORE, Petitioner prays as follows:

1. That this agency adjudge the rights of the parties to this action under MCA Sections 23-5-602(2), (3) and (4) or MCA Section 23-5-608;

2. That Petitioner be allowed to continue to operate its games and the "add-on" promotions for video gambling machine players heretofore authorized and permitted; and

3. That the Petitioner be awarded such other and further relief as may be just and proper.

DATED this 10th day of October, 1991.

HEDMAN, HILEMAN & LACOSTA
Attorneys for Petitioner.

By: 

William E. Hileman, Jr.
433 Second Street
Whitefish, Montana 59937
(406)862-2528

VERIFICATION

STATE OF MONTANA)
 : ss.
County of Flathead)

ROGER M. FRAMPTON, President of R.M.F., Inc., being first duly sworn, deposes and says:

That he is the Petitioner in the foregoing Petition for Declaratory Ruling; that he has read the foregoing, knows the contents thereof, and that the facts and matters therein contained are true, accurate and complete to the best of his knowledge and belief.



ROGER M. FRAMPTON

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA
GAMBLING CONTROL DIVISION

IN THE MATTER OF the Petition for)	
Declaratory Ruling by R.M.F., Inc.,)	
dba/Best Bet Casino, Gambling Operator	)	DOCKET NO. <u>91-129</u>
License Number 05-4053)	
)	
Respondent: Best Bet Casino)	
R.M.F., Inc.)	
1225 Euclid Avenue)	
Helena, Montana 59601)	

**HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND
PROPOSED ORDER**

This matter has its roots in the issuance of a correction notice by an investigator for the Gambling Control Division (Division) to the Petitioner on August 22, 1991. (Exhibit P-1). In response to the correction notice, the Petitioner filed a formal Petition for Declaratory Ruling on October 15, 1991. That Petition sought a declaratory ruling that Petitioner could continue its "5 out of 5" promotion and similar "add-on" promotions for video gambling machine players.

This Hearing Examiner was appointed on October 21, 1991. He thereupon assumed jurisdiction and conducted a series of pretrial conferences which resulted in the parties being ordered to make disclosures of their contentions, witnesses and evidence. After disclosures, the parties were permitted to use discovery procedures and to file responsive pleadings.

The result of pretrial procedures was the filing of a pretrial agreement of the parties, which was adopted by the Hearing Examiner on April 2, 1992.

The case went to hearing on April 23, 1992, on the issues framed by the pretrial agreement. Witnesses were sworn and testified subject to cross-examination. Exhibits were offered and admitted in evidence. Without objection, demonstrations of the operation of a typical video keno machine and of the proposed "5 out of 5" promotion were given.

During the hearing, the Petitioner moved to amend the pleadings by striking Issue No. 3 from Page 4 of the Pretrial Agreement. Staff resisted the motion and it was taken under advisement pending the filing of briefs on that and other issues. In its initial post-hearing brief, Staff conceded in effect that Petitioner's point was well-taken. Therefore, there is no issue as to whether the "5 out of 5" promotion was "accomplished by physically manipulating the outcome of a video gambling machine".

The issues remaining are whether the "5 out of 5" promotion and similar "add-on" promotions for video gambling machine players are legal in light of section 23-5-111, MCA, and whether the "5 out of 5" promotion and similar "add-on" promotions for video gambling machine players are in violation of sections 23-5-602(2)(3) and (4), MCA.

The parties waived the filing of proposed findings of fact and conclusions of law but did submit simultaneous post-hearing briefs.

The Hearing Examiner, now being fully advised in the premises, and good cause appearing therefore, makes his findings of fact, conclusions of law and proposed order as follows:

FINDINGS OF FACT

1. Petitioner, R.M.F., Inc., is the owner and operator of the Best Bet Casino, Helena, Lewis and Clark County, Montana, and is the owner/licensee of Gaming License No. 05-4053 for use in connection with said facilities.

2. The Division is charged with administering Montana's public gambling laws. (Section 23-5-115, MCA).

3. The Division is also required to strictly construe Montana's public gambling laws "to allow only those types of gambling and gambling activity that are specifically and clearly allowed by law". (Section 23-5-111, MCA).

4. On August 22, 1991, Best Bet Casino was issued a correction notice, describing the alleged violation of "5 out of 5" promotion on video keno machines as the award of prizes in addition to the players' own play of the machine. Said correction notice alleged violations of sections 23-5-602(2), (3), and (4), MCA, as well as section 23-5-608, MCA. No penalty for past actions of Petitioner was imposed or suggested in the correction notice.

5. Video keno is the game of keno played on an electronic video gambling machine, as opposed to the game of keno played live. Keno is a variant of bingo where the player selects up to ten numbers and the video machine or live game caller selects at least 20 numbers. The win and its size are determined by the pay table, which states the number of credits awarded per credit wagered when the numbers selected by the machine match some or all of the numbers previously selected by the player. The player "hits" each matching number. The video keno pay table must meet the statutory 80% payout requirement. Section 23-5-607, MCA.

a. There are 80 numbers on a video keno board. The player is allowed to select and play up to 10 numbers. The machine has a computer chip inside programmed to select 20 numbers at random from the 80 possible.

b. The following steps are basic:

- (i) The player deposits coin(s) or a \$1 or \$5 bill, if the machine is so equipped. The player receives one credit per coin (quarter or nickel), and so forth, with respect to bills played.
- (ii) The player presses the button marked "play credits". The player may wager credits equal to \$2.00 (eight for a quarter machine, 40 for a nickel machine).
- (iii) The player presses the button marked "erase".
- (iv) The player selects up to 10 numbers from the grid of 80.
- (v) The background of the video monitor is usually

blue with a yellow grid pattern separating the 80 whitish numbers. The player's choice of numbers is often marked by check-marks, replacing the number of the appropriate square.

- (vi) The player presses "start".
- (vii) The machine then selects 20 numbers at random. When one of the numbers the player has marked "hits", the check-mark will turn red (or into some other symbol, depending on the brand of machine) to indicate that the player has hit that number.

c. If the player has enough "hits", he or she wins. The amount of the win is determined by multiplying the size of the win taken from the pay table by the number of credits the player has wagered. The machine tallies the total number of credits won and paid for. Any credits can be "cashed in" by printing a ticket, or played off on the machine. The player may then either press the "collect winnings" button or press the play credits button and start over.

6. The "5 out of 5" Bonus (add-on) is an extra bonus, given in credits, to a person playing a "5 spot" (selecting five numbers) and hitting all five.

- (a) If the player decides to play video keno, and also chooses to play five numbers, if and when he or she hits all five numbers, the machine awards the normal win listed on the machine pay table, and the attendant verifies that all five numbers have been hit and awards the bonus amount in credits.
- (b) The base amount for the bonus is determined by the house in advance. It is posted on or near the machine. The bonus amount of credits increases daily until someone wins. When the bonus has been won, the bonus amount of credits reverts to the base amount.
- (c) The operator awards the bonus to the successful player by having an employee deposit coins or bills representing the amount of the bonus in the slot or bill acceptor of the machine. The player can either cash in or continue to play. The player can also refuse the bonus altogether. The player is under no obligation to collect the bonus.
- (d) The award is progressively increased, but the combined machine payout and bonus never exceed the \$100.00 specified in section 23-5-608, MCA.
- (e) Several video keno machines on premises are subject to the bonus, but each such machine

involves its own separate bonus program.

7. In order to participate in the "5 out of 5" bonus, a person must first risk the loss of cash by playing the video keno machine.

8. The promotion is offered by a licensed operator only to persons on premises and involves the use of a video gambling machine.

9. Petitioner contends that it has been very careful to structure video keno promotions so as to be in compliance with all relevant statutory provisions.

10. Upon receiving the correction notice, Petitioner discontinued offering the "5 out of 5" bonus, and has not offered it since and pending the outcome of this action.

11. It is possible to program a video keno machine internally to award a bonus to the player in a manner similar to the "5 out of 5" promotion, including progressive increase of bonus.

12. Sections 23-5-602(2) and (3), MCA, admittedly do not apply to the facts in this case. Section 23-5-602(4), MCA, defines "keno machine" as "an electronic video gambling machine that, upon insertion of cash, is available to play keno..."

13. Section 23-5-608, MCA provides as follows:

"(1) A video gambling machine may not allow more than \$2 to be played on a game or award free games or credits in excess of the following amounts:

- (a) \$100 a game for a video draw poker machine; and
- (b) \$800 a game for a video keno or bingo machine.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher."

14. Section 1 of Chapter 647 of the Laws of Montana of 1991, effective July 1, 1991, amended the definition of "gambling" or "gambling activity" in section 23-5-112, MCA, by providing that, "the term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, Chapter 6, part 1".

15. That legislation added what is now codified as section 23-5-112(29), MCA, which defines "promotional game of chance" as "a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it."

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and the subject matter in this case.

2. The proceedings in this case were conducted in a fair and proper manner which assured the Petitioner due process of law.

3. All of the Hearing Examiner's foregoing Findings of Fact are adopted as

Conclusions of Law.

4. The "5 out of 5" promotion that is the subject of this action was a gambling related activity.

5. It was offered for promotional purposes. But, it was offered only to those who paid a valuable consideration to play the video keno machine to which the "5 out of 5" promotion applied. Players had to play the machine to qualify for the bonus. The video keno machine did not award the bonus credits, the operator did, through its staff.

6. The promotion was not a "promotional" game of chance" as defined by section 23-5-112(29), MCA, and was not excluded from the definition of "gambling" or "gambling activity", as defined in section 23-5-112(11), MCA.

7. The "5 out of 5" promotion is not expressly authorized by any other Montana statute.

8. The "5 out of 5" promotion for video keno machine players is an "illegal gambling enterprise" as defined by section 23-5-112(16), MCA, and therefore is "not legal in the light of section 23-5-111, MCA."

9. The promotion, in the form testified to, is in violation of sections 23-5-602(4) and 23-5-608, MCA.

10. This is not a criminal case, and it does not involve a claim by a participant for a denied prize or a game or sport like golf or owning, training or riding a race horse, all of which require some degree of skill.

11. The Staff's correction notice did not operate retrospectively to address events that took place prior to August 22, 1991, and it does not seek to penalize the Petitioner for past actions.

12. Chapter 647 of the Laws of 1991 did not purport to operate retrospectively from its effective date, and the Staff did not attempt to enforce it retrospectively. No past rights were impaired, no new obligations were created and no new duties were imposed on the Petitioner.

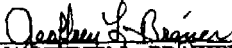
13. A holder of a license issued by the Gambling Control Division does not acquire a vested right. Section 23-5-110(2), MCA. He, she, or it therefore does not acquire a vested right to conduct any form of gambling activity or promotion, especially if the statutes that regulate gambling are thereafter amended.

14. The Petition for Declaratory Ruling should be denied.

PROPOSED ORDER

NOW, THEREFORE, IT IS HEREBY RECOMMENDED that the Gambling Control Division make and issue a final order denying the Petition for Declaratory Ruling.

DATED this 25 day of June, 1992.



GEOFFREY L. BRAZIER
Hearing Examiner

RATIONALE

The policy of the state is that its gambling laws be strictly construed. This point cannot be seriously disputed in light of Article III, Section 9 of the Montana Constitution of 1972; section 23-5-110, MCA; section 23-5-111, MCA; and the case authorities cited by the parties.

There is no doubt that the activity under scrutiny in this case was gambling related. It was offered by a licensed "operator", on gambling "premises", and involved the use of "gambling devices", referred to as "video gambling machines" or "video keno machines". In order to qualify for the "bonus" the player first had to play the gambling machine in the manner contemplated by Montana statutes.

There also can be no doubt that the "5 out of 5" bonus was offered for promotional purposes. There could be no other rational purpose. Gambling is a competitive business.

There is also no doubt that, by amending what is now codified as section 23-5-112(11), MCA, (defining "gambling" and "gambling activity") and by enacting section 23-5-112(29), MCA, (defining "promotional game of chance") the Legislature in 1991 intended to change the law and to exempt or except certain promotional activities from gambling regulation.

In order to qualify for exemption, the offerer of the bonus must meet the statutory definition of "promotional game of chance."

In addressing this case, the Hearing Examiner must decide whether the "5 out of 5" bonus falls within that statutory definition. This exercise calls for applying the facts to the statute, and some statutory interpretation.

In this case, the Hearing Examiner is struck by two undisputed factual circumstances which he is unable to reason around, through or over. These are that the player must first play the machine in order to qualify for the bonus, and that the operator, not the machine, awards the bonus. Although the reward may be higher than the machine offers, the player must first risk his own money to be eligible for the award. Entitlement to the bonus depends upon the operation of the machine.

The Petitioner had difficulty with these facts at the hearing and in briefs. On Page 3, line 19 of its initial Brief, it argues that "no additional consideration" is paid to obtain the bonus. This argument appears to the Hearing Examiner to concede that consideration was paid to qualify for the bonus. On Page 6, line 13 of its Reply Brief, the Petitioner concedes that "playing video keno itself is a game of chance". Thus the bonus requires a gambling activity and an initial consideration to qualify.

In the context of Montana's gambling laws, the insertion of cash makes the machine available to play. That cash is the thing of ultimate value to the gambling industry, regardless of amount or denomination. Without it there would be no industry.

The insertion of cash is a "valuable consideration" which must be "paid" to qualify for the bonus. Since that is so, the bonus falls outside the definition of "promotional game of chance" and is subject to the gambling laws of this State. (The statute must be strictly construed to allow only those types of gambling activity specifically and clearly allowed by statute. Section 23-5-111(1), MCA. Furthermore, in construction of a statute, the function of the judge is simply to ascertain and declare what is in terms or in substance contained

therein, not to insert what has been omitted or to omit what has been inserted. Section 1-2-101, MCA.)

The Hearing Examiner also finds it interesting how the present statutory definition of "promotional game of chance" inverts the historic statutory definition of "lotto" applied in State ex rel. Dussault, et al. v. Fox-Missoula Theatre Corporation et al., 110 Mont. 441, 101 P.2d 1065 (1940); State ex rel. Stafford et al. v. Fox-Great Falls Theatre Corporation et al., 114 Mont. 52, 132 P. 2d 689 (1942); and State v. Cox, 136 Mont. 507, 349 P.2d 104 (1960). It is the Hearing Examiner's analysis that these cases tend to support his conclusion.

On the other hand, this case does not involve a claim by a disgruntled player for a withheld award and it doesn't involve skills required to compete in golf or to prepare and sponsor a race horse. These circumstances generally tend to distinguish the cases relied upon by Petitioner in its Reply Brief.

With regard to Petitioner's contentions that the Staff suddenly changed its interpretation of the law to forbid add-on promotions when it formerly permitted them, the fact is that the new interpretation came to light within two months after the effective date of major revisions to gambling statutes, including express treatment of promotional games of chance. The State's enforcement action was prospective from the date of the correction notice. It did not address past activities and was not criminal or otherwise punitive in nature. In view of these facts and of the legislative policy that a gambling operator does not have a vested right in a license but only a revocable privilege (section 23-5-110(2), MCA), Petitioner's argument must fall.

This decision is based upon the facts of this case and is intended to be so limited. It would appear that, in developing future promotions, operators ought to design them in the light of strict interpretations of section 23-5-112(29), MCA, and bear in mind that, if the proposed promotion involves the play of video gambling machines, only the machines can award the prizes under current Montana statutes.

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 1992, I mailed true and correct copies of the foregoing Findings of Fact, Conclusions of Law and Proposed Order, through the U. S. Mails, postage prepaid, to the parties in this case, addressed as follows:

William E. Hileman, Jr., Esq.
c/o Hedman, Hileman and Lacosta
433 Second Street
Whitefish, Montana 59937

Robert F. W. Smith, Jr., Esq.
2687 Airport Road
Helena, Montana 59620


GEOFFREY L. BRAZIER
Hearing Examiner

BEFORE THE DEPARTMENT OF JUSTICE
STATE OF MONTANA
GAMBLING CONTROL DIVISION

IN THE MATTER OF the Petition)	
For Declaratory Ruling by)	
R.M.F., Inc., dba/Best Bet)	
Casino, Gambling Operator)	
License Number 05-4053)	Docket No. <u>91-129</u>
Respondent: Best Bet Casino)	
R.M.F., Inc.)	
1225 Euclid Ave.)	
Helena MT 59601)	

FINAL DECISION OF DEPARTMENT OF JUSTICE
ADOPTING HEARING EXAMINER'S PROPOSED
DECISION WITH MODIFICATION

On April 23, 1992, the Gambling Control Division of the Department of Justice conducted an administrative hearing on the above-referenced matter. Geoffrey L. Brazier presided at the hearing as Hearing Examiner pursuant to section 2-4-611, Montana Code Annotated (MCA). The Hearing Examiner entered a Proposed Decision on June 26, 1992, denying the Petition for Declaratory Ruling. A copy of the Proposed Decision is attached to this notice.

On July 1, 1992, the Department gave notice of the Hearing Examiner's Proposed Decision and gave all interested parties opportunity to file written exceptions and briefs, and upon request, present oral arguments to the Attorney General or his representative concerning the Proposed Decision. Written exceptions and briefs as well as any requests for oral argument were to be submitted to the Department no later than July 25, 1992.

Written exceptions were received from the Respondent and are dated July 20, 1992. No request for oral argument was received. A review of the complete record indicates the Hearing Examiner's Proposed Findings of Fact are based on competent substantial evidence, the hearing complied with the essential requirements of law, and the Hearing Examiner properly interpreted the relevant law and regulations.

IT IS ORDERED, the Proposed Decision entered by the Hearing Examiner in the above-referenced cause is adopted as the Final Decision of the Department of Justice, and the Petition for a Declaratory Ruling is denied.

Dated this 31st day of August, 1992.

DEPARTMENT OF JUSTICE

By: Judy Browning
JUDY BROWNING
Deputy Attorney General

NOTICE: Any interested party may seek judicial review of this final agency decision. Judicial review is obtained by filing a petition for judicial review in District Court within 30 days after service of this decision. Judicial review is conducted pursuant to section 23-5-636, MCA.

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, 1993. This table includes those rules adopted during the period April 1, 1993 through June 30, 1993 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, 1993, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1992 and 1993 Montana Administrative Registers.

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