

Reserve
KFM
9035
1973
.A245a

RESERVE

MONTANA

ADMINISTRATIVE

REGISTER

1993 ISSUE NO. 19
OCTOBER 14, 1993
PAGES 2294-2461



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-36-20 (Board of Optometrists) Notice of Proposed Amendment - Continuing Education - Approved Programs or Courses. No Public Hearing Contemplated. 2294-2295

8-61-13 (Board of Social Work Examiners and Professional Counselors) Notice of Proposed Amendment - Definitions - Licensure Requirements for Social Workers - Application Procedures for Social Workers - Licensure Requirements for Professional Counselors. No Public Hearing Contemplated. 2296-2300

8-79-30 (Milk Control Bureau) Notice of Public Hearing on Proposed Amendment and Adoption - Definitions - Transactions Involving the Purchase and Resale of Milk within the State. 2301-2314

8-86-49 (Board of Milk Control) Notice of Public Hearing on Proposed Amendment - Transportation of Milk From Farm-to-Plant and as it Related to Minimum Pricing - Readjustment to Quotas - Settlement Fund Payments. 2315-2322

EDUCATION, Title 10

10-3-164 (Board of Public Education) Notice of Public Hearing on Proposed Adoption - Certification - Early Childhood. 2323-2325

EDUCATION, Continued

10-3-165 (Board of Public Education) Notice of Proposed Amendment - Board of Public Education Policy Statement - Due Process in Services - Identification of Children With Disabilities - Opportunity and Educational Equity - Special Education - Student Records - Special Education Records. No Public Hearing Contemplated. 2326-2329

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-436 Notice of Public Hearing on Proposed Amendment - Hazardous Waste - Hazardous Waste Management. 2330-2338

LABOR AND INDUSTRY, Department of, Title 24

24-26-46 (Board of Personnel Appeals) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Rules of Procedure before the Board of Personnel Appeals - Labor-Management Relations and Grievances. 2339-2367

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-112 Notice of Proposed Repeal - Unauthorized Changes of Telephone Customers' Primary Interexchange Carrier (PIC). No Public Hearing Contemplated. 2368-2369

38-2-113 Notice of Proposed Amendment and Repeal - Removing Reference to Class E Motor Carriers - Motor Carriers Authorized to Transport Logs. 2370-2372

REVENUE, Department of, Title 42

42-2-551 Notice of Public Hearing on Proposed Amendment and Repeal - Personal Property. 2373-2391

42-2-552 Notice of Public Hearing on Proposed Amendment and Adoption - Forest Land Classification. 2392-2397

42-2-553 Notice of Proposed Amendment - Low Income Property Tax Reduction. No Public Hearing Contemplated. 2398-2399

RULE SECTION

ADMINISTRATION, Department of, Title 2

NEW	(Public Employees' Retirement Board) Implementation of Family Law Orders Splitting and Paying Montana Public Retirement Benefits.	2400-2403
NEW	Teachers' Retirement Board) Rules Implementing the Provisions of Senate Bill 173 as Passed by the 1993 Legislature Relating to the Teachers' Retirement System.	2404-2407

STATE AUDITOR, Title 6

NEW	Administration and Enforcement of Laws Regulating Standards for Companies Considered to be in Hazardous Financial Condition - Regulating Annual Audited Reports - Regulating Life and Health Reinsurance Agreements - Regulating Reports by Holding Company Systems - Establishing Accounting Practices and Procedures to be Used in Annual Statements - Regulating Credit for Reinsurance, Including Letters of Credit - Establishing Standards for Valuation of Insurer Securities and Other Invested Assets.	2408-2411
-----	---	-----------

COMMERCE, Department of, Title 8

AMD	(Board of Horse Racing) Licenses Issued for Conducting Parimutuel Wagering - Daily Double Feature - Requirements of Licensee - Pool Calculations.	2412
AMD	(Board of Private Security Patrol Officers and Investigators) Experience Requirements - Insurance Requirements - Fees.	2413-2414

EDUCATION, Title 10

(Superintendent of Public Instruction) Corrected Notice of Repeal - Composition of a Core Child Study Team.	2415
---	------

Page Number

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

NEW (Montana Health Care Authority) Health
Care Authority - Process for Selection of
Regional Health Care Planning Boards. 2416

LIVESTOCK, Department of, Title 32

AMD License Fees - Slaughterhouse, Meat Packing
House or Meat Depot License. 2417

REVENUE, Department of, Title 42

AMD Opening a Liquor Store. 2418-2422
NEW

AMD Liquor Licenses and Permits. 2423-2425
NEW

AMD Withholding Taxes Which Apply to Indians. 2426

AMD Cigarettes. 2427-2432
NEW

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

AMD Emergency Assistance to Needy Families with
Dependent Children. 2432

AMD Medicaid Dental Services. 2433-2434

Corrected Notice of Amendment - Case
Management Services for Youth with Severe
Emotional Disturbance, Definitions. 2435-2436

AMD Low Income Energy Assistance Program
REP (LIEAP). 2437-2441

INTERPRETATION SECTION

Before the Department of Commerce, Board of
Dentistry.

Petition for Declaratory Ruling.

In the Matter of the Estate of Edward F. Abbott,
Montana Licensed Dentist, Deceased, for a
Declaratory Ruling on the Applicability of Montana
Code Annotated Section 37-4-101(2)(b), 37-4-321 and
37-4-327 to the Estate. 2442-2444

Page Number

Before the Department of Commerce, Board of Nursing.

Notice of Petition for Declaratory Ruling.

In the Matter of the Petition for Declaratory Ruling Regarding the Scope of Practice for Registered Nurses Performing Conservative, Sharp Debridement of Non-viable Tissue in Wounds.

2445-2447

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.

2448

How to Use ARM and MAR.

2449

Accumulative Table.

2450-2461

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.36.602 APPROVED PRO-
to continuing education) GRAMS OR COURSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 13, 1993, the Board of Optometrists proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.36.602 APPROVED PROGRAMS OR COURSES (1) The type of educational programs approved by the board shall be those affiliated with national, regional or state optometric associations, societies, academies, ~~or~~ colleges of optometry, or approved by the international association of boards of examiners in optometry's council on optometric practitioner education (COPE).

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

Auth: Sec. ~~37-10-202~~, MCA; IMP, Sec. ~~37-10-308~~, MCA

REASON: This amendment is being proposed to allow licensees another avenue for compiling continuing education credits. The Board has considered the outline for the COPE program and is satisfied that programs it will approve are consistent with continuing education requirements of the board.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Optometrists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 12, 1993.

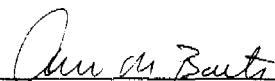
4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Optometrists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 12, 1993.

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

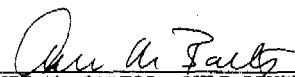
persons directly affected has been determined to be 25 based on the 251 licensees in Montana.

BOARD OF OPTOMETRISTS
PAUL L. KATHREIN, O.D.

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 4, 1993.

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

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	OF RULES PERTAINING TO
to definitions, licensure	)	SOCIAL WORK EXAMINERS AND
requirements for social	)	PROFESSIONAL COUNSELORS
workers, application procedures)		
for social workers and)	
licensure requirements for)	
professional counselors)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. November 13, 1993, the Board of Social Work Examiners and Professional Counselors proposes to amend rules pertaining to definitions, licensure requirements and application procedures.

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

"8.61.401 DEFINITIONS (1) through (1)(d) will remain the same.

(2) "Direct client contact" means physical presence, telephonic presence, or interactive video link presence of the client, client family member, or client representative.

(3) "Qualified supervisor" means a licensed social worker, licensed psychologist, or a licensed and board-certified psychiatrist. A licensed psychologist or psychiatrist shall only qualify to supervise one half of the total hours required, with a licensed social worker supervisor required for at least half.

(4) "Direct observation" of service delivery means participation in the service delivery, observation through a two-way mirror, observation of a video or audiotape of the service delivery, or observation through an interactive video link of the service delivery."

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

"8.61.402 LICENSURE REQUIREMENTS FOR SOCIAL WORK

(1) For the purpose of meeting the 3,000 hour requirement of section 37-22-301(2)(b), MCA, an applicant shall provide ~~verified experience which may include~~ verification of the following:

(a) 3,000 supervised hours spent providing psychotherapy or clinical social work services to individuals, families, and groups, of which at least 50% shall include the application of psychosocial methods in direct client contact;

~~(b) hours spent supervising the work of other persons, providing psychotherapy supervision, on a form approved by the board, which shall include at least 100 documented hours of individual or group supervision by a qualified supervisor. At least 50% of the 100 hours shall be individual and face-to-face by a licensed social worker, and at least 10 hours of which includes direct observation of the service delivery. Each supervisory session shall be documented with the following information:~~

~~(i) date and length of supervision in increments not less than 15 minutes;~~

~~(ii) names of applicant, supervisor (including type of license and number) and signatures of both;~~

~~(iii) content summary (excluding confidential information).~~

~~(c) supervision which has been conducted on a regular basis. No more than 160 hours of social work experience shall transpire without providing at least 2 hours of supervision. Less frequent supervision may take place under unusual circumstances only with prior approval by the board.~~

~~(d) supervisor's experience and expertise with the applicant's client population (i.e. child, adolescent, adult, chemically dependent) and methods of practice (i.e. individual, group, family, crisis or brief interventions).~~

~~(e) supervisor's relationship with the applicant which shall not constitute a conflict of interest, such as (but not limited to) being in a cohabitation or financially dependent relationship with the applicant, or being the applicant's parent, child, spouse, or sibling.~~

~~(f) a supervision agreement in writing and in a format approved by the board. The agreement shall include, but not be limited to:~~

~~(i) the applicant's and supervisor's names, signature and dates;~~

~~(ii) terms of the agreement including financial compensation, frequency and method of supervision, duration and termination provision; and~~

~~(iii) a statement of confidentiality and the supervisor's qualifications."~~

Auth: Sec. 37-22-201, MCA; IMP, Sec. 37-22-102, 37-22-201, 37-22-301, MCA

"8.61.403 APPLICATION PROCEDURE FOR SOCIAL WORK (1) through (2)(b) will remain the same.

(c) three reference letters as required by section 37-22-301(2), MCA, including one from the applicant's supervisor, which shall include:

(i) inclusive dates and total hours of supervision in increments no less than 15 minutes.

(ii) names of applicant, supervisor (include type of license and number), and signature of both.

(iii) content summary (excluding confidential information).

(iv) recommendation to approve for licensure or not.

(v) number of supervised hours satisfactorily completed, and

(vi) supervisor must attest to the above under penalty of law. Falsification or misrepresentation of any of the above may be considered misrepresentations and a violation of professional ethics which may result in discipline of the supervisor's license."

Auth: Sec. 37-22-201, MCA; IMP, Sec. 37-22-301, MCA

"8.61.1201 LICENSURE REQUIREMENTS (1) through (1)(c) will remain the same.

(i) Human growth and development includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory, and demonstrated competence and familiarity in the use of current professional diagnostic manuals.

(ii) through (viii) will remain the same.

(2) "Advanced counseling practicum" shall include: practica taken at the graduate school level which includes supervision by a counselor educator with a minimum of one hour of face to face consultation with the supervisor for every 10 hours of practicum site experience.

(a) Supervision by licensed program faculty to include:

(i) a minimum of 30 hours individual face-to-face consultation and review with supervisor;

(ii) a minimum of 45 hours small group supervisory consultation with supervisor and peers in practicum program;

(b) A minimum of 200 clock hours of service to clients which includes:

(i) a minimum of 90 hours offering face-to-face direct service to individual, family and group clients;

(ii) an additional 45 hours which may include any of the above plus audio and videotape review, two way mirror observations, research, writing case notes, collateral contacts, and any other non-specified activities deemed appropriate by the practicum supervisor to enhance the student's expertise in providing services to the client population.

(3) "2,000 hours (3,000 hours as of July 1, 1996) is defined as 2,000 clock hours of experience working in a counseling setting. The 2,000 hours shall have been completed in their entirety at the time of submission of the application. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervision acceptable for job/internship experience shall include a minimum of one hour of face to face consultation with the supervisor for every 20 hours of job/internship experience. Some examples of acceptable experience would be:

(a) A 40-hour per week job/internship which provides two hours of individual supervision each week would accumulate 2,000 supervised hours in 50 weeks to equal the 10/1 ratio, or

(b) A 20-hour per week job/internship which provides one hour of individual supervision each week would accumulate 2,000 supervised hours in 100 weeks to equal the 20/1 ratio.

(a) One half of the above must be post degree.

(b) Hours earned in practical internship, etc., during the graduate program experience, up to one half of the above total, will be accepted.

(c) applicant must receive a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience.

(d) The supervision guidelines are as follows:

(i) must be a licensed mental health professional in the state of residence;

(ii) the supervision agreement shall be in writing and in a format approved by the board. The agreement shall include, but not be limited to:

(A) the applicant's and supervisor's names, signatures and dates;

(B) terms of the agreement including financial compensation, frequency and method of supervision, duration and termination provision; and

(C) a statement of confidentiality and the supervisor's qualifications.

(iii) supervisor's relationship with applicant shall not constitute a conflict of interest, such as, but not limited to, being in a cohabitation or financially dependent relationship with the applicant, or being the applicant's parent, child, spouse or sibling;

(iv) must submit a final log detailing dates and durations of supervisory contacts and issues discussed during these contacts;

(v) supervisor must attest to the above under penalty of law. Falsification or misrepresentation of any of the above may be considered misrepresentation and a violation of professional ethics, which may result in discipline of the supervisor's license.

(4) If an applicant fails the examination, the applicant may retake the examination upon payment of the examination fee."

Auth: Sec. 37-1-131, 37-23-103, MCA; IMP, Sec. 37-23-202, MCA

REASON: The proposed amendments will implement statutory changes mandated by the 1993 legislature to change the experience hours required. The amendments will also clarify the licensed professional counselor and social worker experience and supervision requirements to inform prospective applicants of the standards to be met.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Social Work Examiners and Professional Counselors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 12, 1993.

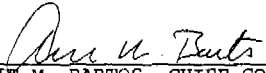
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Social Work Examiners and

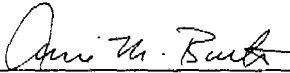
Professional Counselors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 12, 1993.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 67 based on the 667 licensed social work examiners and professional counselors in Montana.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
RICHARD SIMONTON, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 4, 1993.

BEFORE THE MILK CONTROL BUREAU
OF THE STATE OF MONTANA

In the matter of proposed amend-) NOTICE OF PUBLIC HEARING
ments of rule 8.79.101 regarding)
definitions and proposed)
adoption of new rule I concern-)
ing transactions involving the)
purchase and resale of milk)
within the state) DOCKET #18-93

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

1. On Tuesday, November 17, 1993, at 9:00 a.m. a public hearing will be held in the Dept. of transportation auditorium, 2701 Prospect Avenue, Helena, Montana, to consider amendments to ARM 8.79.101, and the adoption of new rule I.

2. The rule proposed to be amended by the Montana Dairymen's Association (MDA) provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

~~"8.79.101 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE RULE DEFINITIONS~~

(1) As used in this ~~sub chapter~~ chapter, unless the context otherwise requires, the following definitions shall apply:

~~(a) "Act" or "Milk Control Act" means the milk control laws contained in title 81, chapter 23, MCA.~~

~~(a)(b) "Other source milk" means all milk as defined in the act Act, and also all reconstituted or recombined milk which is received in a plant from any source other than a producer licensed under the Milk Control Act.~~

~~(b)(c) "Plant receipts" means all milk received from producers, other plants, and other sources, inventory, and all additives used in fluid products.~~

~~(c) "Base" means a specified amount of milk which a producer agrees to supply periodically and which a distributor agrees to purchase, and may be expressed in terms of whole milk or the components of whole milk.~~

~~(d) "Base deliveries" means the actual amount of milk delivered by a group of base holding producers which is equal to the base specified or the actual deliveries, whichever is less.~~

(e)(d) "Excess milk" means the amount of milk delivered to a plant by a producer in excess of his specified ~~base or~~ quota.

(f)(e) ~~"Dumpage" or "skim dumped"~~ "Skim milk dumped" means that amount of skim milk dumped or otherwise destroyed after separation and without further processing or usage.

(g)(f) ~~"Total plant shrinkage"~~ "Shrinkage" means that amount by which milk receipts exceed milk otherwise accounted for. ~~Plant loss or shrinkage in excess of 2 percent of current producer receipts will be allocated to and priced in class I. Plant loss or shrinkage of 2 percent or less of current producer receipts will be allocated to and priced in class III.~~

(h)(g) "Overage" means that amount by which milk accounted for exceeds plant receipts.

(i)(h) "Surplus" means that amount of milk produced ~~for fluid use which that~~ exceeds the ~~fluid~~ class I and II needs of the market.

(j)(i) "Plant" means the processing plant of a distributor.

(k)(j) ~~"Hauler" a contract hauler is defined as~~ means an independent businessman who owns his own trucking equipment and who contracts directly with the producers for hauling their milk from farm to plant. A ~~"distributor or plant hauler" is defined as~~ means a processing plant ~~who which~~ provides trucking equipment to haul producer milk from farm to plant.

(l)(k) "Jobber" means any independent businessman other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any distributor other than acquiring the ~~distributors'~~ distributor's packaged product and distributing and selling the same, and whose business practices and policies are within his exclusive province to establish, and not subject to any influence or control from the distributor.

(m)(l) "Import jobber" means a distributor who purchases milk already processed and packaged for resale to wholesale and retail customers from a source or sources whose headquarters are geographically located outside the boundaries of Montana.

(n)(m) "Store" means any supermarket, grocery, soda fountain, dairy store, confectionery, or similar mercantile establishment, whether rural or urban, which sells milk over the counter or on the premises to customers at retail.

(o)(n) ~~"Department" as used in this rule~~ means the department of commerce.

(p) "Board" means the board of milk control.

(p) "Bureau chief" means the chief of the milk control bureau of the department.

~~(2) On the farm prices as fixed by this board will apply only to those producer-distributors who produce, process and sell at retail prices on the farmstead only milk exclusively produced by their herds.~~

~~(3) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and administrative assessments due the department from such producers under section 81-23-202 and 81-23-105, MCA. The distributor shall transmit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under section 81-23-202, MCA, shall be reported and paid at least quarterly, as provided in that section. Assessments under section 81-23-105 and ARM 8.79.302 shall be separately reported and paid monthly.~~

~~(4) Deductions of any kind (other than administrative assessments and license fees) from payments due producers may be made ONLY UPON WRITTEN AUTHORIZATION from producers, or, in the case of cooperatives, upon formal resolution of the directors at a regular business meeting. A copy of such authorization shall be retained by the distributor as part of his permanent records for his own protection.~~

~~(5) Distributors, jobbers and import jobbers delivering to wholesale stops must leave at such wholesale stops an invoice of the sales of fluid milk for each day's delivery, itemized as to number of each separate form or use of milk sold and the total price of each such form or use sold. In instances where the distributor elects to utilize a computer to bill its customers, the distributor may elect to forego recording the total price and unit price of each such form or use of milk sold on the invoice left with the wholesale customers. In the computer invoice utilized, the billing system must indicate for each delivery, the number of each separate form or use of milk sold, the unit price of and the total price of each such form or use sold.~~

~~(6) All tests approved by the animal health division of the Montana department of livestock shall be considered by the department as official tests for the purpose of administration of the Milk Control Act.~~

~~(7) When producer payments are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.~~

~~(8) Each distributor must maintain a record of butterfat tests of each producer's milk or cream covering each pay period and on demand, provide each producer with each butterfat test result made for that producer during the pay period for which the information was requested. Such record~~

shall be kept on file for two (2) years and be made available to any authorized agent of the department upon request.

~~(9) On or before the tenth day of each month the bureau chief will post for public inspection in the main office of the department an original notice of the class I, II and III prices to be paid producers for grade A milk by distributors during the next calendar month. In addition thereto and on the same day, he will cause a correct copy of the posted notice to be mailed to each distributor licensed under the act and to each member of the producer liaison committee. In addition thereto each distributor will be furnished a sufficient supply of such notices to provide each of its producers with a copy.~~

~~(a) The notices shall contain not only statements of the correct prices to be paid, but statements of the applicable Chicago area average prices relied upon, and the mathematical computations by which Montana prices were arrived at.~~

~~(10) For the purposes of determining the audit value of producer milk delivered to a processing plant under the provisions of section 31-23-302, MCA, all butterfat and skim milk received from producers shall be considered as utilized by the processing plant in either class I, II or III as indicated by plant processing and sales records. Skim milk dumped or allocated to allowable shrinkage as defined in paragraph 1, sub paragraph (g) shall be considered as utilized in class III for pricing purposes.~~

~~(11) Distributors purchasing milk or cream from producers shall render to producers not later than the 15th day of each month, statements containing each of the following items:~~

- ~~(a) Name and address of dealer issuing statement.~~
- ~~(b) Date of statement.~~
- ~~(c) Period for which statement is rendered.~~
- ~~(d) Name of producer for whom the statement is intended.~~
- ~~(e) Producer butterfat tests for the first half of the month or other test period.~~
- ~~(f) Producer butterfat tests for the last half of the month or other test period.~~
- ~~(g) The weighted average butterfat test of the producer for the month for which the statement is rendered.~~
- ~~(h) Percentage of milk or skim milk and fat utilized in each classification, or, in the alternative, pounds of milk or skim milk and fat utilized in each classification.~~
- ~~(i) Rate paid for milk at test for each classification as established by applicable rule.~~
- ~~(j) Total pounds of milk purchased from producer.~~
- ~~(k) Amounts paid as premiums, bonuses, etc.~~
- ~~(l) Gross amounts paid after addition of premiums etc.~~

~~(m) Itemization of advance payments and authorized deductions.~~

~~(n) Total deductions.~~

~~(o) Net amount due and paid.~~

~~(12) On or before the 15th day of each month, in detail and on forms supplied by the department, each distributor must submit to the department a report of the following receipts, uses, sales, and transactions for the preceding month, to-wit:~~

~~(a) The quantities of milk, butterfat and skim milk received from producers.~~

~~(b) The quantities of milk, butterfat and skim milk contained in the milk and products received from other distributors.~~

~~(c) The quantities of milk, butterfat and skim milk contained in other source milk received (except non-fluid milk products of the types disposed of in the form in which received without further processing by the distributors).~~

~~(d) Inventories on hand at the beginning of the month (packaged and bulk).~~

~~(e) Additives used in fluid products.~~

~~(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the pounds of skim milk and butterfat on hand at the end of each month.~~

~~(g) Out of state sales (packaged and bulk).~~

~~(h) Such other information with respect to such receipts and utilization as the department may prescribe.~~

~~(i) Distributors shall, supply the department with information of what producers, to their knowledge, have gone out of business during the preceding month, and in the blanks provided for such information on said forms.~~

~~(13) On or before the 15th day of each month each distributor must submit to the department a duplicate or other correct copy of his producer payroll, for the preceding month, indicating total producer deliveries and payment for the preceding month for each producer supplying the plant.~~

~~(14) Each distributor whose place of business is outside the state of Montana, but who comes under the jurisdiction of the Montana Milk Control Act, and of this rule by virtue of his distributing milk within the state, either in bulk or packaged form, must file with the department on forms supplied by the department, on or before the 15th day of each month, a report of sales of such milk during the preceding month.~~

~~(a) Each import jobber who purchases milk from sources outside the state of Montana for resale in Montana must file with the department, on forms supplied by the department, on or before the 15th day of each month, a report of sales of such milk during the preceding month.~~

~~(b) Each producer-distributor shall file with the department, on forms supplied by the department, on or before the 15th day of each month, a report of his class I sales and disposition of production in excess of class I sales during the preceding month.~~

~~(15) Producers must be paid twice a month as follows:~~

~~(a) A payment or advance that approximately covers the value of the milk or cream purchased during the first two (2) weeks of the plant's monthly pay period, less one-half of the approximate monthly deductions herein sanctioned, must be paid not later than thirty (30) days after the start of the plant's monthly pay period. Such payment need not be accompanied by an itemized statement.~~

~~(b) All milk and cream purchased during the balance of the plant's monthly pay period must be paid for not later than fifteen (15) days after the close of the plant's monthly pay period. Such payment must include the balance of all amounts due from the first two (2) weeks of the monthly pay period and must be accompanied by a statement to each producer setting forth the information required in paragraph eleven (11) of these rules.~~

~~(16) The department shall cause periodic audits of the books and records of distributors to be made to verify the utilization of all milk reported pursuant to paragraph twelve (12), thereof, and thereby establishing payment or nonpayment of minimum producer prices fixed by rules of the board.~~

~~(a) Overpayments made by distributors not offset against underpayments or otherwise collected by the distributors within ninety (90) days after final settlement of the audit of the period during which the overpayment was determined will not be credited to the distributor in any subsequent audits.~~

~~(b) Upon completion of each audit the distributor will be furnished with an audit summary and commentary with respect to audit results and with indicated producer adjustments, if any, for each month audited. All underpayment settlements must be paid to producers on or before the next regular pay date and proof of such settlement payments must be filed with the department by the distributor forthwith.~~

~~(c) At any time a distributor is unwilling or unable to reconcile the audit results with rules of the board and/or department it may request a review of the audit by the bureau chief of the milk control bureau. The time limitation for final settlement payment to producers will be stayed until ten (10) days after such review is completed and the distributor has received notice of the bureau chief's decision.~~

~~(d) Within ten (10) days after the distributor receives notice of the bureau chief's decision it may file written application for appearance before the department at its offices in Helena, Montana to review the decision of the~~

bureau chief. The time limitation on final settlement payment to producers will be further stayed until review by the department is completed. After such a review, the department will make official findings and conclusions and order, to be effective upon the issuance thereof.

~~(17) Classification and allocation.~~

~~(a) All milk and its component quantities of skim milk and butterfat sold by a producer or a producer marketing organization which is required to be reported pursuant to paragraph twelve (12) of rule 0-79.101 will be classified by the department and its staff pursuant to section 01-23-101, MCA, for the purpose of establishing compliance with minimum producer prices fixed by applicable rule of the board to wit:~~

~~(i) Class I milk shall include, in addition to that specified in section 01-23-101, MCA, shrinkage attributable to producer milk in excess of 2 percent of current producer receipts and plant overages.~~

~~(ii) Class II milk will be classified as specified in section 01-23-101, MCA.~~

~~(iii) Class III milk shall include in addition to that specified in section 01-23-101, MCA, skim milk dumped, plant loss or shrinkage of 2 percent or less of current producer receipts and bulk inventories of fluid milk products.~~

~~(18) Each producer whose milk is pooled with milk from other sources supplying a non base or non quota distributor shall be credited with a pro-rata share of the milk allocated to the distributors' class I usage.~~

~~(a) Each producer whose milk is pooled with the milk from other sources supplying a distributor pursuant to a base or quota marketing plan shall be credited with either his base specified in the distributor's base or quota program, or his actual deliveries, whichever is less.~~

~~(b) Where the distributor has a base or quota program, all class I milk assigned the distributor's pool will be deemed to have been supplied first either from base milk of licensed producers, or from actual deliveries of his licensed producers, whichever is less.~~

~~(c) Where the distributor has a base or quota program and the total amount of class I milk used exceeds the total amount of base milk received from licensed producers and credited to other sources, the additional milk will be treated as having been supplied from excess milk over base.~~

~~(19) For the purpose of producer pricing, no distributor will be permitted to allocate milk purchased from sources other than his regular producers to a higher use classification than the use classification allocated for his regular producers milk.~~

~~(a) Beginning ninety (90) days after the effective date of this rule, no distributor will be permitted to allocate~~

~~milk from its wholly owned farm, if any, to a higher use classification than that accorded milk from its established producers.~~

~~(20) In interplant transfers of milk, the purchasing distributor must deliver to the selling distributor a sworn and notarized statement of the use to which the transferred milk in question was put, including the pounds or percentage ultimately packaged and sold as class I products. The purchasing distributor must also deliver a correct copy of said sworn statement to the department.~~

~~(a) In the event that more than one transfer is made between the same distributors or that such transfers are in the regular course of business between the buying and selling distributors, such certified statement need be made only regularly once each month not later than five (5) days after the close of business of the previous month, so long as it shows the usage for each transfer of milk during the preceding month.~~

~~(b) The department will supply all distributors purchasing milk from other distributors with necessary standard forms of certificates for making the notarized statements herein required. The standard printed forms will be in various colors and in triplicate, so that a copy of each certificate can be delivered to the department and another copy can be retained by the purchasing distributor.~~

~~(21) Inferior quality or noncompliance with the lawful rules of duly constituted health or sanitation agencies shall be reasons for the rejecting of producer milk. In all cases the rejection of the milk must be supported by a statement to the producer setting forth the reason(s) for which the milk was rejected. A copy of said statement must be mailed to the department.~~

~~(22) Except for persistent repetition of the cases set forth in paragraph (21) hereof, no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the department of commerce in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.~~

~~(23) No producer shall terminate his contract or selling agreement with any distributor except by giving at least thirty (30) days' WRITTEN notice to the distributor and to the department of his intention to terminate; PROVIDED, however, that nothing herein shall prevent a dealer and producer from providing by WRITTEN contract or agreement for a shorter or longer period of notice, PROVIDED FURTHER, however, that the producer must be paid in full by the 15th day of the month following the month of such termination.~~

~~(24) This rule and the rescission herein of any previously-existing rule shall not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous rule herein rescinded in whole or in part, to enforce any right or penalty or to punish any offense under the authority of any such previously existing rule, at the time this rule takes effect, but as to all such acts, things, liabilities, rights, penalties, prosecutions or proceedings and such previously existing rule shall remain in full force and effect.~~

~~(25) It is the intention of the department that if any provision of the rule, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.~~

~~(26) Nothing contained in this order shall be construed as requiring or authorizing the violation of any order, rule or regulation lawfully issued by any federal office having proper jurisdiction."~~

AUTH: 81-23-104, MCA

IMP: 81-23-103 and 81-23-402, MCA

3. The amendments to ARM 8.79.101 are necessary in order to split into two rules to achieve easier readability.

4. The new rule as proposed by the Montana Dairymen's Association (MDA) provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

"I. TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE"

(1) On-the-farm prices as fixed by the board will apply only to those producer-distributors who produce, process and sell at retail prices on the farmstead only milk exclusively produced by their herds.

(2) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and assessments due the department from such producers under sections 81-23-202 and 81-23-105, MCA. The distributor shall transmit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under section 81-23-202, MCA, shall be reported and paid at least quarterly, as

provided in that section. Assessments under section 81-23-105 and ARM 8.79.302 shall be separately reported and paid monthly.

(3) Deductions of any kind (other than assessments that are required under 82-23-105 and 81-23-302, MCA, and license fees) from payments due producers may be made ONLY UPON WRITTEN AUTHORIZATION from producers, or, in the case of cooperatives, upon formal resolution of the directors at a regular business meeting. A copy of such authorization shall be retained by the distributor as part of its permanent records for its own protection.

(4) Distributors, jobbers and import jobbers delivering to wholesale stops must leave at such wholesale stops an invoice of the sales of fluid milk for each day's delivery, itemized as to number of each separate form or use of milk sold and the total price of each such form or use sold. In instances where the distributor elects to utilize a computer to bill its customers, the distributor may elect to forego recording the total price and unit price of each such form or use of milk sold on the invoice left with the wholesale customers. In the computer invoice utilized, the billing system must indicate for each delivery, the number of each separate form or use of milk sold, the unit price of and the total price of each such form or use sold.

(5) All tests approved by the Montana department of livestock shall be considered by the department of commerce as official tests for the purpose of administration of the Milk Control Act.

(6) When producer payments are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

(7) Each distributor must maintain a record of butterfat tests of each producer's milk or cream covering each pay period and provide each producer with each butterfat test result made for that producer as provided in subsection (10) of this rule. Such record shall be kept on file for two (2) years and be made available to any authorized agent of the department upon request.

(8) On or before the tenth day of each month, the bureau chief will post for public inspection in the main office of the department an original notice of the class I, II and III prices to be paid producers for grade A milk by distributors during the next calendar month. In addition thereto and on the same day, he will cause a correct copy of the posted notice to be mailed to each distributor, producer-distributor, and producer licensed under the Act. The notices must contain not only statements of the correct prices to be paid, but statements of the applicable Chicago area average prices

relied upon, and the mathematical computations by which Montana prices were arrived at.

(9) For the purpose of determining the audit value of producer milk delivered to a plant under section 91-23-302, MCA, all butterfat and skim milk received from producers shall be considered as utilized by the plant in either class I, II or III as indicated by plant processing and sales records. Skim milk dumped or allocated to allowable shrinkage shall be considered as utilized in class III for pricing purposes.

(10) Distributors purchasing milk or cream from producers shall render to producers not later than the 15th day of each month, statements showing each of the following items:

- (a) Name and address of distributor issuing statement.
- (b) Date of statement.
- (c) Period for which statement is rendered.
- (d) Name of producer for whom the statement is intended.
- (e) Producer butterfat tests for the first half of the month or other test period.
- (f) Producer butterfat tests for the last half of the month or other test period.
- (g) The weighted average butterfat test of the producer for the month for which the statement is rendered.
- (h) Percentage of milk or skim milk and fat utilized in each classification, or, in the alternative, pounds of milk or skim milk and fat utilized in each classification.
- (i) Rate paid for milk at test for each classification as established by applicable rule.
- (j) Total pounds of milk purchased from producer.
- (k) Amounts paid as premiums, bonuses, etc.
- (l) Gross amounts paid after addition of premiums etc.
- (m) Itemization of advance payments and authorized deductions.

(n) Total deductions.
(o) Net amount due and paid.
(11) On or before the eighth business day after the end of each month, in detail and on forms supplied by the department, each distributor must submit to the department a report of the information required by ARM 8.86.512, and a report of:

- (a) out-of-state sales (packaged and bulk); and
- (b) information of what producers, to the distributor's knowledge, have gone out of business during the preceding month.

(12) On or before the 15th day of each month, each distributor must submit to the department a duplicate or other correct copy of its producer payroll for the preceding month, indicating total producer deliveries and payment for the preceding month for each producer supplying the plant.

(13) Each distributor whose place of business is outside the state of Montana, but who comes under the jurisdiction of the Milk Control Act, and of this rule by virtue of his distributing milk within the state, either in bulk or packaged form, must file with the department on forms supplied by the department, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(a) Each import jobber who purchases milk from sources outside the state of Montana for resale in Montana must file with the department, on forms supplied by the department, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(b) Each producer-distributor shall file with the department, on forms supplied by the department, on or before the 15th day of each month, a report of his class I sales and disposition of production in excess of class I sales during the preceding month.

(14) The department shall cause periodic audits of the books and records of distributors to be made to verify the utilization of all milk reported pursuant to ARM 8.86.512, thereby establishing payment or nonpayment of producer prices fixed by rules of the board.

(a) Overpayments made by distributors not offset against underpayments or otherwise collected by the distributors within ninety (90) days after final settlement of the audit of the period during which the overpayment was determined will not be credited to the distributor in any subsequent audits.

(b) Upon completion of each audit the distributor will be furnished with an audit summary and commentary with respect to audit results and with indicated producer adjustments, if any, for each month audited. All underpayment settlements must be paid to producers on or before the next regular pay date and proof of such settlement payments must be filed with the department by the distributor forthwith.

(c) At any time a distributor is unwilling or unable to reconcile the audit results with rules of the board and/or department it may request a review of the audit by the bureau chief. The time limitation for final settlement payment to producers will be stayed until ten (10) days after such review is completed and the distributor has received notice of the bureau chief's decision.

(d) Within ten (10) days after the distributor receives notice of the bureau chief's decision it may file written application for appearance before the department at its offices in Helena, Montana to review the decision of the bureau chief. The time limitation on final settlement payment to producers will be further stayed until review by the department is completed. After such a review, the department will make official findings and conclusions and order, to be

effective upon the issuance thereof.

(15) All milk and its component quantities of skim milk and butterfat sold by a producer or a producer marketing organization which is required to be reported pursuant to ARM 8.86.512 will be classified by the department pursuant to section 81-23-101, MCA, for the purpose of establishing compliance with minimum producer prices fixed by applicable rule of the board, to-wit:

(a) Class I milk shall include, in addition to that specified in section 81-23-101, MCA, shrinkage in excess of 2 percent of current producer receipts and plant overages.

(b) Class II milk will be classified as specified in section 81-23-101, MCA.

(c) Class III milk shall include, in addition to that specified in section 81-23-101, MCA, skim milk dumped, plant loss or shrinkage of 2 percent or less of current producer receipts and bulk inventories of fluid milk products.

(16) When a pool handler, as defined in ARM 8.86.511(e), purchases milk outside the pool area, as defined in ARM 8.86.511(a), which is greater than the needs of its Montana market, all such purchased milk that is greater than that pool handler's Montana market requirements will be deducted from its total purchases outside the pool area.

(17) Pool handlers with surplus pool milk shall make that milk available to other pool handlers as required by the other pool handlers to fulfill their class I and II market needs. Such surplus pool milk shall be made available to the other pool handlers at the actual cost, including transportation and other handling costs, to the pool handler having such surplus pool milk; the pool handler having such surplus milk may not charge the other pool handlers a premium, profit, or other amount in addition to the actual cost to the pool handler.

(18) A distributor may reject milk provided by a producer because of inferior quality or noncompliance with the lawful rules of duly constituted health or sanitation agencies. In all cases the rejection of the milk must be supported by a statement to the producer setting forth the reason(s) for which the milk was rejected. A distributor shall mail a copy of the statement to the department.

(19) Except for persistent repetition of the cases set forth in subsection (17) of this rule, no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the department in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(20) No producer may terminate his contract or selling agreement with any distributor except by giving at least thirty (30) days' WRITTEN notice to the distributor and to the

department of his intention to terminate. However, nothing in this rule prevents a distributor and a producer from providing by WRITTEN contract or agreement for a shorter or longer period of notice. The producer must be paid in full by the 15th day of the month following the month of such termination.

(21) If any provision of this chapter, or the application of this chapter to any person or circumstance shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

AUTH: 81-23-104, MCA

IMP: 81-23-103 AND 81-23-402, MCA

5. The new rule is created because the old rule (ARM 8.79.101) was split into two rules so it was easier to read. Amendments were also made to the old language as it exists in the new rule to eliminate obsolete and unnecessary language, language duplicated in other rules and to rewrite the rule in accordance with accepted attorney general's drafting style.

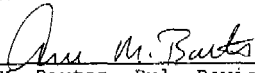
6. Persons known to have a possible interest in this proposal are producers and distributors.

7. Interested persons may participate and present data, views, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Milk Control Bureau, 1520 East Sixth Avenue-Room 50, PO Box 200512, Helena, MT 59620-0512, no later than November 15, 1993.

8. A hearing officer will be appointed by the attorney general's office to preside over and conduct the hearing.

DEPARTMENT OF COMMERCE

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 October 4, 1993.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of proposed) NOTICE OF PUBLIC HEARING
amendments to several rules:)
rule 8.86.301 as it relates to)
transportation of milk from)
farm-to-plant and as it relates) to minimum pricing; rule)
8.86.505 as it relates to)
readjustment to quotas; and)
rule 8.86.514 as it relates to)
settlement fund payments) DOCKET #19-93

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

1. On November 17, 1993, at 10:00 a.m., or as soon thereafter as possible, a public hearing will be held in Dept. of transportation auditorium, 2701 Prospect Avenue, Helena, Montana, to consider amendments of ARM 8.86.301, section (10) and (14)(c), ARM 8.86.505, sections (1)(b) and (c) and ARM 8.86.514, section (1)(c)

2. The hearing will be held in response to a petition by the Montana Dairymen's Association (MDA) and on the milk control board's own motion.

3. The rules proposed to be amended by MDA provide as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

"8.86.301 PRICING RULES

(1)-(9) remains the same.

~~(10) Transportation of milk.~~

~~(a) Definitions as used in this paragraph are as follows:~~

~~(i) labor cost is defined as salaries, wages and payroll taxes for drivers and others;~~

~~(ii) employee benefits cost is defined as "fringe benefits" such as hospitalization and/or life insurance, pension contributions, unemployment insurance, industrial accident insurance, sick pay, vacation pay, etc.;~~

~~(iii) rental cost is defined as the leasing of vehicles and equipment (e.g. trucks, tanks, pumps, etc.) rather than owning them;~~

~~(iv) repair and maintenance cost is defined as the average cost of repairs and maintenance of bulk milk tank trucks over the most recent twelve (12) month period;~~

~~(v) gas, diesel fuel, oil and lubricants costs are defined as those amounts actually recorded and used in bulk tank trucks on specific farm to plant routes. For every seven cents (\$.07) increase or decrease in the cost of gas and diesel fuel, the rate of hauling would automatically increase or decrease one cent (\$.01) per hundredweight.~~

~~(vi) tire costs are defined as the average cost of tires used on bulk milk tank trucks over the most current twelve (12) month period.~~

~~(vii) insurance, license and tax costs are defined as the average cost of these items, recorded by specific tank truck, over the most current twelve (12) month period;~~

~~(viii) contract services costs are defined as all costs paid to a contract hauler and approved by the board.~~

~~(ix) General and administrative costs are defined as follows:~~

~~(A) accounting, record keeping and clerical costs;~~

~~(B) administrative and/or supervision costs;~~

~~(C) tank truck cleaning supplies (e.g. soaps, detergent, water, etc.);~~

~~(D) tank truck storage (e.g. tractors, trailers, etc.);~~

~~(E) miscellaneous depreciation, repair and rental costs (e.g. shop repair equipment, fuel tanks, pumps, etc.);~~

~~(F) other miscellaneous items (as cost justified).~~

~~(x) Depreciation on trucks is defined as original costs of the truck less salvage value, divided by the economic life of the truck expressed in total miles.~~

~~(xi) Depreciation on bulk milk hauling tanks is defined as original costs of the tank less salvage value, divided by the economic life of the tank expressed in total years.~~

~~(xii) Interest is defined as the cost of borrower capital or, in the alternative, a return on invested capital equal to the current interest cost on borrower capital.~~

~~(xiii) Producer route is defined as a group of producers designated by the person, firm or corporation who transports these producers' milk from farm to plant, whether such hauler be a distributor or plant hauler or a contract hauler as defined (xiv), (A) below. In designating routes, the hauler must give consideration to the similarity of hauling conditions, between or among the producers so assigned, such as proximity to the plant and to each other, road conditions, frequency of haul and the economic feasibility of such grouping. The board reserves the right to reject any or all producer routes not designated in accordance with this definition after due consideration of all the factors specified herein;~~

~~(xiv) Haulers:~~

~~(A) a contract hauler is defined as an independent person, firm or corporation, including a producer cooperative association, which owns its own transportation equipment and which contracts directly with the producers for transporting their milk from farm to plant subject to the provisions of this subparagraph (10);~~

~~(B) a distributor or plant hauler is defined as a milk processing plant which provides transportation for hauling milk from the farm to its plant and negotiates the hauling rates for this transportation with the producers involved subject to the provisions of this subparagraph (10). This term includes all distributor or plant haulers providing such transportation regardless of whether they provide their own transportation equipment and labor or secure transportation and labor from another source;~~

~~(xv) Hauling rates. The term hauling rates as used in this rule means the rate charged producers for hauling milk from farm to plant. The hauling rate is to be based on the cost of hauling for the six lowest months of the plants total production for the year, for each route, to compensate for an inflationary factor.~~

~~(xvi) Driver's log is defined as a record maintained by the tank truck driver indicating:~~

~~(A) departure time from plant or other headquarters at the beginning of each run;~~

~~(B) arrival time at the plant at end of each run;~~

~~(C) total miles traveled on each run;~~

~~(D) driver's comments on road conditions, delays of all types, on the road equipment failures, and other information as the driver may deem appropriate.~~

~~(xvii) Invested capital is defined as the net capital invested in hauling and allied equipment after reduction of all existing loan balances;~~

~~(b) Records:~~

~~(i) The distributor and/or contract hauler shall maintain records of hauling costs by specific truck sufficient to provide costs on the following cost items:~~

~~(A) labor (including summaries of mechanics' time spent on farm to plant vehicles);~~

~~(B) employee benefits;~~

~~(C) rental (if any);~~

~~(D) repairs and maintenance;~~

~~(E) gas, oil and other lubricants;~~

~~(F) tires;~~

~~(G) insurance, licenses and taxes;~~

~~(H) contract services;~~

~~(I) general and administrative;~~

~~(J) depreciation on trucks;~~

~~(K) interest;~~

~~(L) driver's log;~~

~~(c) Producer routes;~~

~~(i) producer routes to establish hauling costs from farm to plant must be submitted to and approved by the board's executive secretary prior to any petition for changes in hauling rates;~~

~~(d) Petition for changes in hauling rates;~~

~~(i) Consideration of any hauling rate changes shall be initiated by the distributor or contract hauler by written petition directed to the board of milk control, 1424 9th Avenue, Helena, Montana 59620.~~

~~(e) Determination of hauling costs.~~

~~(i) Hauling costs will be determined by an audit of distributor's or contract hauler's hauling cost records. Such audits shall cover a period of time sufficiently long to accurately establish current hauling costs per hundredweight. Such audit will be conducted by the milk control bureau pursuant to the procedures provided for in this rule. When the hauler's total costs on a route by route basis have been approved by the board of milk control the charges to individual producers on a specific route become a matter of negotiation between the hauler and the producer concerned. In the event that the hauler and his producers are unable to agree on the distribution of approved hauling costs among the producers concerned, the board of milk control will then specify such distribution of costs based on the facts available at that time.~~

~~(11)(10)~~ Products not specified. Any unassigned quantity or new product hereafter marketed, but not specifically priced under the appropriate price announcement, will be assigned a price which will be the logical multiple or fraction of the nearest quantity or product to which a specific price has been fixed by the appropriate price announcement, until a specific price or formula for price is ordered by this board as a result of the regular hearing procedure and based upon actual cost experience of the industry. THE BOARD OF MILK CONTROL MUST BE GIVEN THIRTY (30) DAYS WRITTEN NOTICE PRIOR TO THE INTRODUCTION OF A NEW PRODUCT IN THE STATE OF MONTANA.

~~(12)(11)~~ Jobber and/or independent contractor prices. Minimum prices that must be charged to jobbers and/or independent contractors by distributors for packaged milk products are set forth in the appropriate price announcement.

~~(13)(12)~~ Supervening federal or state law. No price established by any formula set forth in this rule shall be charged if the same be contrary to any supervening federal or state law, rule or regulation. Should any minimum prices published by this board under this rule exceed the limitations

imposed by such laws, rules or regulations, such prices shall be reduced to the extent of such excess, even though such reduction may impair a uniform or complete application of the price fixing formula, or any of the same, set out in this rule. The prices, as so modified, shall be respected and enforced as the minimum prices established under this rule.

~~(14)~~ (13) Monthly price announcements.

(a) Monthly price announcements will be issued pursuant to paragraph 6 of this rule. Producer, jobber, institutional, wholesale, retail and on-the-farm wholesale and retail prices will be uniform and identical throughout the state of Montana.

(b) In the event that recalculation of the formula indices does not indicate a change in prices, that circumstance also will be announced."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

"8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

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

(iv) reduce each eligible producer's quota for whom a figure was computed under section (iii) hereof by the number so computed effective on March 1 next following. However, quota will be reduced only if there was less than ~~12%~~ 20% quota milk in class III for the preceding month of May. In addition, if quota milk is to be reduced pursuant to this rule, each producer whose quota milk is to be reduced shall have until, but not including, March 1 to sell or otherwise transfer the underproduced quota before such reduction is effective.

~~(b)~~ ~~No quota will be readjusted before January 1993.~~

~~(c)~~ (b) No additional quota will be issued until there is less than ~~twelve percent (12%)~~ twenty percent (20%) in class III. If the quota to be assigned is less than five-tenths of one percent (0.5%) of the quota held by all eligible producers, the entire quota pounds to be assigned shall be carried over until the following year and combined with any other quota for assignment at that time.

~~(d)~~ (c) On or before the first day of April each year where applicable, the administrator shall calculate each eligible producer's additional quota to be assigned in accordance with the following computations:

(i)-(vi) remains the same.

~~(e)~~ (d) If the established quota contains more surplus than can be effectively handled, any affected party may petition the milk control board for a hearing.

~~(f)~~ (e) Each eligible producer will have six (6) months after this plan's effective date to reduce his production to his assigned quota. Following the initial six (6) months, any

freight costs and loss on the movement and sale of surplus milk over quota will be charged back to those eligible producers who produced above their quota. The proceeds for the sale of surplus milk above quota, less transportation, will be paid to the eligible producers who ship in excess of their quota."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

8.86.514 PROCEDURES FOR POOLING OF RETURNS FROM POOL

MILK

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

(c) on or before the 13th day of the month, notify each pool handler of the amount if any by which his utilization value for the preceding month exceeds the amount due pool dairymen with respect to the pool handler's pool milk, based on the appropriate quota and excess prices. The amount of such difference must then be paid by such pool handler to the administrator on or before the 15th day of the month, or the first business day thereafter, for deposit into the pool settlement reserve. Any amount due that is not paid received by the administrator by the 25th of the month will have a late charge or an interest charge of 1.5% automatically attached each month the payment is not made. For purposes of calculating the interest, the 1.5% charge will be added to the unpaid balance each month.

(d) remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

4. The amendment of ARM 8.86.301(10) is necessary because the paragraph is obsolete. Nearly all hauling of milk in Montana is now done under contracts directly between the producer and the hauler, whereas the trucks used to be provided by the distributor. Negotiated contracts are a much more efficient method of setting hauling rules.

5. The amendment of ARM 8.86.505(1)(iv) is to allow for an adequate supply of milk in Montana. Experience from operating the Montana milk pool and quota plan has shown that the 12% excess milk provisions in the current rule is not high enough.

6. The amendment of ARM 8.86.505(1)(b) is because it is now obsolete.

7. The amendment of ARM 8.86.514 is to ensure the milk control bureau receives the monies due the pool settlement fund in a timely fashion. In the current rule, the word "paid" was unclear whether it had to be received or just placed in the United States mail by the 25th of each month.

8. The rule proposed to be amended by the board of milk control provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

"8.86.301 PRICING RULES

(1)-(14) (b) remains the same.

(c) Prices announced pursuant to subsection 6 of this rule are stated in United States of America (USA) currency. When currency other than USA currency is used to purchase milk, compliance with minimum pricing rules will be determined by converting the foreign currency to USA currency at the exchange rate posted at the nearest bank holding a USA National bank or a Montana state bank charter."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

Note: If the petition changes proposed by MDA are adopted by the board, the numbering of this amendment will be (13) (c).

9. The amendment of ARM 8.86.301(1)(c) is to clarify what currency minimum prices are based on. Currently milk is being sold on the Canadian border at the correct dollar and cent value, however, Canadian money is being accepted for payment at its face value, causing the milk to be sold for under the required minimum pricing. This amendment is being proposed to prevent that situation from happening.

10. Persons known to have a possible interest in these proposals are producers, distributors, retailers and consumers.

11. Specific factors which the board will take into consideration in these proceedings will include, but not be limited to the following:

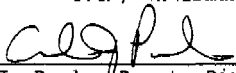
a. Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes.


b. Current procedures for hauling milk from the farm-to-plant.

12. Interested persons may participate and present data, views, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Milk Control Bureau, 1520 East Sixth Avenue-Room 50, PO Box 200512, Helena, MT 59620-0512, no later than November 15, 1993.

13. A hearing officer will be appointed by the attorney general's office to preside over and conduct the hearing.

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 October 4, 1993.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)
amendment of Certification)
) NOTICE OF PUBLIC HEARING ON
) PROPOSED NEW RULE I
) EARLY CHILDHOOD

To: All Interested Persons

1. On December 9, 1993 at 3:00 p.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education offices 2500 Broadway, Helena, in the matter of the proposed new rule Early Childhood.

2. The rule as proposed provides as follows:

I EARLY CHILDHOOD (1) The early childhood program is offered as an "add-on" to the elementary program. It may be offered as a minor to elementary education or as an approved program for the addition of early childhood to a program.

(2) For the prospective teacher of children, ages eight and under, the program shall:

(a) provide coursework and/or experiences which prepare the student to meet the needs of family, educators and the general public through the ability to:

(i) explain to parents and other concerned individuals the fundamentals of child growth, development, and learning; articulate the rationale for developmentally appropriate education programs for young children and the need for community support for such programs;

(ii) identify services that provide information and support for families and children and the role of related disciplines in supporting young children and their families;

(iii) explain roles of parents as primary caregivers and informal teachers of young children, understand the importance of parents' expectations for their children, and acknowledge the collaborative role of parents and teachers in early childhood programs;

(iv) communicate how children affect and are affected by parents, siblings, extended family and community;

(v) work cooperatively and supportively with families, especially those that have special educational needs, including those in which English is not the dominant language;

(vi) include families in assessing a child's development, report assessment results in a clear and supportive manner to family members and other appropriate professionals, and identify strengths and needs when setting goals.

(b) provide knowledge and/or experiences necessary for the student to assist all children including those with disabilities, and their parents, through the ability to:

(i) participate in and assist other professionals in family centered assessments and in developing and implementing individualized service and educational plans for young children;

(ii) adapt curriculum content to meet the needs of all young children, including those who may have a disability, be at risk for developmental delay or may be gifted.

(iii) articulate the rationale for early intervention services;

(iv) identify available special educational community services for the young child, including prevention, early intervention, integration into mainstream environment, and referral to specialized program.

(c) provide the basis for assisting with health and safety related areas including:

(i) basic health, nutrition, and safety management procedures for infants, toddlers, and young children as well as basic health and safety management procedures regarding childhood illness and communicable disease;

(ii) appropriate health appraisal and referral procedures to appropriate community health and social services when necessary;

(iii) identification of hazards, assessment of risks and appropriate corrective steps in early childhood settings;

(iv) assistance to young children in developing decision-making and interpersonal skills to promote good health and personal safety.

(d) provide field experiences and professional internships in which:

(i) theory and practice are integrated through field work in conjunction with coursework and professional consultation, (at least part of the experience must be with children under five);

(ii) the student assumes the full range of teaching duties in exemplary early childhood settings.

(e) provide the ability to respond professionally to:

(i) the interpretation of historical, philosophical, and social foundations of early childhood education and their affect on current practices and future trends;

(ii) current issues which affect children, families, and programs for young children and the early childhood profession;

(iii) value issues and the need for incorporating codes of ethics in professional practices;

(iv) working cooperatively with professionals (including) volunteers to maintain a safe and developmentally appropriate environment;

(v) career long growth and development;

(vi) signs of emotional distress, child abuse and neglect and reporting to appropriate authorities.

(f) provide the ability to analyze and evaluate developmental theories and implications to:

(i) integrate various developmental domains, learning styles and learning modalities;

(ii) include theories of development, learning and assessment in planning appropriate programs, environments and interactions;

(iii) develop and implement an integrated curriculum using play, themes and projects focusing on the children's developmental needs and interests;

(iv) integrate multicultural/anti-bias themes, literature, and experiences in all curriculum areas;

(v) observe and record young children's behavior and conduct accurate and meaningful assessments;

(vi) apply knowledge of utility and limitations of all forms of assessment administered to young children;

(vii) create and manage a learning environment that emphasizes direct experience, active manipulation of concrete materials, child choice and decision-making, exploration of the environment and interaction with others;

(viii) use developmentally appropriate methods that include play, open ended questions, group decisions, problem solving, cooperative learning and inquiry experiences to help young children in solving problems, making decisions, and becoming independent learners and developing intellectual curiosity;

(ix) use group and individual guidance and problem solving techniques to nurture prosocial interaction among children, to encourage interpersonal problem solving and to develop self control and positive self esteem.


AUTH: Sec. 20-4-102

IMP: Sec. 20-4-103

3. Currently, there is no endorsement for early childhood education. The board has proposed this rule in order to recognize individuals with this specific academic preparation.

4. Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Kinna, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than December 19, 1993.

5. John Kinna of the Board of Public Education, 2500 Broadway, Helena, MT 59620, has been designated to preside over and conduct the hearing.


WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 10/4/93.

19-10/14/93

MAR Notice No. 10-3-164

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT OF
amendment of Accreditation	)	ARM 10.60.101 BOARD OF
and Special Education	)	PUBLIC EDUCATION POLICY
	)	STATEMENT, 10.60.102 DUE
	)	PROCESS IN SERVICES,
	)	10.60.103 IDENTIFICATION
	)	OF CHILDREN WITH DISABIL-
	)	ITIES, 10.55.802
	)	OPPORTUNITY AND EDUCATIONAL
	)	EQUITY, 10.55.805 SPECIAL
	)	EDUCATION, 10.55.2002
	)	STUDENT RECORDS, 10.55.2003
	)	SPECIAL EDUCATION RECORDS

NO PUBLIC HEARING
CONTEMPLATED

To: All Interested Persons

1. On December 9, 1993, the Board of Public Education proposes to amend ARM 10.60.101 Board of Public Education Policy Statement, 10.60.102 Due Process in Services, 10.60.103 Identification of Children with Disabilities, 10.55.802 Opportunity and Educational Equity, 10.55.805 Special Education, 10.55.2002 Student Records, and 10.55.2003 Special Education Records.

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

10.60.101 BOARD OF PUBLIC EDUCATION POLICY STATEMENT

(1) It shall be the policy of the Board of Public Education to foster the development and continuation of appropriate special education services for all identified handicapped children with disabilities with the opportunity to become confident, dignified and self-sufficient members of society to the greatest extent possible.

AUTH: Sec. 20-2-121 IMP: Sec. 20-7-402

10.60.102 DUE PROCESS IN SERVICES

(1) Special education services shall include the provision of due process to ensure the rights of handicapped children with disabilities. The goal of due process is to prevent harm to children, parents and society. Due process shall include protection regarding the following:

- (a) identification of handicap-disability;
- (b) through (d) will remain the same.

AUTH: Sec. 20-2-121 IMP: Sec. 20-7-402

10.60.103 IDENTIFICATION OF THE--HANDICAPPED--CHILDREN WITH DISABILITIES

(1) In order that a free, appropriate, public education be provided to all children, all persons who can assist in identifying the handicapped--disability and determine services to meet the needs of a child shall participate in the placement process.

(2) Child study teams shall be used to identify handicapped--children with disabilities, and instructional teams shall be used to plan individual education programs. Parents shall be involved in the child study team process and shall be included in the development of the individualized education plan.

(3) To assure correct identification of handicaps disabilities and proper educational placement, children shall have the opportunity for a comprehensive educational evaluation. ~~---This--evaluation--shall--include--educational, psychological,--medical--and--other--relevant--testing--which--is tailored--to--assess--specific--areas--of--educational--need--for--all referred--children---Tests--are--to--be--selected--and--administered so--as--best--to--ensure--the--results--reflect--accurately--the child's--true--educational--status---If--any--question--exists--that an--evaluation--is--inaccurate,--the--child--is--entitled--to--an outside--independent--evaluation---~~

AUTH: Sec. 20-2-121

IMP: Sec. 20-7-204

10.55.802 OPPORTUNITY AND EDUCATION EQUITY (1) The school district shall not discriminate against any student on the basis of sex, race, marital status, national origin, or handicapped--conditionphysical or mental disability in any area of accreditation. This includes programs, facilities, textbooks, curriculum, counseling, library services, and extracurricular activities. It is the purpose of the accreditation standards to guarantee equality of educational opportunity to each person regardless of sex, race, marital status, national origin, or handicapping--conditionphysical or mental disability.

AUTH: Sec. 20-2-114

IMP: Sec. 20-2-121

10.55.805 SPECIAL EDUCATION (1) through (3) will remain the same.

(4) Each school shall be responsible for the following:

(a) handicapped--students with disabilities shall be given opportunities to become confident, dignified, and self-sufficient members of society.

(b) to the maximum extent possible, and when appropriate, handicapped--students with disabilities are educated with nonhandicapped--students without disabilities in the district in which they live;

(4)(c) through (d) will remain the same.

(5) Each school district with middle, junior high, 7th and 8th grade budgeted at high school rates or high school(s)

shall require the development and use of processes to waive specific learner goals based on individual student needs, performance levels, age maturity, and assessment of ability. Goals which are viewed as the result of this process must be identified on a student's transcript individualized education program.

(6) will remain the same.

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

10.55.2002 STUDENT RECORDS (1) will remain the same.

(2) Student records shall be kept in a fire resistant file or vault in the school building or, for rural schools, in the county superintendent's office. The board of trustees shall establish policies and procedures for the use and transfer of student records, which are in compliance with state and federal laws governing individual privacy. All educational records collected and maintained by a school shall be kept in a confidential manner according to the Family Educational Rights and Privacy Act (FERPA).

(3) will remain the same.

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

10.55.2003 SPECIAL EDUCATION RECORDS (1) through (2) will remain the same.

(3) The board of trustees shall establish written procedures for the destruction of confidential records. Records are to be kept for a minimum of five years after termination of special education services ~~or after age 18 or legal age.~~


AUTH: Sec. 20-4-114 IMP: Sec. 20-2-121

3. The board proposes to amend these rules to be consistent with changes in federal law and regulations (Individual Disabilities Education Act) and Montana statute.

4. Interested parties may submit their data, views or arguments in writing to John Kinna, Chairman, Board of Public Education, 2500 Broadway Helena, MT 59620, no later than December 6, 1993.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a public hearing and submit this request along with any written comments they have to John Kinna, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than December 6, 1993.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having 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 those directly affected has been determined to be 51 as there are 514 school districts in Montana.



WAYNE BUCHANAN, EXECUTIVE SECRETARY
Board of Public Education

Certified to the Secretary of State 10/4/93.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.44.102, 114, 118, 202,) FOR PROPOSED AMENDMENT
303, and 304 dealing with hazardous) OF RULES
waste management.)

(Hazardous Waste)

To: All Interested Persons

1. On November 16, 1993, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.44.102 INCORPORATIONS BY REFERENCE (1)-(4) Remain the same.

(5) As of ~~December 25, 1992~~ [the effective date of these amendments], all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, 1991~~2~~ edition of Title 40 of the Code of Federal Regulations (CFR). References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (1991~~2~~ edition), provided in parenthesis. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

<u>State Rule</u>	<u>Federal Rule Incorporated</u>	<u>Notation of Most Recent Changes to Federal Rules</u>
<u>16.44. . . .</u>	<u>40 CFR</u>	
(a)-(b)	Remain the same.	
(c) 110	Parts 264 and 266	Boiler and industrial furnace (BIF) rules, NC

- (d) 116 264.98, 264.99, 264.100, NC
264.112, 264.113,
264.117(a), 264.118,
264.147
- (e) 120 270.14 - 270.23 26 ~~BIF rules.~~ Liners
and leak detection
systems.
- (f)-(g) Remain the same.
- (h) 126 Parts 264 and 266 ~~BIF rules.~~ NC
- (i) ~~Rule-I~~ Part 268, (except sections Land disposal
129 268.5, 268.6, 268.42(b), restrictions and
and 264.44) as well as foreign shipment
Appendices I through IX of hazardous
waste; varianc-
es.
- (j) 202 Parts 264 and 266, Appendix ~~BIF rules.~~ NC
to Part 262
- (k) 306 Part 264, Subpart O; Part ~~BIF rules.~~ NC
265, Subpart O; Part 266,
Subparts C-G; 265.71,
265.72
49 CFR
- (l)-(m) Remain the same.
40 CFR
- (n) 331 261.31 NE Wood preserving
listings; adminis-
trative stay.
- (o)-(y) Remain the same.
- (z) 425 262.58 Requirements for
international
agreements between
the U.S. and for-
oreign countries
with different
standards for
international
handling of haz-
ardous waste. NC
49 CFR / 33 CFR
- (aa)-(ab) Remain the same.

- (ac) 609 Part 265, Subparts B - Q, BIF rules, Ground-
excluding Subpart H and water monitoring;
265.75 liners and leak
detection systems.
- (ad) 702 Part 264, Subparts B - BB, BIF rules, Liners
excluding Subpart H and and leak detection
264.75; Part 264, Appen- systems.
dices I, IV, V, VI, and IX
- (ae)-(ak) Remain the same.
- (al) 1111 Part 266, Appendices I BIF rules techni-
through XII cal amendments.
- NC - Refers to no change in the material which is being
incorporated by reference from the time of the last
formally noticed incorporation by reference.

(6) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.114 EFFECT OF A PERMIT (1)(a) Compliance with a
valid permit during its term constitutes compliance, for pur-
poses of enforcement, with the Act and with this chapter, ex-
cept for those requirements adopted as a part of this chapter
~~that restrict the placement of hazardous wastes in or on the~~
~~land, not included in the permit which:~~

(i) become effective directly by statute;
(ii) are adopted under ARM 16.44.129, restricting the
placement of hazardous wastes in or on the land; or
(iii) are adopted under ARM 16.44.702 regarding leak de-
tection systems for new and replacement surface impoundment,
waste pile and landfill units, and lateral expansions of sur-
face impoundment, waste pile and landfill units. The leak
detection system requirements include double liners, construc-
tion quality assurance (CQA) programs, monitoring, action leak-
age rates, and response action plans, and will be implemented
through the procedures of ARM 16.44.118.

(b) However, a A permit may be modified, revoked and
reissued, or terminated during its term for cause as set forth
in ARM 16.44.116 and 16.44.117, or the permit may be modified
upon the request of the permittee as set forth in ARM 16.44.116
and 16.44.118.

(2)-(3) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.118 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AU-
THORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGE-
MENT OF NEWLY IDENTIFIED WASTES (1) Remains the same.

TABLE I
LISTING OF MINOR MODIFICATIONS

- A. General Permit Provisions
1. Administrative and informational changes.
 2. Correction of typographical errors.
 3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).
 4. Changes to increase the frequency of monitoring, reporting, sampling, or maintenance activities by the permittee.
 5. Changes in interim compliance dates.
 6. Changes in expiration date of permit to allow earlier permit termination.
 7. Changes in ownership or operational control of a facility, provided the procedures of ARM 16.44.115(2) are followed.
- B. General Facility Standards
1. Changes to waste sampling or analysis methods:
 - a. To conform with department guidance or regulations;
 - b. To incorporate changes associated with F039 (multisource leachate) sampling or analysis methods.
 2. Changes to analytical quality assurance/control plan to conform with department guidance or regulations.
 3. Changes in procedures for maintaining the operating record.
 4. Increases in the frequency of inspection schedules.
 5. Changes in the training plan which do not decrease the amount or affect the type of training.
 6. Contingency plan:
 - a. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed;
 - b. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.
 7. Changes in the construction quality assurance (CQA) plan that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.
- Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.
- C.-G. Remain the same.
- H. Surface Impoundments
1. Treatment, storage, or disposal of different wastes in surface impoundments:
 - a. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use

of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028);

- b. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).

2. Modifications of unconstructed units to comply with 40 CFR 264.221(c), 264.222, 264.223, and 264.226(d) (incorporated by reference in ARM 16.44.702).

Note: See section (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes.

I. Remains the same.

J. Landfills and Unenclosed Waste Piles

1. Landfill different wastes:

- a. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028);
- b. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).

2. Modifications of unconstructed units to comply with 40 CFR 264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 (incorporated by reference in ARM 16.44.702).

Note: See section (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes.

K.-L. Remain the same.

(2)-(3) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1)-(94) Remain the same.

(95) "Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(95)-(99) Remain the same but are renumbered (96)-(100).

(101) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. This term does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or department approved or EPA approved corrective action.

(100)-(107) Remain the same but are renumbered (102)-(109).

~~(109)~~ (110) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(109)-(135) Remain the same but are renumbered (111)-(137).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.303 DEFINITION OF HAZARDOUS WASTE (1)-(2) Remain the same.

(3)(a) Remains the same.

(b) The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(i) waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332); and

(ii) wastes from burning any of the materials exempted from regulation under ARM 16.44.306(1)(c)(v)-(viii)-i and

(iii) nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061

waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in ARM 16.44.202), that are disposed in approved solid waste disposal facilities, provided that these residues meet the generic exclusion levels identified in (A) below for all constituents, and exhibit no characteristics of hazardous waste.

(A) The generic exclusion levels are:

<u>Constituent</u>	<u>Maximum for any single composite sample (mg/l)</u>
<u>Antimony</u>	<u>0.063</u>
<u>Arsenic</u>	<u>0.055</u>
<u>Barium</u>	<u>6.3</u>
<u>Beryllium</u>	<u>0.0063</u>
<u>Cadmium</u>	<u>0.032</u>
<u>Chromium (total)</u>	<u>0.33</u>
<u>Lead</u>	<u>0.095</u>
<u>Mercury</u>	<u>0.009</u>
<u>Nickel</u>	<u>0.63</u>
<u>Selenium</u>	<u>0.16</u>
<u>Silver</u>	<u>0.30</u>
<u>Thallium</u>	<u>0.013</u>
<u>Vanadium</u>	<u>1.26</u>

(B) Testing requirements for generic exclusion levels must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes.

(C) For each shipment of K061 HTMR residues sent to an approved solid waste disposal facility that meets the generic exclusion levels for all constituents, and does not exhibit any characteristic, a notification and certification must be sent to the department. The notification must include the following information: the name and address of the solid waste disposal facility receiving the waste shipment; the EPA hazardous waste number and treatability group at the initial point of generation; and the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(4) Remains the same.

AUTH: 75-10-405, MCA; IMP: Sec. 75-10-403, 75-10-405, MCA

16.44.304 EXCLUSIONS (1) The following are not subject

to regulation under this chapter:

(a)-(k) Remain the same.

(l) when used as a fuel, coke and coal tar from the iron and steel industry that contains or is produced from decenter tank tar sludge, EPA Hazardous Waste K087. The process of producing coke and coal tar from such decenter tank tar sludge in a coke oven is likewise excluded from regulation EPA hazardous waste K087, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the toxicity characteristic specified in ARM 16.44.324, when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar refining process;

(m) spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(n) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; and

(o) nonwastewater splash condenser gross residue from the treatment of K061 waste in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(2)(a)-(i) Remain the same.

(j) used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use; and

(k) non-terne plated used oil filters that are not mixed with wastes listed in ARM 16.44.330-333 if these oil filters have been gravity hot-drained using one of the following methods:

(i) puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) hot-draining and crushing;

(iii) dismantling and hot-draining; or

(iv) any other equivalent hot-draining method that will remove used oil.

(3)-(5) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

3. The department is proposing these amendments to the rules in order to bring current rules in line with U.S. Environmental Protection Agency regulations so that the Montana Hazardous Waste Management Program may continue to be authorized by EPA.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to J. Mark Stahly, Department of Health

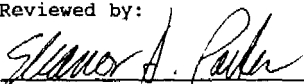
and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 19, 1993.

5. J. Mark Stahly has been designated to preside over and conduct the hearing.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 4, 1993.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF PERSONNEL APPEALS
FOR THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of certain existing)
rules, the adoption of NEW)
RULES I through VI, and the)
repeal of 24.26.696, related)
to rules of procedure before)
the Board of Personnel Appeals)
and substantive rules relating)
to labor-management relations)
and grievances, as found in)
ARM Title 24, Chapter 26.)

TO ALL INTERESTED PERSONS:

1. On November 5, 1993, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of existing rules, the repeal of an existing rule, and adoption of new rules, all related to procedural and substantive matters that come before the Board of Personnel Appeals.

The Board of Personnel Appeals will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., November 1, 1993, to advise us of the nature of the accommodation that you need. Please contact the Board of Personnel Appeals, Attn: Ms. Jennifer Jacobson, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3022; TDD (406) 444-5549; fax (406) 444-4140.

2. The Board of Personnel Appeals proposes to amend existing rules as follows (new matter underlined, deleted matter interlined), and adopt new rules as follows:

24.26.202 BOARD ADDRESS BUSINESS (1) All requests, petitions, and other correspondence to the board should be addressed to the Board of Personnel Appeals, Capitol Station P.O. Box 1728, Helena, MT 59624-1728.

(2) Any complaint, answer, petition or other document required or allowed to be filed with the board or served on a party may be filed or served by means of a telephonic facsimile communication device (fax). The board fax number is (406) 444-4140.

(3) Filings with the board by fax are subject to the following conditions:

(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed by fax even when multiple copies otherwise would be required;

(b) when a document is received after 5:00 p.m. Mountain Time, the date of filing of that document, for purposes of board rules, will be the date of the next regular work day;

(c) the original document and any copies must be received by the board within 5 days of the fax transmittal or the filing will not be recognized as timely; and

(d) the board's failure to receive a fax, for any reason, including but not limited to the unavailability or failure of fax equipment or transmission lines, does not excuse the late filing of documents.

AUTH: Sec. 2-4-201, MCA

IMP: Sec. 2-4-201, MCA

REASON: These amendments are proposed to update the mailing address of the board and to allow the use of current FAX technology in the filing of documents with the board.

NEW RULE I COMPUTING TIME FOR RESPONSES (1) For the purposes of these rules, the term "days" means calendar days, unless otherwise specified.

(2) When a document is personally delivered, the time period specified for a response is counted starting the day after the delivery is made.

(3) When a document is mailed, the time period specified for a response is counted starting three days after the date of the postmark on the envelope.

(4) Mailed documents are presumed to be mailed on the day they are dated. That presumption may be rebutted by a showing of the postmark. The burden of proof for showing that a document was mailed on a date different than the document's date rests with the person who claims that it was mailed on the different date.

AUTH: Sec. 2-4-201, MCA

IMP: Sec. 2-4-201, MCA

REASON: This proposed new rule clarifies how to determine when to start counting the response time allowed by these rules. It also establishes a presumption about the mailing date, and provides for a means of overcoming the presumption and establishes who has the burden of proof.

NEW RULE II DECLARATORY RULINGS (1) On petition of any interested person, the board may, in its discretion, issue a declaratory ruling with respect to the applicability of any statement of facts to any rule or statute enforceable by the board.

(2) The petition to institute proceedings for a declaratory ruling shall contain:

(a) the rule or statute upon which petitioner seeks a declaratory ruling;

(b) a detailed statement of the facts upon which petitioner requests the board to issue a declaratory ruling;

(c) sufficient facts to show that petitioner will be affected by the requested declaratory ruling;

(d) all propositions of law or contentions to be asserted by petitioner;

(e) the questions presented for decision by the board;
(f) the specific answer requested; and
(g) the name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

(3) The Board shall, within 60 days after the petition is filed, notify the petitioner and (any other person known by the petitioner to be interested in the requested declaratory ruling) whether the board will issue a ruling. The board will generally not issue a declaratory ruling concerning a matter that is the subject of an unfair labor practice case or that, in the judgment of the board, would be more appropriately considered through a contested case proceeding. If the board decides to issue a ruling, it shall serve all parties named in the petition by mailing:

(a) a copy of the petition; and
(b) a notice of the time and place of hearing at which the petition will be considered.

(4) After a hearing is held the board shall issue its declaratory ruling within sixty (60) days of the close of the hearing or, where briefs are filed subsequent to the hearing, within sixty (60) days of the close of the hearing.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, MCA

REASON: In the past, the board has issued declaratory rulings under the authority of the Montana Administrative Procedure Act. This proposed new rule recognizes that practice and formally provides the necessary procedures for filing a petition requesting such a ruling, and the process by which the board will consider the petition.

24.26.301 PURPOSE (1) The purpose of these rules is to provide all employees of the Montana department of ~~highways~~ transportation with an orderly and uniform method to file and process personnel grievances.

AUTH: Sec. 2-18-1001, MCA IMP: Sec. 2-18-1002, MCA

REASON: This amendment reflects the legislative name change of the department of transportation (Ch. 512, L. 1991).

24.26.302 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

~~(1)(5)"Employee"~~ means any person employed in the Montana department of ~~highways~~ transportation.

~~(2)(6)"Employee grievance"~~ means an employee's dissatisfaction concerning ~~a serious~~ an employment-related matter of ~~his employment~~ based upon working conditions, supervision, or the result of administrative action except those arising from the Classification and Wage Act, as provided in 2-18-1011, MCA.

~~(3)(1)~~ Remains the same, but renumbered as (1).

~~(4)(7)~~ Remains the same, but renumbered as (7).

~~(5)"Form"~~ means the ~~highway department personnel grievance form.~~ BPA B(1)

~~(6) "Quasijudicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws, granting or denying privileges, rights, or benefits, determining rights and interests of adverse parties, evaluating and passing on facts, awarding compensation, ordering action or abatement of action, adopting procedural rules, holding hearings, and any other act necessary to the performance of a quasijudicial function.~~

~~(7)(4) "Department head" means the director of highways the Montana department of transportation.~~

~~(8)(2) "Department" means the Montana department of highways transportation.~~

~~(3) "Department designee" means any person authorized by the director of the department of transportation to act on behalf of the director in a personnel matter.~~

AUTH: Sec 2-18-1001, MCA IMP: Sec. 2-18-1002, MCA

REASON: These proposed amendments generally update the rule by making technical corrections that reflect the name change of the department of transportation, eliminate references to obsolete forms, make the definitions gender-neutral, and renumber the definitions in alphabetical order. The amendments bring this rule into conformity with its counterpart in Sub-Chapter 4 (Department of Fish, Wildlife and Parks grievances).

24.26.303 GRIEVANCE PROCEDURE (1) Step one:

~~(a) An employee, group of employees, or employee representative, may utilize the formal grievance procedure, after exhausting all available informal remedies within the department of highways as set forth in the department's rules or regulations, by obtaining a personal personnel grievance form BPA-B(1), completing it by detailing the specifics of the grievance and submitting it to the employee's immediate supervisor or department designee for consideration within 180 days after the alleged incident or action occurred. A copy of the form must be retained by the employee.~~

~~(b) The immediate supervisor or department designee shall have three working days to examine the grievance, to record his findings and to indicate support or nonsupport of the grievance on the form, and return the form to the employee.~~

~~(c) The employee shall have three working days to accept or reject the immediate supervisor's evaluation and findings by completing the appropriate section on the form, and forwarding the grievance to step two.~~

(2) Step two:

~~(a) If the immediate supervisor's or department designee's response is late or if the response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head for review within three working days. If the immediate~~

supervisor or department designee does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within three working days.

(b) The department head shall have five working days to review the grievance, to record findings in the appropriate section of the form, to indicate support or nonsupport of the grievance, and to return it to the employee.

~~(c) The employee shall have five working days to accept or reject the department head's evaluation and findings by completing the appropriate section of the form, and forwarding the grievance to step three.~~

~~(i)~~ In the event the employee accepts the department head's findings and recommendation, the recommendation shall become effective upon notification to the department head by the employee.

~~(ii)~~ In the event the employee rejects the department head's recommendation, the employee may submit the grievance for final resolution pursuant to step three.

(3) Step three:

(a) ~~If the department head's response is late or if the response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within ten working days for final resolution. If the department head does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within ten working days for final resolution.~~

(b) ~~An agent of~~ The board of personnel appeals shall have ~~ten~~ thirty days from receipt of the form to conduct ~~its~~ the inquiry and render a preliminary decision. ~~The department and the employee shall have five days to accept or reject the preliminary decision. If the department and the employee accept the preliminary decision, it shall become the final decision. If the employee or the department rejects the preliminary decision, appeal to the board must be made within five working days.~~ The board, a member of the board, or an examiner appointed by the board shall conduct schedule a pre-hearing conference in accordance with appropriate provisions of the Administrative Procedure Act within ~~20~~ 30 days of rejection of the preliminary decision.

(c) will remain the same.

~~(d) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final decision together with a final order.~~

AUTH: Sec. 2-18-1001, MCA IMP: Sec. 2-18-1002, MCA

REASON: These amendments bring the language into conformity with the language of the statute and the references to "employee" throughout Sub-Chapters 2 and 4. Technical errors are corrected and the process regarding the initiation of a

grievance is clarified. Because in certain instances the immediate supervisor is a low level supervisor who does not have the authority to act in the grievance process, the amendments allow the department to refer the grievance to the proper authority. Also added is a six month time limit for filing the grievance in conformity with a recent statutory change (Ch.14, L. 1991).

The amendments also recognize that the inquiry and issuance of a preliminary decision is conducted by an agent of the board and not the board itself and the timeline is extended from ten to thirty days in order to allow a more thorough investigation. A time limit of five working days is inserted for appealing the preliminary decision to the board. The timeline for scheduling a pre-hearing conference is extended to 30 days in recognition of the workload of the Hearings Unit.

24.26.304 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) will remain the same.

(2) If a grievance is filed pursuant to this rule, the board shall serve the grievance upon the department and the department shall have ten days in which to respond to the grievance. After the ten days have elapsed, the board grievance shall commence with at step three (b) of the formal grievance procedure provided in ARM 24.26.202 ~~303~~.

AUTH: Sec. 2-18-1001, MCA IMP: Sec. 2-18-1002, MCA

REASON: The proposed amendment makes the language consistent by referring to the "grievance" and makes other technical corrections.

24.26.402 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

~~(1)~~(5) will remain the same, but is to be renumbered as (5).

~~(2)~~(6) "Employee grievance" means an employee's dissatisfaction concerning a ~~serious~~ an employment-related matter of ~~his employment~~ based upon working conditions, supervision, or the result of administrative action except those arising from the operation of the statewide classification and pay plan as provided in 2-18-1011, MCA.

~~(3)~~(1) will remain the same, but is to be renumbered as (1).

(4) will remain the same.

~~(5)~~(2) will remain the same, but is to be renumbered as (2).

(3) "Department designee" means any person authorized by the director of the department of fish, wildlife and parks to act on behalf of the director in a personnel matter.

(7) "Working days" means all calendar days except Saturdays, Sundays and holidays.

AUTH: Sec. 87-1-205, MCA IMP: Sec. 87-1-205, MCA

REASON: These amendments make the language gender-neutral and adds definitions of "working days" and "department designee". These changes conform to the proposed amendments to the rules contained in Sub-Chapter 3 (Montana Department of Transportation grievances).

24.26.403 GRIEVANCE PROCEDURE (1) ~~If after exhausting the internal grievance procedure as provided by the personnel policies of the department, an employee does not believe that his grievance based upon working conditions, supervision, or the result of an administrative action has been resolved to his satisfaction, the employee may file a formal grievance with this board.~~

~~(2) To file a grievance with this board the employee shall file with this board a letter with the following information:~~

~~(a) the employee's name,~~

~~(b) the employee's position classification,~~

~~(c) which division and bureau the employee works for,~~

~~(d) a statement of what the nature of the grievance is,~~

~~and~~

~~(e) a statement of how the internal grievance procedure has been followed.~~

~~(3) Upon receipt of the letter from the employee, this board shall serve a copy of the letter on the department and a summons directing the department to submit to this board a position paper on the grievance within ten days after the service of the letter, accompanied by certificate of service certifying that a copy of the position paper has been served on the grievant.~~

~~(4) After the ten days have elapsed from the date of service of the letter, the board may set the matter for a hearing de novo. However, upon the stipulation of both parties to the grievance, the matter may be submitted to the board for decision on the record of the proceedings before the department.~~

(1) Step one:

(a) An employee may utilize the formal grievance procedure after exhausting all available informal remedies within the department as set forth in the department's rules or regulations by obtaining a Personnel Grievance form, completing it by detailing the specifics of the grievance and submitting it to the employee's immediate supervisor or department designee for consideration within 180 days after the alleged incident or action occurred. A copy of the form must be retained by the employee.

(b) The immediate supervisor or department designee shall have three working days to examine the grievance, to record findings and to indicate support or nonsupport of the grievance on the form, and return the form to the employee.

(2) Step two:

(a) If the immediate supervisor's or department designee's response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within three working days. If the immediate supervisor or department designee does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the department head within three working days.

(b) The department head shall have five working days to review the grievance, to record findings in the appropriate section of the form, to indicate support or nonsupport of the grievance, and to return it to the employee.

(c) In the event the employee accepts the department head's findings and recommendation, the recommendation shall become effective upon notification to the department head by the employee.

(d) In the event the employee rejects the department head's recommendation, the employee may submit the grievance for final resolution pursuant to step three.

(3) Step three:

(a) If the department head's response is timely returned to the employee and the employee wishes to continue the grievance, the employee shall do so by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within ten working days for final resolution. If the department head does not respond timely, the employee may advance the grievance by submitting the form, or a copy thereof, with all appropriate sections completed, to the board of personnel appeals within ten working days for final resolution.

(b) An agent of the board of personnel appeals shall have thirty days from the receipt of the form to conduct the inquiry and render a preliminary decision. If the employee or the department rejects the preliminary decision, appeal to the board must be made within five working days. The board, a member of the board or an examiner appointed by the board shall schedule a hearing in accordance with appropriate provisions of the Administrative Procedure Act within 30 days of rejection of the preliminary decision.

(c) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision together with a recommended order, which shall be filed with the board, and if no exceptions are filed within twenty days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(d) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order.

AUTH: Sec. 87-1-205, MCA IMP: Sec. 87-1-205, MCA

REASON: This proposed amendment allows for uniformity between the two grievance procedures administered by the board for the Department of Transportation (Sub-Chapter 3) and the Department of Fish, Wildlife and Parks (Sub-Chapter 4). Consistent timelines and definitions between these two statutory grievance procedures will aid the board in the uniform administration of grievances.

24.26.404 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) ~~If the department directly or indirectly interferes, restrains, coerces, or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.~~

~~(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion, or retaliation.~~

~~(3) The board shall serve the complaint upon the department and the department shall have ten days from the date of service of the complaint upon it to respond to the complaint. The response shall be filed with this board accompanied by a certificate of service certifying that the complainant has been served with a copy of the response.~~

~~(4) After the ten days have elapsed from the date of service of the complaint, the board may set the matter for hearing.~~

(1) Any employee who files a grievance or who testifies or submits evidence in any proceeding in this chapter shall be assured freedom from restraint, interference, coercion, or reprisal and if these freedoms are denied the employee through supervisory or administrative action, the employee shall be entitled to file a grievance with the board.

(2) If a grievance is filed pursuant to this rule, the board shall serve the grievance upon the department and the department shall have ten days in which to respond to the grievance. After the ten days have elapsed, the grievance shall commence at step three (b) of the formal grievance procedure provided in ARM 24.26.403.

AUTH: Sec. 87-1-205, MCA

IMP: Sec. 87-1-205, MCA

REASON: This proposed amendment allows for uniformity between the two statutory grievance procedures administered by the board for the Department of Transportation (Sub-Chapter 3) and the Department of Fish, Wildlife and Parks (Sub-Chapter 4). Consistent timelines and definitions between these two grievance procedures will assist the board in uniformly administering grievances.

24.26.508. GRIEVANCE PROCEDURE (1) ~~Step One.~~ Any employee, group of employees, or appropriately designated representatives, may utilize ~~the formal appeals procedure~~ this formal grievance procedure. The individual employee must obtain a state employee classification and wage appeal form BPA-C(1) and follow the accompanying instructions. In the case of a potential group appeal, the group of employees must comply with the rules governing ~~group appeals~~ consolidated appeals (24.26.404 513). Appeal forms may be obtained from the Board of Personnel Appeals, ~~capital station P. O. Box 1728~~, Helena, Montana 59624-1728, or from the personnel offices of ~~all~~ any departments within the executive branch.

(a) ~~The appropriate completed appeal form when completed~~ shall be submitted together with the current position

description, signed by the employee and the immediate supervisor. If the current position description is disputed, the employee may also submit a proposed position description, which represents the employee's understanding of the duties and responsibilities of the position and is signed by the employee.

(b) To complete the appeal form, the employee must clearly identify the issue or issues motivating the appeal and explain the reasons why each listed issue is being appealed. A list of appealable issues will be provided with the appeal form. The employee must explain in detail the issue and their reasons for appealing. If an issue or reason for the appeal is not adequately identified, the appeal may be returned to the employee at any step in the appeal procedure.

(c) Appealable issues are the following:

(i) The class specification doesn't adequately describe my position duties.

(ii) a different class specification is a better description of my position duties.

(iii) The class title is inappropriate for my position.

(iv) The minimum qualifications are not equivalent to those required to do my job.

(v) Other positions assigned to the same class have less difficult work than my position.

(vi) My position duties are more similar to positions assigned to a different class.

(vii) Other positions assigned to the same class perform duties significantly different than my position duties.

(viii) The position description for my position class does not adequately describe the duties and responsibilities assigned.

(ix) There are significant responsibilities assigned to my position which are not included in the position description.

(x) There are significant duties described in the position description which are not performed by this position.

(xi) There is not a current position description available for my position.

(c) Pursuant to section 2-18-203(2), MCA, the grade assigned to a class is not an appealable subject. The appeal shall be described in terms of the following appealable issues:

(i) substantial changes have occurred in this position to warrant reclassification. Specifically, this position should be allocated to (list class code and class title):

(ii) this position was incorrectly allocated to (list class code and class title) and should be allocated to (list class code and class title):

(iii) pursuant to point factoring methodology, inappropriate levels have been assigned to the following factors: (list all applicable factors):

(iv) The pay plan rules have been incorrectly applied to my this position (specific rule(s) should be cited); and

(v) Other issue must specifically relate to position classification.

~~(d) The immediate supervisor shall have ten working days to examine the appeal, attempt to resolve the complaint, record his or her findings, record steps taken (if any) to resolve appeal, and return the form to the employee.~~

~~(e) If the immediate supervisor feels the employee appeal has merit, the immediate supervisor may, initiate a request for reclassification through the agency personnel office, or request an administrative review of the classification of the employee's position, or redescribe the position duties to more adequately reflect actual work performed or initiate and complete other steps to address the identified issue. The employee should continue the appeal even if administrative action is underway.~~

~~(f) If the employee does not accept the findings of the immediate supervisor, the employee shall have five working days to forward the evaluation and findings of the immediate supervisor to step two.~~

~~(2) Step Two one:~~

~~(a) If the employee chooses to continue the appeal, the employee shall submit the form with all appropriate sections completed to the department head for review.~~

~~(b)(a) The employee shall submit the appeal form and accompanying material to the department head or department designee. The department head or designee shall have five fifteen working days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.~~

~~(b) The department head or designee is not limited to the issues raised by the employee in the appeal form, but may address any other issue listed in (1)(c) above, deemed by the department head or designee to be important to the appeal.~~

~~(c) If the employee does not accept the findings of the department head or designee, the employee shall have five fifteen working days to forward the appeal evaluation and findings of the department head to the state personnel division, step three two. The employee must identify and explain, in writing, where and why he or she disagrees with the findings of the department head or designee.~~

~~(3) Step Three two:~~

~~(a) If the employee chooses to continue the appeal, the employee shall submit the form, all appropriate sections completed, to the personnel division for review.~~

~~(b)(a) The state Ppersonnel Ddivision shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and to issue its recommended adjustment and return it to the employee or the proper representative.~~

~~(e)(b) The state Ppersonnel Ddivision's review and findings shall be limited to the issue(s) identified in Step One of the appeal. Any additional issues identified at Step Three will be addressed through informal administrative procedures as determined by the Personnel Division. are not limited to the issues raised by the employee in the appeal form, but may address any other issues listed in (1)(c) above, deemed by the state personnel division to be important to the appeal.~~

~~(d)(c)~~ The state Personnel Division will must prepare detailed clear written findings in response to the ~~issue(s)~~ identified at step one explaining its position regarding each relevant issue.

~~(e)(d)~~ If the employee accepts the state Personnel Division's findings and recommendations, the formal appeals procedure is concluded upon the implementation of the state Personnel Division's findings and recommendations.

~~(e)~~ If the employee rejects the state personnel division's findings and recommendations or if the state personnel division fails to make its findings within 30 working days, the employee shall have fifteen working days to forward the appeal to the board of personnel appeals at step three.

~~(f)~~ The employee shall have 10 working days to forward the appeal to the board for resolution.

(4) Step Four Three:

~~(a)~~ If the employee rejects the personnel division's findings and recommendation, the employee shall submit the form BPA-C(1), with all appropriate sections completed, to the board.

~~(b)(a)~~ The employee must identify and record explain, in writing, where and why they the employee disagrees with feel the state Personnel Division's findings are in error.

~~(c)(b)~~ The board or its designee shall have 10 fifteen working days to accept or reject the appeal for hearing at Step Four Three.

(i) The board or its designee shall examine the issue(s) and exceptions identified by the employee in the appeal form and the issues, findings and explanations addressed by the department head or designee, or the state personnel division in steps one and two. If the issue(s), findings and exceptions explanations are adequately described addressed, the board or its designee will accept the appeal at Step Four three- and serve notice of acceptance on the state personnel division and the employee within 10 working days. The board's notice to the state personnel division will include a copy of the employee's written explanation of why the employee disagrees with the state personnel division's step two response.

~~(ii)~~ If the board finds the issue identified at step one to be inadequately described, the board shall return the appeal to the employee. In such case, the employee may redescribe the issue and refile the appeal at step one within 10 working days.

~~(iii)~~ If the board or its designee finds feels that the Personnel Division's written findings or the employee's exceptions to the written findings or issues, findings or explanations raised by the employee, the department head or designee, or the state personnel division are not adequately described addressed, the board or its designee shall return the appeal to the appropriate party. In such case, the party will expand its issues, findings or exceptions explanations and refile them with the board within 10 15 working days.

~~(d)(c)~~ If, in the board's discretion of the board or its designee, it decides a decision is made to conduct a preliminary investigation of ~~an~~ the appeal, it shall have 20 working days to ~~to~~ investigate and issue a preliminary decision. The board

or its designee may carry out any investigations deemed necessary for resolution of the appeal or complaint. The employee or group of employees and the state personnel division shall have ~~ten~~ fifteen working days to accept or reject the preliminary decision. If the employee or group of employees and the ~~state~~ personnel division accept the preliminary decision, it shall be final and binding. ~~The board shall then implement the preliminary decision by instructing the personnel division to remedy the situation.~~

~~(e)~~ (d) If the employee, group of employees, or the ~~state~~ personnel division rejects the preliminary decision, or the board ~~or its designee~~, in its discretion, decides not to conduct a preliminary investigation, the board or ~~an agent appointed by the board~~ its designee shall conduct a hearing in accordance with title 2, chapter 4, MCA.

~~(f)~~ (e) Any investigation and/or hearing conducted by the board ~~or its designee~~ shall be restricted to the issues identified at ~~Step One~~ in the appeal form or during step one and step two.

~~(g)~~ (f) If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the board ~~or its designee~~ shall issue an order requiring action to resolve the employee's grievance.

~~(h)~~ (g) Upon the conclusion of the hearings process, the ~~board~~ or its designee shall issue its proposed findings of fact, conclusions of law, and recommended order within 90 working days.

~~(i)~~ (h) The prescribed time limits at any step of the appeal process may be modified or waived upon mutual agreement of ~~all parties~~ the affected parties.

AUTH: Sec. 2-18-1011, MCA IMP: Sec. 2-18-1011, MCA

REASON: The amendments to 24.26.508 reflect clarifications to the language that identify this process as the grievance procedure to be used when submitting a wage or classification appeal. Group appeals will no longer be tied to rule 23 of the Montana Rules of Civil Procedure and will henceforth be designated as consolidated appeals. Technical corrections to citations and the Board's address are also made.

The amendments revise the grievance procedure and recognizes the implementation of Point Factoring Methodology for classification. Timelines and procedures have been adjusted and clarified to provide the best opportunity for resolution at the earliest possible point in the dispute. The amendments also allow for a fuller discussion of issues that affect the dispute.

24.26.513 GROUP CONSOLIDATED APPEALS (1) If the facts of a several given appeals affect a large number of employees in the same manner as the appealing employee and the conditions of ~~rule 23 of the Montana Rules of Civil Procedure are met~~, the board may designate the appeals as a group consolidated appeal.

(2) The affected employees shall designate one individual as the contact person for notice purposes. Notice of intent to maintain a group consolidated appeal shall immediately be sent

by the contact person to the board or its designee. As soon as practicable after notice is sent, the board or its designee shall approve or disapprove the group consolidated appeal and shall notify the contact person of its decision. Such decision may be conditional, and may be altered or amended at any time before the final determination by order of the board after a hearing.

~~{3}--Rule-23--shall--also--govern--notice--to--members--of--the group--withdrawal--of--a--member--from--a--group--use--of--his--own counsel--by--a--group--member--the--effect--of--board--findings--on--a group--maintenance--of--a--group--action--in--regard--to--particular issues--or--subclasses--supplemental--orders--controlling--conduct--of the--action--and--dismissal--or--compromise--of--the--appeal--~~

{4}{3} In a case designated as a group consolidated appeal by the board or its designee, the appeal shall begin at step three one of the formal appeals procedure provided in 24.26.403 508.

AUTH: Sec. 2-18-1011, MCA IMP: Sec. 2-18-1011, MCA

REASON: These amendments delete the references to Rule 23 of the Montana Rules of Civil Procedure, provide for a single contact person, and update terminology for the purpose of consistency with other rules.

24.26.518 FAILURE OF SUPERVISOR, DEPARTMENT HEAD, DESIGNEE, OR STATE PERSONNEL DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT (1) If the immediate-supervisor, department head or designee, or the state personnel division does not respond to an employee's appeal within the prescribed time limits in the appeals procedure, the employee may forward-his advance the appeal to the next step in the appeal procedure by forwarding his or her original copy of the appeal form BPA-E{4} and a new copy of the appeal form BPA-E{4} to the next step within five fifteen days of the expiration of the time limit.

AUTH: Sec. 2-18-1011, MCA IMP: Sec. 2-18-1011, MCA

REASON: These amendments make technical revisions for consistency in gender-neutral language, timelines and terminology.

24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED (1) After a final order concerning a position has been issued by the board, a new hearing will be granted only upon a showing of some substantial change in that position which was not considered at the prior hearing and which would warrant a new hearing by the board or its designee.

(2) The employee shall include with his or her petition a signed affidavit stating the substantial change.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ARM 24.26.508 up to step four three (b).

(4) The staff board or its designee shall then conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

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

(5) will remain the same.

AUTH: Sec. 2-18-1011, MCA IMP: Sec. 2-18-1011, MCA

REASON: These amendments make technical revisions for consistency in gender-neutral language and terminology.

24.26.602 FILING DURATION OF NEGOTIATED AGREEMENTS AND DURATION (1) ~~One copy of each collective bargaining contract between a public employer and a labor organization shall be filed with the board within 30 days after the final execution thereof.~~

(2) Agreements reached between a public employer and a labor organization shall be for a minimum of one year and shall not exceed two years.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-104, MCA

REASON: This amendment eliminates the requirement that executed contracts be filed and decreases the amount of papers that must be stored.

24.26.603 FILING OF LABOR ORGANIZATION'S BYLAWS (1) Any employee organization seeking certification from the board as exclusive representative of a group of employees must first file with the board a copy of the labor organization's written bylaws. ~~The bylaws must be filed only once with the board. If any revisions or changes are made, the bylaws must be refiled.~~

(2) The bylaws must provide for and guarantee that:

(a) ~~Provisions~~ are made for democratic organization and procedures-1

(b) ~~Elections~~ are held pursuant to adequate standards and safeguards-1

(c) ~~Controls~~ are provided for the regulation of officers and agents having fiduciary responsibility-1, and

(d) ~~Sound~~ accounting, fiscal control, and annual audit requirements exist.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-206, MCA

REASON: This amendment involves technical corrections only and does not alter present practices.

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION (1) A petition for new unit determination and election ~~shall~~ may be filed with the board by a labor organization or a group of employees.

(2) will remain the same.

(3) The original petition and ~~five~~ three copies of the petition shall be filed with the board.

(4) will remain the same.

(5) The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, ~~from 30 percent of the employees in the proposed unit, which have been individually signed and dated within six months prior of the date of the filing of the petition, that the desire for organization~~

~~represents 10 percent of the employees in the proposed unit. The cards shall indicate that the signatories desire to be represented for collective bargaining purposes by the petitioner.~~

(6) will remain the same.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: These amendments recognize that filing a petition is a discretionary process, reduces the number of copies required to be filed with the original petition, and clarifies existing language by adding the requirement that the authorization cards clearly state their intended use.

24.26.614 EMPLOYER COUNTER PETITION (1) and (2) will remain the same.

(3) The petition shall contain:

(a) ~~discussion the specifics~~ of the nature of employer's disagreement with the petitioner~~+'s~~ proposed appropriate unit;

(b) a detailed description of the employer's proposed appropriate unit;

(c) through (e) will remain the same.

(4) will remain the same.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: This amendment addresses the board's need for detailed information in order to adequately assess the validity of the counter petition.

24.26.618 PETITION TO INTERVENE (1) and (2) will remain the same.

(3) The petition shall be accompanied by proof of interest consisting of authorization cards, or copies thereof, from 10 percent of the employees in the proposed unit, which have been signed and dated within 6 months ~~prior to of the date of the filing of the petition, representing 10 percent of the employees in the unit.~~ The cards shall indicate that the signatories desired to be represented for collective bargaining purposes by the petitioner.

(4) and (5) will remain the same.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: The amendment clarifies existing language and adds the requirement that the authorization cards clearly state their intended use.

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) The board shall direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

(a) to direct a unit determination hearing ~~within 20 days~~ after the time for intervening has passed; or

(b) to dispense with a unit determination hearing ~~at its sole discretion~~, under the following conditions:

(i) the employer has not filed a counter petition;

(ii) no intervenors contest the petitioner's proposed unit structure; ~~or~~

~~(iii) the parties have entered into a consent election agreement.~~

~~(2) The parties may waive a hearing and enter into a consent election agreement after the time to intervene has past. Such agreement shall be drafted by the board's election judge and must include a description of the unit and the time and place of the election. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit when it is signed by the parties and approved by the election judge.~~

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

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: These amendments remove the requirement that a hearing be held within twenty days in recognition that the existing timeline is unrealistic given the current workload of the Hearings Unit. Inconsistent or redundant language is deleted, and adds new language to recognize consent election agreements and the process by which consent elections are implemented.

24.26.622 EMPLOYER PETITION (1) A petition may be filed with the board by an employer alleging that one or more labor organizations ~~has~~ have presented to it as a claim to be recognized as the exclusive representative in an appropriate unit.

(2) The ~~original~~ petition shall be signed by the petitioner or its authorized representative.

~~(3) The original petition shall be filed with the board.~~

~~(4)-(3)~~ The petition shall contain:

(a) ~~A~~ statement naming all ~~parties~~ labor organizations making a claim to the employer to be recognized as the exclusive representative and bargaining agent; ~~and a concise statement of how that demand for recognition took place.~~

~~(b) a concise statement of how the demands for recognition took place;~~

~~(b)-(c) If where there is a an employer-recognized or board-certified representative, the petition shall contain a statement by the employer of what criteria it bases its doubt belief that the incumbent, exclusive representative does not have the majority support of the members of the bargaining unit in question; and~~

~~(c)-(d) A description of the bargaining unit the bargaining representative is labor organizations demanding demand to represent. Such description shall include, including the approximate number of employees in the unit or units that are in dispute, and an enumeration, by job title, of the inclusions and exclusions proposed by the labor organizations;~~

~~(i) The approximate number of employees in the unit, and~~

~~(ii) an enumeration, by job title, of the unit's inclusions and exclusions.~~

~~(d)(e)~~ A brief description, including expiration dates, of all contracts covering employees in the proposed unit; and
~~(e)(f)~~ Any other relevant facts.

(4) Petitions may be filed when any of the following circumstances apply:

(a) during the period not more than 90 days, and not less than 60 days prior to the termination date of the existing collective bargaining agreement;

(b) during January of the year the existing collective bargaining agreement terminates, if the bargaining unit is comprised of employees of school districts, units of the university system, or a community college;

(c) after the termination date of the existing collective bargaining agreement; or

~~(5) The employer petition must be filed:~~

~~(a) not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or after the termination of the existing collective bargaining agreement. -- An employer petition of a bargaining unit comprised of school employees may only be filed in January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement; or~~

~~(b)(d) when the incumbent bargaining representative gives notice to the employer that it desires to begin negotiations of a successor agreement.~~

~~(6)(5) If after investigating the matters alleged in the petition, this the board finds that there has been a sufficient demand for recognition made of the employer, and where applicable that there are sufficient, objective criteria for the employer to, in good faith, doubt the certified or recognized bargaining representative's majority status, then this the board shall serve a copy of the petition on all parties named as claiming to be the exclusive representative and bargaining agent.~~

~~(7)(6) The refusal to serve a petition is appealable to the full board if written exceptions to the refusal ~~is~~ are filed with this the board within 20 days after the date of the notification of the refusal to serve the petition.~~

~~(8)(7) The same right of intervention shall exist for an employer petition as exists for unit determination petitions.~~
AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: These amendments clarify confusing language by rewording portions of the rule and rearranging the order of the text.

24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT (1) A ~~P~~petition for ~~C~~clarification of ~~B~~bargaining ~~U~~unit may be filed with the board ~~only~~ by an ~~b~~bargaining ~~e~~exclusive representative of the ~~b~~bargaining unit in question or by a ~~the~~ public employer ~~and~~ only if:

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

(2) A copy of ~~any such~~ the petition shall be served by the board upon the bargaining representative if filed by a public employer and upon the employer if filed by a bargaining representative.

(3) A Petition for Clarification of an existing bargaining unit shall contain the following:

(a) through (i) will remain the same.

(4) The party on whom the petition was served shall have 20 days to file a response with ~~this the~~ board.

(5) Upon a determination that a question of fact exists, ~~this the~~ board ~~may~~ shall set the matter for hearing. Upon completion of the hearing ~~this the~~ board may:

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

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: These amendments make grammatical changes throughout the rule and clarifies the language contained in (1) by making consistent reference to bargaining units and exclusive representatives. The amendment in (5) recognizes that in cases where a question of fact exist, the matter must be set for a hearing. Therefore, the discretionary "may" is changed to "shall".

24.26.643 PETITION FOR DECERTIFICATION (1) will remain the same.

(2) The petition must be filed during the period not more than 90 days ~~before~~, and not less than 60 days ~~before~~ prior to the termination date of the previous collective bargaining agreement, or upon the terminal date thereof.

(3) through (4) will remain the same.

(5) The original petition and ~~five~~ three copies of the petition shall be filed with the board.

(6) will remain the same.

(7) The petition shall be accompanied by proof that 30 percent of the employees in the unit do not desire to be represented by the existing exclusive representative. ~~This proof will~~ shall consist of authorization cards, or copies thereof, which have been individually signed and dated within six months ~~prior to~~ of the date of the filing of the petition. The card shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the board-certified or employer-recognized exclusive representative, or that they desire to be represented by the petitioner.

(8) will remain the same.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: These amendments, in addition to minor grammatical changes, reduce the number of copies of the original petition and adds the requirement that authorization cards clearly state the intended purpose of their use.

24.26.646 PETITION TO INTERVENE (1) and (2) will remain the same.

(3) The original petition and ~~five~~ three copies of the petition shall be filed with the board.

(4) will remain the same.

(5) The petition shall be accompanied by proof of interest representing ten percent of the employees in the unit. ~~This proof will shall~~ consist of authorization cards, or copies thereof, which have been individually signed and dated within six months ~~prior to~~ of the date of the filing of the petition. The cards shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the board, certified or employer-recognized exclusive representative, or that they desire to be represented by the petitioner.

(6) and (7) will remain the same.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: These amendments, in addition to minor grammatical changes, reduce the number of copies of the original petition and adds the requirement that authorization cards clearly state the intended purpose of their use.

24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE (1) After one year from the date of certification by ~~this the~~ board or recognition by an employer as of the bargaining representative and after the filing of a petition for decertification by an employee or group of employees an incumbent bargaining agent may submit to ~~this the~~ board an affidavit of disaffirmance of representation stating it no longer desires to represent the bargaining unit in question.

(2) will remain the same.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-207, MCA

REASON: This amendment makes only grammatical changes.

NEW RULE III PETITIONS TO REVOKE CERTIFICATION OR RECOGNITION (1) A petition to revoke board certification or employer recognition of an exclusive representative may be filed by the employer or the exclusive representative of a bargaining unit.

(2) The board will order revocation only upon an unequivocal showing that:

(a) no collective bargaining agreement is in effect; and

(b) the exclusive representative disclaims further interest in representing the bargaining unit.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, MCA

REASON: This proposed new rule establishes the conditions necessary for an employer or union to petition the board to officially revoke certification or recognition of a bargaining unit.

NEW RULE IV PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE (1) A petition to amend the certification or recognition of an exclusive representative may be filed by a labor organization when there is no question of representation and one of the following reasons exists:

(a) to reflect a change in name or affiliation of the exclusive representative; or

(b) a change in name of the employer.

(2) Petitions to affiliate exclusive representatives of bargaining units with other labor organizations shall show that members of the bargaining unit were afforded due process and will have continuity of representation.

(a) Due process in the affiliation process shall be demonstrated by a showing that members of the bargaining unit were:

(i) given notice of the impending affiliation vote;

(ii) given an opportunity to discuss the proposed affiliation at a meeting prior to voting; and

(iii) permitted to vote by secret ballot on the affiliation question.

(b) Continuity of representation shall be demonstrated by a showing that:

(i) there will be a continuation of bargaining unit autonomy;

(ii) local officers will be retained;

(iii) financial arrangements are not substantially different under the affiliation than before; and

(iv) procedures regulating grievance handling, voting and by-law changes are continued.

(3) The board will conduct an investigation upon receipt of the petition and will issue an amendment to the certification or recognition, or will deny the petition.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, MCA

REASON: This proposed new rule establishes requirements for amending the certification or recognition by the board.

24.26.655 ELECTIONS DIRECTED (1) ~~The board shall direct an election to be conducted by an agent of the board where an appropriate unit has been determined and a question of representation exists or where a petition for an election has been filed. When a petition for an election has been filed, the board shall direct an election be held, if an appropriate unit has been determined or if no question of representation exists.~~ The election shall be conducted under the direction and supervision of the board with all determinations made by an agent subject to review by the board of personnel appeals by an aggrieved party.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: This amendment clarifies the language directing an election.

24.26.656 CONDITIONS (1) All elections shall be held at such times and places and upon such terms as the board may specify, including on-site or mail-ballot elections.
AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: Mail ballot elections are currently conducted by the NLRB and the board of personnel appeals, and this amendment formally recognizes that practice.

24.26.660 BALLOTS (1) The rank order of ~~the employee~~ labor organization names to be placed on the ballot will be determined during the pre-election hearing. "No Representation" will always be listed as the last choice.
(2) and (3) remain the same.
AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: This amendment makes only a minor grammatical change to clarify that only labor organizations representing employees for the purposes of collective bargaining are properly placed on election ballots.

24.26.661 POLL WATCHERS (1) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place when the election is held on-site. The failure or refusal of one party to send an observer to a polling place does not infringe on the right of another party to send an observer to that place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting.
AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: This amendment clarifies that poll watchers are necessary only for an on-site election, and provides that a party has the right to have an on-site poll watcher.

24.26.662 POLLING AREA ELECTIONEERING (1) Prior to the commencement of ~~the~~ an on-site election the agent of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.
AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: This amendment clarifies that this rule applies only to on-site elections.

24.26.666 OBJECTIONS (1) Within five working days after the tally of ballots has been furnished to the parties, either orally or in writing, any party may file with the board, objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which

the objections are based. An original and five copies of such objections shall be signed and filed with the board, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: This amendment makes clear that either oral or written notification to the parties of the election results starts the five day period in which to file objections.

24.26.667 CERTIFICATION (1) If no objections are filed within the time set forth above, ~~or if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held,~~ the board shall forthwith issue to the parties a certification of representative, where appropriate.

(2) In order to be certified by the board as the exclusive representative for any bargaining unit that existed before July 1, 1973, and is presently in existence, the employee labor organization must submit ~~five copies~~ a copy of the existing collective bargaining agreement as support of ~~their~~ its claim.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-208, MCA

REASON: The amendment in (1) strikes the statement on runoff elections since no certification is issued pending a runoff. The amendment in (2) keeps the reference to labor organizations consistent with 24.26.660.

24.26.680 COMPLAINT (1) A complaint alleging that a person or organization has engaged in or is engaging in an unfair labor practice may be filed by an employee, a group of employees, a labor organization or a public employer within six months thereof.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or ~~his~~ the authorized representative. The original and ~~five~~ three copies of the complaint shall be filed with the board. ~~The board shall serve one copy of the complaint on each party named in the complaint.~~

(3) will remain the same.

(4) If the board determines that the facts alleged in the complaint do not constitute an unfair labor practice under section 39-31-401 ~~and or~~ 39-31-402, MCA, it shall dismiss the charge.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-406, MCA

REASON: These amendments clarify that organizations as well as individuals may be accused of unfair labor practices. The amendments also make technical adjustments to the wording and reduce the number of copies that must be provided at the time of filing.

24.26.680 B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT (1) The board shall serve one copy of the complaint upon the each party charged with the unfair labor practice.

(2) ~~The A~~ party so charged shall file a response with the board to the complaint within ten days after receipt of the charges. A response is a letter setting forth in detail facts relevant to the complaint which the ~~R~~espondent wishes to bring to the board's attention including a specific reply to each factual allegation made in the complaint.

(3) and (4) remain the same.

(5) As provided for in 39-31-405(3), MCA, if after the investigation or after the appeal provided for in subsection (2) of 39-31-405, MCA, the investigator or the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and ~~the any~~ party charged a notice of finding of probable merit.

(6) As provided for in 39-31-405(4), MCA, if a finding of probable merit is made, the person or entity against whom the charge is filed shall file an answer to the complaint. The answer must be made in writing within ten days of receipt of the notice of finding of probable merit.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-405, MCA

REASON: These amendments clarify the existing rule by specifying the time in which a party must answer a notice of finding of probable merit and make minor grammatical changes.

24.26.682 NOTICE OF HEARING (1) After the time for filing an answer has passed, the board shall serve a notice of hearing upon the parties. The hearing date shall not be less than five ~~nor more than 20~~ working days ~~from~~ after the date of service. The notice shall include all those items listed in section 2-4-601, MCA, and shall state whether the board or an agent of the board will hear the complaint.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-406, MCA

REASON: This amendment recognizes that the 20 working day deadline for conducting a hearing for all complaints is unrealistic. The change does not preclude a hearing from being held within 20 working days.

24.26.684 EXCEPTIONS (1) If a majority of the board have not heard the case, the person who conducted the hearing shall serve a proposed decision and order upon the parties who shall have 20 days to file exceptions with ~~and present briefs and oral arguments to the entire board.~~

(2) If briefs in support of a party's exceptions are ~~desired~~ to be submitted, those briefs must be filed with the board, ~~or sent directly to the board members,~~ at least ~~ten~~ fifteen days before the board hearing or the briefs will not be accepted or considered.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-406, MCA

REASON: These amendments clarify that briefs and oral arguments are not required when filing exceptions with the board. The amendments also provide for a more orderly procedure for the filing of briefs with the board. The Board Secretary will make copies of briefs and mail them to the board members prior to the board hearing.

24.26.695 PETITION INTEREST MEDIATION (1) ~~In the event of a labor dispute, a petition, in writing, requesting assistance of the board, may be filed with the board by an employee or group of employees, a labor organization, or a public employer. When a dispute over the negotiation of a collective bargaining agreement exists between the public employer and a labor organization after a reasonable period of negotiation or upon expiration of the collective bargaining agreement, the parties shall request interest mediation.~~ The original of the petition shall be signed by the petitioner or ~~his~~ the authorized representative, ~~and the original and five copies shall be filed with the board.~~ The petitioner shall serve a copy of the petition simultaneously upon any party named in the petition. The petition shall contain:

- (a) ~~the~~ the name, address, and telephone number of ~~the~~ petitioner or authorized representative;
- (b) ~~the~~ the name, address, and telephone number of ~~the~~ public employer;
- (c) a description of ~~the~~ the unit involved;
- (d) ~~the~~ the name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof;
- (e) a description of the dispute in detail;
- (f) a statement as to what assistance is requested; and
- (g) a statement indicating if the request is unilateral or joint.

(2) will remain the same.
(3) Upon petition for interest mediation, the board shall designate a qualified labor mediator who is an agent of the board to mediate the dispute. The board may instead request a mediator from the Federal Mediation and Conciliation Service, if one is available.

(4) Any information disclosed to the mediator in the performance of these duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the board.

(5) The mediator shall not produce any confidential records or testimony with regard to any mediation on behalf of a party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the board.

(6) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be

private and nonpublic, except if otherwise mutually agreed upon by the parties.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-307, MCA

REASON: These amendments incorporate most of the text from ARM 24.26.696, and limit this rule to interest mediation of collective bargaining negotiations. The amendments also make minor grammatical changes. The Board believes that section 39-31-307, MCA, contemplates mediation over collective bargaining issues, rather than grievances. Compare: New Rule IV, infra.

NEW RULE V GRIEVANCE MEDIATION (1) When a dispute exists between a public employer and a labor organization over the meaning, interpretation or application of an existing collective bargaining agreement, the parties may request grievance mediation. The board, in its discretion, may designate a qualified labor mediator to mediate the dispute under the following conditions:

(a) the parties mutually agree to the request;
(b) the parties mutually agree to the conditions set by the board; and

(c) the parties mutually agree to waive the applicable time limitations in the collective bargaining agreement's grievance procedure.

(2) Matters disclosed to the mediator by the parties during the course of mediation shall be confidential and shall not be divulged unless approved by both parties to the dispute.

(3) In the event the dispute goes to arbitration, the mediator may not be called as a witness or otherwise called to divulge information or settlement offers which may have been discussed during mediation.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, MCA

REASON: This proposed new rule defines grievance mediation and delineates the conditions under which grievance mediation can occur. This voluntary process of dispute resolution is designed to explore avenues of agreement and/or compromise on grievances prior to submitting them to final and binding arbitration.

24.26.697 FACT FINDER (1) through (3) will remain the same.

(4) The parties shall immediately notify the board of the name of the fact finder. The board shall notify the fact finder and along with a request him to immediately establish dates and places of hearings.

(5) Within 20 days from ~~his notification by the board~~ the date of hearing, the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the board.

(6) and (7) will remain the same.

(8) The cost of factfinding proceedings must be equally borne between the board and the parties concerned. The fact finder shall, within ten working days of the written findings,

submit ~~his~~ an invoice of the costs and fees to the board which shall send copies of ~~an~~ the invoice to both parties on which they will be billed for one-third of the total. The parties shall pay the board within five days and the board shall forward the total amount to the fact finder.

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-309, MCA

REASON: The amendments clarify the process for payment of the fact finder's fee and adds a timeline for the submission of fees. Minor grammatical changes are made as well.

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

(3) The parties may petition the board to assist in the selection of the arbitrator by requesting that the board submit to them a panel of qualified arbitrators in accordance with ARM 26.24.595.

~~(4) The arbitrator shall render a decision within 30 days of his appointment.~~

AUTH: Sec. 39-31-104, MCA IMP: Sec. 39-31-310, MCA

REASON: The amendments clarify the nature of the assistance provided by the board and deletes reference to ARM 26.24.595 as being erroneous. The 30 day decision schedule is deleted because it is unrealistic.

NEW RULE VI PANEL OF ARBITRATORS AND FACT FINDERS

(1) The board shall maintain a panel of qualified labor arbitrators and fact finders for referral, upon request, to the parties to a labor dispute. Panel members are expected to conform to the ethical standards and procedures set forth in the code of professional responsibility for arbitrators of labor disputes as approved by the National Academy of Arbitrators. The board has established procedures to compile lists and appoint arbitrators or fact finders from such lists and considers such facts as background, experience, availability, acceptability, geographical location and the expressed preferences of the parties.

(2) Persons seeking to be listed on the panel must complete and submit an application form. The form may be obtained from the board offices, 1805 Prospect Avenue, Helena, or by writing to the board, P.O. Box 1728, Helena, MT 59624-1728. Upon receipt of an executed form, the board will review the application, assure that it is complete, and make any necessary inquiries. The board will review the completed application in light of the criteria set forth below and will decide whether an applicant should be listed on the panel. Each applicant will be notified in writing of the board's decision.

(3) Applicants will be accepted on the panel if they:

(a)(i) are experienced in decision-making roles in the resolution of labor-management disputes; or

(ii) have extensive experience in relevant positions in collective bargaining; and

(b) are capable of conducting an orderly hearing, can analyze testimony and exhibits; and

(c) can prepare clear and concise findings and awards within reasonable time limits.

(4) The qualifications listed in subsection (3) of this rule are best demonstrated by the submission of actual arbitration awards and/or fact finding reports prepared by the applicant while serving as an impartial arbitrator chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies also may be considered by the board.

(5) No advocate shall be listed on the panel. An advocate is a person who represents employers or labor organizations, as an employee, attorney or consultant, in matters related to collective bargaining. A person who was not an advocate when listed may not continue to be listed after becoming an advocate and must notify the board of such change in status immediately.

(6) Initial listing on the panel may be for a period not to exceed three years and may be renewed for periods not to exceed two years, provided upon review the listing is not canceled by the board as set forth below. Notice of cancellation may be given to the member whenever the member:

(a) no longer meets the criteria for admission;

(b) has been repeatedly and flagrantly delinquent in submitting awards;

(c) has refused to make reasonable and periodic reports to the board as required;

(d) has been the subject of complaints by parties who use board panels and the board, after appropriate inquiry, concludes that just cause for cancellation has been shown; or

(e) is determined by the board to be unacceptable by the parties, based on board records showing the number of times the arbitrator or fact finder's name has been proposed to the parties and the number of times the person has been selected.

(7) When, pursuant to a request, the board submits a list of arbitrators or fact finders to the parties to a dispute, the names on the lists shall be drawn at random from the panel described above. However, the board will attempt to comply with a joint request of the parties to restrict the lists in any of the following ways:

(a) only arbitrators who are listed on the labor arbitration panel of the American Arbitration Association or the Federal Mediation and Conciliation Service or who are members of the National Academy of Arbitrators;

(b) only arbitrators whose resumes filed with the board show that they are engaged exclusively or primarily in the practice of arbitration or fact finding; or

(c) only arbitrators who reside in Montana.

(8) If they desire, the parties may jointly request a second list of arbitrators or fact finders. A second list will consist of names drawn at random from the panel without regard to any restrictions requested by the parties.

(9) Arbitrators and fact finders selected by the parties pursuant to referral of their name by the board shall notify the

board of acceptance of appointments, scheduling of hearing, continuances or postponements, and cancellations.

(10) Arbitrators and fact finders listed on the panel shall provide the board with one copy of all written decisions or recommendations issued.

(11) Nothing contained herein should be construed to limit the right of parties to select jointly any arbitrators or arbitration procedure acceptable to them.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, MCA

REASON: This proposed new rule establishes the necessary requirements and competencies for arbitrators and fact finders seeking to be listed with the board, and defines the processes by which the parties select arbitrators and fact finders from the lists maintained by the board.

3. The Board of Personnel Appeals proposes repealing ARM 24.26.696, Mediation, on the grounds that the subject matter of the rule is being included in ARM 24.26.695, Interest Mediation, as part of the revision of the Board rules. Authority to repeal this rule is contained in section 39-31-104, MCA and implements section 39-31-307, MCA.

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

Paul Melvin
Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., November 12, 1993.

5. The Board of Personnel Appeals proposes to make these rule amendments, repeals and new rules effective January 1, 1994. The Board reserves the right to make some or any of the proposed amendments, repeals, and/or new rules effective on a different date, or not at all, as the Board deems appropriate.

6. The Hearing Unit of the Legal Services Division of the Department of Labor and Industry has been designated to preside over and conduct the hearing.



David A. Scott
Rule Reviewer



Willis M. McKeon, Chair
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State: October 4, 1993.

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

In the Matter of Proposed	)	NOTICE OF PROPOSED
Repeal of Rule 38.5.3345	)	REPEAL OF RULE 38.5.3345
Regarding Unauthorized Changes)		
of Telephone Customers'	)	NO PUBLIC HEARING
Primary Interexchange	)	CONTEMPLATED
Carrier (PIC).)	

TO: All Interested Persons

1. On November 15, 1993 the Department of Public Service Regulation proposes to repeal the above stated rule.

2. The rule proposed to be repealed is 38.5.3345 CHANGE IN CUSTOMER'S INTEREXCHANGE CARRIER and is located at page 38-895, Administrative Rules of Montana. The authority sections were 69-3-103 and 69-3-822, MCA, and implementing sections were 69-3-102 and 69-3-201, MCA. This rule is being repealed because primary interexchange carrier (PIC)-change data supplied by various local exchange carriers indicates that the problem of unauthorized PIC changes, also referred to as "slamming," is not an industry-wide problem. Rather, the problem appears to be the result of the fraudulent practices of several small companies. Since the rule as currently drafted targets the whole interexchange carrier industry, the Commission believes it is overly broad and should be repealed.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing (original and 10 copies) to Tim Sweeney, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than November 15, 1993.

4. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Tim Sweeney, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than November 15, 1993.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 Adminis-

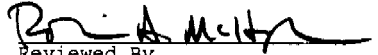
trative Register. Ten percent of those persons directly affected has been determined to be one (1) based upon the number of interexchange carriers serving Montana.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.



Bob Rowe, Vice Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 4, 1993.


Reviewed By

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

In the Matter of Proposed	)	NOTICE OF PROPOSED
Amendment of a Rule to Remove	)	AMENDMENT TO RULE 38.3.702
Reference to Class E Motor	)	AND PROPOSED REPEAL OF
Carrier and Proposed Repeal	)	RULES 38.3.1401 THROUGH
of Rules Pertaining to Class	)	38.3.1420
E Motor Carriers.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On November 15, 1993 the Department of Public Service Regulation proposes to amend and repeal the rules identified in the above title and described in the following paragraphs, all related to Class E motor carriers, motor carriers authorized to transport logs. The proposed rules to be repealed are located at pages 38-192.1 - 38-192.14, Administrative Rules of Montana.

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

38.3.702 BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE (1) Every class A, class B, class C, ~~and class D~~ and ~~class E~~ intrastate carrier must file with this commission evidence of complying with the minimum insurance requirements of this commission as applicable to bodily injury and property damage liability insurance.

(2) For the purposes of this sub-chapter "bodily injury" shall include death. AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP, Ch. 364, L. 1993

3. The rules proposed for repeal provide, in substance, as follows:

38.3.1401 APPLICATION FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1402 APPLICATIONS FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS -- DEFINITIONS AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1403 APPLICATIONS FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS -- MINIMUM PROOF REQUIRED AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1406 CONTRACT FOR CLASS E SERVICES AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1408 CONTRACT FOR CLASS E SERVICES -- REQUIRED PROVISIONS AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1409 CONTRACT FOR CLASS E SERVICES -- CONTINUING PERFORMANCE, MULTIPLE LOADS AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1410 CONTRACT FOR CLASS E SERVICES -- DOCUMENTATION AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1414 CLASS E USUAL BUSINESS OPERATION AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1415 CLASS E REGULAR BASIS AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1416 RETAINING CLASS E CERTIFICATE AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1417 OTHER CIRCUMSTANCES ALLOWING RETENTION OF CLASS E CERTIFICATE AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1418 CLASS E REPORTS AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1419 ADDITIONAL INFORMATION REQUIRED BY THE COMMISSION AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

38.3.1420 SHOW CAUSE ORDER AUTH: Sec. 69-12-201, MCA, and Ch. 364, L. 1993; IMP: Ch. 364, L. 1993

4. Rationale: The statement of reasonable necessity for the proposed amendment and repeal is that these actions are required by law. The 53rd Legislature of the State of Montana, through Ch. 364, L. 1993 (effective October 1, 1993) repealed all PSC-administered law prescribing regulation of Class E motor carriers, rendering administrative rule references and rules pertaining to Class E motor carriers meaningless.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment or repeal in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than November 12, 1993.

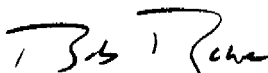
6. If a person who is directly affected by the proposed amendment or repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than November 12, 1993.

7. If the agency receives requests for a public hearing on the proposed amendment or repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment or repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision

or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 40 persons based upon the existence of at least 400 Class E motor carriers.

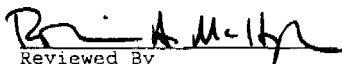
8. The authority of the agency to make rules as proposed and the statutes being implemented are set forth following each rule above.

9. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.



Bob Rowe, Vice Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 4, 1993.



Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PUBLIC HEARING ON
of ARM 42.21.106, 42.21.107,) THE PROPOSED AMENDMENT of ARM
42.21.113, 42.21.123, 42.21.131) 42.21.106, 42.21.107, 42.21.
42.21.137, 42.21.138, 42.21.139) 113, 42.21.123, 42.21.131,
42.21.140, 42.21.151, 42.21.155) 42.21.137, 42.21.138, 42.21.
42.21.163, and 42.21.305 and) 139, 42.21.140, 42.21.151,
REPEAL of ARM 42.21.164 relating) 42.21.155, 42.21.163 and 42.
to Personal Property) 21.305 and REPEAL of ARM
) 42.21.164 relating to
) Personal Property

TO: All Interested Persons:

1. On November 8, 1993, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the repeal of ARM 42.21.164 and the amendment of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.163, and 42.21.305 relating to personal property.

2. The Department proposes to repeal the following rule:

42.21.164 REQUEST FOR REVIEW found at page 42-2150 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-8-111, MCA.

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

42.21.106 TRUCKS (1) through (3) remain the same.

(4) The trended depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for the ~~1993~~ 1994 tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in subsection (1).

TRUCK TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD
1993	80%
1992	40%
1991	35%
1990	29%
1989	24%
1988	20%
1987	18%
1986	15%
1985	14%

1984	13%
1983	12%
1982	11%
1981	11%
1980 and before	10%
1994	80%
1993	43%
1992	37%
1991	34%
1990	28%
1989	23%
1988	20%
1987	18%
1986	15%
1985	14%
1984	13%
1983	12%
1982	11%
1981 and before	10%

(5) remains the same.

(6) All trucks and truck tractors of 26,000 pounds or more, licensed weight or gross vehicle weight, are subject to an additional 45 mills levied upon the taxable value.

~~(6)~~ (7) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-139, 15-6-140 and 61-3-321 MCA

42.21.107 TRAILERS (1)(a) through (1)(d) remains the same.

(e) The trended depreciation schedules referred to in subsections (1)(b), (c), and (d) ~~is~~ are listed below and shall be used for the ~~1993~~ 1994 tax year.

TRAILERS 0 - 18,000 LBS. G.V.W.

<u>YEAR NEW/ACQUIRED</u>	<u>% GOOD</u>
1993	88%
1992	59%
1991	57%
1990	56%
1989	52%
1988	48%
1987	44%
1986	42%
1985	41%
1984	40%
1983	38%
1982	36%
1981	34%

1980	32%
1979	30%
1978	28%
1977	26%
1976	24%
1975	22%
1974	20%
1973 & Before	15%
1994	80%
1993	60%
1992	58%
1991	54%
1990	51%
1989	48%
1988	45%
1987	42%
1986	41%
1985	40%
1984	38%
1983	36%
1982	34%
1981	32%
1980	30%
1979	28%
1978	26%
1977	24%
1976	22%
1975	20%
1974 & Before	15%

(2) The wholesale value for all trailers ~~over 16,000~~
18,001 - 25,999 GVW is:

(a) remains the same.

(b) The acquired cost as certified by the owner or applicant to the department of revenue, as applied to the depreciation schedule in subsection (2)(d) (e).

(c) Values as derived from department of revenue developed supplementary schedules. These schedules will be used in conjunction with the depreciation schedule in subsection (2)(d) (e). The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(d) All trailers and semi-trailers with a licensed gross weight of 26,000 pounds or more are exempt from taxation.

(d) (e) The trended depreciation schedule mentioned in sub-section (2)(b) and (c) is listed below and shall be used for the ~~1993~~ 1994 tax year. It is the same schedule as used in ARM 42.21.106(4).

TRAILERS EXCEEDING 18,000 LBS. G.V.W.

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
1993	80%
1992	40%
1991	35%
1990	29%
1989	24%
1988	20%
1987	18%
1986	15%
1985	14%
1984	13%
1983	12%
1982	11%
1981	11%
1980 and before	10%

TRAILERS 18,001 - 25,999 LBS. G.V.W.

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
1994	80%
1993	43%
1992	37%
1991	34%
1990	28%
1989	23%
1988	20%
1987	18%
1986	15%
1985	14%
1984	13%
1983	12%
1982	11%
1981 and before	10%

(3) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP; Secs. 15-6-138, 15-6-139 and 15-6-201 MCA.

42.21.113 LEASED AND RENTED EQUIPMENT (1) (a) through (2) remains the same.

(3) The trended depreciation schedules referred to in subsections (1) and (2) are listed below and shall be used for tax year ~~1993~~ 1994.

Year			
New/Acquired	\$0 - 500	\$501 - 1500	\$1,501 or Greater
1992	70%	85%	85%
1991	40%	70%	72%
1990	17%	52%	57%
1989	17%	35%	40%
1988	17%	21%	24%
1987	17%	21%	24%
1986 and older	17%	21%	24%
 1993	70%	85%	85%
1992	44%	69%	71%
1991	19%	53%	56%
1990	9%	35%	39%
1989 and older	9%	20%	24%

(4) remains the same.

(5) For rental video tapes the following schedule shall be used:

Year Acquired	Trended % Good
1992	25%
1991	15%
1990	10%
 1993	25%
1992	15%
1991	10%

(6) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-136 MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (4) remains the same.

(5) The trended depreciation schedule referred to in subsections (2) through (4) is listed below and shall be used for tax year ~~1993~~ 1994. The schedule is derived by using the guidebook listed in subsection (1) and the "Farm Tractor Trade-In Guide" and "Farm Equipment Trade-In Guide" of the current year of assessment and are incorporated by reference, Technical Publications Division, Intertec Publishing Corporation, Box 12901, Overland Park, Kansas 66212, as the data base. The trended depreciation schedule will approximate average loan value.

	TRENDED % GOOD
YEAR	AVERAGE LOAN
1993	65%
1992	52%
1991	46%
1990	42%

1989	41%
1988	37%
1987	35%
1986	34%
1985	33%
1984	32%
1983	31%
1982	32%
1981	31%
1980	30%
1979	29%
1978	28%
1977	26%
1976	25%
1975	26%
1974	25%
1973	24%
1972	23%
1971	22%
1970	21%
1969 and before	20%

<u>1994</u>	<u>65%</u>
<u>1993</u>	<u>53%</u>
<u>1992</u>	<u>49%</u>
<u>1991</u>	<u>45%</u>
<u>1990</u>	<u>41%</u>
<u>1989</u>	<u>40%</u>
<u>1988</u>	<u>37%</u>
<u>1987</u>	<u>35%</u>
<u>1986</u>	<u>35%</u>
<u>1985</u>	<u>33%</u>
<u>1984</u>	<u>33%</u>
<u>1983</u>	<u>32%</u>
<u>1982</u>	<u>32%</u>
<u>1981</u>	<u>31%</u>
<u>1980</u>	<u>30%</u>
<u>1979</u>	<u>29%</u>
<u>1978</u>	<u>27%</u>
<u>1977</u>	<u>26%</u>
<u>1976</u>	<u>27%</u>
<u>1975</u>	<u>26%</u>
<u>1974</u>	<u>25%</u>
<u>1973</u>	<u>23%</u>
<u>1972</u>	<u>22%</u>
<u>1971</u>	<u>21%</u>
<u>1970 and before</u>	<u>20%</u>

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-138 MCA.

42.21.131 HEAVY EQUIPMENT (1) The wholesale market value of heavy equipment shall be the acquired cost, as certified by the owner or applicant to the department of revenue, applied to the depreciation schedule in subsection (5). The department may require proof from the taxpayer to certify the accuracy of the acquired cost. If the taxpayer fails to provide proof upon request of the department, the valuation of the equipment will be based on the other procedures herein listed. The wholesale market value of heavy equipment shall be the quick sale as shown in the "Green Guide" and "Green Guide for Older Equipment" for the current year of assessment. This guide may be reviewed in the department or purchased from the publisher and is incorporated by reference: Equipment Guide Book Company, 2800 West Bayshore Road, P.O. Box 10113, Palo Alto, California 94303.

(2) If the heavy equipment cannot be valued under subsection, the wholesale market value of heavy equipment shall be the quick sale as shown in the "Green Guide" and "Green Guide for Older Equipment" for the current year of assessment. This guide may be reviewed in the department or purchased from the publisher and is incorporated by reference: Equipment Guide Book Company, 2800 West Bayshore Road, P. O. Box 10113, Palo Alto, California 94303. For all heavy equipment which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (5) to arrive at a value which approximates wholesale value. The trend factors are the most recent available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Company", 1617 Beverly Boulevard, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(3) For equipment that cannot be valued under subsections (1) and (2), the value for heavy equipment shall be ascertained by trending the quick sale as found in the guide in subsection (2) (1), for the same make and model. The trend factors are the same as those mentioned in subsection (4) (2).

(4) For all heavy equipment which cannot be valued under subsections (1) through (3), the department of revenue or its agent shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (5) to arrive at a value which approximates wholesale value. The trend factors are the most recent available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Company", 1617 Beverly Boulevard, P. O. Box

26307, Los Angeles, California 90026, is herein adopted by reference. The wholesale market value of heavy equipment that cannot be valued under subsections (1), (2) or (3) shall be the acquired cost, as certified by the owner or applicant to the department of revenue, applied to the depreciation schedule in subsection (5). The department may require proof from the taxpayer to certify the accuracy of the acquired cost.

(5) The trended depreciation schedules referred to in subsections ~~(1)~~ (2), (3) and (4) ~~is~~ are listed below and shall be used for tax year ~~1993~~ 1994. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in subsection ~~(2)~~ (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR	% GOOD WHOLESALE
1993	80%
1992	65%
1991	50%
1990	46%
1989	44%
1988	42%
1987	39%
1986	34%
1985	32%
1984	29%
1983	27%
1982	26%
1981	28%
1980	27%
1979	26%
1978	28%
1977	28%
1976	25%
1975	26%
1974	27%
1973	27%
1972 & Before	26%
1994	80%
1993	65%
1992	47%
1991	44%
1990	41%
1989	39%
1988	37%
1987	35%
1986	30%
1985	28%
1984	26%
1983	25%
1982	26%

1981	26%
1980	27%
1979	27%
1978	27%
1977	27%
1976	22%
1975	21%
1974	21%
1973 & Before	21%

(6) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993, and applies to all heavy equipment not listed in ARM 42.21.139.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year ~~1993~~ 1994.

SEISMOGRAPH UNITS

<u>TRENDED</u>		<u>TREND</u>		<u>TRENDED</u>		<u>WHOLESALE</u>	<u>WHOLESALE</u>
<u>YEAR</u>						<u>FACTOR</u>	<u>% GOOD</u>
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>		
1993	100%	1.000	100%	80%	80%		
1992	85%	1.000	85%	80%	68%		
1991	69%	1.005	69%	80%	55%		
1990	52%	1.026	53%	80%	42%		
1989	34%	1.153	36%	80%	29%		
1988	20%	1.113	22%	80%	18%		
1987 & older	5%	1.161	6%	80%	5%		
1994	100%	1.000	100%	80%	80%		
1993	85%	1.000	85%	80%	68%		
1992	69%	1.010	70%	80%	56%		
1991	52%	1.018	53%	80%	42%		
1990	34%	1.040	35%	80%	28%		
1989	20%	1.067	21%	80%	17%		
1988 & older	5%	1.128	6%	80%	5%		

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR</u>		<u>TREND</u>	<u>TRENDED</u>
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>
1993	100%	1.000	100%
1992	85%	1.000	85%

1991	69%	1.005	69%
1990	52%	1.026	53%
1989	34%	1.153	36%
1988	20%	1.113	22%
1987 & older	5%	1.161	6%

1993	100%	1.000	100%
1992	85%	1.000	85%
1991	69%	1.010	70%
1990	52%	1.018	53%
1989	34%	1.040	35%
1988	20%	1.067	21%
1987 & older	5%	1.128	6%

(5) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-138 MCA.

42.21.138. OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) through (2) remain the same.

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year ~~1993~~ 1994.

OIL AND GAS FIELD PRODUCTION EQUIPMENT TRENDED DEPRECIATION SCHEDULE			
YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1993	100%	1.000	100%
1992	95%	1.000	95%
1991	89%	1.005	89%
1990	83%	1.026	85%
1989	77%	1.053	81%
1988	71%	1.113	79%
1987	65%	1.161	75%
1986	58%	1.173	68%
1985	51%	1.179	60%
1984	45%	1.195	54%
1983	39%	1.227	48%
1982	33%	1.245	41%
1981	28%	1.310	37%
1980	23%	1.457	34%
1979 & Older	20%	1.616	32%
1994	100%	1.000	100%
1993	95%	1.000	95%
1992	89%	1.010	90%
1991	83%	1.018	84%
1990	77%	1.040	80%
1989	71%	1.067	76%
1988	65%	1.128	73%

1987	58%	1.176	68%
1986	51%	1.189	61%
1985	45%	1.194	54%
1984	39%	1.211	47%
1983	33%	1.243	41%
1982	28%	1.262	35%
1981	23%	1.328	31%
1980 & Older	20%	1.477	30%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-138 MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year ~~1993~~ 1994.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

YEAR	% GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
1993	100%	80%	80%
1992	92%	80%	74%
1991	84%	80%	67%
1990	76%	80%	61%
1989	67%	80%	54%
1988	58%	80%	46%
1987	49%	80%	39%
1986	35%	80%	28%
1985	30%	80%	24%
1984	24%	80%	19%
1983 & Older	20%	80%	16%
1994	100%	80%	80%
1993	92%	80%	74%
1992	84%	80%	67%
1991	76%	80%	61%
1990	67%	80%	54%
1989	58%	80%	46%
1988	49%	80%	39%
1987	35%	80%	28%
1986	30%	80%	24%
1985	24%	80%	19%
1984 & Older	20%	80%	16%

(6) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-138 MCA

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The trended depreciation schedule for tax year ~~1993~~ 1994 is listed below.

<u>DRILL RIG % GOOD SCHEDULE</u>	
<u>YEAR</u>	<u>TRENDED % GOOD</u>
1993	100%
1992	92%
1991	84%
1990	76%
1989	67%
1988	58%
1987	49%
1986	35%
1985	30%
1984	24%
1983 and Older	20%
1994	100%
1993	92%
1992	84%
1991	76%
1990	67%
1989	58%
1988	49%
1987	35%
1986	30%
1985	24%
1984 and Older	20%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1992~~ 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-138 MCA.

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year ~~1993~~ 1994.

TABLE 1: 5 YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1992	85%	1.000	85%
1991	69%	1.009	70%
1990	52%	1.029	54%
1989	34%	1.056	36%
1988 & older	20%	1.113	22%
1993	85%	1.000	85%
1992	69%	1.012	70%
1991	52%	1.029	53%
1990	34%	1.045	36%
1989 & older	20%	1.073	22%

TABLE 2: 10 YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1992	92%	1.000	92%
1991	84%	1.009	85%
1990	76%	1.029	78%
1989	67%	1.056	71%
1988	58%	1.113	65%
1987	49%	1.161	57%
1986	39%	1.177	46%
1985	30%	1.189	36%
1984	24%	1.206	29%
1983 & older	20%	1.239	25%
1993	92%	1.000	92%
1992	84%	1.012	85%
1991	76%	1.025	78%
1990	67%	1.045	70%
1989	58%	1.073	62%
1988	49%	1.131	55%
1987	39%	1.179	46%
1986	30%	1.196	36%
1985	24%	1.208	29%
1984 & older	20%	1.225	25%

(5) This rule is effective for tax years beginning after December 31, 1992 1993.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-140 MCA.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 1993 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM

42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	70%	1.000	70%
1991	45%	0.966	43%
1990	20%	0.946	19%
1989 and older	10%	0.932	9%
1993	70%	1.000	70%
1992	45%	0.969	44%
1991	20%	0.935	19%
1990 and older	10%	0.915	9%

CATEGORY 2

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	85%	1.000	85%
1991	69%	1.014	70%
1990	52%	1.005	52%
1989	34%	1.021	35%
1988 and older	20%	1.047	21%
1993	85%	1.000	85%
1992	69%	1.000	69%
1991	52%	1.015	53%
1990	34%	1.006	34%
1989 and older	20%	1.023	20%

CATEGORY 3

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	85%	1.000	85%
1991	69%	.994	69%
1990	52%	.992	52%
1989	34%	.993	34%
1988 and older	20%	1.018	20%
1993	85%	1.000	85%
1992	69%	1.013	70%
1991	52%	1.029	53%
1990	34%	1.038	35%
1989 and older	20%	1.035	21%

CATEGORY 4

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	85%	1.000	85%
1991	69%	1.015	70%
1990	52%	1.024	53%
1989	34%	1.021	35%
1988 and older	20%	1.034	21%
1993	85%	1.000	85%
1992	69%	1.013	70%
1991	52%	1.029	54%
1990	34%	1.038	35%
1989 and older	20%	1.035	21%

CATEGORY 5

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	85%	1.000	85%
1991	69%	1.015	70%
1990	52%	1.024	53%
1989	34%	1.021	35%
1988 and older	20%	1.034	21%
1993	85%	1.000	85%
1992	69%	1.009	70%
1991	52%	1.021	53%
1990	34%	1.037	35%
1989 and older	20%	1.068	21%

CATEGORY 6

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	85%	1.000	85%
1991	69%	1.040	72%
1990	52%	1.100	57%
1989	34%	1.165	40%
1988 and older	20%	1.218	24%
1993	85%	1.000	85%
1992	69%	1.030	71%
1991	52%	1.072	56%
1990	34%	1.134	39%
1989 and older	20%	1.201	24%

CATEGORY 7

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	92%	1.000	92%
1991	84%	1.029	86%
1990	76%	1.070	81%
1989	67%	1.115	75%
1988	58%	1.158	67%
1987	49%	1.182	58%
1986	39%	1.201	47%
1985	30%	1.225	37%
1984	24%	1.258	30%
1983 and older	20%	1.277	26%
1993	92%	1.000	92%
1992	84%	1.022	86%
1991	76%	1.053	80%
1990	67%	1.095	73%
1989	58%	1.141	66%
1988	49%	1.185	58%
1987	39%	1.209	47%
1986	30%	1.229	37%
1985	24%	1.253	30%
1984 and older	20%	1.287	26%

CATEGORY 8

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1992	92%	1.000	92%
1991	84%	1.014	85%
1990	76%	1.042	79%
1989	67%	1.082	72%
1988	58%	1.132	66%
1987	49%	1.173	57%
1986	39%	1.203	47%
1985	30%	1.252	38%
1984	24%	1.294	31%
1983 and older	20%	1.342	27%
1993	92%	1.000	92%
1992	84%	1.016	85%
1991	76%	1.030	78%
1990	67%	1.058	71%
1989	58%	1.099	64%
1988	49%	1.150	56%
1987	39%	1.191	46%
1986	30%	1.222	37%
1985	24%	1.272	31%

1984 and older 20%

1.314

26%

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-139 MCA.

42.21.163 PERSONAL PROPERTY TAX REFUND (1) A person removing migratory personal property, except motor vehicles under Title 61, from the state before the end of the calendar year of assessment may apply for a refund of property tax paid. Application must be made with the treasurer of the county where the property was assessed. The application must be made by January 31 following the year of assessment.

(2) The application must contain:

(a) the name and current mailing address of the applicant;

(b) a complete description of the personal property;

(c) the Montana property tax bill for the migratory personal property under consideration with proof of full payment;

(d) the date the personal property was removed from the state;

(e) the location of the personal property upon removal from the state; and

(f) proof that tax was paid on the personal property in another state; such as a verified tax paid receipt.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-16-613.

42.21.305 TRENDING DEPRECIATION SCHEDULES (1) ~~1993~~ 1994 trending percent depreciation schedule for licensed motorcycles and licensed quadricycles:

<u>Year</u>	<u>Trending % Good</u>
1993	80%
1992	59%
1991	51%
1990	47%
1989	43%
1988	40%
1987	37%
1986	29%
1985	27%
1984	23%
1983	20%
1982	16%
1981	16%
1980	15%
1979	15%
1978 & Older	15%
<u>1994</u>	<u>80%</u>
<u>1993</u>	<u>57%</u>
<u>1992</u>	<u>55%</u>
<u>1991</u>	<u>49%</u>
<u>1990</u>	<u>44%</u>

<u>1989</u>	<u>41%</u>
<u>1988</u>	<u>38%</u>
<u>1987</u>	<u>37%</u>
<u>1986</u>	<u>29%</u>
<u>1985</u>	<u>28%</u>
<u>1984</u>	<u>24%</u>
<u>1983</u>	<u>20%</u>
<u>1982</u>	<u>18%</u>
<u>1981</u>	<u>19%</u>
<u>1980</u>	<u>17%</u>
<u>1979 & Older</u>	<u>17%</u>

(2) ~~1993~~ 1994 trended depreciation schedule for automobiles and trucks with a rated capacity of 1 ton and less:

<u>Year</u>	<u>Trended % Good</u>
<u>1993</u>	<u>80% of FOB</u>
<u>1992</u>	<u>75%</u>
<u>1991</u>	<u>64%</u>
<u>1990</u>	<u>53%</u>
<u>1989</u>	<u>44%</u>
<u>1988</u>	<u>39%</u>
<u>1987</u>	<u>32%</u>
<u>1986</u>	<u>26%</u>
<u>1985</u>	<u>19%</u>
<u>1984</u>	<u>16%</u>
<u>1983</u>	<u>13%</u>
<u>1982</u>	<u>11%</u>
<u>1981</u>	<u>10%</u>
<u>1980</u>	<u>9%</u>
<u>1979</u>	<u>8%</u>
<u>1978</u>	<u>7%</u>
<u>1977</u>	<u>7%</u>
<u>1976 & Older</u>	<u>7%</u>

<u>1994</u>	<u>80% of FOB</u>
<u>1993</u>	<u>79%</u>
<u>1992</u>	<u>68%</u>
<u>1991</u>	<u>57%</u>
<u>1990</u>	<u>46%</u>
<u>1989</u>	<u>39%</u>
<u>1988</u>	<u>33%</u>
<u>1987</u>	<u>27%</u>
<u>1986</u>	<u>21%</u>
<u>1985</u>	<u>17%</u>
<u>1984</u>	<u>13%</u>
<u>1983</u>	<u>11%</u>
<u>1982</u>	<u>9%</u>
<u>1981</u>	<u>7%</u>
<u>1980</u>	<u>7%</u>
<u>1979</u>	<u>6%</u>
<u>1978</u>	<u>6%</u>

1977 & Older

53

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP: 15-8-202 MCA.

4. The department is proposing the amendments because 15-8-111, MCA, requires the department to assess all property at 100% of its market value except as provided in 15-7-111, MCA. The statute does not address in detail how the department is to arrive at market value. Through various administrative rules, the department has adopted the concept of trending and depreciation to arrive at market value for property in instances where the present market value is unknown.

The method by which trending and depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules. State courts have indicated that those schedules must be a part of the rule.

Additionally, ARM 42.21.106 and 42.21.107 are being amended to reflect 1993 legislative changes.

ARM 42.19.163 is being amended to reflect a 1993 legislative change created by SB-438.


ARM 42.21.164 is being repealed because it is unnecessary. Sections of this rule conflict with 15-8-111, MCA. Further, the taxpayer is afforded an opportunity for review by filing an AB-26.

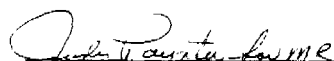
5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than November 12, 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 October 4, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING ON
of ARM 42.20.161 and 42.20.)	THE AMENDMENT of ARM 42.20.
164 and the ADOPTION of NEW)	161 and 42.20.164 and the
RULES I through V relating to)	PROPOSED ADOPTION of NEW
Forest Land Classification)	RULES I through V relating
)	to Forest Land Classification

TO: All Interested Persons:

1. On November 4, 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 and amendment of the above stated rules relating to forest land classification.
2. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana.
3. The new rules as proposed to be adopted and rules as proposed to be amended provide as follows:

42.20.161 FOREST LAND CLASSIFICATION DEFINITIONS

(1) Effective January 1, 1994, the department of revenue shall use the following definitions to determine forest land classification and the productive capacity of land to grow timber:

(a) The phrase "capable of producing timber that can be harvested in commercial quantity" means, forest land that can produce ~~30~~ 25 cubic feet or more of stemwood per acre per year in live softwood trees, 1.0 inch in diameter at breast height, at the culmination of the mean annual increment (the point of maximum wood production) for fully-stocked, natural stands; and

(i) through (iii) remains the same.

(b) through (1) remains the same.

AUTH: Sec. 15-44-105 MCA; IMP: Secs. 15-44-101 and 15-44-102 MCA.

42.20.164 FOREST SITE PRODUCTIVITY CLASSES (1) Effective January 1, 1994, the department of revenue shall assign all forest land to one of the following forest site productivity class designations:

(a) forest site productivity class ~~V~~ IV (25 through 44.9 cubic feet of wood per acre per year);

(b) forest site productivity class ~~VI~~ III (45 through 64.9 cubic feet of wood per acre per year);

(c) forest site productivity class ~~V~~ II (65 through 84.9 cubic feet of wood per acre per year);

(d) forest site productivity class ~~IV~~ I (85 through ~~104.9~~ and over cubic feet of wood per acre per year);

~~(e) forest site productivity class III (105 through 124.9 cubic feet of wood per acre per year);~~

~~(f) forest site productivity class II (125 through 144.9 cubic feet of wood per acre per year); and~~

~~(g) forest site productivity class I (145+ cubic feet of wood per acre per year).~~

AUTH: Secs. 15-44-105 MCA; IMP: Secs. 15-44-101 and 15-44-102 MCA.

NEW RULE I FOREST LAND ELIGIBILITY - GENERAL PRINCIPLES

(1) All parcels under one ownership that are 15 contiguous acres or greater that meet the requirements of ARM 42.20.160 and 42.20.161 shall be assessed and taxed as forest land.

(2) The property owner of record or the owner's agent must provide proof of eligibility on an application form prescribed by the department.

(a) Forest land application forms shall be available at each county appraisal office. Applications must be submitted to the county appraisal office in which the property resides prior to March 1 of the year for which the reclassification is being sought or within 15 days after being notified of a classification change, whichever is later.

(b) An annual application is not required. The owner or owner's agent need reapply only under the following conditions:

(i) the landowner believes they meet eligibility requirements and wants the department to consider the classification of the land as forest land;

(ii) the department has reclassified the property because of a change in the eligibility of the property, a change in property use or a change in ownership.

(c) The department shall review the application and may conduct a field evaluation. The department will approve or deny the application and return a copy of the form with the written decision to the property owner or the owner's agent.

(d) An applicant for forest land classification who is dissatisfied with the department's determination may appeal to the appropriate county tax appeal board pursuant to 15-15-101, MCA.

(3) All terms and classification procedures pertaining to forest lands are defined in ARM 42.20.161 and the "Forest Productivity Classification Manual" as compiled by the Property Assessment Division of the Department of Revenue.

AUTH: Secs. 15-1-201 and 15-44-105, MCA; IMP: Secs. 15-44-101 through 15-44-104, MCA.

NEW RULE II FOREST LAND VALUATION ZONES (1) The

department shall divide the state into forest valuation zones, with each zone designated to recognize the uniqueness of marketing areas, timber types, growth rates, access, and other pertinent factors that affect value. The designated forest valuation zones and the counties contained within each zone are:

(a) Zone 1 - Northwest: Flathead, Lincoln and Sanders counties;

(b) Zone 2 - West Central: Granite, Lake, Mineral,

Missoula, Powell and Ravalli counties;

(c) Zone 3 - South Central: Beaverhead, Deer Lodge, Jefferson, Lewis and Clark, Madison and Silver Bow counties;

(d) Zone 4 - Central: Broadwater, Cascade, Gallatin, Glacier, Meagher, Park, Pondera and Teton counties; and

(e) Zone 5 - Eastern: Blaine, Big Horn, Carbon, Carter, Chouteau, Custer, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Powder River, Prairie, Rosebud, Sweet Grass, Stillwater, Toole, Treasure, Wheatland and Yellowstone counties.

AUTH: Secs. 15-1-201 and 15-44-105, MCA; IMP: Secs. 15-44-101 through 15-44-104, MCA.

NEW RULE III FOREST LAND VALUATION FORMULA (1) Non-commercial forest land and non-forest land shall not be eligible for valuation as forest land. Standing and down timber on forest land shall not be separately valued and assessed.

(2) The valuation of forest land shall be as provided in 15-44-101 through 15-44-105, MCA.

(3) The valuation of forest land shall be based on a five year average of income, expense, and capitalization rate for the years 1987 through 1991.

(4) The department shall determine the forest productivity value for each forest valuation zone using the formula $V=I/R$, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula, $I = (M \times SV) + NAI - C$, where:

(i) I is the per-acre net income;

(ii) M is the per-acre mean annual net wood production;

(iii) SV is the per-acre stumpage value;

(iv) NAI is the per-acre agricultural related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate.

(5) Net income (I) shall include stumpage value derived from the harvest of timber on state timber sales.

(6) The mean annual net wood production (M) shall be determined by using the following formula $M=RA \times MAI$ where:

(a) RA is the cubic foot to board foot ratio which converts cubic feet to board feet; one cubic foot will equal 4.1 board feet; and

(b) MAI is the arithmetic midpoint of each forest productivity site class in each forest valuation zone.

(7) Agricultural related income is the average net income for grazing livestock on forest lands in each forest valuation zone. Agricultural related income shall be determined by using the formula $AI = GF \times AUM \times GC$ where:

(a) AI is the per-acre agricultural related income;

(b) GF is the average per-acre grazing fee on private

land;

(c) AUM is the average per-acre animal unit months on forest land; and

(d) GC is the percentage reflecting grazing costs incurred by the landowner for maintaining fences, wells, corrals, roads and some part-time animal oversight.

(8) The capitalization rate is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate.

(9) The effective tax rate shall be calculated by dividing the total estimated tax due on private forest lands by the total forest value of those lands.

AUTH: Secs. 15-1-201 and 15-44-105, MCA; IMP: Secs. 15-44-101 through 15-44-104, MCA.

NEW RULE IV FOREST COSTS (1) The determination of forest costs in New Rule III (4) (b) (v) shall be based upon the average expenses for fire assessment, brush control, timber stand improvement in zones 1 and 2 only, timber cost control, and administrative overhead as determined by the Department of State Lands (DSL) over the base period specified in New Rule III (3). For forest land valuation zone 1, the allowable expenses will be those calculated by the DSL Northwest land office in Kalispell. For forest land valuation zone 2, the allowable expenses will be those calculated by the DSL Southwest land office in Missoula. For forest land valuation zones 3, 4, and 5, the allowable expenses will be those calculated by the DSL Central land office in Helena. Those costs shall be deducted from the per acre gross timber income.

AUTH: Secs. 15-1-201 and 15-44-105, MCA; IMP: Secs. 15-44-101 through 15-44-104, MCA.

NEW RULE V NATURAL DISASTER REDUCTION - GENERAL PRINCIPLES

(1) Forest lands upon which, after December 31, 1993, trees are destroyed by fire, disease, insect infestation, or other natural disaster shall be eligible for a 50 percent reduction in assessed value for 20 tax years beginning the first full tax year following the natural disaster.

(2) The property owner of record as of January 1 of the first full tax year for which the reduction in value is sought or that owner's agent must complete an application with the appraisal office in which the property is located. The application prescribed by the department will be the Property Adjustment Form (AB-26). The application must be made by March 1 or within 15 days of receipt of the assessment list of the first full year for which the reduction in value is requested.

(3) The department shall review the Property Adjustment Form and may conduct a field evaluation. The department will issue a written determination to the applicant.

(4) The applicant shall include on the Property Adjustment Form:

(a) applicant's name and current mailing address;

- (b) date of application;
 - (c) legal description of the property where the natural disaster occurred;
 - (d) type of natural disaster;
 - (e) approximate size of forest land affected by the natural disaster;
 - (f) date the natural disaster occurred; and
 - (g) description of the damage to the timber stocking on the forest land affected by the natural disaster.
- (5) Forest land shall be eligible for a 50% reduction in assessed value provided:
- (a) the forest land affected is 15 contiguous acres or larger in size and under one ownership;
 - (b) the forest land affected contained at least 10 percent stocking of live trees prior to the natural disaster;
 - (c) the forest land affected contains 10 percent stocking or less of live trees after the occurrence of the natural disaster; and
 - (d) the applicant has timely filed the request for valuation review and the natural disaster occurred after December 31, 1993.

AUTH: Secs. 15-1-201 and 15-44-105, MCA; IMP: Secs. 15-44-101 through 15-44-104, MCA.

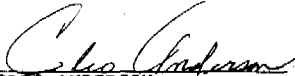
4. The amendments of ARM 42.20.161 and 42.20.164 are required to acknowledge updated information supplied by the University of Montana, School of Forestry. Through the productivity modeling and mapping project, staff have more accurately determined the number of site classes and amount of stemwood that can be produced on forest land per acre per year. These changes reflect that increased accuracy. New Rule I identifies the application process and some general principles important to the valuation of forest lands. New Rule II identifies the 5 forest land valuation zones and provides an indication of the criteria that was analyzed and recognized in making the zone determinations. New Rule III defines the individual elements of the forest land valuation formula. New Rule III also indicates what items are considered allowable costs, and the source of the forest cost data. New Rule IV further defines one specific element of the forest land valuation formula. That element is forest costs. New Rule V specifies under what conditions forest land owners may claim a reduction in value due to natural disaster.

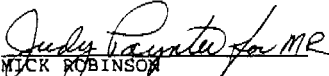
5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than November 5, 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 October 4, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED
of ARM 42.19.401 relating to) AMENDMENT of ARM 42.19.401
Low Income Property Tax) relating to Low Income Property
Reduction) Tax Reduction

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1993, the Department of Revenue proposes to amend ARM 42.19.401 relating to low income property tax reductions.

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

42.19.401 LOW INCOME PROPERTY TAX REDUCTION (1) through (3) remains the same.

(4) The applicant is required to list total income from all sources, including otherwise tax exempt income of all types. That income includes, but is not limited to, employment income, gross business income less ordinary operating expenses but before deducting depreciation or depletion allowance, social security, railroad pension, teachers pension, employment pension, veterans pension, any other pension, alimony, disability income, unemployment benefits, welfare payments, aid to dependent children, rentals, interest from investments, stock/bond interest or dividends, interest from banks and any other income, but not including social security income paid directly to a nursing home, food stamps or direct utility payments paid by the energy share program.

(5) Gross business income less ordinary operating expenses but before deducting depreciation or depletion allowance is that income reported as net profit or loss on schedule C, or schedule F, of the federal income tax return. The application will require a copy of the appropriate form be attached.

(6) remains the same.

AUTH: Sec. 15-1-201 MCA; IMP: 15-6-134 AND 15-6-151, MCA.

3. The amendments to ARM 42.19.401 are reasonably necessary to explain the statutory changes enacted by the passage of HB 437 during the 1993 Legislative session.

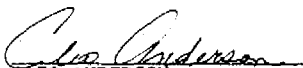
4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

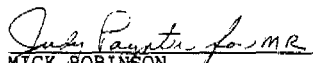
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 12, 1993.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 12, 1993.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State October 4, 1993.

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

In the matter of the adoption)	NOTICE OF THE ADOPTION OF
of proposed rules relating to)	RULE I (2.43.615) AND RULE II
the implementation of Family)	(2.43.616) RELATING TO THE
Law Orders splitting and pay-)	RETIREMENT SYSTEMS
ing Montana public retirement)	ADMINISTERED BY THE PUBLIC
benefits.)	EMPLOYEES' RETIREMENT BOARD

TO: All Interested Persons.

1. On July 29, 1993, the Public Employees' Retirement Board published notice of a public hearing on the proposed adoption of the above new rules concerning Montana's retirement systems in the Montana Administrative Register, Issue number 14, starting at page 1580 and inclusive of page 1583.

2. On August 30, 1993 at 9:00 a.m. at the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing was held pursuant to the July 29, 1993 notice. No oral testimony or written comments were received at this hearing.

3. The following written comments were received by the Board:

COMMENT: Rule I, subsection (2)(d). The first sentence is unclear and is not precisely equivalent to the rule as proposed by the Teachers' Retirement Board.

RESPONSE: The board has clarified and restructured the rules after conversations with the TRS administrator. The rules as adopted will be precisely equivalent in order to simplify compliance.

COMMENT: Rule II (2). It should be made clear that the proposed FLO submitted to the board must be a court judgment, decree or order.

RESPONSE: The rule, as adopted, requires the proposed FLO submitted for approval must be a certified copy of a court judgment, decree or order.

COMMENT: Rule II (5). It should be made clear that the board is not giving up its power to make the final decision on the FLO when an administrative hearing is held.

RESPONSE: The rule, as adopted, provides that the board retains the final decision on a FLO through its authority to approve, not approve or to amend the hearing examiner's proposed findings of fact, conclusions of law and order.

COMMENT: Rule II (7). As proposed, the rule appears to allow the FLO to dictate whether the board could assess costs.

That should be a board decision only.

RESPONSE: The rule, as adopted, clarifies that the board may assess any costs of administering the FLO; the FLO may only direct the assessment of such costs to a particular party.

COMMENT: Rule II (7) provides that costs and fees for reviewing and administering the FLO may be assessed but does not specify how they will be established. Will a party be able to determine their liability for costs and fees prior to review of the FLO? Will there be further rulemaking to establish fees?

RESPONSE: At this time, we do not anticipate charging costs or fees for a typical FLO review and administration. The cost and fees provision was enacted by law to allow the board to deal with exceptional circumstances and to reassess the situation as more experience is gained.

COMMENT: Rule I (6) requires that the FLO designate payment distribution in one of two ways. Either the order must be for a specific total dollar amount, or the order must require proportionate payments. A specific total dollar amount is generally not provided in most child support orders since such obligations may be modified in the future and may terminate on the occurrence of an event, rather than on a specific date or when a certain amount has been paid. A child support obligation is not expressed as a percentage of income of a parent but rather as a specific obligation.

Is it your intention to exempt ongoing monthly child support obligations from the definition of a FLO? When the retirement benefit represents an obligated parent's main source of income, such an exclusion may deprive a child of the support a court has determined is necessary. It will also prevent the state from receiving reimbursement from the obligated parent for public assistance funds paid by the state.

RESPONSE: Proportionate payments can be specified as a percentage or as a dollar amount which can be converted to a percentage. (An initial support payment of \$150, when made proportional, would be applied as $\$150/\X (where X is the initial full amount of the benefit payment)). For proportional payment orders, the alternate payee will also receive a proportional amount of any benefit increases. This will increase the amount of the support payment so language in the court order allowing such increases is necessary.

Alternative conditions for the termination of benefits may make it impossible to specify a date of termination or a specific number of payments. However, the duration of FLO payments must be specified so they can be terminated when appropriate. The number of payments must either be specified or susceptible to calculation on the face of the document. Terms such as "when the child graduates from high school" or "when emancipated" are not sufficient since the agency does not have the resources to investigate such contingencies.

FLO's will be an effective tool in the rare circumstance of a retiree owing child support. A FLO does not have to be a final decree; if a final order is in place which does not meet the FLO criteria, a properly drafted enforcement order might suffice as a FLO.

There is no authority in statute for the state to become an alternate payee under a FLO in order to collect reimbursement of public assistance funds previously paid.

COMMENT: Rule II, (1) provides that information concerning a participant's account will only be released subject to the terms of ARM 2.43.303, which provides that this information will be released upon receipt of a written authorization signed by the member. MCA 40-5-206 requires all public agencies to provide the CSED, upon request, all information concerning a child support obligor's location, income and assets.

RESPONSE: The agency will honor CSED's right to receive information under § 40-5-206, MCA upon submission of a written request with reference to your statutory authority.

4. The Public Employees' Retirement Board has adopted the proposed rules with the following changes:

RULE 1: FAMILY LAW ORDER -- CONTENTS AND DURATION

(1) same as proposed rule.

(2) A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system. The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO. Specific designations of participant(s) in a FLO may include:

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

~~(d) If a specific designation of participant is not utilized in any section of a FLO, the statutory definition of the term participant will be construed. In such case, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO.~~

(3) Payments under a FLO must be the same type and form as, and for no greater amount or duration than those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the participant may be subject to a FLO. Only the participant can be required to designate a specific option or request a refund. (For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee ~~be named~~ as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)

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

RULE II FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION

(1) same as proposed rule.
(2) A participant or alternate payee must submit a certified copy of a court judgement, decree or order containing a proposed Family Law Order (FLO) to the division for board approval. The board may delegate authority for approval of a proposed FLO to the division.

(3) No FLO is effective prior to October 1, 1993. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the board. Unless a later date is specified in the proposed FLO, the effective date for purposes of ~~refunds of member contributions is the date of receipt of a proposed FLO and, for purposes of all other allocating benefits and payments in progress, the effective date~~ is the 1st day of the month following receipt.

(4) Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the board. If the proposed FLO is approved, ~~the~~ retained payments will be paid to the alternate payee(s); if not approved, to the participant.

(5) The board's decision to approve or not approve a proposed FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the board sends notice of the decision. If an administrative hearing is properly requested, the final administrative decision ~~constitutes the board's decision must be made by the board after receiving the hearing examiner's proposed decision.~~

(6) same as proposed rule.

(7) Costs of reviewing and administering the FLO, including actuarial analysis and attorneys' fees, may be assessed by the board and billed to the party filing the proposed FLO with the board unless otherwise another party is designated in the FLO to pay those costs. Amounts owing plus interest thereon at an annualized effective rate of 8% may be offset against payments to be received by the appropriate party.

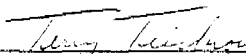
(8)-(9) same as proposed rule.

5. The new rules which have been adopted will be numbered as follows:

Rule I ARM 2.43.615

Rule II ARM 2.43.616


Dal Smilie, Chief Legal Counsel
Rule Reviewer


Terry Teichrow, President
Public Employees' Retirement
Board

Certified to the Secretary of State on September 27, 1993

19-10/14/93

Montana Administrative Register

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION
new rules implementing the)	OF RULE I (2.44.522)
provisions of Senate Bill 173 as)	AND RULE II (2.44.523)
passed by the 1993 legislature)	RELATING TO THE
relating to the Teachers')	TEACHERS' RETIREMENT
Retirement System)	SYSTEM

TO: All Interested Persons.

1. On July 29, 1993, the Teachers' Retirement Board published notice of a public hearing on the proposed adoption of the above new rules concerning the Teachers' Retirement System in Montana Administrative Register, Issue number 14, starting at page 1584 and inclusive of page 1587.

2. On August 30, 1993 at 9:00 a.m. at the Teachers' Retirement System, 1500 Sixth Avenue, Helena, Montana, a public hearing was held pursuant to the July 29, 1993 notice. Amy Pfeifer, representing the Child Support Enforcement Division, was present and submitted written testimony.

3. The following written comments were received by the Board:

COMMENT: Rule I, subsection (2)(b). The term "contingent annuitants" is inconsistent with the language of 19-4-702, MCA, which refers to "designated beneficiary".

RESPONSE: The board has corrected the terminology.

COMMENT: Rule I, subsection (2)(c). It was unclear how this subsection related to section (2).

RESPONSE: The board has clarified and restructured the rule to insert subsection (2)(c) after the first sentence in section (2).

COMMENT: Rule I (6) requires that the FLO designate payment distribution in one of two ways. Either the order must be for a specific total dollar amount to be paid, or the order must require proportionate payments.

A Family Law Order providing for an ongoing child support obligation of \$150.00 per month doesn't appear to fall under either requirement. A specific total dollar amount is generally not provided since child support obligations may be modified in the future and may terminate on the occurrence of an event, rather than on a specific date or when a certain amount has been paid. Nor is a child support obligation expressed in terms of a percentage of income of a parent, but rather as a specific obligation.

Is it your intention to exempt ongoing monthly child support obligations from the definition of a FLO? When the retirement benefit represents an obligated parent's main source of income, such an exclusion may deprive a child of the support a court has determined is necessary. It will also prevent the state from receiving reimbursement from the obligated parent for public assistance funds paid by the state on behalf of the child.

RESPONSE: Proportionate payments can be specified as a percentage or as a dollar amount which can be converted to a percentage. (An initial support payment of \$150, when made proportional, would be applied as $\$150/\X (where X is the initial full amount of the benefit payment). For proportional payment orders, the alternate payee will also receive a proportional amount of any benefit increases. This will increase the amount of the support payment so language in the court order allowing such increases is necessary.

Alternative conditions for the termination of benefits may make it impossible to specify a date of termination or a specific number of payments. However, the duration of FLO payments must be specified so they can be terminated when appropriate. The number of payments must either be specified or susceptible to calculation on the face of the document. Terms such as "when the child graduates from high school" or "when emancipated" are not sufficient since the agency does not have the resources to investigate such contingencies.

FLO's will be an effective tool in the rare circumstance of a retiree owing child support. A FLO does not have to be a final decree; if a final order is in place which does not meet the FLO criteria, a properly drafted enforcement order might suffice as a FLO.

There is no authority in statute for the state to become an alternate payee under a FLO in order to collect reimbursement of public assistance funds previously paid.

COMMENT: Rule II (1). It should be made clear that the proposed FLO submitted to the board must be a court judgment, decree or order.

RESPONSE: The rule, as adopted, requires the proposed FLO submitted for approval must be a certified copy of a court judgment, decree or order.

COMMENT: Rule II (4). It should be made clear that the board is not giving up its power to make the final decision on the FLO when an administrative hearing is held.

RESPONSE: The rule, as adopted, provides that the board retains the final decision on a FLO through its authority to approve, not approve or to amend the hearing examiner's proposed findings of fact, conclusions of law and order.

COMMENT: Rule II (6). As proposed, the rule appears to allow the FLO to dictate whether the board could assess costs. That

should be a board decision only.

RESPONSE: The rule, as adopted, clarifies that the board may assess any costs of administering the FLO; the FLO may only direct the assessment of such costs to a particular party.

COMMENT: Rule II (6) provides that costs and fees for reviewing and administering the FLO may be assessed but does not specify how they will be established. Will a party be able to determine their liability for costs and fees prior to review of the FLO? Will there be further rulemaking to establish fees?

RESPONSE: At this time, we do not anticipate charging costs or fees for a typical FLO review and administration. The cost and fees provision was enacted by law to allow the board to deal with exceptional circumstances and to reassess the situation as more experience is gained.

4. The Teachers' Retirement Board has adopted the proposed rules with the following changes:

RULE I FAMILY LAW ORDER -- CONTENTS AND DURATION

(1) same as proposed rule.

(2) A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system. The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO.

Specific designations of participant(s) in a FLO may include:

(a) An individual "member" (active, inactive or retired).

(b) "Primary" and/or ~~"contingent designated"~~ beneficiary(ies) eligible to receive lump sum payment(s) upon the death of an active or inactive member of the system and ~~"contingent annuitants"~~ designated beneficiary designated by the member at the time of retirement to receive continuing retirement benefits upon the death of the retired member.

~~(c) The term participant will be construed to include any and all possible participants of the Teachers' Retirement System unless otherwise defined in the FLO. In such case, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO.~~

(3) Payments under a FLO must be the same type and form as, and for no greater amount or duration than those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the participant may be subject to a FLO. Only the participant can be required to designate a specific option or request a refund. (For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee ~~be named~~ as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)

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

RULE II FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION

(1) A participant or alternate payee must submit a certified copy of a court judgement, decree or order containing a proposed Family Law Order (FLO) to the board for approval. The board may delegate authority for approval of a proposed FLO to the executive director.

(2) No FLO is effective prior to October 1, 1993. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the board. Unless a later date is specified in the proposed FLO, the effective date for purposes of refunds of member contributions is the date of receipt of a proposed FLO and, for purposes of all other allocating benefits and payments in progress, the effective date is the 1st day of the month following receipt.

(3) Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the board. If the proposed FLO is approved, the retained payments will be paid to the alternate payee(s); if not approved, to the participant.

(4) The board's decision to approve or not approve a proposed FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the board sends notice of the decision. If an administrative hearing is properly requested, the final administrative decision constitutes the board's decision must be made by the board after receiving the hearing examiner's proposed decision.

(5) same as proposed rule.

(6) Costs of reviewing and administering the FLO, including actuarial analysis and attorneys' fees, may be assessed by the board and billed to the party filing the proposed FLO with the board, unless otherwise another party is designated in the FLO to pay the costs. Amounts owing plus interest thereon at an annualized effective rate of 8% may be offset against payments to be received by the appropriate party.

(7) - (8) same as proposed rule.

5. The new rules which have been adopted will be numbered as follows:

Rule I ARM 2.44.522

Rule II ARM 2.44.523

By: 

Dal Smilie, Chief Legal Counsel
Rule Reviewer



David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State September 27, 1993.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
new rules for the administration	)	NEW RULES 6.6.3401-
and enforcement of laws regulating	)	6.6.3404; 6.6.3501-6.6.3514;
standards for companies considered	)	6.6.3601-6.6.3604; 6.6.3701-
to be in hazardous financial	)	6.6.3716; 6.6.3801-6.6.3809;
condition, regulating annual	)	6.6.3901-6.6.3907; AND
audited reports, regulating life	)	6.6.4001
and health reinsurance agreements,)	
regulating reports by holding)	
company systems, establishing)	
accounting practices and)	
procedures to be used in annual)	
statements, regulating credit for)	
reinsurance, including letters of)	
credit, and establishing standards)	
for valuation of insurer)	
securities and other invested)	
assets)	

TO: All Interested Persons:

On August 12, 1993, the state auditor and commissioner of insurance of the state of Montana published notice of public hearing with respect to the proposed adoption of new rules for the administration and enforcement of laws regulating standards for companies considered to be in hazardous financial condition, regulating annual audited reports, regulating life and health reinsurance agreements, regulating reports by holding company systems, establishing accounting practices and procedures to be used in annual statements, regulating credit for reinsurance, including letters of credit, and establishing standards for valuation of insurer securities and other invested assets. The notice was published at page 1726 of the 1993 Montana Administrative Register, issue number 15.

1. The agency has assigned the following rule numbers to the rules proposed for adoption:

Rules I through IV, regarding companies considered to be in hazardous financial condition, will be numbered 6.6.3401 through 6.6.3404.

Rules V through XVIII, regarding annual audited reports and establishing accounting practices and procedures to be used in annual statements, will be numbered 6.6.3501 through 6.6.3514.

Rules XIX through XXII, regulating life and health reinsurance agreements, will be numbered 6.6.3601 through 6.6.3604.

Rules XXIII through XXXVIII, regarding reporting by holding company systems, will be numbered 6.6.3701 through 6.6.3716.

Rules XXXIX through XXXVII, regarding credit for reinsurance will be numbered, 6.6.3801 through 6.6.3809.

Rules XXXVIII through LIV, regarding letters of credit used in reduction of liability for reinsurance ceded, will be numbered 6.6.3901 through 6.6.3907.

Rule LV, regarding valuation of securities other than those specifically referred to in statutes, will be numbered 6.6.4001.

2. With the exception of 6.6.3404, 6.6.3506, and 6.6.3510, the agency has adopted the new rules as proposed.

3. The agency has adopted 6.6.3404, 6.6.3506, and 6.6.3510 as proposed, but with the following changes (material stricken is interlined; new matter added is underlined):

Rule IV (6.6.3404) ADMINISTRATIVE REMEDIES AVAILABLE TO INSURERS (1) Any health service corporation subject to an order under ARM 6.6.3403 may request a hearing pursuant to 33-30-112, MCA.

(2) Any other insurer subject to an order under ARM 6.6.3403 may request a hearing or appeal from the order pursuant to 33-2-1321, MCA.

AUTH: 33-1-313, 33-2-1321, and 33-2-1517, MCA

IMP: 33-2-1321, and 33-2-1517, and 33-30-112, MCA

Rule X (6.6.3506) QUALIFICATIONS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNT Subsections (1) and (2) remain the same.

(3) Following the effective date of these rules, No partner or other personmember of a firm responsible for rendering a report may act in that capacity for more than 7 consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of 2 consecutive years. This does not preclude other partners or members of any accounting firm from succeeding to the responsibility for rendering reports. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining whether relief should be granted:

- (a) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
- (b) Premium volume of the insurer; and
- (c) Number of jurisdictions in which the insurer transacts business.

Subsections (4) and (5) remain the same.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-1-701 and
33-2-1517,
MCA

RULE XIV (6.6.3510) REPORT ON SIGNIFICANT DEFICIENCIES IN INTERNAL CONTROLS (1) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant, describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit, in accordance with SAS No. 60, "Communication of Internal Control Structure Matters Noted in an Audit" (AU section 325 of the professional standards of the AICPA, which requires an accountant to communicate significant deficiencies (called "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report must be filed annually by the insurer with the department within 100 days after the filing of the annual audited financial statements. The insurer shall provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

4. A public hearing on the proposed rules was held on September 3, 1993. Four interested persons attended the hearing, one of whom presented views on some of the proposed rules. No written data, views or arguments with respect to the proposed rules were received within the time allotted or at all. The agency has fully and thoroughly considered submissions received respecting the proposed rules and responds thereto as follows:

COMMENT:

Health service corporations are regulated under a separate chapter of the Montana Insurance Code, so the administrative remedies mentioned in proposed Rule IV (ARM 6.6.3404) do not apply. The rule should be revised to recognize administrative remedies available to health service corporations, as well as other insurers.

RESPONSE:

The agency agrees and revises the rule accordingly.

COMMENT:

There are a limited number of CPAs and CPA firms headquartered in Montana that have the knowledge, resources, and ability to provide the audit services contemplated by the proposed rules and there is a possibility that local insurers

will have to hire the services of foreign CPAs, depending on how the rules as proposed are applied. Rule X(3) (ARM 6.6.3506) should be revised to clarify whether it precludes a member of the same firm from succeeding the CPA that is disqualified due to years of service. The proposed rule also should be revised to clarify when the 7 year disqualification period begins to run.

RESPONSE:

The rule as proposed contemplates applications to the commissioner for relief from rotation requirements. Rule XVII (ARM 6.6.3513) also allows for exemption from compliance with audited report rules. Furthermore, it could be argued that the phraseology "no partner or other person responsible for rendering a report may act in that capacity for more than 7 consecutive years" implies that a different partner or other person within the firm could succeed to the function.

However, the fact that the question was raised is evidence of ambiguity. The better approach would be to try to remove the ambiguity. Accordingly, the rule is revised for that purpose.

COMMENT:

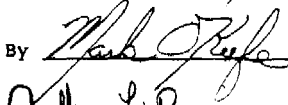
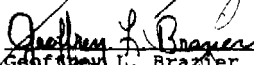
The 10 day period for notification of significant deficiencies provided in Rule XIV (ARM 6.6.3510) is not only unrealistically short but appears to be in contradiction of the NAIC model rule, which provides a 60 day period. This may be a typographic error.

RESPONSE:

Review of agency records reveals that there was indeed an earlier error in the drafting process which was not recognized until now. The comment is well taken and the rule is revised accordingly.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By



Geoffrey L. Brazier
Rules Reviewer

Certified to the Secretary of State this 4th day of October, 1993.

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

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of rules pertaining to licenses)	RULES PERTAINING TO THE
issued for conducting parimutuel)	HORSE RACING INDUSTRY
wagering, daily double feature,)	8.22.502, 8.22.1616, 8.22.1802
requirements of licensee, and)	and 8.22.1803
pool calculations)	

TO: All Interested Persons:

1. On July 29, 1993, the Board of Horse Racing published a notice of proposed amendment at page 1595, 1993 Montana Administrative Register, issue number 14.

2. The Board has amended the rules exactly as proposed.

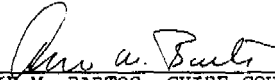
3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

COMMENT: One comment was received from the Employment Relations Division of the Department of Labor and Industry stating the proposed rule amendment to 8.22.502(11) should be changed to state that every track licensee shall file, with the Board, proof of workers' compensation insurance coverage for all employees. The comment states this would further the express public policy of the state of Montana by requiring licensees of the Board to demonstrate compliance with workers' compensation laws.

RESPONSE: The suggested language would again require the Board of Horse Racing to perform the duties, which are not properly with the Board, of collecting fees for workers' compensation policies, and demanding evidence of compliance with workers' compensation laws already in existence under the Department of Labor. This is not a proper function of the Board, and was therefore amended out of a different section of the rules previously for the same reason.

BOARD OF HORSE RACING
MALCOLM ADAMS, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 4, 1993.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to experience)	)	8.50.428 EXPERIENCE
requirements, insurance require-	)	REQUIREMENTS, 8.50.431
ments and fees	)	INSURANCE REQUIREMENTS AND
	)	8.50.437 FEE SCHEDULE

TO: All Interested Persons:

1. On July 15, 1993, the Board of Private Security Patrol Officers and Investigators published a notice of public hearing on the proposed amendment of the above-stated rules at page 1450, 1993 Montana Administrative Register, issue number 13. The hearing was held on August 5, 1993 in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Board has amended the rules as proposed but would like to note that the new language in 8.50.431(1) through (4)(c) was inadvertently printed without being underlined.

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

COMMENT: Mr. T.L. Tyler, licensed private investigator, submitted written comments to the Board offices on August 2, 1993. Mr. Tyler expressed his opposition to the adoption of rules requiring insurance of private investigators. Mr. Tyler noted that many professions do not require insurance of licensees, and questioned whether insurance should be required of a licensed private investigator.

RESPONSE: Section 37-60-202(8), MCA, gives the Board specific authority to require licensees to provide the Board with proof of insurance as the Board considers necessary. The Board has previously enacted administrative rule section 8.50.431 requiring licensees to have insurance. This rule was first adopted in 1984, and has required that all licensees possess insurance ever since this rule was first adopted. The Board's current amendments to this rule have been proposed in response to industry concerns that the previous requirements were difficult, and in some cases, impossible to meet. The Board finds that an insurance requirement for all licensees has been and continues to be a valid requirement in the protection of the public.

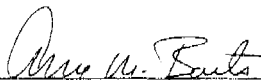
COMMENT: Al Ketterling, a licensed private investigator, submitted written comments to the Board. Mr. Ketterling explained that he did not believe that an insurance requirement should be utilized as an alternative to the code of conduct and proper complaint procedures. Mr. Ketterling also expressed his concern that insurance would be too expensive for the part time investigator.

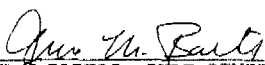
RESPONSE: The Board does not intend to utilize an insurance requirement as an alternative to the code of

conduct. The Board has and will continue to pursue violations of the Board's statutes and rules of the Board independent of any insurance requirement. Further, the Board has adopted a minimum insurance coverage for a licensed private investigator of \$25,000 dollars, which the Board believes to be reasonable for even a part time investigator. The Board arrived at the \$25,000 dollar figure through a consultation with members of the insurance industry, and the Montana Association of Private Investigators and Security Officers.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
GARY GRAY, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 4, 1993.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the) CORRECTED NOTICE OF REPEAL
repeal of ARM 10.16.1204) OF ARM 10.16.1204, COMPOSITION
) OF A CORE CHILD STUDY TEAM

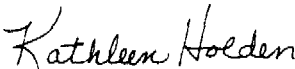
To: All interested persons

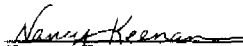
1. On May 13, 1993, the Superintendent of Public Instruction published notice of public hearing on the proposed repeal, amendment and adoption of rules pertaining to special education at page 757 of the 1993 Montana Administrative Register, issue number 9. A public hearing was held on June 3, 1993.

2. On August 12, 1993, the Superintendent of Public Instruction published notice of repeal, amendment and adoption of these rules at page 1913 of the 1993 Montana Administrative Register, issue number 15.

3. In the proposed notice in paragraph 1 above, the Superintendent inadvertently proposed ARM 10.16.1204 as both a repealed and amended rule. In the adoption notice in paragraph 2 above, the Superintendent indicated that the rule should have been amended. This is incorrect because it is identical to a new rule that was adopted, Rule XXXI Composition of a Child Study Team, codified as ARM 10.16.1114.

4. Based on the foregoing, the Superintendent of Public Instruction hereby repeals ARM 10.16.1204.


Kathleen F. Holden
Rule Reviewer
Office of Public Instruction


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State October 4, 1993.

BEFORE THE MONTANA HEALTH CARE AUTHORITY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION
adoption of Rules I-III	)	OF NEW RULES I-III
concerning the process for	)	(16.48.101 - 16.48.103)
selection of Regional Health)	
Care Planning Boards)	
		(Health Care Authority)

To: All Interested Persons


1. On August 26, 1993, the Montana Health Care Authority published notice of the proposed adoption of the above-captioned rules at page 1972 of the 1993 Montana Administrative Register, issue number 16.

2. The Montana Health Care Authority has adopted the rules as proposed with no changes.

3. A few comments were received concerning the general mission of the Montana Health Care Authority. These comments were not specifically about the proposed rules.

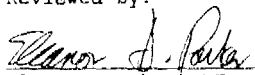
One comment suggested that during the process of selection the Health Care Authority should give consideration in part to a balance between physical and mental health interests. The response of the Health Care Authority is that it is not necessary to change the rule to ensure that such a consideration is given since the term health care in reference to providers includes both physical health care and mental health care under the governing definitions.

One comment addressed the proposed Rule II(2) for the purposes of urging the Health Care Authority not to "rubber stamp" requests for expansion of the membership of each board. The concern involved maintaining a balance between urban and rural interests. This is mandated under Rule III as well as in the law, Sections 50-4-401, et seq., MCA.


SAMUEL T. HUBBARD
Executive Director
Montana Health Care Authority

Certified to the Secretary of State October 4, 1993

Reviewed by:


Eleanor Parker, DHES Attorney
Montana Administrative Register

19-10/14/93

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the Amendment)
of Rule 32.2.401 pertaining to)
Department of Livestock)
License Fees)

NOTICE OF AMENDMENT OF
FEE UNDER ARM
32.2.401 AS TO A
SLAUGHTERHOUSE, MEAT
PACKING HOUSE, OR MEAT DEPOT
LICENSE

TO: All Interested Persons:

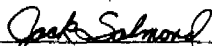
1. On June 10, 1993, the Montana Board of Livestock acting through the Montana Department of Livestock published notice of a proposed amendment to ARM 32.2.401 increasing the license fee for a slaughterhouse, meat packing house, or meat depot at pages 1180 and 1181 of the Montana Administrative Register, issue number 11.

2. The department has adopted the amendments exactly as proposed.

3. No comments or testimony were received.



LON MITCHELL
Rule Reviewer
Department of Livestock



JACK SALMOND, CHAIRMAN
Montana Board of Livestock

Certified to the Secretary of State, September 23, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)
of ARM 42.11.301 and ADOPTION)
of NEW RULE I (ARM 42.11.305))
relating to Opening a New)
Liquor Store)
)

NOTICE OF AMENDMENT OF
ARM 42.11.301 and ADOPTION
of NEW RULE I (ARM 42.11.
305) relating to Opening a
New Liquor Store

TO: All Interested Persons:

1. On July 15, 1993, the Department published notice of the proposed amendment of ARM 42.11.301 and adoption of New Rule I (ARM 42.11.305) relating to opening new liquor stores at page 1475 of the 1993 Montana Administrative Register, issue no. 13.

2. A Public Hearing was held on August 10, 1993, to consider the proposed amendment and adoption. Douglas B. Olson, attorney with the Staples Law Firm appeared on behalf of the Montana Tavern Association and presented comments. The Staples Law Firm, supplemented those oral comments with written comments after the hearing.

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

COMMENT: Revise New Rule I (3)(a) to require 5% or 10% of the overall population in the particular community to sign the petition rather than just 20 registered voters. This would require a more representative figure and would prevent any small number of people from initiating the process.

RESPONSE: Concur. The department is revising this section to require signatures from 5% of the most recent census estimated population for the community or 20 signatures which ever is greater.

COMMENT: Revise New Rule I (4)(c) to hold the public hearing from two weeks to 20 days after the last publication of the notice in the newspapers. One week is not sufficient time to organize testimony and documents needed for the hearing. Suggest the timing interval used for license transfers but no sooner than two weeks.

RESPONSE: Concur. The department is revising this section to require the hearing to be held no sooner than 14 days or later than 20 days following the publication of the notice in the newspapers.

COMMENT: Revise New Rule I (4)(d) to allow other issues than the two currently listed to be the focus of the hearing. The two items of direction are too narrow in scope. The issues that could arise, either in support of or in opposition to a new agency store in a community, are too far flung and unpredictable to limit the scope of the hearing and that a much more general statement be included so that, in turn, a much broader range of

potential legitimate concerns could be addressed.

RESPONSE: Concur in part. The department is revising this section to add a third hearing directive to open the hearing to other issues directly related to the opening of a new state liquor store in the community. The additional directive is not intended to open the hearing to matters unrelated to the events predicated on the petition and the community in which the store is intended to be located.

COMMENT: Revise New Rule I (7) to include the requirement that good faith must be established throughout the petition process and that if it is ascertained that the petition was merely for the purpose of thwarting future attempts to establish a state liquor store in the community that some sort of protection against such an abuse be established.

RESPONSE: Concur. The department is revising this section to include a good faith requirement, which if not evident will allow the three-year limitation on the solicitation for an agent in the community to be waived.

4. Based on these comments, the Department has amended the rules as follows:

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

(a) "Agency store" means a state liquor store operated by an agent.

(b) "Agent" means a person, partnership, or corporation that markets liquor on a commission basis under an agency agreement with the department and provides all the resources, including personnel and store premises, needed to market liquor under the agreement except the liquor product, which is owned by the department until purchased by a customer.

(c) "Liquor" includes table wine when the alcoholic beverage code permits the department to distribute table wine to a state liquor store.

(d) "State liquor store" includes agency stores and liquor stores operated by state employees.

(e) "MINIMUM QUALIFIED PETITIONERS" MEANS THE NUMBER OF ADULTS WHO RESIDE IN THE COMMUNITY WHICH NUMBER EQUALS 5% OF THE COMMUNITY POPULATION AS DETERMINED IN THE MOST RECENTLY AVAILABLE CENSUS ESTIMATE FOR THE COMMUNITY OR 20 ADULTS WHO RESIDE IN THE COMMUNITY IF 5% OF THE COMMUNITY POPULATION IS LESS THAN 20.

(e)(E) "New state liquor store" means, a state liquor store that begins operation in a community that has not had a state liquor store in operation for one or more years.

(f)(G) "Community boundary" means:

(i) In the case of an incorporated city or town, the city or town limits;

(ii) in other communities, the generally recognized and commonly accepted outer edge of the community.

(2) Other words and phrases used in these rules shall have the meaning ascribed to them in the Montana Alcoholic Beverage

Code, as amended, and if not defined therein have their usual and customary meaning. (AUTH: Sec. 16-1-303 MCA, IMP, Sec. 16-2-101 MCA.

NEW RULE I (ARM 42.11.305) OPENING A NEW STATE LIQUOR STORE (1) The number of state liquor stores that may be located in a community will vary with the liters of liquor sold in a community annually. If there is no history of liquor sales for a community, the department will estimate the liter sales based on experience with communities that have similar population sizes. The number of stores that may be located in a community per liter volume is as follows:

- (a) 5 stores for 930,000 liters or more annually;
- (b) 4 stores for 680,000 to 929,999 liters annually;
- (c) 3 stores for 430,000 to 679,999 liters annually;
- (d) 2 stores for 180,000 to 429,999 liters annually; and
- (e) 1 store for less than 180,000 liters annually.

(2) A new state liquor store will be operated by an agent unless operation by state employees would be less expensive to the department.

(3) The department will conduct a public hearing to open a new agency store in a community when all of the following conditions are met:

(a) The department receives a petition signed by ~~20 registered voters who reside in the community~~ AT LEAST THE MINIMUM QUALIFIED PETITIONERS to open an agency store in the community. The petition must clearly state that its purpose is to have the department open a state liquor store in the community which will be operated by an agent under contract with the department. The petition must show the printed name, mailing address and signature of each person signing the petition.

(b) The department receives a letter from a person willing to submit a proposal or bid to operate an agency store in the community. This person must control or expect to control a building in the community that could be used as the agency store location.

(c) The number of state liquor stores currently operating in the community does not exceed the limit in (1).

(d) The nearest community with an operating state liquor store is more than 35 miles as measured from the nearest community boundaries along the shortest route on a paved road between the two communities unless the new store is to be located in a community eligible for more than one store pursuant to (1).

(e) The department has not solicited for an agent in the community within the previous three years.

(f) The petition identified in (a) and the letter from a potential agent in (b) must be received within six months of each other.

(4) When all of the conditions in subsection (3) are met, the department will hold a public hearing in the community to

receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a liquor store agent. The procedures concerning the public hearing are:

(a) The notice will contain the following:
(i) the date, time and place in the community where the public hearing will be conducted; and

(ii) provide the name and address of the hearing officer appointed by the liquor division administrator to conduct the hearing.

(b) Notice of the public hearing will be advertised twice during a two-week period in the legal section of:

(i) the nearest daily newspaper in general circulation for the affected area; and

(ii) in the local community newspaper, if there is one.

(c) The hearing will be conducted ~~approximately one week~~ NO LESS THAN 14 DAYS BUT NO MORE THAN 20 DAYS following the last publication of the notice in the newspapers.

(d) The hearing officer will preside over the hearing and collect the information presented by all persons. The hearing will be directed to the following:

(i) whether the department should proceed with its intention to advertise for proposals or bids for a liquor store agent for the community; and

(ii) whether any limitations or restrictions on the location and operation of the agency should be considered; AND

(iii) WHETHER ANY OTHER ISSUES DIRECTLY RELATED TO THE OPERATION OF THE PROPOSED STORE IN THE COMMUNITY OR ITS POSSIBLE EFFECTS ON THE COMMUNITY SHOULD BE CONSIDERED IN THE DETERMINATION OF WHETHER TO PROCEED WITH ITS INTENTION TO ADVERTISE FOR PROPOSALS OR BIDS FOR A LIQUOR STORE AGENT FOR THE COMMUNITY.

(e) Within one week following the public hearing, the hearing officer will submit a report to the liquor division administrator. This report will provide the following:

(i) identify all of the issues raised at the hearing;

(ii) recommend whether proceeding with the advertisement for proposals or bids for a liquor store agent is in the best interest of the state, and the community; and

(iii) recommend whether any limitations or restrictions on the location and operation of the agency should be considered.

(f) One week following receipt of the hearing officer's report, the liquor division administrator will decide what action will be taken in response to the hearing officer's recommendations.

(5) Notice of the liquor division administrator's decision will be mailed to all parties who signed the petition and gave a mailing address or who attended the public hearing and gave a mailing address.


(6) If the decision is to proceed with the advertisement for request for proposals or invitation for bids for a liquor store agent, the process to select an agent will be conducted in

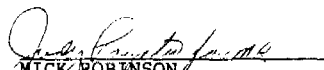
accordance with ARM ~~42.11.103~~ 42.11.303.

(7) If no proposals or bids are received in response to a request for proposals or invitation for bids, or none of the proposals or bids received meet the minimum requirements specified in the request for proposals or the invitation for bids, the department will make no further solicitation for an agent in the community for three years. If the conditions in subsection (3) and (4) are met after the three year period, the department will begin the process again. HOWEVER, IF THE DEPARTMENT DETERMINES THAT THE PETITION REQUIRED IN SUBSECTION (3)(A) WAS NOT GENERATED IN GOOD FAITH, THE DEPARTMENT MAY WAIVE THE THREE-YEAR LIMITATION.

AUTH: Sec. 15-1-303, MCA; IMP: Sec. 16-2-101, MCA.

5. Therefore, the Department adopts the rules with the amendments listed above.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State October 4, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT	)	NOTICE AMENDMENT of ARM
of ARM 42.12.103, 42.12.106,	)	42.12.103, 42.12.106,
42.12.122, 42.12.141, 42.12.144	)	42.12.122, 42.12.141,
and the ADOPTION of RULE I	)	42.12.144 and the ADOPTION
(ARM 42.12.116) relating to	)	of NEW RULE I (42.12.116)
Liquor Licenses and Permits	)	relating to Liquor
	)	Licenses and Permits

TO: All Interested Persons:

1. On August 26, 1993, the Department published notice of the proposed amendment and adoption of rules relating to liquor licenses and permits at page 2003 of the 1993 Montana Administrative Register, issue no. 16.

2. A Public Hearing was held on September 21, 1993, to consider the proposed amendment and adoption. Mark Staples, of the Staples Law Firm appeared on behalf of the Montana Tavern Association and submitted oral comments. No written comments were received regarding these rules.

3. As a result of the comments received the Department will further amend ARM 42.12.106; 42.12.122 and 42.12.144. ARM 42.12.103; 42.12.141 and New Rule I (ARM 42.12.116) remain as proposed.

4. Oral comments received during the hearing are summarized as follows along with the response of the Department:

COMMENT: Add language to ARM 42.12.122 which would differentiate between changing the configuration of the premises and an upgrade to the premises, such as repairing a roof. An upgrade would not be an alteration, even though it is a "structural change." Also, need to clarify a definition of "cosmetic change" in ARM 42.12.106.

RESPONSE: The Department agrees with the suggested amendment to subsection (4) of the rule to refer specifically to 16-3-311, MCA, which defines alteration. ARM 42.12.106 is being amended to include an expanded definition of "cosmetic change."

COMMENT: Amend ARM 42.12.144 to add specific criteria which would narrow the circumstances under which an applicant is granted additional time to obtain a license to transfer between quota areas. It was also suggested the extension have a time limit not to exceed 60 days. One of the criteria could be that the failure to obtain a license within the specified time period was through no fault of the applicant.

RESPONSE: The Department agrees to amend the rule adding the requirement that failure to purchase a license during the

initial time period was no fault of the applicant and limiting the extension of time to no more than 60 days.

5. The Department has amended the rules as follows:

42.12.106 DEFINITIONS (1) through (4) remain the same.

(5) "Restaurant" means a public eating establishment allowing for seated service for a minimum of 12 persons at tables or booths where the sale of food served is prepared on site.

(6) "Prepared food business" means a restaurant, except the food need not be prepared on site.

(7) "Primarily meals with table service" means a restaurant where the business records show that the gross sales of food is greater than the sum of any other activity conducted on the premises.

(8) "COSMETIC CHANGE" MEANS, IN ADDITION TO THE EXAMPLES GIVEN IN 16-3-311, MCA, THE CORRECTION OF STRUCTURAL DEFECTS THAT DO NOT ENTAIL RECONFIGURATION OF THE PREMISES.

AUTH: Sec. 16-1-303, MCA; IMP: 16-4-105 and 16-4-207, MCA.

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES

(1) through (3) remains as proposed.

(4) Premises currently licensed that do not meet the suitability standards would be required to meet the above standards upon department approval of completed alterations of the existing licensed premises in accordance with ~~law~~ 16-3-311, MCA, except for the requirement that premises not be within a fifty foot radius of gasoline pumps. The restriction on premises being beyond a fifty foot radius of gasoline pumps applies only to transfers of licenses to new locations or to new original licenses.

AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-4-402, 16-4-404, and 16-4-405 MCA.

42.12.144 TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) remains the same.

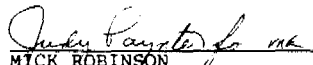
(2) An applicant applying pursuant to (1)(b), whose application is granted by the department, is required to purchase a transferable license within 60 days after receipt of the final agency decision and submit additional documents needed to effect a transfer of ownership and location. However, additional time can be requested and approved by the department when the applicant can demonstrate he is actively pursuing the purchase of a license and THAT FAILURE TO PURCHASE A LICENSE IS THROUGH NO FAULT OF THE APPLICANT. THE ADDITIONAL TIME IS NOT TO EXCEED 60 DAYS. An additional fee is required to cover the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.

(3) through (5) remain as proposed.

AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-4-204 MCA.

6. No comments were received on ARM 42.12.103, ARM 42.12.141 and NEW Rule I (ARM 42.12.116), therefore, those rules will be adopted as noticed. The Department further adopts ARM 42.12.106; 42.12.122; and 42.12.144 with the amendments listed above.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State October 4, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.17.111 relating to)	ARM 42.17.111 relating to
Withholding Taxes Which Apply)	Withholding Taxes Which
to Indians)	Apply to Indians

TO: All Interested Persons:


1. On August 26, 1993, the Department published notice of the proposed amendment of ARM 42.17.111 relating to withholding taxes which apply to Indians at page 1995 of the 1993 Montana Administrative Register, issue no. 16.


2. Written comments were received from Arthur Punley, Jr. which are summarized as follows along with the response of the Department:

COMMENT: Mr. Punley, a member of an Oklahoma Indian Tribe, does not believe the State should tax his Montana income. The Montana income tax exemption is limited to members who live and work on their own reservation. Mr. Punley believed the taxation of his income is more properly within the purview of the Tribal Government.

RESPONSE: The law and supporting rules narrowly construe the exemption of income taxation to those Native Americans who both work and live on their own reservation in Montana. The amendment to this rule was made to correct a clerical error addressing the effective date of the rule.

3. The Department has adopted the rule as proposed.


CLEO ANDERSON
Rule Reviewer


NICK ROBINSON
Director of Revenue

Certified to Secretary of State October 4, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF AMENDMENT of
of ARM 42.31.102, 42.31.107,)	ARM 42.31.102, 42.31.107,
42.31.108, 42.31.121, 42.31.131,))	42.31.108, 42.31.121, 42.31.
42.31.201, 42.31.221 and THE)	131, 42.31.201, 42.31.221
ADOPTION of NEW RULES I, II, III))	and THE ADOPTION OF NEW RULES
IV, V, VI, VII and VIII relating))	I, II, III, IV, V, VI, VII,
to Cigarettes)	and VIII relating to
)	Cigarettes

TO: All Interested Persons:

1. On August 26, 1993, the Department published notice of the proposed amendment of ARM 42.31.102, 42.31.107, 42.31.108, 42.31.121, 42.31.131, 42.31.201, and 42.31.221 and the adoption of New Rules I through VI relating to cigarettes at page 1997 of the 1993 Montana Administrative Register, issue no. 16. The Department further adopts New Rules VII and VIII which are necessary to clarify the law as indicated by the comments of the public hearing and subsequent thereto.

2. A Public Hearing was held on September 21, 1993, to consider the proposed amendments and adoption where oral and written comments were received.

3. As a result of the comments received the Department has further amended the proposed rules and is adopting New Rule VII and VIII as presented at the hearing which are shown below.

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

COMMENT: Montana Association of Tobacco and Candy Distributors, through their attorney offered 13 comments and related amendments. The general substance of those comments were that a number of the rules could be clarified by making changes in terminology or phrases.

RESPONSE: The Department agrees with the substance of the changes as suggested by Montana Association of Tobacco and Candy Distributors and will make those changes to the rules accordingly. However, comment number 4 and 13 will not be accepted. Comment 4 is now addressed under New Rule II (ARM 42.31.325). Comment 13 is a moot issue because the law and rules cover the sale of cigarettes at retail.

5. The Department has amended the rules based on the oral and written comments received at the hearing and other comments and concerns presented to the department by individuals not in attendance at the hearing as follows:

42.31.102 MARKING UNSTAMPED CIGARETTES (1) All cigarettes sold in Montana must have a tax stamp except sales made to ~~U.S. government~~, military RESERVATIONS and licensed wholesalers which sales are subject to the provisions of ARM 42.31.108.

(2) remains the same.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-111, 16-11-113, and 16-11-156, MCA.

42.31.107 ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION

(1) Each wholesaler shall prepare form CT-205 and Schedule A. When appropriate, FORM CT-206 and Schedule C are to be filed with the FORM CT-205 form. These forms are TO BE filed with the department of revenue BY A WHOLESALER on or before the 15th day of the month following the preceding month's activities. Form CT-205 is a reconciliation of the purchase and distribution of cigarettes and the consumption of cigarette tax indicia. The back of form CT-205 reflects exempt ~~U.S. government~~, military RESERVATION, out-of-state, and wholesaler to wholesaler purchases for the month. FORM CT-205 and supporting forms are hereby incorporated by reference and may be obtained by contacting the Department of Revenue at P.O. Box 5835, Helena, Montana 59604.

(2) remains the same.

(3) Sales of untaxed cigarettes made to cigarette retailer(s) on an INDIAN reservation will SHALL be reported on Form CT-206. FORM CT-206 MUST BE COMPLETELY FILLED OUT AND CONTAIN THE ORIGINAL SIGNATURE OF THE PURCHASER AND WHOLESALER ON THE DATE OF DELIVERY.

(a) ~~If a negotiated quota agreement exists, the tribe TRIBAL GOVERNMENT shall~~ MAY provide the department with a list showing the names of qualified retailers and their portion of the quota. The tribe TRIBAL GOVERNMENT must notify the department of any change in the requested allocations.

(b) ~~If no agreement exists and the tribe TRIBAL GOVERNMENT does not provide direction on allocation among Indian retailers, the department will approve sales of allocated untaxed cigarettes based on past purchases or the best information available until the RESPECTIVE INDIAN reservation quota is depleted. THE ALLOCATION TO RETAILERS WILL BE ON A FIRST TO SHIP BASIS UNLESS PARTICULAR CIRCUMSTANCES INDICATE ANOTHER BASIS.~~

(4) Wholesaler(s) must contact the department prior to all non-taxed sales on a reservation. The department will issue permission to ship the cigarettes, will track quota allocations, and notify the wholesalers when the quota has been reached. Once the quota for any particular retailer/reservation has been reached, sales to that retailer/reservation will include tax.

AUTH: Sec. 16-11-103 MCA; IMP: Secs. 16-11-104, 16-11-111, and 16-11-156, MCA.

42.31.108 SALES OF UNSTAMPED CIGARETTES (1) Any person who purchases unstamped cigarettes, claiming that Montana lacks jurisdiction over his cigarette sales activities, must be fully identified by name, address of residence, address and location of business, and federal TAX OR TRIBAL GOVERNMENT identification number. The required information will be entered on form CT-206, which will also be a receipt requiring the signature of the person purchasing the cigarettes to acknowledge the purchase and physical possession of the unstamped cigarettes itemized thereon.

(2) remains the same.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-132 and 16-11-156, MCA.

42.31.121 CORPORATE APPLICANTS FOR CIGARETTE LICENSES

(1) remains the same.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-120 and 16-11-301 MCA.

42.31.131 CIGARETTE TAX REFUNDS/DISTRIBUTIONS

(1) Cigarette tax refunds/distributions will be issued as provided in subsections (2), (3) and (4). All cigarette refunds will be calculated assuming a 3% discount rate unless documentation is provided supporting a higher discount rate.

(2) Refund claims by a cigarette manufacturer must contain a notarized affidavit that the cigarette tax refund claimed is for state of Montana cigarette tax insignia which are affixed to the unsalable cigarettes; that credit or refund for the net cost of the tax insignia has been given to a Montana cigarette dealer; and that the cigarettes will not be sold at any time. Refund claims must be accompanied by a copy of the credit memo or invoice issued to the Montana dealer. Refunds will be allowed for stale or damaged merchandise during the first 90 days after a change in the tax rate at the previous rate of tax unless it can be verified conclusively that the new tax has been paid on the specific product for which such refund is claimed.

(3) Cigarette tax distributions are made to an Indian tribe pursuant to an agreement between the INDIAN tribe and the department of revenue. The agreement provides for the collection of a tribal cigarette tax on the INDIAN reservation and a distribution, less the administrative expense, if applicable, to the INDIAN tribe based on the negotiated QUOTA agreement.

(4) Cigarette tax credits or refunds for indicia used in sales made on an Indian reservation are made to wholesalers pursuant to the established quota FOR A PARTICULAR INDIAN RESERVATION. The wholesaler can request a credit or a cash refund by filing FORM CT-207. Upon receipt of FORM CT-207 the department will approve the credit or mail the refund within ten (10) working days.

(5) No credit or refund on FOR non-taxed (quota) sales ON AN INDIAN RESERVATION will be allowed to a wholesaler once the

retailer/reservation has depleted the quota amount. (See ARM 42.31.107 for qualifying sales.) Amounts on FORM CT-207 received during the month will be reconciled with amounts on Form CT-206 filed at the appropriate time. Any discrepancies found will be added to or subtracted from the amount requested for stamps/refunds of the current month. Added/subtracted amounts will be applied to the request of the wholesaler that causes the discrepancy to develop.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 15-1-503, 16-11-112 and 16-11-156 MCA.

RULE II (42.31.325) LICENSE (1) All persons that sell tobacco products at retail must obtain a license from the department of revenue. This includes sales over the counter, by vending machine or any other means of selling the tobacco product.

(2) In the case where the retailer contracts with a vending machine operator to ~~have~~ PLACE a vending machine FOR THE SALE OF TOBACCO PRODUCTS in ~~an~~ THE establishment, the retailer must obtain a RETAIL license to sell tobacco products.

(3) The license covers one fiscal year, July 1 to June 30.

(4) The license cannot be transferred.

(5) THE DEPARTMENT WILL ISSUE THE APPLICABLE LICENSE(S) AS REQUIRED UNDER 16-11-120, MCA, OR 16-11-303, MCA, TOGETHER ON ONE FORM.

AUTH: Sec. 16-11-312, MCA; IMP: Sec. 16-11-303 and 16-11-306, MCA.

RULE IV (42.31.331) SALES FROM VENDING MACHINES

(1) Sales OF TOBACCO PRODUCTS FROM VENDING MACHINES are only permitted in:

(a) places not opened to the general public, SUCH AS FACTORIES, BUSINESSES, AND PRIVATE OFFICES;

(b) places where persons under the age of 18 are not permitted access;

(c) places where alcoholic beverages are sold and consumed on the premises; or

(d) places OPEN TO THE GENERAL PUBLIC where the vending machine is under direct supervision of the owner or employee of the establishment.

(2) For places opened to the general public the vending machine must be located in a place where the owner or an employee OF THE ESTABLISHMENT can see it to ensure individuals under the age of 18 do not use the machine. For example, all tobacco vending machines in a hotel or motel must be located in the lobby where the desk clerk can see who is making the purchase from the machine. LICENSEES ARE RESPONSIBLE TO INSURE THERE IS A SYSTEM OF SUPERVISION IN PLACE TO PREVENT VIOLATIONS.

AUTH: Sec. 16-11-312, MCA; IMP: Sec. 16-11-305 and 16-11-306, MCA.

6. Subsequent to the hearing the Department determined the necessity to adopt New Rule VII (ARM 42.31.345) and VIII (ARM 42.31.350) because of numerous questions concerning the law regarding penalties and a definition of public school buildings and discussions during the course of the hearing related to the quota system. Therefore, the Department proposes additional rules to cover these areas as follows:

NEW RULE VII (42.31.345) PENALTIES (1) The penalties mandated under 16-11-308, MCA, will be enforced and collected by the county attorney in the county where the violation occurred.

AUTH: Sec. 16-11-312, MCA; IMP: Sec. 16-11-308, MCA.

NEW RULE VIII (42.31.350) USE OF TOBACCO PRODUCTS IN PUBLIC SCHOOL BUILDINGS (1) The use of tobacco products in public school buildings referred to in 20-5-411, MCA, applies only to elementary and secondary schools.

AUTH: Sec. 16-11-312, MCA; IMP: Sec. 20-5-411, MCA.


7. The Department has also determined that the catchphrase for ARM 42.31.201 and New Rule I (ARM 42.31.320) should be amended. The text of the rules will remain as proposed.


42.31.201 TOBACCO PRODUCTS DEFINED FOR TAX PURPOSES

NEW RULE I (ARM 42.31.320) TOBACCO PRODUCTS DEFINED REGARDING SALES TO MINORS

8. The Department is adopting ARM 42.31.221, New Rule III (42.31.330); New Rule V (42.31.335) and New Rule VI (42.31.340) as proposed in the notice of intent published on August 26, 1993.

9. Therefore, the Department adopts the rules with the amendments listed above.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State October 4, 1993.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules 46.10.318	)	RULES 46.10.318 AND
and 46.10.319 pertaining to	)	46.10.319 PERTAINING TO
emergency assistance to	)	EMERGENCY ASSISTANCE TO
needy families with	)	NEEDY FAMILIES WITH
dependent children	)	DEPENDENT CHILDREN


TO: All Interested Persons

1. On July 15, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.10.318 and 46.10.319 pertaining to emergency assistance to needy families with dependent children at page 1479 of the 1993 Montana Administrative Register, issue number 13.

2. The Department has amended rules 46.10.318 and 46.10.319 as proposed.

3. No written comments or testimony were received.


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State October 4, 1993.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of 46.12.602,	)	RULES 46.12.602, 46.12.605
46.12.605 and 46.12.606	)	AND 46.12.606 PERTAINING TO
pertaining to medicaid	)	MEDICAID DENTAL SERVICES
dental services)	
)	

TO: All Interested Persons

1. On August 12, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.602, 46.12.605 and 46.12.606 pertaining to medicaid dental records at page 1888 of the 1993 Montana Administrative Register, issue number 15.

2. The Department has amended rules 46.12.602 and 46.12.606 as proposed.

3. The Department has amended the following rule as proposed with the following changes:

46.12.605 DENTAL SERVICES, REIMBURSEMENT Subsections (1) through (5) remain as proposed.

(6) Payment for denture adjustments DURING THE FIRST YEAR AFTER DELIVERY OF THE DENTURES will be made only to a dentist or denturist who did not make the dentures.

Subsections (7) and (8) remain as proposed.

4. The Department has thoroughly considered all commentary received:

COMMENT: The Denturist Association submitted a comment that under 46.12.605(6) there were no time limits for when the original work was completed, and when the original dentist or denturist could do necessary repairs.

RESPONSE: The Department recognizes there could be a potential problem to a patient who needs denture repairs or adjustments. The Department amends the rule as shown above to set a specific time period after which the originating provider could do necessary repairs.


COMMENT: The Denturist Association objected to sections 46.12.606(2)(a) and (5)(a)(i) and (iii), requiring that a dentist either perform denture work or that a dentist write out a prescription for the work to be done by a denturist.

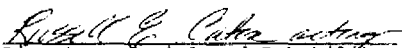
RESPONSE: The sections referred to by the Association are not being amended by this notice. The sections referred to in the

rule are the same as before the Department's amendments. At CFR § 42 440.120 "Dentures" are defined as artificial structures made under the direction of a dentist to replace a full or partial set of teeth. The Department interprets this to mean that a prescription is required by a dentist for anybody other than a dentist to perform denture work.

COMMENT: The Denturist Association submitted the following comment about reimbursement: "46.12.605(1) states that all services will be provided at the lowest service rate. This is not the case under these proposed rules".

RESPONSE: Rule 46.12.605(1) states the Department will pay the lowest of the providers actual charge, the amount allowed by Medicare or the Department's fee schedule. The rule makes no reference to services being provided by the lowest cost provider, but simply states the reimbursement methodology for these services.


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State October 4, 1993.

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

In the matter of the	)	CORRECTED NOTICE OF THE
amendment of rules	)	AMENDMENT OF RULES
46.12.1930, 46.12.1945	)	46.12.1930, 46.12.1945
through 46.12.1947,	)	THROUGH 46.12.1947,
46.12.1950 and 46.12.1951	)	46.12.1950 AND 46.12.1951
pertaining to targeted case	)	PERTAINING TO TARGETED CASE
management for adults with	)	MANAGEMENT FOR ADULTS WITH
severe and disabling mental	)	SEVERE AND DISABLING MENTAL
illness and youth with	)	ILLNESS AND YOUTH WITH
severe emotional disturbance	)	SEVERE EMOTIONAL
	)	DISTURBANCE

TO: All Interested Persons

1. On August 12, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.1930, 46.12.1945 through 46.12.1947, 46.12.1950 and 46.12.1951 pertaining to targeted case management for adults with severe and disabling mental illness and youth with severe emotional disturbance at page 1901 of the 1993 Montana Administrative Register, issue number 15 and on September 30, 1993, the Department published the notice of amendment of rules 46.1930, 46.12.1945 through 46.12.1947, 46.12.1950 and 46.12.1951 at page 2251 of the 1993 Montana Administrative Register, issue number 18.

2. The Department discussed the deletion of the terms "record maintenance" and "service coordination" in its rationale for ARM 46.12.1945 in its notice of amendment published at page 1901 of the 1993 Montana Administrative Register, issue no.15 on August 12, 1993, but neglected to show these terms as deleted in the rule. To avoid confusion, the Department is amending its notice to reflect the deletion of these definitions.

3. The Department has amended rule 46.12.1945 as proposed with the following corrections.

46.12.1945 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE. DEFINITIONS Subsections (1) through (5)(g) remain as proposed.

~~(6) "Record maintenance" means the act of recording essential information promptly in client files to document the provision of case management services. This information must be in a form which can be easily understood by the client and providers.~~

~~(7) "Service coordination" means the act of linking the client, the parent or family members with service providers and facilitating development of service resources.~~

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

4. All portions of the September 30, 1993 notice of amendment not specifically changed by this amended notice remain the same. The corrections noted in this amended notice will appear in the September 30, 1993 replacement pages for the Administrative Rules of Montana.

David D. Davis
Rule Reviewer

Russell E. Carter for
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 4, 1993.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules	)	RULES 46.13.203, 46.13.301,
46.13.203, 46.13.301,	)	46.13.302, 46.13.303,
46.13.302, 46.13.303,	)	46.13.304 AND 46.13.401 AND
46.13.304 and 46.13.401 and	)	THE REPEAL OF RULE
the repeal of rule 46.13.402	)	46.13.402 PERTAINING TO LOW
pertaining to low income	)	INCOME ENERGY ASSISTANCE
energy assistance program	)	PROGRAM (LIEAP)
(LIEAP))	

TO: All Interested Persons

1. On July 29, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.13.203, 46.13.301, 46.13.302, 46.13.303, 46.13.304 and 46.13.401 and the repeal of rule 46.13.402 pertaining to low income energy assistance program (LIEAP) at page 1618 of the 1993 Montana Administrative Register, issue number 14.

2. The Department has amended 46.13.203 and 46.13.303 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.13.301 DEFINITIONS Subsections (1) through (9) remain as proposed.

(10) "Member receiving supplemental security income (SSI), aid to families with dependent children (AFDC), or INDIGENT ASSISTANCE AS PROVIDED IN 53-2-804, MCA OR TRIBAL general assistance (GA)" means any member of a household whose needs are included in the SSI, AFDC, or INDIGENT ASSISTANCE OR TRIBAL GA grant or any person whose income and resources are considered in determining eligibility for those programs.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) Except as provided below, households which consist solely of members receiving supplemental security income, aid to families with dependent children, ~~or~~ INDIGENT ASSISTANCE AS PROVIDED IN 53-2-804, MCA OR TRIBAL general assistance are automatically financially eligible for ~~100%~~ low income energy assistance benefit awards. ~~"Members receiving SSI, AFDC, or general assistance" includes any financially responsible relative or individual whose income and~~

~~resources were considered in determining eligibility for these programs.~~

Subsections (2) through (6) remain as proposed.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.304 CALCULATING INCOME Subsections (1) through (2)(b) remain as proposed.

~~(c) Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for 75% of the benefit award matrices as defined in ARM 46.13.401(2); the dependent care was provided by a person WHO IS not related by blood or marriage to any A member of the household.~~

Subsections (3) through (3)(c)(x) remain as proposed.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (2)(c) remain the same.

(d) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

(i) TABLE OF BENEFIT LEVELS

SINGLE FAMILY

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$264	\$372	\$408	\$318	\$248	\$227
<u>TWO</u>	\$384	\$541	\$594	\$463	\$361	\$330
<u>THREE</u>	\$523	\$737	\$809	\$630	\$492	\$450
<u>FOUR</u>	\$720	\$1,104 1,014	\$1,113	\$867	\$677	\$618

MULTI FAMILY and MOBILE HOME charts remain as proposed but are numbered (ii) and (iii). Subsection (2)(e) remains as proposed.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

4. The department is not repealing rule 46.13.402 as proposed. The department has amended rule 46.13.402 with the following changes:

46.13.402 DETERMINING BENEFIT AWARDS: MISCELLANEOUS
(1) ~~For applications filed during the period October 1 through April 30, households found eligible will receive the applicable benefit amount, if available, determined from the matrix table found in ARM 46.13.401 which corresponds to the household's type and cost of primary heating fuel, the number of bedrooms in, and type of, dwelling unit, the relative climatic condition by heating district and the level of household income.~~

Subsections (1)(a), (1)(b), (2) and (3) remain the same but are renumbered (1) through (4) respectively.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: All of ARM 46.13.402 should not be repealed, only subsection (1).

RESPONSE: The department agrees. Subsection (1) is being deleted because its contents are now incorporated into ARM 46.13.203(3) and 46.13.401(2), as amended. However, the contents of subsections (1)(a) through (3) will be renumbered and left intact, because they cover material which is not discussed elsewhere in the LIEAP rules.

COMMENT: The terms "general assistance" and "GA" should be removed from 46.13.301 and 46.13.302.

RESPONSE: Although the 53rd Montana Legislature in HB 427, Chapter 561 eliminated state-administered general relief assistance, some counties and tribal governments may continue to provide indigent assistance. Since some LIEAP households may still receive county indigent assistance, it is not appropriate to delete these terms from ARM 46.13.301 and 46.13.302. It is the department's intention that households which consist solely of members receiving supplemental security income, aid to families with dependent children, or county or tribal assistance be categorically eligible for the fuel assistance program. However, ARM 46.13.301 and 46.13.302 are being amended to use the term "indigent assistance and tribal general assistance" because HB 427 replaces the term general relief assistance with indigent assistance.

COMMENT: The year's date should not be used in ARM 46.13.303 and 46.13.304 in connection with the poverty levels used to determine eligibility and deductions. If the term "current year poverty level" were used instead, it would not be necessary to amend these rules each year to change the year.

RESPONSE: The LIEAP program year does not coincide with the calendar year. Rather it runs from October 1 of one calendar year through September 30 of the next calendar year. In

approximately February of each year the U. S. Office of Management and Budget (OMB) publishes the poverty levels for that year; for example, in February 1993 the OMB publishes the 1993 poverty levels which will be used in the LIEAP program beginning October 1, 1993. If the term "current year poverty level" were used, it would be misleading, because it could be interpreted to mean the current calendar year rather than LIEAP program year.

COMMENT: It has been noted that several of the figures in the table of benefit levels in the amendments to ARM 46.13.401(2)(d) appear to be incorrect.

RESPONSE: The benefit level for a single family whose dwelling has four bedrooms and uses electricity to heat was listed as \$1,104 due to a clerical error. This is being corrected to \$1,014. It was also suggested that the benefit levels for multi family dwellings using fuel oil might be incorrect, because they are higher than the benefit levels for single family dwellings heating with fuel oil, whereas in previous years the benefit levels for single family dwelling were usually higher. The department has checked its figures and has determined that the proposed benefit levels for multi family dwellings using fuel oil are consistent with the data provided by the U.S. Department of Energy's Energy Information Administration.

COMMENT: ARM 46.13.304 as proposed to be amended states at subsection (2)(c) that a dependent care deduction is allowed only if the care was provided by a person not related by blood or marriage to any household member. It is unclear how close the relationship must be to result in the deduction being disallowed, as no definition of "related by blood or marriage" is included.

RESPONSE: The department has reconsidered the policy of disallowing dependent care deductions for care provided by a relative. The department has decided that the deduction should be allowed, regardless of whether the caregiver is a relative, as long as the caregiver is not a member of the household. The department does believe that a deduction should not be allowed for care provided by one household member to another, because the money paid did not leave the household. Therefore ARM 46.13.304(2)(c) is being changed to state that the deduction will be allowed if the care was not provided by a household member.

6. This rule is retroactive to October 1, 1993, which is the beginning date of the LIEAP program year. The amendments would have been effective on this date if the notice of amendment had been filed as planned. The filing of the notice was delayed for two weeks while the department verified the accuracy of some of the figures in the table of benefit levels in ARM 46.13.401. This was necessary after the department

received a comment questioning these figures (see comment and response above).

Don Silva
Rule Reviewer

Russell E. Carter
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 4, 1993.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the Estate of) PETITION FOR DECLARATORY
Edward F. Abbott, Montana) RULING
licensed dentist, deceased, for)
a declaratory ruling on the)
applicability of Mont. Code)
Ann. Section 37-4-101(2)(b),)
37-4-321 & 37-4-327 to the)
Estate)

1. On November 19, 1993, at 10:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, the Board of Dentistry will consider a petition for declaratory ruling regarding whether the estate of a duly licensed, deceased dentist may maintain the existing practice for a reasonable time pending sale of the practice by the Estate, by hiring a duly licensed dentist to perform all procedures and functions requiring a licensed dentist.

2. Petitioner's name and address are as follows:

Shirley Ruth Abbott
Personal Representative
Estate of Edward F. Abbott
c/o Timothy J. Wylder, Esq.
Jardine, Stephenson, Blewett & Weaver, P.C.
7th Floor, First National Bank Building
P.O. Box 2269
Great Falls, Montana 59403

3. Edward F. Abbott, D.D.S., a duly licensed Montana dentist, was the proprietor of a private dental practice at 3926 Third Avenue South, Great Falls, Montana (the "Practice") until his death on September 2, 1993. The Petitioner, Shirley Ruth Abbott, was named personal representative of the Estate of Edward F. Abbott by Order and Letters of Appointment dated September 7, 1993. Under the Montana Uniform Probate Code, the personal representative of an estate has the right to take possession and control of the decedent's property, and has a statutory duty to take all steps reasonably necessary for the management, protection, and preservation of the estate. Mont. Code Ann. Section 72-3-606. Petitioner contends that the Practice has substantial good will and going concern value, and that failure to provide the services of a licensed dentist at the Practice until the Practice can be sold will cause dissipation of good will and will cause irreparable harm to the Estate.

Petitioner desires to hire a licensed dentist to maintain the Practice and its good will pending sale by the Estate. Petitioner has sought informal advice from the Board's staff legal counsel concerning whether the Estate may employ a licensed dentist to manage and perform practice functions

requiring a licensed dentist pending marketing and sale of the Practice. Staff counsel has advised that no assurance can be given that the Estate and the employee dentist would not be subject to prosecution under Mont. Code Ann. Sections 37-4-327 and 37-4-321, respectively, for the practice of dentistry as defined under Mont. Code Ann. Section 37-4-101(2)(b).

4. Mont. Code Ann. Section 37-4-101(2) provides that "[a] person is 'practicing dentistry' under this chapter if he ... (b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;"

5. The question presented to the Board for declaratory ruling is whether the estate of a duly licensed, deceased dentist may maintain the existing practice, for a reasonable time pending sale of the practice by the Estate, by hiring a duly licensed dentist to perform all procedures and functions requiring a licensed dentist, without violating the above-referenced statutes?

6. Petitioner contends that hiring a duly licensed dentist to maintain the Practice pending sale is reasonably necessary for protection and preservation of the estate as required by the Montana Uniform Probate Code. Petitioner contends that the best interests of patients are served by continuity of care on the Practice premises where there is timely access to patient records and staff with personal knowledge of the patients' particular needs. Petitioner alleges on information and belief that dental services are currently performed by licensed dentists in hospitals that are not owned by licensed dentists; that there is no exemption for such hospitals under Mont. Code Ann. Section 37-4-103; and that no action has been taken against such hospitals. Accordingly, Mont. Code Ann. Section 37-4-101(2)(b) should be interpreted by the Board as allowing an estate to hire a duly licensed dentist to maintain a practice pending sale in the ordinary course of probate administration.

7. Petitioner respectfully requests a declaratory ruling that the Estate may hire a duly licensed dentist to maintain the Practice for a reasonable time pending sale in the ordinary course of probate administration without the Estate or the hired dentist violating Mont. Code Ann. Section 37-4-327 and 37-4-321, respectively.

8. Petitioner knows of no other party similarly situated at this particular time, but alleges on information and belief that this issue is of critical concern to the estate of any licensed dentist who owns a private practice at death.

9. Interested persons may present their data, views or arguments either orally or in writing at the meeting scheduled for November 19 at 10:00 a.m. Written data, views or arguments may also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box

200513, Helena, Montana, to be received no later than November 19, 1993.

BOARD OF DENTISTRY

By:

Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 4, 1993.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition) NOTICE OF PETITION FOR
for declaratory ruling regard-) DECLARATORY RULING
ing the scope of practice for)
registered nurses performing)
conservative, sharp debridement)
of non-viable tissue in wounds)

1. On November 5, 1993, at 8:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling regarding the scope of practice for registered nurses performing conservative, sharp debridement of non-viable tissue in wounds.

2. The petitioners are:

Jeanne Knecht R.N., C.E.T.N.
Columbus Hospital
500 15th Avenue South
Great Falls, Montana 59405

Trudy English, R.N., C.E.T.N.
Montana Deaconess Med. Center
1101 26th Street South
Great Falls, Montana 59405

Edine Loran, R.N., C.E.T.N.
St. Patrick Hospital
500 West Broadway
Missoula, Montana 59802

Kelle Graves, R.N., C.E.T.N.
Billings Deaconess Med. Center
P.O. Box 37000
Billings, Montana 59103

3. The Petitioners represent registered nurses providing wound care. The Petitioners indicate this issue has been addressed in IAET (WOCN) educational programs, conferences and Standards of Care. Recent nursing literature discusses debridement as a component of wound management. The Petitioners also state that the practice of sharp debridement on non-viable tissue in wounds is being performed in certain areas.

4. The statute as to which Petitioners request a ruling is as follows:

37-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) ...

(2) ...

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the

promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

(b) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(4)

5. The Petitioners request that the Board issue a ruling regarding conservative sharp debridement of non-viable tissue to be within the scope of practice of registered nurses demonstrating the knowledge, preparation and experience to safely execute the procedure.

6. The Petitioners have indicated that they believe that a Montana State Board of Nursing ruling that would sanction qualified registered professional nurses to perform sharp debridement of non-viable tissue would help provide improved value, quality, and effective treatment to patients.

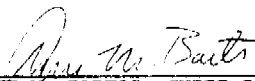
The Board notes that other hospitals, physicians, and registered nurses may be affected.

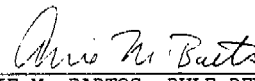
7. Interested persons may present their data, views or arguments either orally or in writing at the meeting scheduled for November 5 at 8:00 a.m. Written data, views or arguments may also be submitted to the Board of Nursing, Lower Level,

Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana, to be received no later than November 12, 1993.

BOARD OF NURSING

By:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 4, 1993.

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 June 30, 1993. This table includes those rules adopted during the period July 1, 1993 through September 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 June 30, 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 1993 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

- 2.21.908 and other rules - Disability and Maternity Leave - Sick Leave - Parental Leave for State Employees, p. 827, 2372
(Public Employees' Retirement Board)
I-II Establishment and Implementation of Family Law Orders Splitting and Paying Montana Public Retirement Benefits, p. 1580
I-V Retirement Incentive Program Provided by HB 517, p. 742, 2008
I-V Emergency Adoption of Rules on the Retirement Incentive Window for Certain PERS Members, p. 933
2.43.302 and other rules - Retirement Incentive Program Provided by HB 517, p. 2057
2.43.418 Accrual and Payment of Interest for Previous Periods of Elected Service, p. 496, 1199
2.43.609 Funding Available for Post-Retirement Adjustments, p. 359, 1200
(Teachers' Retirement Board)
I-II Implementing the Provisions of SB 173 Pertaining to the Establishment and Implementation of Family Law Orders, p. 1584
2.44.201 and other rules - Adopting the Current Model Procedure Rules - Updating the Calculation of Part-Time Service - 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 - Implementing Amendments to SB 226 Adopted by the First 1992 Special Legislative Session Relating to the Teachers' Retirement System, p. 492, 1201

(State Compensation Insurance Fund)

- I Establishing Criteria for Assessing a Premium Surcharge, p. 2060
- 2.55.101 and other rules - Organization of the State Fund - Open Meetings - Establishment of Premium Rates, p. 748, 1635
- 2.55.320 and other rule - Method for Assignment of Classifications of Employments - Construction Industry Premium Credit Program, p. 970, 1485
- 2.55.324 and other rules - Establishment of Premium Rates. p. 1, 340

AGRICULTURE, Department of, Title 4

- I-III and other rules - Civil Penalties Relating to Beekeeping in Montana - Designating Regulated Bee Diseases - Clarifying the Apiary Registration Forfeiture Procedure - Restrictions on Apiary Registration, p. 1588, 2120
- I-IV and other rules - Importation of Mint Plants and Equipment Into Montana - Field Inspection - Mint Oil Fee, p. 750, 1637
- I-IX and other rules - Civil Penalties - Inspection Fees - Assessment Fees - Produce Grades Relating to the Distribution of Produce in Montana - Verification of Produce Grown in Montana - Commodity Grade and Charges - Control of Apples - Grading of Cherries - Wholesalers and Itinerant Merchants, p. 1163, 1636
- 4.4.316 and other rules - Liability on all Crops - Time Policy Becomes Effective - Cut Off Date, p. 361, 939
- 4.10.206 Licensing for Pesticide Operators, p. 2063
- 4.12.3007 and other rules - Civil Penalties Relating to the Distribution of Seed in Montana - Seed License Fees - References to Seed Processing Plants - Seed Buyers and Seed Public Warehouses - Bonding of Seed Buyers and Seed Public Warehouses, p. 972, 1486

STATE AUDITOR, Title 6

- I-II and other rules - Establishing Accreditation Fees for Annual Continuation of Authority - Defining "Money Market Funds" as they Relate to Investments by Farm Mutual Insurers - Remove Limitations on the Issuance of Credit Life and Credit Disability Insurance

- to Joint Debtors - Prohibiting Discrimination in Determining Eligibility for Personal Automobile Insurance - Wage Assignments - Voluntary Payroll Deduction, p. 2163
- I-IV Prohibiting Unfair Discrimination for Previously Uninsured Personal Automobile Insurance Applicants, p. 2436, 674
- I-LV Administration and Enforcement of Laws Regulating Standards for Companies Considered to be in Hazardous Financial Condition - Annual Audited Reports - Life and Health Reinsurance Agreements - Reports by Holding Company Systems - Establishing Accounting Practices and Procedures to be Used in Annual Statements - Credit for Reinsurance, Including Letters of Credit - Standards for Valuation of Insurer Securities and Other Invested Assets, p. 1726
- 6.6.502 and other rules - Medicare Supplement Insurance, p. 979, 1487
- (Classification and Rating Committee)
- I-IX Temporary Rules on Matters Subject to Notice and Hearing Before the Classification and Rating Committee, p. 1173, 1638
- I-X Matters Subject to Notice and Hearing Before the Classification and Rating Committee, p. 1781, 2225

COMMERCE, Department of, Title 8

(Board of Alternative Health Care)

- 8.4.301 and other rules - Fees - Licensing by Examination - Direct Entry Midwife Apprenticeship Requirements - Unprofessional Conduct - High Risk Conditions - Consultation on Transfer Conditions - Required Reporting, p. 1055, 1639

(Board of Athletics)

- 8.8.2801 and other rules - Kickboxing, p. 363, 1109, 1320

(Board of Barbers)

- 8.10.405 Fee Schedule, p. 2168

(Board of Chiropractors)

- I and other rule - Interns and Preceptors - Fees - Applications, p. 1592

(Board of Clinical Laboratory Science Practitioners)

- I-IX Clinical Laboratory Science Practitioners, p. 2065

(Board of Dentistry)

- 8.16.601 and other rules - Introduction - Dental Auxiliaries - Exams - Licensure by Credentials - Unprofessional Conduct - Qualifying Standards - Dental Auxiliaries - Denturist Interns, p. 2229, 393

(Board of Hearing Aid Dispensers)

- 8.20.401 and other rules - Traineeship Requirements - Fees - Record Retention - Unethical Conduct - Complaints - Disciplinary Actions - Testing Procedures -

- Continuing Educational Requirements - Notification -
Definitions - Forms of Bills of Sale Contracts and
Purchase Agreements - Inactive Status, p. 197, 534
- (Board of Horse Racing)
- 8.22.502 and other rules - Licenses Issued for Conducting
Parimutuel Wagering - Daily Double Feature -
Requirements of Licensee - Pool Calculations, p. 1595
- 8.22.612 and other rule - Veterinarians: State or Practicing -
Trainers, p. 277, 535
- (Board of Landscape Architects)
- 8.24.409 Fee Schedule, p. 325
- (Board of Medical Examiners)
- I Practice of Acupuncture - Unprofessional Conduct,
p. 498, 1322
- 8.28.1501 and other rules - Definitions - Utilization Plans -
Protocol - Informed Consent - Prohibitions -
Supervision - Prescriptions - Allowable Functions -
Revocation or Suspension of Approval - Prescribing/
Dispensing Authority - Scope of Practice -
Termination and Transfer - Training of Physician
Assistants, p. 2677, 341, 395
- (Board of Funeral Service)
- 8.30.407 and other rules - Fees - Unprofessional Conduct -
Crematory Facility Regulation - Casket/Containers -
Shipping Cremated Human Remains - Identifying Metal
Disc - Processing of Cremated Remains - Crematory
Prohibitions, p. 1787
- (Board of Nursing)
- 8.32.406 and other rule - Licensure for Foreign Nurses -
Prescribing Practices, p. 385, 1202
- (Board of Nursing Home Administrators)
- 8.34.414 and other rule - Examinations - Reciprocity Licenses,
p. 2686, 264, 396
- (Board of Occupational Therapy Practice)
- 8.35.414 Therapeutic Devices, p. 1598, 2231
- (Board of Optometrists)
- I-III Surgery - Aspects of Surgery Prohibited - Anterior
Segment Defined - Optometrist's Role in Post-
Operative Care, p. 2625, 398
- 8.36.401 and other rules - Board Meetings - Applications for
Examination - Examinations - Reciprocity - General
Practice Requirements - Fees - Applicants for
Licensure, p. 1447, 2121
- (Board of Outfitters)
- 8.39.502 Licensure - Outfitter Qualifications, p. 327
- 8.39.503 Licensure - Outfitter Examination, p. 2688, 343
- 8.39.504 and other rules - Outfitter Operations Plans -
Conduct of Outfitters and Guides - Unprofessional
Conduct, p. 2070
- (Board of Pharmacy)
- 8.40.404 and other rules - Fees - Out-of-State Mail Service

- Pharmacies, p. 2073
- (Board of Private Security Patrol Officers & Investigators)
8.50.428 and other rules - Experience Requirements - Insurance Requirements - Fees, p. 1450
- (Board of Psychologists)
8.52.604 and other rules - Application Procedures - Examination - Fee Schedule, p. 1792, 2232
- (Board of Public Accountants)
8.54.407 Qualifications for a License as a Licensed Public Accountant, p. 1453, 2122
- (Board of Radiologic Technologists)
8.56.409 and other rules - Examinations - Renewals - Fees - Permits - Permit Fees, p. 1455
- (Board of Real Estate Appraisers)
8.57.401 and other rule - Definitions - Experience Requirements, p. 501, 1642
- 8.57.403 and other rules - Examinations - Experience Requirements - Education Requirements - Fees - Agricultural Certification, p. 2170
- (Board of Realty Regulation)
8.58.406A and other rules - Applications - Trust Accounts - Continuing Education - Unprofessional Conduct - Property Management, p. 1063, 1909, 2123, 2233
- (Board of Respiratory Care Practitioners)
8.59.501 and other rules - Applications - Temporary Permits - Renewals - Continuing Education, p. 1458, 2125
- (Board of Social Work Examiners and Professional Counselors)
8.61.402 and other rule - Licensure Requirements for Social Workers and Professional Counselors, p. 92, 1325
- (Board of Speech-Language Pathologists and Audiologists)
8.62.502 and other rules - Aide Supervision - Nonallowable Functions of Aides, p. 1795
- (Building Codes Bureau)
8.70.101 and other rules - Building Codes, p. 2173
- (Weights and Measures Bureau)
8.77.102 and other rule - Fees for Testing and Certification - License Fee Schedule for Weighing and Measuring Devices, p. 1077, 1501
- (Milk Control Bureau)
8.79.301 Licensee Assessments, p. 95, 400
- (Financial Division)
8.80.101 and other rules - Banks - Reserve Requirements - Investment in Corporate Stock - Investments of Financial Institutions - Limitations on Loans - Loans to a Managing Officer, Officer, Director or Principal Shareholder - Corporate Credit Unions, p. 1599, 2198
- (Board of Milk Control)
8.86.301 Monthly Calculation of the Class I Milk Paid to Producers, p. 1797, 2234

- 8.86.301 Emergency Amendment - Calculating the Class I Milk Paid to Milk Producers, p. 1203
- 8.86.301 Class I Producer Prices - Inter-Plant Hauling Rates, p. 329
- (Local Government Assistance Division)
- 8.94.3701 and other rules - 1985 and 1986 Federal Community Development Block Grant Program - Administration of the 1993 Federal Community Development Block Grant Program, p. 205, 536
- 8.94.4102 Report Filing Fees Paid by Local Government Entities Under the Montana Single Audit Act, p. 755, 1328
- (Board of Investments)
- 8.97.1301 and other rules - Definitions - Seller/Services Approval Procedures - Loan Loss Reserve Account, p. 1247, 2235
- (Business Development Division)
- 8.99.401 and other rules - Microbusiness Finance Program, p. 1800, 2236
- (Board of Housing)
- 8.111.405 and other rule - Income Limits and Loan Amounts - Cash Advances - Reverse Annuity Mortgage Loan Provisions, p. 503, 1207
- (Montana State Lottery)
- 8.127.101 Organizational Rule - Retailer Commission - Sales Staff Incentive Plan, p. 2486, 401
- 8.127.407 Retailer Commission, p. 2078

EDUCATION, Title 10

- (Superintendent of Public Instruction)
- 10.6.101 and other rules - School Controversy Contested Cases Rules of Procedure, p. 2110, 344
- 10.16.901 and other rules - Special Education, p. 757, 1913
- (Board of Public Education)
- 10.55.601 Accreditation Standards: Procedures, p. 2690, 682
- 10.56.101 Student Assessment, p. 2693, 683
- 10.57.211 Test for Teacher Certification, p. 1463
- 10.57.404 Teacher Certification - Class 4 Vocational Education, p. 387, 940
- 10.64.301 and other rules - Transportation - Definitions - Bus Chassis - Bus Body - Special Education Vehicle - LP Gas Motor Fuel Installation - General - Application - Special Equipment, p. 207, 684
- (State Library Commission)
- 10.101.101 Organization of the State Library Agency, p. 1461

FAMILY SERVICES, Department of, Title 11

- I Qualifications of Respite Care Providers, p. 1251
- 11.7.313 Foster Care Payments, p. 589, 1208
- 11.7.601 and other rules - Foster Care Support Services, p. 2080

- 11.12.101 and other rules - Youth Care Facilities, p. 1079, 1506
- 11.12.101 Definition of Youth, p. 591, 1209
- 11.12.101 and other rules - Maternity Homes Licensed as Youth Care Facilities, p. 102, 403
- 11.12.401 Administration of Youth Group Homes, p. 812
- 11.14.102 and other rules - Family and Group Day Care Homes Providing Care Only to Infants - Day Care Facility Registration for Certain In-Home Providers for the Purpose of Receiving State Payment, p. 97, 941
- 11.14.103 and other rules - Day Care Facility Licensing and Registration Requirements, p. 333, 1210
- 11.14.605 State Payment for Day Care Services, p. 279, 541
- 11.18.125 and other rule - Community Homes for Persons with Developmental Disabilities - Community Homes for Persons who are Severely Disabled, p. 2630, 149

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- 12.3.112 Setting of Nonresident Antelope Doe/Pawn Licenses, p. 2201
- 12.3.123 Nonresident Combination License Alternate List, p. 2199
- 12.3.402 License Refunds, p. 105, 951, 1330
- 12.5.301 Yellow Perch as Nongame Species in Need of Management, p. 389, 953
- 12.6.901 Water Safety Regulations - Allowing Electric Motors on Lake Elmo, p. 1963

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-III Health Care Authority - Process for Selection of Regional Health Care Planning Boards, p. 1972
- I-III Health Care Facility Licensing - Licensure Standards for Residential Treatment Facilities, p. 1809
- I-VI Establishing Procedures for Local Water Quality District Program Approval - Procedures for Granting Enforcement Authority to Local Water Quality Districts, p. 2445, 543
- I-XXV Air Quality Bureau - Operating Permits for Certain Stationary Sources of Air Pollution, P. 1817
- I-XXXIV and other rules - Air Quality - Air Quality Permitting - Prevention of Significant Deterioration - Permitting in Nonattainment Areas - Source Testing - Protocol and Procedure - Wood Waste Burners, p. 1264
- 16.8.1107 and other rules - Air Quality Preconstruction Permits, p. 1965
- 16.8.1903 and other rule - Air Quality - Air Quality Operation and Permit Fees, p. 1807

- 16.14.406 Solid and Hazardous Waste - Disposal Fees for Solid Waste, p. 1318, 1931
- 16.14.501 and other rules - Solid Waste - Municipal Solid Waste Management, p. 2083
- 16.14.501 and other rules - Solid Waste Management, p. 814, 1645
- 16.14.502 and other rules - Solid Waste - Municipal Solid Waste Management, p. 2203
- 16.16.803 Subdivisions - Subdivision Review Fees for RV Parks and Campgrounds, p. 283, 542
- 16.24.104 Children's Special Health Services - Eligibility Requirements for the Children's Special Health Services Program, p. 1262, 1933
- 16.28.701 and other rules - School Immunization Requirements, p. 505, 1214
- 16.32.302 Licensing and Certification - Updating References to National Construction Codes, p. 1178, 1658
- 16.38.301 and other rules - Public Health Lab and Chemistry Lab Addressing Laboratory Fees for Food, Consumer Safety and Occupational Health Analysis, p. 1812, 2239
- 16.42.302 and other rules - Occupational and Radiological Health - Asbestos Abatement Requirements - Permit - Accreditation - Course Fees - Remedies for Violations, p. 215, 549
- 16.44.106 and other rules - Solid and Hazardous Waste - Regulation of Hazardous Waste Facilities and Generators - Identification of Hazardous Waste, p. 232, 555
- 16.44.125 and other rules - Hazardous Waste - Facility Permit Fees - Hazardous Waste Management - Attorney's Fees in Court Action Concerning Release of Records, p. 1254, 2009
- 16.44.202 and other rule - Hazardous Waste - Underground Injection Wells, p. 1608, 2126
(Petroleum Tank Release Compensation Board)
- 16.47.311 and other rules - Consultant Labor Classifications, p. 2206

CORRECTIONS AND HUMAN SERVICES, Department of, Title 20

- 20.3.413 and other rules - Certification System for Chemical Dependency Personnel, p. 2633, 151
(Board of Pardons)
- 20.25.101 and other rules - Revision of the Rules of the Board of Pardons, p. 2639, 297

JUSTICE, Department of, Title 23

- I Issuance of Seasonal Commercial Driver's License, p. 1610

- I Affidavit Form for an Indigence Financial Statement, p. 1465
- I-II Montana Peace Officer Standards and Training - Public Safety Communications Officers, p. 519, 1513
- I-II Probation and Parole Officer Certification, p. 521, 1514
- I-VI and other rules - Rules of the Fire Prevention and Investigation Bureau Describing the Revision of Licensure Requirements for Persons Selling, Installing or Servicing Fire Protection Equipment - Other Provisions Dealing with Fire Safety, p. 1855
- 23.5.101 State Adoption of Federal Hazardous Materials Regulations, p. 1469
- 23.12.101 and other rules - Department of Justice Standardization of Criminal History Information Collection - Implementation of an Arrest Numbering System, p. 2246, 556
- 23.14.404 Peace Officers Standards and Training, p. 2450, 559
- 23.16.101 and other rules - Regulating Public Gambling, p. 1974

LABOR AND INDUSTRY, Department of, Title 24

- 24.9.314 and other rule - Document Format, Filing and Service - Exceptions to Proposed Orders, p. 2695, 298, 560
- 24.16.9007 Prevailing Wage Rates - Service Occupations, p. 391, 1331
- 24.29.702G and other rule - Groups of Employers that Self-Insure for Workers' Compensation Purposes, p. 1613, 2240
- 24.29.1402 Liability for Workers for Medical Expenses for Workers' Compensation Purposes - Payment of Medical Claims, p. 1870
- 24.29.1403 and other rules - Medical Services for Workers' Compensation - Selection of Physician - Physicians Reports - Relative Value Fee Schedule - Treatment and Reporting, p. 107, 404
- 24.29.1409 Travel Expense Reimbursements for Workers' Compensation Purposes, p. 1872
- 24.29.1416 Applicability of Rules and Statutes in Workers' Compensation Matters - Applicability of Date of Injury, Date of Service, p. 1876
- 24.29.1504 and other rules - Selection of Treating Physician for Workers' Compensation Purposes, p. 1878
- 24.29.1531 and other rules - Chiropractic Services and Fees in Workers' Compensation Matters, p. 1089, 1659

STATE LANDS, Department of, Title 26

- I Assessment of Fire Protection Fees for Private Lands Under Direct State Fire Protection, p. 1881

- 26.3.180 and other rules - Recreational Use of State Lands - Posting of State Lands to Prevent Trespass, p. 1471

LIVESTOCK, Department of, Title 32

- 32.2.401 Fees for Slaughterhouse, Meat Packing House or Meat Depot License, p. 1180

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Reject, Modify or Condition Permit Applications in the Sharrott Creek Basin, p. 1101, 1515
I-VII Requiring Measuring Devices on Watercourses Identified as Chronically Dewatered, p. 2454, 561, 1668
36.12.101 and other rules - Definitions - Application and Special Fees - Issuance of Interim Permits - Testing and Monitoring, p. 593, 1335A
36.12.202 and other rules - Water Right Contested Case Hearings, p. 2086

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-II Electric Utility Line Maintenance - Electric Utility Nominal Voltage and Variance Range, p. 523, 1672
38.5.102 and other rules - Minimum Filing Requirements - Procedures for Class Cost of Service - Rate Design, p. 596, 1669
38.5.2601 and other rules - Telecommunications Services and General Utility Tariff - Price List Filing Requirements, p. 2699, 1336
38.5.3345 Change in Customer's Interexchange Carrier - Deferring of Implementation Until September 1, 1993, p. 285

REVENUE, Department of, Title 42

- I Tax Information Provided to the Department of Revenue, p. 1192
I-II Exemptions Involving Ownership and Use Tests for Property, p. 2212
42.2.602 and other rules - Taxpayer Appeal Rules, p. 247, 570
42.11.211 and other rules - Liquor Division, p. 2492, 158, 434
42.11.301 Opening a New Liquor Store, p. 1475
42.12.103 and other rules - Liquor Licenses and Permits, p. 2003
42.15.101 and other rules - Change of Domicile, p. 244, 571
42.15.121 and other rule - Taxation of Indian Income, p. 2719, 242, 1674
42.17.105 Computation of Withholding, p. 525, 1111
42.17.111 Withholding Taxes Which Apply to Indians, p. 1995

- 42.18.105 and other rules - Property Reappraisal for Taxable Property in Montana, p. 1182, 2127
- 42.22.101 and other rules - Centrally Assessed Companies, p. 131, 435
- 42.26.101 and other rules - Corporation License Tax Multistate Activities, p. 250, 572
- 42.31.102 and other rules - Cigarettes, p. 1997
- 42.31.402 Telephones, p. 2107
- 42.35.211 and other rules - Inheritance Tax, p. 2109

SECRETARY OF STATE, Title 44

- I and other rule - Fees for Limited Liability Companies - Fees Charged for Priority Handling of Documents, p. 1885, 2248
- I-IV Commissioning of Notary Publics, p. 1883, 2250 (Commissioner of Political Practices)
- 44.10.521 Mass Collections at Fund-Raising Events - Itemized Account of Proceeds, Reporting, p. 2216

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Specified Low Income Medicare Beneficiaries, p. 1103, 1542
- I Statistical Sampling Audits, p. 2272, 441
- I-VIII and other rules - Individual Habilitation Plans, p. 381, 1353
- 46.8.1203 and other rules - Developmental Disabilities Aversive Procedures, p. 890, 1356
- 46.10.318 and other rule - Emergency Assistance to Needy Families with Dependent Children, p. 1479
- 46.10.403 AFDC Assistance Standards, p. 908, 1360
- 46.10.406 AFDC Resources, p. 135, 345
- 46.10.410 At-Risk Child Care Services, p. 2114
- 46.10.505 and other rule - Specially Treated Income for AFDC, p. 918, 1517
- 46.10.807 and other rules - AFDC JOBS Program, p. 638, 1361
- 46.12.503 and other rules - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 607, 1520
- 46.12.507 and other rules - Medicaid Coverage and Reimbursement of Ambulance Services, p. 2218
- 46.12.516 Medicaid Coverage of Intermediate Level Therapeutic Youth Group Home Treatment, p. 1106, 1540
- 46.12.555 and other rules - Medicaid Personal Care Services, p. 922, 1363
- 46.12.583 and other rule - Organ Transplantation, p. 604, 1367
- 46.12.590 and other rules - Inpatient Psychiatric Services, p. 646, 1369
- 46.12.602 and other rule - Medicaid Dental Services, p. 1888
- 46.12.806 Durable Medical Equipment - Oxygen, p. 531, 1112
- 46.12.1222 and other rules - Medicaid Nursing Facility Reimbursement, p. 662, 1385

- 46.12.1226 and other rule - Nursing Facility Reimbursement,
p. 8, 685
- 46.12.1928 Targeted Case Management for Adults, p. 920, 1397
- 46.12.1930 and other rules - Targeted Case Management for Adults
with Severe and Disabling Mental Illness and Youth
with Severe Emotional Disturbance, p. 1901, 2251
- 46.12.3002 Medically Needy, p. 913, 1398
- 46.12.4002 and other rules - AFDC-Related Institutionalized
Individuals, p. 905, 1399
- 46.13.203 and other rules - Low Income Energy Assistance
Program (LIEAP), p. 1618
- 46.13.301 and other rules - Low Income Energy and
Weatherization Assistance Programs, p. 527, 1113
- 46.25.101 and other rules - General Relief Assistance and
General Relief Medical, p. 1195, 1678
- 46.25.725 Income for General Relief Assistance, p. 139, 346