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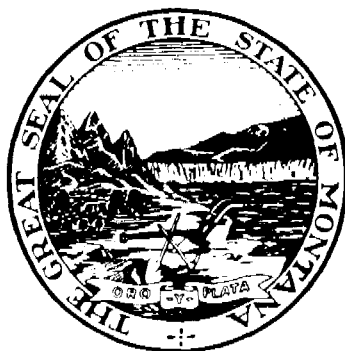
RESERVE

APR 16 1993
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

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APR 16 1993
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of Rules 2.44.201,)	HEARING ON PROPOSED
2.44.401, 2.44.503, 2.44.505,)	AMENDMENT OF RULES
2.44.506, 2.44.519, 2.44.520 and)	RELATING TO THE
2.44.521 for the purpose of)	T E A C H E R S '
adopting the current model)	RETIREMENT SYSTEM
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, and)	
implementing amendments to SB 226)	
adopted by the first 1992 special)	
legislative session relating to the)	
Teachers' Retirement System)	

TO: All Interested Persons.

1. On May 11, 1993 at 10 A.M. a public hearing will be held in the office of the Teachers' Retirement System, at 1500 Sixth Avenue, Helena, Montana, to consider the adoption of amendments of rules 2.44.201, 2.44.401, 2.44.503, 2.44.505, 2.44.506, 2.44.519, 2.44.520 and 2.44.521.

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

2.44.201 MODEL PROCEDURAL RULE (1) To the extent applicable to the operations of the teachers' retirement board, the board has herein adopted and incorporated the attorney general's model procedural rules one through 28 by reference to such rules as stated in ARM 1.3.101 through 1.3.234, as amended as of June 12, 1992.

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: The attorney general's model rules have been amended several times since TRS first adopted them by reference in 1972. This amendment would simply update TRS's rules to include all amendments made to the model rules since that date.

2.44.401 CALCULATING SERVICE CREDITS (1) will remain the same

(2) A member employed part-time during the school term shall receive service credit based on the total full-time equivalent verified by his employer divided by the number of months reported. For the purpose of this subsection, ~~seven (7)~~ eight (8) hours shall be considered one (1) day.

(3) will remain the same

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: A full day is generally considered to be 8 hours for most employers covered under the teachers' retirement system. If less than 8 hours are used part-time service credit will be overstated.

2.44.503 ELIGIBILITY UNDER FULL SCHOOL-YEAR RETIREMENTS

(1) If a member completes and receives credit for a full school term, and is otherwise eligible, he will be first eligible for retirement benefits on the 1st of July the month following the ~~school term~~ contract termination date.

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: School district and university member contracts can cover a school term terminating in either May or June. This amendment will provide for the payment of retirement benefits effective the 1st of the month following termination.

2.44.505 ELIGIBILITY FOR SURVIVOR BENEFITS (1) will remain the same

(2) A birth certificate or some evidence of his/her birth date is required for each beneficiary eligible to receive the survivor benefits ~~of \$100.00 per month~~.

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: Monthly benefits, for which evidence of date of birth are required, are available to both the member's nominated beneficiary and any minor children under age 18. The minor child benefit was increased from \$100.00 to \$200.00 per month in 1989 and rule 2.44.505 should be corrected.

2.44.506 BENEFIT PAYMENTS (1) will remain the same

(2) Monthly benefits will be paid based upon information provided by the member and estimates prepared provided by the teachers' retirement system until final salary information and contributions are received.

(3) Adjustments will be retroactive to the retirement effective date.

(3) At the time application for retirement benefits is made, each applicant must submit a copy of their final year's contract and any previous contract(s) as may be requested. If a member does not have a written contract, a statement from their employer verifying their daily or hourly rate of pay, their full time equivalent and the number of days they were employed in the fiscal year will be accepted.

(4) will remain the same

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: To clarify that the initial monthly benefit will be based upon data provided by the applicant and the estimates prepared by staff and that adjustments will be made retroactive to the retirement effective date after final reports and contributions are received.

2.44.519 POST RETIREMENT ADJUSTMENT (1) Post-retirement adjustments will be made in each year the amount in the reserve

fund is adequate for this purpose as provided in 19-4-712(3).

(2) In accordance with 19-4-712, MCA, funding available for post-retirement adjustments is determined at the end of each fiscal year, by subtracting from the total investment income, the actuarial amount necessary to fund the retirement system and multiplying the remainder by the portion of the retirement fund balance representing retired members.

(a) "Total Investment Income" earned on a pension trust fund in a fiscal year is the net investment yield realized by the pension trust fund during that fiscal year. Unrealized gains or losses, such as unrealized appreciation or depreciation in market value, shall not be considered when calculating total investment income.

(b) The "actuarial amount required to fund the retirement system" is the total investment income, after payment of administrative and investment expenses, sufficient to attain the actuarially required rate of return for the year(s) since the last postretirement adjustment. The actuarially required rate is the rate recommended by the consulting actuary and adopted and published by the Board pursuant to 2.44.306, ARM.

(c) The "portion of the retirement fund balance representing retired members" is a percentage equal to the present value of accrued benefits for retirees divided by the present value of accrued benefits for all members.

(4) is renumbered to become (3).

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: To clarify the implementation of the statutes governing the funding for post-retirement adjustments. The amendments are necessary to provide a procedure for calculating the funding for post-retirement adjustments in future years to insure that the actuarially required amount is realized before post-retirement adjustments are paid.

2.44.520 CALCULATION OF ANNUAL BENEFIT ADJUSTMENT

(1) will remain the same

(2) will remain the same

(3) The annual adjustment shall be made to each eligible recipient in a single payment which will be combined with the regular May March benefit. (May March benefits are mailed on the last business day of May.)

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

Rationale: To comply with the provisions of SB 1 as adopted by the first 1992 special session.

2.44.521 ELIGIBILITY FOR ANNUAL BENEFIT ADJUSTMENT

(1) will remain the same

(2) will remain the same

(3) On or before March-4 January 15, certification forms will be mailed to those retirees who must provide certification of residency. The certification forms will be mailed to the current information or home address on file with the teachers' retirement system. Recipients not returning satisfactory certification of Montana residency by April-1 March 1, will be considered non-residents for the purpose of determining

eligibility for the annual adjustment to be made during May of that year.

AUTH: 19-4-201, MCA IMP: Title 19, Section 4, MCA

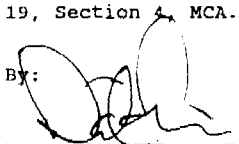
Rationale: To comply with the provisions of SB 1 as adopted by the first 1992 special session.


3. Interested parties may submit their data, views, or arguments, either orally or in writing, at the public hearing. Written views, comments or data may also be submitted to David L. Senn, Executive Director, Teachers' Retirement System, 1500 Sixth Avenue, Helena, MT 59620-0139, no later than May 14, 1993.

4. Brenda Nordlund has been designated to preside over and conduct the hearing.

5. The authority of the Board to amend the rules is based on section 19-4-201, MCA, and the rules implement Title 19, Section 4, MCA.

By:


Dal Smilie, Chief Legal Counsel
Rules Reviewer


David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State March 22, 1993

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

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

TO: All Interested Persons.

1. On May 14, 1993 at 9:00 am in the Board Meeting Room of the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.43.418 pertaining to the accrual and payment of interest when members of the PERS opt to qualify previous periods of service as an elected official into the retirement system.

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

2.43.418 ELECTED OFFICIALS (1) Any member who holds ~~his~~ a covered position by virtue of election to a public office shall accrue service years and receive service credits over the entire term for which he ~~the member~~ holds elected office and receives a salary for ~~his~~ services. Per diem or other such benefits will not be considered salary.

(2) A member who is appointed to an elective office to fill an unexpired term will accrue service years and receive service credits for the fractional portion of such term as he ~~the member~~ actually serves.

(3) An elected official whose statutory term of office ends prior to the 15th of a month may elect to terminate retirement system membership effective on the last day of the month preceding the end of ~~his~~ ~~the~~ term of office.

(4) A member who elects to qualify previous periods of service as an elected official as membership service in the PERS shall qualify that service in the manner prescribed in 19-3-505, MCA, except the cost to qualify this service will not include calculations of interest accumulations on employee and employer contributions prior to July 1, 1993.

AUTH: 19-3-304, 19-5-201 and 19-7-201 MCA.

IMP: Title 19, Ch 3, part 5 and Chs. 5 and 7, part 3 MCA;

3. The rule is proposed to be amended in order to clarify that elected officials must qualify previous periods of service into the retirement system in the same manner as any other member of the PERS. Additionally, wording is changed in order to make the rule gender neutral.

Although not specified in rule or statute, past administrative procedure has not included the calculation of interest due on previous periods of elected service. An internal legal opinion

has advised the Board that past procedure is contraindicated by both state statute and federal nondiscrimination requirements found in the IRS regulations for qualified pension plans.


The amendments are necessary to provide notice to members that interest will be due and payable on periods of previous service in an elected office and to provide a "starting date" for the accrual and payment of the interest.


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 no later than May 14, 1993 to:

Mark Cress, Administrator
Public Employees' Retirement Division
1712 Ninth Avenue,
Helena, Montana 59620

5. Kelly Jenkins, legal counsel for the Department of Administration, has been designated to preside over and conduct the hearing.

By:


Terry Telchrow, President
Public Employees' Retirement Board


Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on April 5, 1993.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED ADOPTION
adoption of a new rule	)	OF NEW RULE I UNPROFESSIONAL
pertaining to the practice of	)	CONDUCT
acupuncture	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 15, 1993, the Board of Medical Examiners proposes to adopt the above-stated rule.

2. The proposed new rule will read as follows:

"I. UNPROFESSIONAL CONDUCT The term "unprofessional conduct" as used in section 37-13-311, MCA, includes, but is not limited to the following:

(1) Commission of an act of sexual abuse, misconduct, or exploitation. Each of the following acts constitutes sexual abuse, misconduct or exploitation:

(a) physical or verbal sexual contact or intercourse during the course of the professional relationship, whether in or out of the practitioner's place of business;

(b) failure to maintain appropriate boundaries even where the patient is perceived as seductive;

(c) failure to provide the patient with an opportunity to undress and dress in private;

(d) failure to provide the patient with the opportunity to wear underwear or smock during treatment;

(e) failure to fully drape all parts of the patient's body except that being treated; failure to obtain informed verbal consent before undraping or treating the patient's breasts, buttocks, abdomen or genitals;

(f) use of inappropriate parts of the practitioner's body to brace the patient;

(g) palpation by other than the practitioner's hands; palpation beyond that which is necessary to accomplish a competent examination or treatment;

(h) sexual repartee, innuendo, jokes or flirtation;

(i) sexual comments about the patient's person or clothing;

(j) inquiry into the patient's sexual history or behavior beyond that which is necessary for a competent examination, diagnosis or treatment. The practitioner shall not be unnecessarily intrusive; the practitioner shall not verbalize any value judgment concerning the patient's sexual history or behavior;

(k) attempting to diagnose or treat a sexual issue beyond the practitioner's scope of training or practice;

(l) failure to refer a case of suspected sexual abuse for more specialized professional help.

- (2) Failure to obtain informed consent for treatment. In order to obtain informed consent, the practitioner must give the patient at least:
- (a) a description of the proposed treatment, including:
 - (i) the body part to be treated,
 - (ii) the type of treatment,
 - (iii) the possible sensations the patient might feel,
 - (iv) the duration of treatment, and
 - (v) the possible outcome of the treatment.
 - (b) the practitioner's reason or rationale for the treatment proposed;
 - (c) the choice to accept or reject the proposed treatment, or any part of it, before or during the treatment.
- (3) Failure to maintain appropriate patient charts in the English language."

Auth: Sec. 37-1-134, 37-13-201, MCA; IMP, Sec. 37-13-201, 37-13-311, 37-13-312, MCA

REASON: The proposed new rule will establish appropriate boundaries for acupuncturist/patient interaction; establish the elements of informed consent for acupuncture treatment; and establish the requirement that acupuncturists keep written records, in English, of their professional services to patients. The proposed rule will give clear notice to practitioners of conduct that will be considered unprofessional, and may subject their licenses to disciplinary action.

3. Interested persons may submit their data, views or arguments concerning the proposed adoption, in writing, to the Board of Medical Examiners, 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., May 13, 1993.

4. If a person who is directly affected by the proposed adoption 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 Medical Examiners, 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., May 13, 1993.

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

persons directly affected has been determined to be 7 based on the 68 licensees in Montana.

BOARD OF MEDICAL EXAMINERS
PETER L. BURLEIGH, M.D.,
PRESIDENT

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, April 5, 1993.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to definitions and experience) 8.57.401 DEFINITIONS AND
requirements) 8.57.405 EXPERIENCE
) REQUIREMENTS

TO: All Interested Persons:

1. On May 13, 1993, at 10:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau conference room, 111 No. Jackson, Helena, Montana, to consider the proposed amendments of rules pertaining to the practice of real estate appraisal.

2. The hearing will be held in response to a petition submitted by James R. Campbell, Big Sky Appraisal, Helena, Montana.

3. The rule as proposed to be amended by James R. Campbell provides as follows: (new matter underlined, deleted matter interlined)

"8.57.405 EXPERIENCE REQUIREMENTS (1) will remain the same.

(2) A certified residential appraiser must present evidence of 2000 hours of appraisal experience spread of [sic] a minimum of 24 months.

(3) A certified general appraiser must present evidence of 2000 hours of appraisal experience, spread over a minimum of 24 months, 1000 hours of which must be experience claimed in the appraisal of non-residential real estate.

(4) will remain the same.

Auth: Sec. 37-54-105, MCA; IMP: Sec. 37-54-105, 37-54-202, MCA."

REASON: The petition's rationale for the proposed change is to adopt rules pertaining to real estate appraiser experience that substantially comply with, but are not more stringent than, those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as stated in 37-54-202, MCA.

4. The Board of Real Estate Appraisers proposes to amend ARM 8.57.401 as follows: (new matter underlined, deleted matter interlined)

"8.57.401 DEFINITIONS (1) will remain the same.

(2) "Year of Appraisal experience" means:

(a) at least 1000 2000 hours of appraisal activity distributed over a twelve (12) month period. Maximum experience awarded for a twelve month year is 1000 hours distributed over any amount of time, for a licensed appraiser level;

(b) at least 2000 hours of appraisal activity distributed over a 24 month period of time, for a certified residential or certified general appraiser level.

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

Auth: Sec. 37-54-105, MCA: IMP Sec. 37-54-105, MCA

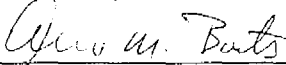
REASON: The Board's proposed amendment will achieve the same result as Petitioner's proposal, and will also bring the experience requirement in compliance with Title XI of FIRREA. The Board's proposal will amend the definitional rule, however, so that the experience definition will apply throughout, and is a more appropriate amendment to achieve the same result.

5. Persons known to have possible interest in this proposal are all members of the State of Montana, House of Representatives, Business and Economic Development Committee; all licensed, certified, and general real estate appraisers; all financial institutions in the state; and all persons who have had or will have any federally related real estate transactions since the effective date of FIRREA.

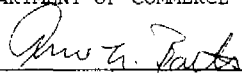
6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Real Estate Appraisers, 111 North Jackson, Helena, Montana, 59620 to be received no later than 5:00 p.m. May 13, 1993.

7. Carol Grell, attorney, has been designated to preside over and conduct the hearing.

BOARD OF REAL ESTATE APPRAISERS
PATRICK ASAY, CHAIRMAN



ANNIE BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE BARTOS, RULE REVIEWER

Certified to the Secretary of State April 5, 1993.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 15, 1993, the Board of Housing proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.111.405 INCOME LIMITS AND LOAN AMOUNTS (1) The annual income limits to be eligible for a reverse annuity mortgage loan shall not exceed the following:

(a) one person household, \$9,500.00	\$10,500.00;
(b) two person household, \$10,900.00	\$13,800.00;
(c) three person household, \$12,250.00	\$15,500.00;

(2) will remain the same."

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-104, 90-6-106, MCA

REASON: The Board is proposing amendments to ARM 8.111.405 to reflect the current (as of February 1993) increase in poverty calculations for household sizes. The current calculations for eligibility figures are one hundred and fifty percent (150%) of poverty figures.

"8.111.409 CASH ADVANCES (1) As part of the loan amount, the board may advance at closing either to the borrower, an amount not to exceed \$2,500.00 to allow the borrower to satisfy any liens on the property or make emergency repairs to the property, and in addition, an amount not to exceed ~~\$600.00~~ \$800.00 to cover closing costs for items such as appraisals, title policies, recording of documents, and closing costs. Such amounts so advanced shall be added to the initial loan balance. To receive a cash advance, the borrower must submit a request in writing on forms supplied by the board."

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-104, 90-6-106, MCA

REASON: The closing costs for the program have not changed since the beginning of the program. However, actual costs incurred at closing have increased approximately \$200.00 and seniors are not able to pick up the additional \$200.00 in costs of closing.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Housing, 2001 Eleventh Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., May 13, 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 Housing, 2001 Eleventh Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., May 13, 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.

BOARD OF HOUSING
TOM MATHER, CHAIRMAN

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, April 5, 1993.

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

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

To: All Interested Persons

1. On May 6, 1993, at 1:30 p.m., the department will hold a public hearing in Room C209, side 2, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules and the repeal of rule 16.28.705.

2. The rule to be repealed is printed on page 16-1285 of the Administrative Rules of Montana.

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

3. The proposed amendments would update immunization requirements to reflect current nationally-recognized immunization standards and add immunization requirements for entry to preschools and post-secondary schools.

4. The rules, as proposed to be adopted and amended, appear as follows (new material proposed for existing rules is underlined; material to be deleted from those rules is interlined):

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

(1) "Adequate documentation" means that documentation required by ARM 16.28.703, 16.28.704, or 16.28.705, depending upon the school year in question.

~~(2) "Department" means the department of health and environmental sciences.~~

~~(3)(2)~~ "Commencing attendance for the first time" means the first occasion a student attends any Montana school, and does not include transfers from one Montana school to another.

(3) "Department" means the department of health and environmental sciences.

(4) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

(5) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTap.

(6) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

(7) "Laboratory confirmation of measles disease" means a copy of a laboratory test result from the department's public health laboratory which documents that a person has had measles

and does not include either the results of immunity testing or a physician's diagnosis that the person has had measles.

(8) "MMR vaccine" means a vaccine containing a combination of measles, mumps, and rubella vaccine.

(4) "Montana immunization initiative" means the actions taken by state and local public health officers between October 1, 1977, and October 1, 1979, to attempt to assess the immunization status of all Montana school children and to fully immunize up to 90% of children under age 15 against the immunizable childhood diseases, in conjunction with the nationwide immunization project stating these goals and initiated by the federal department of health, education and welfare in April, 1977.

(5)(9) "Official parent-maintained immunization record" means a standard document distributed by a the department or by another state's principal health or education agency to record the immunization status of a child as part of that state's immunization maintenance system and designed to be retained and maintained by the parents of that child.

(6)(10) "Physician" is a person licensed to practice medicine in any jurisdiction in the United States or Canada.

(11) "Polio vaccine" means a trivalent polio vaccine, known by the abbreviations OPV, EIPV, or IPV.

(12) "Pupil" means a person who receives instruction in classes at a school, including a foreign exchange student, regardless of the length of attendance or whether credit is received.

(7) "School" means an institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12.

(13) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids and intended for administration to adults and to children seven years of age and older.

(8)(14) "Transfer" means to change school attendance, at any time, from one public school district to another, between private schools, or between public and private schools, and includes a change which occurs between the end of one school year and commencement of the next.

(9)(15) "Vaccine" means:

(a) if administered in the United States, an immunizing agent approved by the Bureau of Biologics, Food and Drug Administration, U.S. Public Health Service; or

(b) if administered outside of the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as noted in ARM 16.28.704.

AUTH: 20-5-407, MCA; IMP: 20-5-402, MCA

RULE I. GENERAL IMMUNIZATION REQUIREMENTS FOR ALL SCHOOLS

(1) Administration of a vaccine is only acceptable if it is done in accordance with the standards and schedules for vaccine use adopted by the advisory committee on immunization practices (ACIP) of the U.S. public health service or the American academy of pediatrics (AAP).

(2) Half doses of vaccine are unacceptable for purposes of meeting the school immunization requirements of these rules.

(3) Immunity testing in lieu of vaccine use may not be used to meet the requirements of these rules, except as specifically allowed in [Rule II(1)(b)(ii)] and [Rule III(4)].

(4) Only MMR (combined measles, mumps, and rubella) vaccine is acceptable for doses given after [the effective date of these amendments], to meet the requirements of these rules for vaccination against either measles, mumps, or rubella.

AUTH: 20-5-407, MCA; IMP: 20-5-403, MCA.

16.28.702. REQUIREMENTS FOR UNCONDITIONAL ENROLLMENT
ATTENDANCE AT A SCHOOL OFFERING ANY PORTION OF GRADES KINDER-
GARTEN THROUGH 12

(1) ~~In order to allow a person to unconditionally attend a school, other than a preschool or a post-secondary school, may not allow as a pupil to attend that school without restriction unless;~~ that school must receive adequate documentation that the following immunizations were performed on the schedule and with the agents noted below:

(a) ~~DTP, DT, or Td vaccine~~ Agents immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(i) ~~For a child aged less than 7 years of age must be administered, four or more doses of diphtheria and tetanus toxoids and pertussis DTP vaccine (DTP) and/or diphtheria/tetanus (DT) toxoids must be administered, at least one dose of which must be given after the fourth birthday unless (iii) below applies;~~

(ii) ~~For a person 7 years old or older who has not completed the above requirement in (i) above must receive additional doses of Td vaccine to reach a minimum of three doses of 7 any combination of three doses of either DTP, DT, or Td, is acceptable, at least one dose of which must be given after the fourth birthday unless (iii) below applies [note (iii) below];~~

(iii) ~~A person commencing attendance for the first time prior to August 1, 1980, need not have received a dose after his fourth birthday;~~

(iv) ~~(iii) Neither Pertussis nor DTP (containing pertussis vaccine) vaccine is not required or recommended for a person seven years of age or older.~~

(iv) DT vaccine administered to children less than seven years of age is acceptable for purposes of this chapter only if accompanied by a medical exemption pursuant to ARM 16.28.707 that exempts the child from pertussis vaccination.

(b) ~~Polio vaccine must be administered to a child less than 18 years of age in as three or more doses of live, oral, trivalent poliomyelitis vaccine, at least one dose of which must be given after the fourth birthday unless the person receiving the vaccine commenced attendance for the first time prior to August 1, 1980. Polio vaccination is not required or recommended for persons 18 years of age and older for attendance in a Montana school.~~

~~(c) Measles vaccine must be administered as one dose of live, attenuated measles (rubeola) vaccine, given after the~~

first birthday, with the exception that a person certified by a physician as having had measles disease is not required to receive measles vaccine. A person receiving measles vaccine prior to one year of age or prior to 1968 must be revaccinated, unless, in the latter case, it can be documented that the vaccine, if administered between 1966 and 1968, was a live virus vaccine.

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

(i) A person entering a Montana school for the first time on or after [the effective date of these amendments], except a person described in subsection (iii) below, must either be administered one dose of measles vaccine at or after 12 months of age or produce laboratory confirmation that s/he has had measles disease.

(ii) A person who entered a Montana school before [the effective date of these amendments], with the exception of a person described in subsection (iii) below, must either:

(A) have been administered one dose of measles vaccine at or after 12 months of age; or

(B) produce a physician's certification that s/he has had measles disease and the date of the measles disease diagnosis.

(iii) A person who is entering middle school or junior high; a student entering the sixth grade; and a person who reaches age 13 must either:

(A) have been administered two doses of measles vaccine at or after 12 months of age separated by at least one month between doses;

(B) produce laboratory confirmation of measles disease;
or

(C) if the person was attending a Montana school prior to [the effective date of these amendments], have on file at the school documentation of a physician's diagnosis that s/he has had measles disease; no additional documentation of measles immunity is required in this case.

(iv) By the beginning of the 1994-1995 school year and each school year thereafter, pupils in grades and of ages exceeding those noted in (iii) above must have been administered two doses of measles vaccine at or after 12 months of age separated by at least one month between doses, unless publically-funded MMR vaccine is not available due to supply deficiencies, in which case those pupils will be allowed to attend until publically-funded vaccine is available to them.

(d) One dose of live Rubella vaccine must be administered as one dose of live rubella vaccine given after the first birthday, with the exception that a female who has reached age 12 is exempted from the rubella vaccine requirement at or after 12 months of age.

(e) One dose of live mumps vaccine must be administered at or after 12 months of age.

(2) In order to allow a person to unconditionally attend a school, other than a preschool or post-secondary school, may allow as a pupil to attend the school without restriction if that school must receives adequate documentation of the

following dates for each disease vaccine noted:

(a) If a person attended school prior to [the effective date of these amendments], or is transferring to a Montana school from out-of-state, the following documentation must be provided:

(i) For DTP, DT, Td, and polio vaccines, the month and year the last dose was administered;

(ii) For rubella vaccine, the month and year of administration if the date of vaccination was at least 13 months after the birthdate, or the month, day, and year of administration if vaccination took place during the twelfth month after birth;

(iii) For measles vaccine, the month and year for the first dose of vaccine if the date of vaccination was at least 13 months after the birthdate (or the month, day, and year of administration if vaccination took place during the twelfth month after birth), and the month, day and year for the second dose.

(a)(b) If a person did not attend school prior to [the effective date of this amendment], documentation must be provided of For DTP, DT, Td, and polio, the month, day, and year the last each dose of all required vaccines was administered, unless the person commenced attendance prior to August 1, 1980, in which case only the year is necessary.

(b) For rubella the month and year administered, unless the person commenced attendance prior to August 1, 1980, in which case only the year is necessary.

(c) For measles (rubeola) the month, day, and year the vaccination was administered, or if measles disease was contracted, the month, day, and year of diagnosis, except if the person commenced attendance prior to August 1, 1980, only the month and year are necessary.

(3) A person who transfers to a Montana school has 30 calendar days after commencement of attendance at the school to which he or she transfers to produce the documentation of immunization status required by this rule.

(4) If a person transfers into a Montana school from out-of-state, he or she must provide the same documentation as required above for a person who commenced attendance prior to August 1, 1980.

AUTH: 20-5-407, MCA; IMP: 20-5-403, 20-5-405, 20-5-406, MCA

RULE II REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A POST-SECONDARY SCHOOL (1) Before a person may enter a Montana post-secondary school as a pupil for the first time on or after [the effective date of this rule], the person must provide the school with the proof of measles (rubeola) immunity required by (a) below, as well as the proof of rubella immunity required by (b) below, unless the person was born before January 1, 1957, in which case (c) applies:

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

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

(ii) The documentation required by ARM 16.28.704 of the

fact that the person was administered two doses of live measles vaccine separated by at least one month, both of which were administered at or after 12 months of age and after the year 1967, along with the month, day, and year each dose was administered.

(b) Any of the following documentation is acceptable proof of rubella immunity (a physician's diagnosis of rubella disease is not acceptable):

(i) The documentation required by ARM 16.28.704 of the fact that the person was administered one dose of live rubella vaccine, administered at or after 12 months of age and after the year 1969, along with the month, day, and year the dose was administered; or

(ii) Either a copy of a laboratory report or test results signed by a physician that indicate the person is immune to rubella, as well as the type of test conducted and the test date.

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

(A) prove his/her age to the school by providing it with a driver's license, school transcript, birth certificate, or passport, so long as the date of birth is indicated on the document in question; and

(B) in the event of an outbreak of rubella, provide the documentation required by (b) above or be excluded from classes and other school-sponsored activities until the local health officer indicates to the school that the outbreak is over.

(ii) The school must maintain a list of students who were born prior to 1957 and provide the school only with the documentation specified in (i)(A) above; in the event of outbreak of rubella, the school must exclude those students if the conditions described in (i)(B) above apply.

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

AUTH: 20-5-407, MCA; IMP: 20-5-403, 20-5-406, MCA

RULE III REQUIREMENTS FOR ATTENDANCE AT A PRESCHOOL

(1) Before a child may attend a Montana preschool, that school must be provided with the documentation required by (2) below that the child has been immunized as required below for his/her age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B (Hib), unless s/he qualifies for conditional attendance in accordance with (7) below:

Total Immunizations Required, By Age

<u>Age at Entry</u>	<u>Number Doses - Vaccine Type</u>
under 2 months old	no vaccinations required

by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine, administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
by 19 months of age	3 doses of polio vaccine 4 doses of DTP vaccine 1 dose MMR vaccine, administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age

(*) varies depending on vaccine type used.

(2) If the child is at least 12 months old but less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.

(3) Documentation of each required vaccination must include the date of birth and the month, day, and year of each vaccination.

(4) In order to continue attending a preschool, a child must continue to be immunized on the schedule described in (1) above and must be immediately excluded from attendance if s/he is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the preschool a record of an appropriate exemption or a conditional enrollment form which indicates that no vaccine dose is past due [see (7) below].

(5) Hib vaccine is not required or recommended for children five years of age and older.

(6) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age, and a child who received a dose prior to 12 months of age must be revaccinated before attending a preschool.

(7) A child may initially conditionally attend a preschool if:

(a) s/he has received at least one dose of each of the vaccines required for his/her age;

(b) a department-prescribed form documenting the child's conditional immunization status is on file at the preschool, attached to the department's Montana certificate of immunization (HES-101); and

(c) s/he is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

AUTH: 20-5-407, MCA; IMP: 20-5-403, 20-5-406, MCA

16.28.703 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE FOR THE FIRST TIME PRIOR TO AUGUST 1, 1980, AT A SCHOOL OFFERING ANY PORTION OF GRADES KINDERGARTEN THROUGH 12 (1) ~~Immunization data must be kept on if the documentation has already been provided on either the department's cumulative health record form (SDH & ES-1, Revised 2/78; due to typographical error, the form may be labeled SDH & EX-1), the department's Montana certificate of immunization form (HES 101), or an equivalent form documenting the same immunization information, that record will be acceptable, but only if the immunization criteria stated in ARM 16.28.702 are met.~~

(2) If the documentation has not been provided to the school on one of the forms referred to in subsection (1) above, immunization information must be transferred onto ~~one of these forms the department's Montana certificate of immunization form (HES 101)~~ from one or more of the types of documentation listed below, and the ~~form~~ certificate must be signed and dated by the person performing the transfer, ~~by November 15, 1980, or, if attendance commences later than November 1, 1980, within 15 days after it commences of the immunization information;~~

(a) an official school medical record from any school in the United States;

(b) a record from any public health department in the United States, signed or stamped by a public health officer or nurse;

(c) a certificate signed by a physician;

(d) any parent-maintained immunization record, if information has been recorded and signed or stamped by a physician, physician's designee, local health officer, or that officer's designee;

(e) any state's official parent-maintained immunization record if the record includes the following:

(i) the child's legal name, birthdate, sex, and vaccination date (month, day, and year) by vaccine type;

(ii) for each administration of vaccine, a signature or stamp signed by a the physician, ~~physician's designee, local health or officer of a health department who administered the vaccine, or that officer's designee of the physician or officer;~~ and

(iii) the date the next dose of vaccine is due;

(f) the international certificates of vaccination approved by the World Health Organization;

(g) for measles (rubeola) only, a letter or statement signed by a physician indicating that the person had measles (rubeola) disease, with the date of diagnosis indicated;

~~(h) for a pupil 7 years of age or older, for the 1980-1981 school year only, immunization assessment data collected during the Montana immunization initiative. This information, if and when entered into an official school immunization~~

~~record, or certificate of immunization form, is adequate evidence of immunization throughout the remaining years of school attendance of such pupil.~~

~~(h) for situations noted in this chapter where laboratory test results are accepted, a certified copy of the laboratory test results form or a signed statement from a physician.~~

~~(3) Each time additional immunization information is provided to the school, the Montana certificate of immunization form must be signed and dated by the person entering the new information onto the form.~~

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

16.28.704. DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE FOR THE FIRST TIME AFTER JULY 31, 1980, DURING THE 1980-1981 SCHOOL YEAR

~~(1) With the exception of post-secondary schools, a school must keep immunization data must be kept on the department's Montana certificate of immunization form (HES 101), and signed by a physician, physician's designee, local health officer, or that officer's designees, if the data is submitted to the school on that form.~~

~~(2) With the exception of post-secondary schools, if the documentation has not been provided to the school on a Montana certificate of immunization form:~~

~~(a) immunization data must be transferred onto that form the Montana certificate of immunization form from one or more of the other types of documentation listed in subsection (3) below by November 15, 1980, or if attendance commences later than November 1, 1980, within 15 days after it commences, and~~

~~(b) the Montana certificate of immunization must be signed and dated by the person school official transferring the information, rather than a physician, physician's designee, local health officer, or that officer's designee each time additional immunization information is documented.~~

~~(3) Immunization data may only be transferred onto the Montana certificate of immunization form from one or more of the types of documentation listed below:~~

~~(a) an official school medical record from any school in the United States;~~

~~(b) the department's cumulative health record;~~

~~(c) a record from any public local health department in the United States, signed by a public local health officer or nurse;~~

~~(d) a certificate signed or stamped by a physician;~~

~~(e) any parent-maintained immunization record, if information has been recorded and signed or stamped by a physician, physician's designee, local health officer, or that officer's designee;~~

~~(f) any state's official parent-maintained immunization record if the record includes the following:~~

~~(i) the child's legal name, birthdate, sex, and vaccination date (month, day, and year) by vaccine type;~~

~~(ii) for each administration of vaccine, a signature or stamp signed by a the physician, physician's designee, local health or officer of a health department who administered the vaccine, or that officer's designee of the physician or~~

officer; and

(iii) the date the next dose of vaccine is due;

(g) the international certificates of vaccination approved by the World Health Organization;

(h) for persons who entered school prior to [the effective date of this amendment], and for measles (rubeola) only, a letter or statement signed by a physician indicating that the person had measles (rubeola) disease, with the date of diagnosis indicated;

(i) for a pupil 7 years of age or older, for the 1980-1981 school year only, immunization assessment data collected during the Montana immunization initiative. This information, if and when entered into an official school immunization record, is adequate evidence of immunization throughout the remaining years of school attendance of such pupil;

(4) Post-secondary schools must:

(a) keep immunization data for each pupil either on the department's Montana certificate of immunization form (HES 101) or on another document that includes, at a minimum, the pupil's name, birth date, vaccination dose type administered, and the month, day, and year each dose was administered; and

(b) accept as sources of the required immunization data only those sources listed in (3) above, as well as, in the case of rubella, laboratory test results showing immunity to rubella if they are signed by a physician and indicate what type of test was conducted and the test date.

(5) No parent, guardian, or other person may fill out any immunization information or sign any immunization documentation unless they are a physician, local health officer, or person otherwise authorized to do so in (1), (2), or (3) above.

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

16.28.706. REQUIREMENTS FOR CONDITIONAL ENROLLMENT

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

(a) if a physician or local health department must indicate on the department's conditional attendance form that immunization of the person has already been initiated by the person receiving, at a minimum, one DTP, (or DT or Td), one polio, one measles (after the first birthday), and one rubella vaccination (unless rubella is not required because the person is a female 12 years of age or older) one dose of each of the vaccines required in ARM 16.28.702(1). If a person is exempt from any of the foregoing vaccinations, the requirements of this rule apply to the remaining immunizations for which no exemption exists.

(b) The conditional attendance form must include the date each dose of the required vaccine(s) is to be administered, the signature of the physician or health department official who established the foregoing immunization schedule, and the signature of a parent or guardian acknowledging the immunization schedule;

(c) The parent or guardian must return the form to the

school before the child may attend.

~~(2) Conditional attendance must be for a reasonable length of time consistent with the immunisation schedule in subsection (4) below, in order to allow for completion of all immunisation requirements, but in any case must not exceed 90 days from the date attendance commences.~~

~~(3)(d) The conditional attendance form provided prescribed by the department must be used to document conditional attendance status and must be retained in the person's school record.~~

~~(4) A person who is conditionally attending school qualifies for unconditional attendance status when he receives the following number of doses of each vaccine, and at intervals of no less than four weeks:~~

Number of Polio Doses	
Person Has Received:	Person Needs:
1	2
2	1
3	0
4	0
3 or more,	
but none after 4th birthday	
(if commencing attendance for	
first time after July 31, 1980)	

Number of DTP, DT, Under 7 Years of 7 Years of Age	
or Td Doses Person	Age Additional or Older
Has Received:	DTP or DT Additional TD
Doses Needed:	
1	2*
2	1
3	0
4	0
3 or more,	
but none since 4th birthday	
(if commencing attendance for	
first time after July 31, 1980)	

~~* A booster dose 8-14 months following the 3rd dose is recommended. Td boosters are also recommended every 10 years.~~

~~(5)(e) If the person who is attending school conditionally fails to complete immunization within the time period indicated in subsection (2) above, fails to receive vaccines on the date they are due, as stated on the conditional exemption form, s/he must either claim an exemption from the immunizations not received and documented, or be excluded immediately from school by the board of trustees, in the case of a public school, by the administrator, in the case of a private school, or by the their designee of either.~~

~~(f) A person who is excluded from school due to failure to meet the requirements of the conditional exemption may continue school only after the school receives the required documentation that s/he has been administered the vaccine(s)~~

which, according to the immunization schedule on the conditional form, were due. In this case, if additional immunizations are still required, the physician or health department must reestablish the schedule as stated in (1)(b) above.

(2) A person entering post-secondary school who does not meet school entry immunization requirements as stated in (Rule II) may be admitted to school under the following conditions:

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

(b) The person must receive the second dose of measles vaccine as soon as one month has passed since administration of the first dose of measles vaccine.

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

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

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

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

AUTH: 20-5-407, MCA; IMP: 20-5-402, 20-5-404, 20-5-405, 20-5-408, MCA

16.28.707 MEDICAL EXEMPTION (1) A person seeking to attend school is not required to have any immunizations which are medically contraindicated. A written and signed statement from any physician that an immunization is medically contraindicated will exempt a person from whatever immunization requirements of section 20-5-403, MCA, the statement indicates necessary.

(2) The statement must include:

(a) which ~~particular~~ specific immunization is contraindicated;

(b) the period of time immunization is contraindicated; and

(c) the reasons for the medical contraindication.

(3) A physician's medical exemption may be recorded on the department's Montana certificate of immunization form or a form may be obtained from the department to be used for use as documentation.

(4) The physician's written statement must be maintained by the school as part of the immunization record of the person qualifying for the exemption.

AUTH: 20-5-407, MCA, IMP: 20-5-405, 20-5-406, MCA

16.28.708 RELIGIOUS OR PERSONAL EXEMPTION (1) A person seeking to attend school is exempt from all or part of the immunization requirements if the parent or guardian of that person, an adult responsible for that person, or the person himself if an adult or an emancipated minor, objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious ~~or personal~~ beliefs of the person signing the statement.

(2) ~~The statement referred to in subsection (1) above must be made on the department's certificate of immunization form and, if exemption is desired from only a portion of the required immunizations, must indicate which immunizations the exemption covers. A claim of exemption from immunization requirements on religious grounds must be maintained on a form provided by the department and provided to the school prior to each school year by the parent or guardian of the pupil for which a religious exemption is claimed, or adult responsible for him or her, unless the pupil is 18 years of age or older or emancipated, in which case the pupil may claim his or her own exemption.~~

(3) ~~The original copy of the statement claim of religious exemption must be kept by the school as part of the person's school record.~~

AUTH: 20-5-407, MCA; IMP: 20-5-405, 20-5-406, MCA

16.28.712 REPORT OF IMMUNIZATION STATUS (1) A report of the immunization status of the pupils in every school must be sent each year to the department by the principal or other person in charge of a school on a form provided by the department.

(2) ~~During the 1981-1982 school year, the report of immunization status must include the status of all pupils through January 15, 1982, and must be submitted by February 1, 1982.~~

(3) ~~(2) For the 1982-1983 school year and each year thereafter, the~~ The report must include the immunization status of all pupils who commence attendance on or before November 15 and must be submitted by December 1 of each school year.

~~(4)~~ (3) A copy of the report must be sent concurrently from the school to the local health department, or, if there is no local health department, to the local board of health or local health officer.

~~(5)~~ (4) The school must keep a record of any change in immunization status of a pupil from that stated on the report, plus the immunization status of any transfer pupil commencing attendance after November 15 of the pertinent school year. Such records must be available upon request to the department or local health authority.

AUTH: 20-5-407, MCA; IMP: 20-5-408(2), MCA

16.28.714 REPORT OF NON-COMPLIANCE (1) If a person is excluded from school other than a preschool or a post-secondary school due to the failure to provide documentation of completed immunization, claim an exemption, or qualify for conditional attendance, the school must place in the U.S. mail notice of that fact to the following by the end of the third day follow-

ing the exclusion, if the person excluded has not returned to school with the required documentation;

(a) the local health officer; and

(b) the ~~Childhood~~ Montana Immunization Program, Health Services and ~~Medical Facilities~~ Division, of the department (phone: ~~444-4740~~ 444-5580).

Concurrent telephone notification of either or both of the above agencies is encouraged but not required.

(2) The notification must include the name of the excluded person; his or her address; the name of his or her parent(s), guardian or responsible adult; and the date of exclusion.

(3) Written documentation of that notification must be placed in the school file, if any, of the person excluded, or in a special file established for such documentation, if the person has no school file. Such documentation must include the information noted in (2) above, date of mailing, and name of the individual giving the notification.

AUTH: 20-5-407, MCA; IMP: 20-5-408(2), MCA

4. The department is proposing these amendments and additions to the rules because they are necessary to implement amendments made to the school immunization statutes in 1989 (deleting the right to a personal exemption and adding pre-school and post-secondary schools to those entities to which immunization requirements apply) and 1991 (requiring meningitis (Hib) vaccinations of children attending preschools), and to reflect the most current nationally-recognized disease control standards. ARM 16.28.705 is proposed to be repealed because the amendments to ARM 16.28.704 make 16.28.705 redundant.

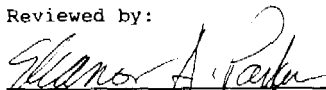
5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Dick Paulsen, Montana Immunization Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 14, 1993.

6. Ellie Parker has been designated to preside over and conduct the hearing.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 5, 1993.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Proposed) NOTICE OF PROPOSED ADOPTION
Adoption of Rules I and II) OF RULES I AND II REGARDING
relating to Montana Peace) PUBLIC SAFETY COMMUNICATIONS
Officer Standards and Training) OFFICERS
) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 17, 1993, the Board of Crime Control Peace Officer Standards and Training Council proposes to adopt the following rules concerning minimum standards and certification requirements of public safety communications officers.

2. The proposed rules will read as follows:

RULE I. MINIMUM STANDARDS FOR THE EMPLOYMENT OF PUBLIC SAFETY COMMUNICATIONS OFFICER (1) Any person employed in the state of Montana as a public safety communication officer after the effective date of this rule, must meet or exceed the minimum standards set forth in 7-31-202, MCA.

(2) The term "public safety communications officer" is defined in 7-31-201, MCA.

AUTH: 7-31-202, MCA. IMP: 7-31-201, 7-31-202, 10-4-101, MCA.

RULE II. REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS OFFICER CERTIFICATION (1) Communications officers must meet or exceed the minimum employment standards established for such officers.

(2) Communications officers shall have completed a forty (40) hour public safety communications officers basic course as provided by MLEA or equivalent training as determined by the POST advisory council.

(3) Communications officers shall have served at least six months with the present employment agency and shall be satisfactorily performing his/her duties as attested to by the head of that agency.

(4) Communications officers who have successfully met the minimum employment standards and who have successfully completed a forty (40) or eighty (80) hour public safety communicators basic training course at MLEA from November 1984 through November 1991 are eligible for their basic certificate.

(5) A communications officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a six month term of employment shall, upon application to the POST advisory council, be issued a basic certificate by the council certifying that the communications officer has met all the basic qualifying public safety communications officer standards of this state.

AUTH: 7-31-203, MCA. IMP: 7-31-201, 7-31-202, 7-31-203,
10-4-101, MCA.

3. These rules are proposed for adoption to comply with 7-31-203, MCA. These rules are to establish qualifications and allow for certification of public safety communications officers.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to Ellis E. Kiser, Director, Peace Officer Standards and Training, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than May 15, 1993.

5. If a person who is directly affected by the proposed adoption wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Ellis E. Kiser, Director, Peace Officer Standards and Training, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than May 15, 1993.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental 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 12.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Executive Director

By: Edwin L. Hall
EDWIN L. HALL, Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 4/5/93
Chris D. Juntun
Rule Reviewer

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Proposed	)	NOTICE OF PROPOSED ADOPTION
Adoption of Rule I and Rule II	)	OF RULE I and RULE II
regarding Probation and Parole	)	REGARDING PROBATION AND
Officer Certification	)	PAROLE OFFICER CERTIFICATION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 17, 1993, the Board of Crime Control proposes to adopt the following rules concerning minimum qualifications for certification of probation and parole officers.

2. The proposed rules will read as follows:

RULE I. MINIMUM QUALIFICATIONS OF PROBATION AND PAROLE OFFICERS (1) Any person employed in the state of Montana as a probation and parole officer must meet or exceed the minimum qualifications set forth in 46-23-1003, MCA.

AUTH: 44-4-301, MCA

IMP: 46-23-1003, MCA

RULE II. REQUIREMENTS FOR PROBATION AND PAROLE OFFICERS CERTIFICATION (1) Probation and parole officers must meet or exceed the minimum employment qualifications established for such officers.

(2) Probation and parole officers must, within their first year of initial employment, complete a probation and parole officers basic course as provided by MLEA, or equivalent training as determined by the POST advisory council.

(3) Probation and parole officers shall have served at least one year with the present employing agency and have completed a probationary period and be satisfactorily performing his/her duties as attested to by the head of that agency.

(4) As a requirement for continuing employment, any probation and parole officer employed before the effective date of this rule must, within 24 months of the effective date of this rule, complete the educational requirements of this rule.

(5) Probation and parole officers who have successfully met the employment qualifications and the educational requirements of this section and who have completed one year of employment shall upon application to the POST advisory council, be issued a basic certificate by the council certifying that the probation and parole officer has met all the basic qualifying standards of this state.

AUTH: 44-4-301, MCA

IMP: 46-23-1003, MCA

3. These rules are proposed for adoption to comply with 46-23-1003, MCA, Section 2. These rules are to establish qualifications and allow for basic certification of probation and parole officers.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to the Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than May 15, 1993.

5. If a person who is directly affected by the proposed adoption wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to the Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than May 15, 1993.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental 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 10.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Executive Director

By:

Edwin L. Hall

EDWIN L. HALL, Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, _____

4/5/93

Chris D. Luntz

Rule Reviewer

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

In the Matter of Proposed	)	NOTICE OF PROPOSED ADOPTION
Adoption of Rules Pertaining	)	OF NEW RULES I AND II
to Electric Utility Line)	
Maintenance and Electric)	
Utility Nominal Voltage and)	
Variance Range.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On May 19, 1993 the Department of Public Service Regulation proposes to adopt the rules identified in the above title and described in the following paragraphs, all related to electric utilities subject to Commission jurisdiction.

2. The rules proposed to be adopted provide as follows.

RULE I. ELECTRIC UTILITY LINE AND FACILITY MAINTENANCE
-- MINIMUM STANDARDS (1) Each public utility providing electric service subject to the jurisdiction of the commission shall, at the minimum, maintain its electric utility lines and facilities pursuant to the national electrical safety code as that code is identified in section 69-4-201, MCA, the effective edition of which is designated by statute or rule.

(2) The edition of the code applicable at the time of maintenance shall be that in effect by statute or rule at the time of construction of the electric utility line or facility unless, without undue expense, the edition in effect by statute or rule at the time of maintenance can reasonably be complied with. AUTH: Sec. 69-3-103, MCA; IMP: Secs. 69-3-108 and 69-4-201, MCA

RULE II. ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in the American National Standards Institute (ANSI) C84.1, 1989. AUTH: Sec. 69-3-103, MCA; IMP: Sec. 69-3-108, MCA

3. Rationale: Rule I is reasonably necessary to ensure safe electric utility operations and service to the public. Although, Martel v. Montana Power Co., 231 Mont. 96, 45 St.Rptr. 460, 752 P.2d 140 (1988), appears to hold or imply that Section 69-4-201, MCA (construction standards), also governs design and maintenance, use of the case to identify governing maintenance standards is less certain and more cumbersome than this rule.

Rule II is reasonably necessary to safeguard consumers and electric appliances, under normal operating conditions, from voltage variations beyond that which are nationally recognized as an acceptable standard and upon which consumers and electric appliance manufacturers normally rely in operating and designing electric appliances.

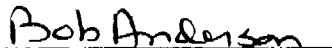
4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than May 19, 1993.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a 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 May 19, 1993.

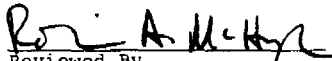
6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an 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 one person based on the less than ten electric utilities subject to PSC jurisdiction.

7. The authority of the agency to make rules as proposed and the statutes being implemented are set forth following each rule above.

8. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.


Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE MARCH 24, 1993.


Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED
of ARM 42.17.105 relating to) AMENDMENT of ARM 42.17.105
Computation of Withholding) relating to Computation of
) Withholding

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 11, 1993, the Department of Revenue proposes to amend ARM 42.17.105 relating to computation of withholding.
2. The rule as proposed to be amended provides as follows:

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula:

(a) $Y = PZ$

where Z is the individual's gross earnings for the payroll period; and
 Y is the individual's annualized gross earnings.

In these calculations, the quantity P (number of payroll periods during the year) has one of the following values:

Annual payroll period	$P = 1$
Monthly payroll period	$P = 12$
Semimonthly payroll period	$P = 24$
Biweekly payroll period	$P = 26$
Weekly payroll period	$P = 52$

(b) $T = Y - 14001700N$

where T is the annualized earnings; and
 N is the number of withholding allowances claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c) $X = A + B(T-C)$ where X is the individual's annualized tax liability the parameters A , B and C are chosen from the following rate schedule:

At Least	But Less Than	A	B	C
\$ 0	\$ 6,590	\$ 0	2.8%	\$ 0
6,590	14,600	184.52	4.7%	6,590
14,600	32,000	560.99	6.5%	14,600
32,000 and over		1,691.99	7.0%	32,000
\$ 0	\$ 8,230	\$ 0	2.7%	\$ 0
8,230	18,250	222.21	4.6%	8,230
18,250	40,000	683.13	6.4%	18,250
40,000 and over		2,075.13	6.8%	40,000

$$(d) \quad W = \frac{X}{P}$$

where W is the amount to be withheld for the payroll period;
X is the annualized tax liability; and
P is the number of payroll periods during the year.

(2) This rule is effective for tax periods beginning ~~September 1, 1992~~ January 1, 1993.

AUTH: 15-30-305 MCA; IMP: 15-30-103; 15-30-199; and 15-30-202 MCA.

3. ARM 42.17.105 is proposed to be amended as a result of House Bill 44. The adjustment for the surtax will change the withholding rate. There is also an adjustment of inflation which required a change in the exemption value and the ranges.


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 May 14, 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 May 14, 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 April 5, 1993.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rules	)	THE PROPOSED AMENDMENT OF
46.13.301, 46.14.301,	)	RULES 46.13.301, 46.14.301,
46.14.401 and 46.14.402 and	)	46.14.401 AND 46.14.402 AND
the repeal of rules	)	THE REPEAL OF RULES
46.14.201 through 46.14.205	)	46.14.201 THROUGH 46.14.205
pertaining to low income	)	PERTAINING TO LOW INCOME
energy and weatherization	)	ENERGY AND WEATHERIZATION
assistance programs	)	ASSISTANCE PROGRAMS

TO: All Interested Persons

1. On May 6, 1993, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.13.301, 46.14.301, 46.14.401 and 46.14.402 and the repeal of rules 46.14.201 through 46.14.205 pertaining to low income energy and weatherization assistance programs.

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

46.13.301 DEFINITIONS Subsections (1) through (7) remain the same.

(8) "Handicapped household" means a household in which resides at least one person who has been determined disabled by the federal social security administration under Title II or Title XVI of the Social Security Act.

Subsection (9) remains the same.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.14.301 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM.
DEFINITIONS (1) "~~Excess~~ energy use" means the actual or estimated annual heating cost ~~minus the LEAP annual benefit amount~~ for a dwelling.

~~(a) The period used to determine excess energy use is the period preceding April 1 of each year.~~

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 90-4-201 and 90-4-202 MCA

46.14.401 PRIORITIZATION FOR SERVICE Subsection (1) remains the same.

(a) Households in each of the governor's substate planning districts with the highest ~~excess~~ energy use shall be given the highest priority.

~~(i) The weatherization service year will begin April 1 of each year.~~

~~(ii) Eligible households not currently on the prioritization list will be added only at the beginning of the next weatherization service year.~~

(b) The excess energy use of households containing a member who is either 60 years of age or older or handicapped as defined by 20 CFR 416 determined by the federal social security administration under Title II or Title XVI of the Social Security Act will be multiplied by 1.25 for purposes of prioritization.

(c) Dwellings which have been weatherized after September 30, 1979, 1985 with federal Department of Energy funds, and with non-department of energy funds after July 1, 1988 April 1, 1992, are not eligible for weatherization.

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

~~(4) Households will be prioritized anew each April 1.~~
Subsections (5) through (7) remain the same in text but will be renumbered (4) through (6).

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 90-4-201 and 90-4-202 MCA

46.14.402 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE Subsection (1) remains the same.

(2) Dwellings chosen to be weatherized shall receive those measures ~~whose cost would be recovered in saved energy over a seven year period determined to be cost effective as defined in 10 CFR, Part 440, as amended through March 4, 1993.~~ The department hereby adopts and incorporates by reference 10 CFR, Part 440, as amended through March 4, 1993. A copy of these federal regulations may be obtained from the Family Assistance Division, Department of Social and Rehabilitation Services, P.O. Box 4210 Helena, MT 59604-4210.

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

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 90-4-201 and 90-4-202 MCA

3. The rules 46.14.201 through 46.14.205 as proposed to be repealed are on pages 46-6017 and 46-6018 of the Administrative Rules of Montana. The authority for these rules is 53-2-201 MCA and the implementing cites are 90-4-201 and 90-4-202 MCA.

4. These changes are being made, in part, to insure that departmental policy coincides with changes in 10 CFR, Part 440, recently implemented by the U.S. Department of Energy. ARM 46.14.401(1)(c) is being changed to conform to 10 CFR 440.18(e) (2)(iii) regarding eligibility for the Low Income Weatherization Program (LIWAP) for a dwelling unit which has been previously weatherized. Sec. 440.18(e)(2)(iii) as amended provides that dwelling units weatherized prior to September 30, 1985, rather than September 30, 1979, are eligible for LIWAP. The amendment

of ARM 46.14.402(2) is necessary to conform to new federal requirements for energy audits set forth in 10 CFR 440.21 as amended.

ARM 46.14.201, 46.14.202, 46.14.203, 46.14.204, and 46.14.205 are being repealed because they relate to internal matters such as the procedures to be followed in processing a LIWAP application which do not need to be addressed in administrative rules.

Currently ARM 46.14.401 provides that an applicant's priority for weatherization services depends on the applicant's "excess energy use", which is determined by subtracting the applicant's Low Income Energy Assistance Program (LIEAP) benefit amount from the applicant's annual heating costs. Under the existing rule, a household with income below 50% of poverty has a lower priority for weatherization than a household with identical energy use but annual income above 50% of poverty, because a household with income below 50% of poverty gets a larger LIEAP benefit which is subtracted from annual heating costs to determine the household's priority.

To prevent this inequitable result, ARM 46.14.401 is being amended to provide that priority for LIWAP will be based on energy use rather than excess energy use. ARM 46.14.301(1) must also be amended to eliminate the definition of "excess energy use" and provide a definition for "energy use."

Subsections ((1)(a)(i) and (ii) and (4) of ARM 46.14.401, which provide that the weatherization service year begins on April 1 of each year and that applications for weatherization services will be prioritized and added to the list for services once a year, have been deleted. The department intends to prioritize applications as often it can practically be done, and no less than four times per year.

ARM 46.14.401(b) is being changed to make the definition of "handicapped" for LIWAP consistent with the definition of that term in the administrative rules governing LIEAP. This is desirable because the same application form is used for both programs. The result of this change is to broaden the definition of "handicapped" for LIWAP purposes, as the term now will include persons determined disabled under Title II of the Social Security Act as well as under Title XVI.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 13, 1993.

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

Sam Shari
Rule Reviewer

ESRL
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 1993.

TO: All Interested Persons

MAR Notice No. 46-2-735

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141 MCA

3. The proposed amendments are necessary to implement the provisions of section 53-6-101 and 53-6-113, MCA, which require the department to set rates for medicaid services. These changes are necessary to implement rate decreases for oxygen and oxygen-related items which are required under House Bill 2 of the 1993 Legislature.

The 1993 Montana Legislature directed the department to achieve a 15% savings in the area of oxygen and oxygen-related items under the durable medical equipment program for the 1994-95 biennium. The legislature suggested that the 15% savings be achieved through competitive bidding, but indicated the savings could be achieved through alternative means. Under a competitive bid approach, all oxygen and oxygen-related items would be purchased from a single supplier. Because most Montana suppliers provide a significant amount of oxygen and related items for medicaid recipients, purchase from only one provider could significantly harm other providers who have relied upon medicaid for a significant part of their services. While the department is not required to protect the market share of these providers, the department would prefer to achieve the required savings through a less drastic approach. Further, the primary provider association for oxygen suppliers has expressed a concern that such a bidding approach would reduce the quality of service.

Based upon suggestions provided by the Big Sky Association of Medical Equipment Suppliers (AMES), the department has prepared a list of proposed fees for oxygen and oxygen-related supplies. The proposed fee decreases for each item vary depending upon the nature and cost of each item. The decreased fees in aggregate would achieve the 15% reduction directed by the legislature.

To implement the proposed fees, the current rule must be amended to specify that current oxygen items will be reimbursed according to a specific fee schedule which will be incorporated by reference into the rule. For any oxygen items which a fee has not been set prior to July 1, 1993 under the current methodology, the fee will be the amount set under the current methodology less 15%.

The department estimates that the proposed amendments will have a fiscal savings of approximately \$600,000 in total state and federal funds for the 1994-95 biennium over the amount estimated to be expended under the current rule. A copy of this notice may be reviewed in the county office of public welfare in each county of the state of Montana. Copies of the proposed fee schedule are being mailed with a notice of this rule to all

oxygen item providers and their provider associations. Copies of this fee schedule may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, or by calling (406)444-4540, or may be viewed in the county office of public welfare in each county of the state of Montana.

4. The proposed amendments will apply to all oxygen and oxygen-related items provided on or after July 1, 1993.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 13, 1993.

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

Dawn Elia
Rule Reviewer

Russell E. Cater, acting for
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 1993.

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

In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of rules pertaining to trainee-)	8.20.401, 8.20.402, 8.20.
ship requirements, fees, record)	407, 8.20.408, 8.20.409,
retention, unethical conduct,)	8.20.411, 8.20.412, AND
complaints, disciplinary)	8.20.501, AND THE ADOPTION
actions, testing procedures, and)	OF NEW RULES 8.20.416,
continuing educational require-)	8.20.417, 8.20.418 AND
ments, and the adoption of new)	8.20.419
rules pertaining to notifica-)	
tion, definitions, forms of)	
bills of sale contracts and)	
purchase agreements, and)	
inactive status)	

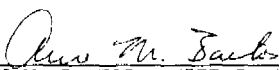
TO: All Interested Persons:

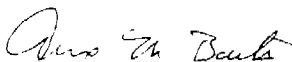
1. On February 11, 1993, the Board of Hearing Aid Dispensers published a notice of proposed amendment and adoption of the above-stated rules at page 197, 1993 Montana Administrative Register, issue number 3.

2. The Board has amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF HEARING AID DISPENSERS
BYRON RANDALL, CHAIRMAN

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 5, 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 veter-) 8.22.612 VETERINARIANS
inarians and trainers) AND 8.22.710 TRAINERS

TO: All interested persons:

1. On February 25, 1993, the Board of Horse Racing published a notice of proposed amendment at page 277, 1993 Montana Administrative Register, issue number 4.

2. The Board has amended rules 8.22.612 and 8.22.710 exactly as proposed.

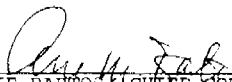
3. The Board has thoroughly considered all comments received. Those comments and the Board's response thereto are as follows:

Rule 8.22.612 VETERINARIANS: STATE OR PRACTICING

COMMENT NO. 1: The proposed amendment does not allow the tracks to have input into the amount they will be assessed for state veterinarian services. Any assessment may be more expensive for the smaller tracks than the larger ones. The tracks also need to know what their costs will be when they begin planning budgets prior to the start of the race season.

RESPONSE: The current rule language allows for contracts or hires to be made upon such terms as the Board and the veterinarians may mutually agree. Additionally, the rule specifically states differing rates of compensation may be agreed upon based upon the experience of the veterinarian. The Board may not therefore set a specific daily fee assessment in the rule, as this will necessarily differ with each track. The proposed rule amendment language allows for flexibility in setting the compensation rate, and would allow the Board to consider the size of the track, and its apparent ability to cover or not cover higher daily assessments.

BOARD OF HORSE RACING
STEVE CHRISTIAN, CHAIRMAN


ANNIE BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 5, 1993.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal of)	NOTICE OF REPEAL OF RULES
rules pertaining to the 1985 &)	PERTAINING TO THE 1985 AND
1986 Federal Community Develop-)	1986 FEDERAL COMMUNITY
ment Block Grant Program and the)	DEVELOPMENT BLOCK GRANT
adoption of a new rule for the)	PROGRAM AND THE ADOPTION OF
administration of the 1993)	NEW RULE I (8.94.3709)
Federal Community Development)	PERTAINING TO THE ADMINIS-
Block Grant Program)	TRATION OF THE 1993 FEDERAL
)	COMMUNITY DEVELOPMENT BLOCK
)	GRANT PROGRAM

TO: All Interested Persons:

1. On February 11, 1993, the Department of Commerce published a notice of public hearing on the proposed repeal and adoption by reference of the above-stated rule at page 205, 1993 Montana Administrative Register, issue number 3. The hearing was held on March 10, 1993, at 2:30 p.m., in the large downstairs conference room at the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana.

2. The Department has repealed ARM 8.94.3701 and 8.94.3702 pertaining to the 1985 and 1986 CDBG programs as proposed and has adopted new rule I (8.94.3709) exactly as proposed. However, in response to comments received at the public hearing, the Department has made several changes in the application guidelines. These changes are discussed in item 3 below.

3. Five members of the public attended and testified at the hearing. In addition, the Department received nine written comments during the comment period provided for by the Administrative Procedure Act. A summary of the oral testimony and the written comments and the Department's responses to them follow:

COMMENT: A portion of CDBG funds should be set aside to fund project planning and engineering. Many small Montana communities do not have the funding to do the preliminary planning and engineering that is required for projects to proceed.

RESPONSE: Criterion #4, Community Efforts, under the public facilities category, requires a 25% match of the non-administrative grant request. The Department will count as eligible match under this criterion documented local government expenditures for preliminary architectural or engineering services.

COMMENT: The proposed guidelines would increase the grant ceiling to \$400,000. The present \$375,000 maximum grant ceiling is adequate.

RESPONSE: The Department believes it is necessary to increase the project grant ceiling from \$375,000 to \$400,000. Raising the grant ceiling to \$400,000 will actually be returning the ceiling to the same level originally established for the Montana CDBG program in 1982. Since that time, inflation has reduced the financial impact of CDBG grants for both housing and public facilities projects. The 21% increase in federal funding from Montana's 1992 total allocation of \$6,233,000 to the 1993 allocation of \$7,543,000 will allow the Department of Commerce (DOC) to increase the grant ceiling without reducing the total number of projects it will be able to fund.

COMMENT: The maximum grant ceiling for public facilities and housing projects should be raised from the proposed \$400,000 to \$500,000 to meet increasing costs.

RESPONSE: The Department believes it would be inappropriate to raise the CDBG maximum grant ceiling to \$500,000 for housing and public facility projects. Because no fixed local match is required for housing projects the Department believes that raising the grant ceiling to \$500,000 would give housing applications an unfair competitive advantage over public facility applications (for which a 25% match is required), since it would be comparatively easier to request housing funds. Because DOC's allocation formula is demand-based the consequent increase in housing applications would result in the allocation of more CDBG dollars to the housing category at the expense of the public facility category.

COMMENT: The 1992 guidelines for economic development projects set a ceiling of \$300,000 for any single project and a total ceiling of \$375,000 for more than one project in the same community. In the 1993 guidelines the Department has proposed to increase the ceiling for both individual projects and for multiple projects in a community to \$500,000. Several persons agreed that the collective ceiling should be \$500,000 but recommended that the ceiling for individual projects be set at \$350,000 rather than at \$500,000 to avoid a concentration of available funds in a reduced number of projects.

RESPONSE: The Department has decided to retain the \$500,000 ceiling for both individual and multiple projects in the same community to provide greater flexibility to communities in selecting viable projects. Concerns regarding the concentration of funds in a few large projects have not been borne out by the Department's past experience. Although the current ceiling for individual economic development projects is \$300,000. The average request for funding has been \$200,000. Thus there does not appear to be any direct correlation between the ceiling, whatever it may be, and amount of funding requested by applicants.

COMMENT: The 1992 CDBG guidelines provided that before a recipient of a previous CDBG grant could be considered for a new grant it must, among other things, have expended 75

percent of the earlier grant. The proposed guidelines would reduce this percentage to 50 percent. Rather than having a reapplication limitation tied to the amount of funds expended it should be linked to the applicant's progress in meeting the project implementation schedule. In the alternative, the reapplication limitation should be linked to the encumbrance of funds from the earlier grant rather than their actual expenditure.

RESPONSE: The U.S. Department of Housing and Urban Development (HUD) has put significant pressure on DOC to spend its allocated CDBG funds on a timely basis. Elimination of the expenditure requirement would remove a major incentive for local governments to complete their current projects in the most timely manner possible. Consequently, the Department believes it is appropriate to keep the expenditure requirement at the proposed 50% level.

COMMENT: Dropping the completion requirement to 50% for reapplication would still not allow current year funded communities to resubmit, since it is very difficult in the first year of project activity to reach the 50% threshold level by the following September.

RESPONSE: The Department understands that many current CDBG grantees will not have 50% of their current project expended by September 13; however, there is a program necessity to maintain an incentive for timely project completion. It is anticipated that many local government units with second year projects will be able to meet the 50% drawdown requirement and be eligible for reapplication.

COMMENT: The Department should not incorporate the Producer Network concept into the economic development component of the 1993 CDBG program as proposed. It would be a mistake to make 0% loans to some businesses and 6% loans to other businesses, and the Department should re-evaluate the need for this initiative and seek additional public input on the subject during the coming year.

RESPONSE: In response to the several negative comments received regarding producer network funding and the absence of any support for the proposal, the Department has withdrawn the proposal.

COMMENT: The proposed guidelines would allow both a city and a county to apply for and receive two grants in the public facilities and housing portion of the CDBG program. This multiple grant concept will add unduly to the existing work overload of the state staff and could create a political controversy if a few communities received two grants while other received none. In addition, it could hurt smaller communities which do not have the staff resources to prepare more than one application.

RESPONSE: Although two persons objected to allowing local governments to apply for more than one project in a single competition, the Department believes this change is reasonable given the increased funding levels available for

the CDBG program. County governments, in particular, have requested this change for several years.

COMMENT: Although the multiple grant concept is desirable, the guidelines should not distinguish as they do between municipalities and counties. The guidelines provide that while counties may apply for two public facilities or two housing grants or one of each, municipalities may not apply for two grants in the same category. In addition, the proposed guidelines prohibit a county from applying for two grants which would benefit the same geographical area but they do not impose a similar limitation on municipalities. The distinctions between municipalities and counties should be eliminated.

RESPONSE: The Department concurs and has deleted the language in question from the final guidelines. Consequently, both municipalities and counties will be able to submit two housing applications, two public facilities applications or one of each, without regard to the geographical area to be benefited by the projects.

COMMENT: Wording on page 56 of the proposed guidelines addressing public facility projects, under Criteria #5, Need for Financial Assistance, states that the Department will award the minimum grant amounts necessary. This language appears to give the Department the discretion to alter the cost of a project based upon the Department's perceptions and experiences, rather than upon the experience of the community.

RESPONSE: The Department feels that the language in question provides for the most effective utilization of federal financial resources. By undertaking a careful review of indicators of local capability and local financial costs, the Department will attempt to provide the necessary level of CDBG grant funds to achieve a reasonably affordable annual cost for affected citizens, while at the same time not providing a windfall for local governments who may receive more funds than necessary. The end result would be a more precise matching of grant amounts to local financial needs and may allow funding of additional local projects.

COMMENT: The documentation required to establish the "financial gap" aspect of economic development applications should be simplified.

RESPONSE: The Department will clarify and simplify the financial gap requirements as requested.

COMMENT: The CDBG program should make provision for the direct funding of fair housing activities such as discrimination "testing," investigating alleged discriminatory practices, and complaint counseling.

RESPONSE: HUD is placing increasing pressure on all state CDBG programs and local government grantees to expand the scope of their activities in regard to fair housing. During FY '93, the Montana CDBG program will be examining various alternative measures that the state and local CDBG recipients can undertake in this regard.

4. No other comments or testimony were received.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

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, April 5, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.14.605 pertaining) 11.14.605 PERTAINING TO
to state payment for day care) STATE PAYMENT FOR DAY CARE
services.) SERVICES.

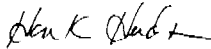
TO: All Interested Persons

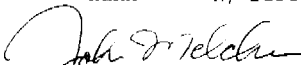
1. On February 25, 1993, the Department of Family Services published notice of the proposed amendment of Rule 11.14.605, pertaining to state payment for day care services, at page 279 of the 1993 Montana Administrative Register, issue number 4.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES


Hank Hudson, Director


John Melcher, Rule Reviewer

Certified to the Secretary of State, April 5, 1993.

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

In the matter of the amendment of)	NOTICE OF
rule 16.16.803 dealing with)	AMENDMENT OF RULE
subdivision review fees for RV)	
parks and campgrounds)	
	(Subdivisions)

To: All Interested Persons

1. On February 25, 1993, the department published notice at page 283 of the Montana Administrative Register, issue number 4, to consider the amendment of the above-captioned rule.

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

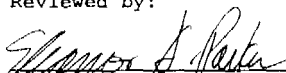
3. No comments were received.



ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 5, 1993.

Reviewed by:



Eleanor Parker, DHES Attorney

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

In the matter of the adoption of)	NOTICE OF ADOPTION
rules I-VI establishing procedures)	OF NEW RULES I-VI
for local water quality district)	
program approval and procedures for)	
granting enforcement authority to)	
local water quality districts)	(Water Quality)

To: All Interested Persons

1. On November 12, 1992, the board published notice at page 2445 of the Montana Administrative Register, issue number 21, to consider the adoption of the above-captioned rules.

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

RULE I (16.20.501) PURPOSE The purpose of this subchapter is to establish ~~guidelines, criteria, and~~ procedures for the ~~development and~~ approval of local water quality district programs, to establish procedures for granting enforcement authority to local water quality districts, and to ensure that the programs and enforcement actions are consistent with Title 75, chapter 5, MCA. Nothing in these rules may be considered to limit or restrict the authority of a local government to adopt rules and regulations authorized by other laws of the state.

RULE II (16.20.502) DEFINITIONS For the purposes of this subchapter, the following definitions, in addition to those in sections 7-13-4502 and 75-5-103, MCA, will apply:

(1) "District" means a "local water quality district" established with definite boundaries for the purpose of protecting, ~~preserving maintaining~~, and improving the quality of state water as authorized by Title 7, chapter 13, part 45, MCA and the rules of this subchapter.

(2) "Program" means a ~~comprehensive~~ local water quality district program designed to protect, ~~preserve maintain~~, and improve the quality of state water within the boundaries of a local water quality district established according to the procedures specified in Title 7, chapter 13, part 45, MCA.

RULE III (16.20.503) NOTIFICATION REQUIREMENTS Same as proposed.

RULE IV (16.20.504) PROGRAM APPLICATION CONTENT (1) To obtain approval of a district program, the district's board of directors shall file an application with the board and ~~concurrently submit a copy of the application to the water quality bureau of the department.~~ The application shall contain the following information:

(a) a map delineating the boundaries of the district and a description of the existing or potential water pollution

problems within the proposed district;

(b) a map indicating general land ownership and use within the district for land units one square mile or more in size;

~~(c) a general description of the area, including a brief description of the topography, geology, climate, population, and land use;~~

~~(d) a general description of the known hydrogeology of the area, including a description of aquifers, the rate and direction of ground water flow, and the location of recharge and discharge areas;~~

~~(e)(c) a general description of the water resources and water uses within the district, if the information is available including an identification of wells, springs, lakes, streams, wetlands, and irrigation ditches;~~

~~(f) a characterization of the quality of the surface water and ground water within the district;~~

~~(g) a discussion of the type and extent of land use activities potentially affecting water quality within the district, including but not limited to commercial, municipal, and industrial discharges, underground storage tanks, storm water disposal, landfills, hazardous waste disposal, mining activities, agricultural activities, injection wells, animal feedlots, and improperly constructed or abandoned wells;~~

~~(h)(d) identification of the district program goals and objectives;~~

~~(i)(e) a district program work plan and implementation schedule;~~

~~(j) a quality assurance and quality control plan for field investigation and sampling activities;~~

~~(k)(f) a program budget;~~

~~(l) a plan to evaluate the effectiveness of the district program;~~

~~(m)(g) information necessary for the department to conduct a brief an analysis of potential impacts to human health and the environment caused by implementation of the district program;~~

~~(n)(h) a description of any proposed district permit programs; and~~

~~(o)(i) copies of any proposed local ordinances for the regulation of the facilities and sources of pollution specified in section 75-5-311(4), MCA, along with a statement demonstrating that the local ordinances meet the following conditions:~~

~~(i)-(ii) Same as proposed.~~

RULE V (16.20.505) PROGRAM APPROVAL AND REPORTING

(1) Upon receipt of a district program application by the department, the department will have 45 30 calendar days to conduct a completeness review of the application. If the application is incomplete, the department shall send written notification to the board of directors identifying the deficiencies and requesting additional information. Upon receipt of the requested information, the department will have 45 30 days to conduct a completeness review.

(2) ~~No later than 30 days after~~ Upon determination that the application is complete, the department shall immediately notify the board of directors ~~has been notified that the application is complete, the department shall and~~ submit the completed application to the board, along with a report and recommendation regarding approval of the district program. At its next regularly scheduled meeting following the department's submission of the report and recommendation under this rule, the board shall hold a hearing on the application.

(3) Subsequent Prior to implementation of the local water quality district program in areas that have been added to the district, changes in the boundaries of a district with an approved program must be described in a program amendment and submitted to the board for approval as an amendment to the approved program in accordance with 75-5-311(7), MCA, and the procedures in subsections (1) and (2) of this rule.

~~(4) Any modifications of an approved program that may affect the district's ability to protect, maintain, and improve the quality of state waters must be reported to the department at least 30 days prior to implementation of the proposed modifications. The department shall have 30 days to review the proposed modifications and to notify the district board whether the proposed modifications must be submitted to the board for approval. If the proposed modifications significantly alter the approved program, the department may request the board to review and approve or disapprove the proposed modifications at its next regularly scheduled meeting.~~

~~(5)~~(4) One year after board approval of a district program and annually thereafter, the board of directors shall submit to the department a report that evaluates the effectiveness of the district program. The report shall include a description of program activities, a discussion of the degree to which program goals, objectives and schedules have been satisfied, monitoring results, a budget summary, and a description of the number and status of permits issued and enforcement actions initiated, as applicable to a particular district program.

~~(6)~~(5) A district shall retain all records for a minimum of 3 years and make its monitoring data available to the department upon request.

RULE VI (16.20.506) PROCEDURES FOR GRANTING STATE ENFORCEMENT AUTHORITY TO LOCAL WATER QUALITY DISTRICTS

(1) Whenever a person is in violation of 75-5-605, MCA, at a location within the district, the department may request that the district enforce the provisions of Title 75, chapter 5, MCA, and rules implementing that chapter for the particular violations. Alternatively, the district may request enforcement authority from the department in a particular case as specified under this rule. ~~Authorization by the department is effective upon receipt of a letter granting enforcement authority to the district as provided in subsection (3).~~

~~(2) In making its determination of whether or not to grant enforcement authority to a district, the department shall~~

~~consider the following:-~~

~~(a) whether the district has submitted documentation to the department establishing the violation(s), as required by 75-5-106, MCA.~~

~~(b) the physical setting and geographical location of the violation;~~

~~(c) the severity of existing or potential impacts to human health or the environment;~~

~~(d) whether the district has sufficient resources to undertake timely and appropriate enforcement measures;~~

~~(e) whether the source of pollution may be more efficiently controlled and brought into compliance by the department; and~~

~~(f) any other relevant factors.~~

(2) The district shall submit a letter to the department requesting authorization to enforce the provisions of Title 75, chapter 5, MCA, which contains appropriate documentation of the violation(s) as required by 75-5-106, MCA.

(3) The department shall authorize a district to enforce the provisions of Title 75, chapter 5, MCA, in response to a district's request unless the department retains jurisdiction and pursues enforcement.

(3)(4) A district is authorized to enforce the provisions of Title 75, chapter 5, MCA, and rules implementing that chapter upon receipt of a letter issued by the department granting enforcement authority for a particular case. The department shall respond to the district's request within five working days after the department's receipt of the request. The letter of authorization may include any limitations or conditions determined necessary by the department. Nothing in the grant of authority to a district may be construed to limit the department's legal responsibility and authority to take enforcement action against the person responsible for the source of pollution.

(4)(5) The department may revoke the enforcement authorization for a district if it determines that conditions exist that warrant such revocation. Such conditions may include but are not limited to;

(a)-(b) Same as proposed.

(c) the district has not complied with the conditions and limitations in the letter of authorization; or

(d) a re-assessment of conditions or change of conditions that indicate that enforcement by the department would be more efficient and economical effective than local enforcement; or

(e) the violation has been effectively remediated.

(5)(6) A district authorized to undertake enforcement actions pursuant to this section shall coordinate its enforcement activities with the department in a manner determined by the department.

3. The following comments were received; the department's response to each follows:

Comment - Rule I: Comments suggested that the proposed rules

should not set guidelines for program development as development of programs should remain discretionary, not mandatory. Commentors were also concerned the rules for establishing a Local Water Quality District (LWQD) or obtaining enforcement authority may somehow restrict or impact existing county regulatory programs. Commentors requested language in the LWQD rules to specifically state the LWQD rules do not limit or restrict existing county authority.

Response: Changes were made to clarify that the rules relate to LWQD program approval and are not intended to be guidelines or criteria for program development. Additional language was added to clarify that the LWQD rules do not restrict existing authorities of county programs.

Comment - Rule II: A change in the proposed definition of "district" was suggested by department staff in order that the language in the rule would be consistent with the policy of the Montana Water Quality Act, which is to protect, maintain, and improve water quality.

A commentor was also concerned that a LWQD program may not include all water quality activities in the district and therefore, LWQD programs would not always be "comprehensive".

Response: "Preserve" was changed to "maintain" to be consistent with the Water Quality Act. The word "comprehensive" was eliminated because a LWQD program may not be the only water-related program in an area and the LWQD is not intended to govern all water-related programs in an area.

Comment - Rule IV: Comments on Rule IV related to the amount of data and information required for a LWQD program application under the proposed rule. Commentors pointed out that much of this information was already available to the department so that submittal of the information would be unnecessary and would not further the objective of the LWQD programs. There was also a concern that counties with no environmental staff could not compile the required technical information; many districts may be created for the purpose of collecting water quality data.

Response: The department agrees with the comments and Rule IV has been modified to reduce the information requirements necessary for a program application submittal.

Comment - Rule V: Comments on Rule V indicated the time frame for the approval process was too long. Commentor also expressed concern about department or board approval of program modifications when the statute did not expressly grant authority for approval of program modifications.

Response: Time frames for the approval process have been shortened in the modified rules. The section related to

department review and approval of program modifications in the proposed rule has been deleted, because the statute directs the department to report to the board if it finds a program is inadequate. This procedure for review adequately addresses the need for review of LWQD programs. The board shall then conduct a hearing on the matter and determine if corrective measures to the program are necessary.

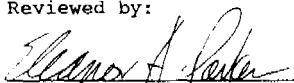
Comment - Rule VI: Rule VI commentators generally perceived the procedures required for granting enforcement authority to be unnecessarily cumbersome.

Response: The department supports granting enforcement authority to the LWQDs when conditions are appropriate and agree that the proposed Rule VI requirements were unnecessarily complex. Rule VI has been modified to make the process of granting enforcement authority less restrictive.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 5, 1993 .

Reviewed by:


Eleanor Parker, Attorney

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

In the matter of the amendment of)	NOTICE OF AMENDMENT
rules 16.42.302-307, 309-311,)	OF RULES
313-317, 320, 321-326, 401-402, and)	
404-405 dealing with asbestos)	
abatement requirements; permit,)	
accreditation, and course fees; and)	
remedies for violations)	(Occupational and Radiological Health)

To: All Interested Persons

1. On February 11, 1993, the department published notice at page 215 of the Montana Administrative Register, issue number 3, to consider the amendment of the above-captioned rules.

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

16.42.302 DEFINITIONS Same as proposed.

16.42.303 EXCLUSIONS Same as proposed.

16.42.304 EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (1)-(2) Same as proposed.

(3) Nothing in this rule precludes sampling and analysis to determine if a material is asbestos containing material. A structure cannot be considered to be free of an asbestos hazard unless sampled according to subsections (1)-(2) of this rule. In the absence of sampling of suspected asbestos material in accordance with subsections (1)-(2), this material will be presumed to be an asbestos containing material.

~~++(4)~~ (4) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, and 29 CFR 1296.58, Appendix A - Quality Control Procedure, 1991 edition, which pertain to, respectively, methods of inspections and reinspection, sampling, analysis, assessment of asbestos standards and quality control procedures; and, the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 analytical method. A copy of each can be obtained from the occupational and radiological health bureau at the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

16.42.305 CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (1)(a)-(c) Same as proposed.

(d) Collection of air clearance samples must involve the use of aggressive air sampling techniques such as with leaf blowers ~~and~~ or fans placed in a setting sufficient to create maximum air disturbance in all potentially occupiable areas.

Aggressive air sampling is not necessary required where asbestos abatement in a building has occurred in areas which are not occupied, such as crawl spaces, or in work areas where repair encapsulation has occurred without the use of a containment barrier.

(e)-(i) Same as proposed.

(2)-(4) Same as proposed.

16.42.306 EVALUATION OF ASBESTOS HAZARDS IN LEA SCHOOL BUILDINGS Same as proposed.

16.42.307 CLEARING ASBESTOS ABATEMENT PROJECTS IN LEA SCHOOL BUILDINGS Same as proposed.

16.42.309 ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER Same as proposed.

16.42.310 RENEWAL OF ACCREDITATION (1)-(7) Same as proposed.

(8) An individual from each discipline such as a worker, contractor or supervisor may only attend a refresher course specific to that individual's discipline in order to get credit for the refresher course.

16.42.311 TRAINING COURSE AND EXAMINATION REQUIREMENTS Same as proposed.

16.42.313 COURSE APPROVAL Same as proposed.

16.42.314 ASBESTOS INSPECTOR'S COURSE Same as proposed.

16.42.315 ASBESTOS MANAGEMENT PLANNERS COURSE Same as proposed.

16.42.316 ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE Same as proposed.

16.42.317 ASBESTOS ABATEMENT CONTRACTOR'S OR SUPERVISOR'S COURSE Same as proposed.

16.42.320 REFRESHER COURSES (1) After January 1, 1990, a person may not offer a refresher course providing the knowledge necessary for renewal of accreditation under ARM 16.42.310 unless the department has approved the refresher course. Refresher courses must be specific to each discipline.

(2)-(3) Remains the same.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

16.42.321 ASBESTOS ABATEMENT PROJECT PERMITS Same as proposed.

16.42.322 ANNUAL PERMITS Same as proposed.

16.42.323 EMERGENCY ASBESTOS PROJECT PERMITS Same as proposed.

16.42.324 ASBESTOS ABATEMENT PROJECT CONTROL MEASURES Same as proposed.

16.42.325 RECORDKEEPING Same as proposed.

16.42.326 INSPECTIONS Same as proposed.

16.42.401 FEES FOR PERMITS Same as proposed.

16.42.402 ACCREDITATION & ACCREDITATION RENEWAL APPLICATIONS Same as proposed.

16.42.404 COURSE AUDITS (1)(a)-(g) Same as proposed.

(h) two or more refresher courses presented in conjunction consecutively \$ 400

16.42.405 PENALTY Same as proposed.

3. The following comments were received; the department's response to each follows:

Comment: A comment was received requesting that the increase in annual permit fees be consistent with the percentage increase of other asbestos fees. A comment was also received in opposition to the increase in accreditation fees and annual permit fees.

Response: Because the asbestos control program is a fee based program it must be a self supporting program, and the department felt it necessary to increase most asbestos related fees in order to maintain normal program operations. The cost of inspecting for annual permits is higher than for inspections related to other permits. All of the fee increases grew at approximately the same rate.

Comment: A comment was received questioning the fact that aggressive air clearance sampling was feasible in mini-enclosures.

Response: The department agrees that it may not be feasible to enter a mini-enclosure and conduct aggressive sampling with both a leaf blower and a fan; therefore, the rules have been revised to state that collection of air clearance samples must involve the use of aggressive air sampling techniques such as with leaf blowers or fans.

Comment: A comment was received that stated that after repair and encapsulation activities a requirement for aggressive sampling would make it impossible for clearance standards to be met using PCM methods, in certain circumstances; therefore, TEM methods would need to be used to obtain clearance levels.

Response: The department agrees that if additional containment methods are not used during small repair or encapsulation activities clearance levels would be difficult to obtain. ARM 16.42.305 has been revised to state "... Aggressive air sampling is not required where asbestos abatement in a building has occurred in areas which are not occupied, such as crawl spaces, or in work areas where repair/encapsulation has occurred without the use of a containment barrier".

Comment: A comment was received regarding further clarification of the term "potentially occupiable area". Is a furnace room a "potentially occupiable area"?

Response: A furnace room is considered a "potentially occupiable area". In potentially occupiable areas where no containment barrier is used, no aggressive air sampling will be required as stated in the above response.

Comment: A comment was received suggesting that the rule be written to prohibit aggressive air sampling in work areas that are not set up with total containment and negative air.

Response: ARM 16.42.305(d) has been revised to state that aggressive sampling is not required in areas where repair or encapsulation has occurred without the use of containment. The department feels this addition will be sufficient and prohibition of aggressive sampling will not be necessary.

Comment: A comment was received regarding the status of public outreach to private homeowners regarding requirements placed on them by these rules.

Response: The department is planning to prepare and release a press release explaining the requirements relating to asbestos removal by a homeowner and is always available by phone to answer questions and assist the public.

Comment: A comment was received asking how the State anticipates educating the homeowner to perform proper asbestos removal.

Response: The department has no plans to educate homeowners or any individual on proper asbestos removal procedures. If someone wishes to become trained in removal we will provide lists of Montana approved training providers to these individuals. The department will also continue to provide general asbestos information to the public. Even though homeowners removing asbestos from their own home are excluded from these rules, the department is in no way suggesting that they are qualified to perform such removal or that we are recommending that untrained homeowners perform their own removal projects.

Comment: A comment was received regarding clarification of ARM 16.42.304; this comment stated that the proposed rule changes

did not address the issue of an inspector inspecting only a portion of the suspect ACM in a building, other than a LEA school building.

Response: The department has addressed this issue through addition of language to ARM 16.42.304.

Comment: A comment was received in regards to the requirement that individuals performing PCM analysis take the NIOSH 582 course. Concern was expressed that a NIOSH training facility does not exist in Montana. The question of whether or not this training course would be incorporated into the training courses which the State is responsible for auditing and approving was also mentioned.

Response: The NIOSH 582 course is generally accepted to be the course that instructs individuals on the PCM analysis technique. To the best of our knowledge the people currently performing these activities in the state have already completed the course. The State will not approve such a course; only those courses taught for Montana asbestos accreditation purposes will be approved and audited by the department.

Comment: A comment was received which suggested that all air sample collection be performed by individuals with the NIOSH 582 training.

Response: The department feels that other individuals may also be qualified to collect PCM air samples. Accredited asbestos abatement contractors and supervisors are instructed on air sample collection in their 32-hour training, industrial hygienists routinely collect samples of varying types, and an engineer may also have experience with air sample collection.

Comment: A comment was received questioning whether or not the "3 foot rule" would apply to facility owners on a per building or per complex basis.

Response: The 3 foot rule applies to continuous surfaces and is not defined by the structure in which it is contained.

Comment: A comment was received asking for clarification of the requirement that the Contractor, Supervisor or Worker refresher courses cannot be provided in conjunction with each other.

Response: ARM 16.42.310 and 16.42.320 have been revised to include this clarification. Refresher courses must be specific to each discipline and cannot be combined. This clarification will maintain full program approval by the EPA and is an EPA requirement.

Comment: A comment was received which asked that local health department employees be exempt from paying state accreditation

fees.

Response: Local health officials are not employed by the state to perform any specific state duties and are therefore subject to fees like any other person seeking accreditation.

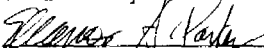
Comment: A comment was received that suggested a photo identification be included on the certification cards.

Response: The department agrees that this would be a good idea; however, we do not feel this would be feasible. Such a requirement would require each individual seeking accreditation to apply in person. This requirement would be a hardship for most people who live outside the Helena area in regards to travel expenses, lost work hours, etc. Another photo ID is required to be at the worksite and will be compared to the accreditation card.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 5, 1993.

Reviewed by:


Counsel for the Department

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

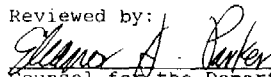
In the matter of the amendment of)	NOTICE OF
rules 16.44.106, 16.44.116,)	AMENDMENT OF RULES
16.44.118, 16.44.120, 16.44.303~)	
16.44.306, 16.44.311, 16.44.351,)	
16.44.402, 16.44.609, 16.44.612,)	
16.44.701, 16.44.702, 16.44.804,)	
16.44.905, 16.44.907, concerning)	
regulation of hazardous waste)	
facilities and generators and)	
identification of hazardous waste)	(Solid & Hazardous Waste)

To: All Interested Persons

1. On February 11, 1993, the department published notice at page 232 of the Montana Administrative Register, issue number 3, to consider the amendment of the above-captioned rules.
2. The department has amended the rules as proposed with no changes.
3. No comments were received.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 5, 1993.

Reviewed by:

Counsel for the Department

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption)
of new Rules I through V)
(23.12.102 through 23.12.106))
pertaining to the) NOTICE OF ADOPTION
implementation of an arrest)
numbering system and)
standardization of criminal)
history information collection)

TO: All Interested Persons:

1. On October 15, 1992, the Department of Justice published a notice of proposed adoption of the following rules concerning the implementation of an arrest numbering system and standardization of criminal history information collection at page 2246 of the Montana Administrative Register, Issue No. 19.

2. The agency has adopted new Rule I (23.12.102) and new Rule V (23.12.106) as proposed.

3. The Department has adopted new Rules II through IV (23.12.103 through 23.12.105) as proposed with the following changes:

RULE II (23.12.103) MONTANA ARREST NUMBERING SYSTEM NUMBER TO BE ASSIGNED - CJIN (1) Following a custodial or felony arrest the arresting agency or by agreement the custodial agency shall access the Montana arrest numbering system (MANS) through the CJIN and have a number assigned to that custodial or felony arrest. ~~The courts shall not allow initial appearance of an individual that has been under custodial or felony arrest until the individual has been fingerprinted and a MANS number registered on the criminal case history and final disposition report form.~~

(2) Prior to release the arresting agency or the courts shall ensure that not allow initial appearance of an individual who that has been under custodial or felony arrest until the individual has been fingerprinted and a MANS number registered on the criminal case history and final disposition report form.

(3) If an individual who is charged with a felony but has not been arrested appears before a court the district judge, city judge or justice of the peace charged with a felony without a physical arrest the court shall at the time of the individual's first appearance inform the individual of the requirement that the individual submit before a district judge or justice of the peace order the individual to report to the appropriate law enforcement agency to be fingerprinted and assigned a MANS number. The individual shall submit report to the law enforcement agency at his the individual's own expense and at a time, date and place set by the court to be fingerprinted.

AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

RULE III (23.12.104) FINGERPRINT CARD (1) through (3) same as proposed.

~~(4) If an individual appears before a court charged with a felony without a physical arrest the court shall at the time of the individual's first appearance before a district judge or justice of the peace order the individual to report to the appropriate law enforcement agency to be fingerprinted and assigned a MANS number. The individual shall report to the law enforcement agency at his own expense and at a time, date and place set by the court to be fingerprinted.~~

~~(4)+(5) Same as proposed.~~

AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

RULE IV (23.12.105) CRIMINAL CASE HISTORY AND FINAL DISPOSITION REPORT (1) Same as proposed.

(2) The form must be completed according to the procedures prescribed by the department.

(a) Before the individual is released from custody the information pertaining to the individual and the initial charge(s) must be completed by the arresting agency and forwarded to the court of appropriate jurisdiction ~~prior to the individual's initial appearance.~~

(b) through (4) Same as proposed.

AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

4. The Department received a total of five written comments and one verbal comment. The Department thoroughly considered all comments. Those comments and the Department's responses are as follows:

COMMENT: District Judge Phillips, District Judge Baugh, Justice of the Peace Stocker, Attorney Judith Loring and Petroleum County Sheriff Busenbark, commented that the provisions in new Rules II and IV, postponing the initial appearance of an individual until fingerprinting is completed and a MANS number is assigned, violated an arrested individual's right to be brought without delay before a magistrate.

RESPONSE: The Department agreed the wording could result in some delay in an initial appearance. The Department, therefore, amended the rules to require that an individual under custodial or felony arrest not be released by an arresting agency or the courts until the individual has been fingerprinted and assigned a MANS number. This allows initial appearance without undue delay.

COMMENT: City Judge Hultz suggested that "city judge" be added to the language now found in subsection 3 of Rule II.

RESPONSE: City judges usually preside over applications for search warrants and complaints only but may, in some localities, preside over first appearances of individuals charged with a

felony. Therefore, the term "City judge" will be added to the rule.

COMMENT: City Judge Hultz also suggested that the requirement in Rule IV that the clerk forward a copy of a completed CHRPI form within 15 days be changed to 30 days to allow the court more time to prepare and forward the form.

RESPONSE: Section 44-5-213(2), MCA, states that dispositions "be reported to the originating agency and the state repository within 15 days." The statute requires that the wording remain the same.

COMMENT: Attorney Loring questioned the references to "human services" in Rule V, asking why human services is required to track inmate status.

RESPONSE: The rule refers to the department of corrections and human services. § 2-15-2301, MCA. The phrase "human services" is included in the department's title and is not a separate entity. The wording will remain the same.

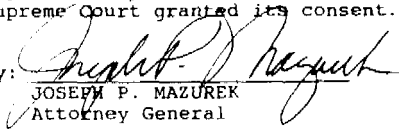
COMMENT: The Commission on Courts of Limited Jurisdiction suggested the language in Rule II be modified to provide that the court "inform" an individual to "submit" to the appropriate law enforcement agency for fingerprinting. The Commission was concerned that the terms "order" and "report" previously in the rule infringed on the independence of the courts.

RESPONSE: The Department has amended the language to conform with the Commission's recommendation.

5. The Department has adopted the remainder of the rules with some editorial changes but substantially as proposed.


6. The Court's consent to the adoption of these rules was required pursuant to section 44-5-213(7), MCA, because the rules impact the judicial branch. On March 2, 1993, the Montana Supreme Court granted its consent.

By:


JOSEPH P. MAZUREK
Attorney General


Kathy Seely
Rule Reviewer

Certified to the Secretary of State
1993.

 April 4,

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the	)	NOTICE OF AMENDMENT
Amendment of Rule 23.14.404	)	OF RULE 23.14.404
Relating to Peace Officers)	
Standards and Training)	

TO: All Interested Persons:

1. On November 12, 1992, the Board of Crime Control published notice of proposed amendment to Rule 23.14.404, at page 2450 of the 1992 Montana Administrative Register, issue number 21.
2. The agency has amended the rule as proposed.
3. No comments were received.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Executive Director

By: Edwin L. Hall
EDWIN L. HALL, Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 4/5/93

Chris D. Juntun
Rule Reviewer

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment	)	CORRECTED NOTICE OF
of Rule 24.9.329, Exceptions to	)	ADOPTION
proposed orders)	

TO: All Interested Persons.

1. On February 25, 1993, the commission published a notice at page 298 of the Montana Administrative Register, Issue No. 4, of the amendment and adoption of the above-captioned rule which relates to the procedure for filing exceptions to proposed orders.

2. The notice of amendment inadvertently omitted mention of ARM 24.9.329(7)-(10), which were unchanged but renumbered. The corrected rule amendment reads as follows:

24.9.329 EXCEPTIONS TO PROPOSED ORDER


- (1) - (4) Same as proposed.
- (4) - (6) Same as original rule but renumbered as (5) - (7).
- (7) - (10) Same as original rule but renumbered as (8) - (11).

AUTH: 49-2-204 AND 49-3-106, MCA; IMP: 49-2-505 and 49-3-308, MCA

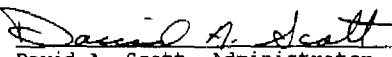
3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on March 31, 1993.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIRPERSON

By:


ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Reviewed by:


David A. Scott, Administrator
Legal Services Division
Dept. of Labor and Industry

Certified to the Secretary of State March 30, 1993.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

In the matter of the adoption)	
of new rules to require mea-)	
suring devices on watercourses)	NOTICE OF ADOPTION OF NEW
identified as chronically)	RULES PERTAINING TO WATER
dewatered)	MEASURING DEVICES

TO: All Interested Persons:

1. On November 12, 1992, the Board of Natural Resources and Conservation published a notice of public hearing on page 2454 Montana Administrative Register, issue number 21, on the adoption of new rules to require measuring devices on watercourses identified as chronically dewatered. The public hearing was held on December 4, 1992, in Helena, Montana.

2. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

RULE I DEFINITIONS - There seemed to be some confusion during the hearing about the terms "water spreading" and "natural overflow"

RESPONSE: include these definitions in Rule I

"Natural overflow" means the water which results in the flooding of lands adjoining streams during high flow with no man-made diversion involved.

"Water spreading" means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually nonperennial, water courses by means of dams, dikes, or ditches, or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

RULE II (3) - The Department of Fish, Wildlife and Parks stated in their comments that provisions of HB 908 require measuring devices only on "Appropriation Facilities". However, the comments state that it may be an advantage to have a stream measuring device where an instream water right holder was senior to other users. The Department of Fish, Wildlife and Parks recommends that the need for a suitable measuring device on a stream be determined by the Board only after consultation with instream right holders, rather than being an automatic requirement as proposed in this rule.

RESPONSE: RULE II (3) be revised as follows and redesignated Rule III (4)

The board may extend the deadline for having a measuring

device for an established instream water right for a beneficial use on an identified chronically dewatered watercourse or portion of a watercourse. If there are no junior water rights or a measuring device will probably not help to solve the chronically dewatered condition or resolve conflicts among water right holders, an extension of the deadline may be granted by the Board. The owner or owners of an instream right must request an extension from the Board. The extension will be for up to two (2) years. Additional requests for extensions may be considered by the Board.

(a) Instream water rights for livestock drinking directly from the watercourse and water spreading and natural overflow irrigation rights will not be required to have a measuring device.

RULE II (2): To allow the rules to be easier to follow Rule II (2) should be changed to Rule III (3).

RESPONSE: Rule II (2) be redesignated Rule III (3) for better organization.

RULE III (4) - The Department of Fish, Wildlife and Parks also commented that this rule outlines the means by which the Board may extend the deadline for installation of measuring devices for reasons of impracticality but addresses only "appropriation facilities" and does not provide a means for extending the deadline for a measuring device for an instream right. The Department of Fish, Wildlife and Parks recommends equity in consideration of extensions of deadlines for installation of measuring devices.

RULE III (4) - Alan Rollo, Medicine River Canoe Club was concerned that Rule III (4) does not require public notice for individual extensions. He stated that some individuals with water rights have a significant impact on a stream. He suggests that a maximum cfs level be established that would not require public notice with the idea that it will reduce the problem when a stream is controlled primarily by one person.

RESPONSE: RULE III (4) be revised as follows and redesignated Rule III (2).

An owner or owners of an appropriation facility on an identified watercourse may request an extension of a deadline for installation of measuring devices. The request for extension must be presented to the board at least one hundred eighty (180) days prior to the ordered deadline. The board will determine if an extension is to be granted and if so will specify a length of the extension. The board may request the department to investigate the request and report its findings to the board. Additional requests for individual extensions may be considered by the board. ~~No public notice of individual~~

~~extensions will be made.~~ Reasons for an individual extension will be limited to:

- (a) extreme health or financial circumstances;
- (b) circumstances beyond the owners control which delay any necessary permits from being obtained; or
- (c) an owner who takes possession of the appropriation facility with insufficient time to acquire and install controlling and measuring devices before the established deadline.

RESPONSE: RULE III (2) be revised as follows and redesignated Rule III (6).

The board must place a notice of consideration of an extension in the legal section and paid advertisement of a newspaper of general circulation in the area of the identified watercourse or portion of watercourse. The notice shall be made at least thirty (30) days before the date of a scheduled board meeting. Actual advertisement costs must be paid by the petitioners owners or operators requesting an extension. ~~(individual notice is not given).~~ The board's findings must be made from information presented at a scheduled board meeting.

RULE III (5) - Allows the granting of an extension for owner or owners of appropriation facilities who are consolidating diversions or ditches.

RESPONSE: RULE III (5) be revised as follows

A one (1) year extension of the deadline for acquiring and installing measuring devices may be granted by the board for the owner or owners of appropriation facilities who are consolidating diversions or ditches. ~~-No public notice will be made.~~

RULE VI: - Ron Shields, USGS commented that requiring owners or operators of measuring devices to record and report measurements would help to gather data and manage the water course.

Alan Rollo, Medicine River Canoe Club related this rule to the Fox monitoring the chicken house and not expecting the individual that is stealing water from his neighbors to report his readings accurately.

Liter Spence, Department of Fish, Wildlife and Parks commented that without a requirement for reporting records to the DNRC or other entity or the appointment of a water commissioner, there is no real incentive for an owner to keep accurate records. He recommends a provision for a flexible means for records to be periodically reported by the owner to DNRC (as may be determined by the DNRC or the Board) so that at least some verification of water use compliance can be established.

Jo Brunner, Montana Water Resources Association, was concerned that an owner or operator of an appropriation facility would be required to keep minute records that would be difficult to take care of especially if the diversion is a distance from the use. She stated that her organization has been supporters of measuring devices for a long time and are not really sure that the adjudication process will be accomplished until a lot more measuring devices are installed so that we know exactly how much water is being used.

RESPONSE: RULE VI (1) be revised as follows:

~~An owner or operator of an appropriation facility on a watercourse or portion of a watercourse identified as chronically dewatered by the department, shall keep records of diversions. Measurements will be recorded at a reasonable interval determined by the department after consultation with the affected owner or operator.~~

To improve the management of a watercourse or portion of watercourse identified by the department as chronically dewatered, the owners or operators of appropriation facilities and/or the owners or operators of instream water rights which require a measuring device will record and report to the department or another designated entity water measurements at a reasonable interval determined by the department after consultation with the affected owners or operators.

(3) The complete rules as adopted are as follows:

36.13.101 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) "Appropriation facility" means a system including structures used to divert, impound, or withdraw water from a watercourse and convey water for a beneficial use.

(2) "Board" means the board of natural resources and conservation provided for in Title 2, Chapter 15, Part 3302.

(3) "Chronically dewatered watercourse" means a watercourse or portion of a watercourse identified by the Department pursuant to Section 85-2-150, MCA.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, Chapter 15, Part 33.

(5) "Director" means the director of the department or his/her designee.

(6) "Natural overflow" means the water which results in the flooding of lands adjoining streams during high flow with no man-made diversion involved.

(62) "Operator" means the owner or any other person having a right, title, or other interest in an appropriation facility or is responsible for the management of the appropriation facility.

(78) "Owner" means the individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity

having a water right or interest in an appropriation facility.

(82) "Suitable controlling device" means a headgate or other adjustable structure to regulate the amount of water diverted from a watercourse. The suitable controlling device must be capable of being closed completely and to adequately vary the amount of water diverted into a ditch, canal, pipeline or other conveyance system.

(910) "Suitable measuring device" means a structure, gauging station or meter that determines the amount of water being diverted into an appropriation facility. The suitable measuring device may be integrated and be a part of a suitable controlling device or it may be separate. Plans and/or specifications of measuring devices must be approved by the department prior to installation. The suitable measuring device must be capable of measuring one hundred twenty five per cent (125%) of the flow rate of the appropriative or reserved water right. The measuring device must be located as close as is reasonably possible to the point of diversion from the watercourse.

(1011) "Water measurement program" means the program established by the 1991 legislature through HB 908 and codified in 85-2-113(4), 85-2-150, and 85-1-602, MCA. The purpose of the program is to more closely manage water uses from chronically dewatered watercourses.

(1112) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(13) "Water spreading" means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually nonperennial, watercourses by means of dams, dikes, or ditches, or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

AUTH: 85-2-113, MCA

IMP: 85-2-113 , MCA

36.13.201 STANDING WATER MEASUREMENT ORDER- CHRONICALLY DEWATERED WATERCOURSE

(1) The owner or operator of an appropriation facility on a watercourse or portion of a watercourse identified as chronically dewatered by the department pursuant to 85-2-150, MCA, must have a properly maintained suitable measuring device as part of the appropriation facility. The appropriation facility must also have a suitable controlling device to regulate the amount of water diverted from the watercourse. The appropriation facility must have a suitable controlling device and measuring device operational no later than two years after Department identification of the watercourse or portions of the watercourse as chronically dewatered.

~~(2) --The board may defer the deadline for having a suitable controlling device and measuring device installed, an appropriation facility which is not currently used because the land to which the water is applied is contracted under a state~~

~~or federal conservation set-aside program or the existing right is leased pursuant to 85-2-436, MCA or the existing right has a temporary change pursuant to 85-2-407, MCA. However the deferred facility must have a suitable controlling and measuring device before it can be put into service. It is the responsibility of the owner or operator of the appropriation facility to request the board to consider a deferment of the deadline.~~

~~(3) Whenever an established instream water right for a beneficial use exists on an identified chronically dewatered watercourse or portion of a watercourse a suitable device is required for measuring the right. However livestock drinking directly from the watercourse and waterspreading and natural overflow irrigation rights will not be required to have a measuring device.~~

(42) If the board specifically finds that the installation of suitable controlling and measuring devices along the entire watercourse or portion of watercourse is not practical within the two (2) year deadline, it may establish a later deadline pursuant to 36.13.301.

(53) Notice of an order issued under this rule must be pursuant to 36.13.701.

AUTH: 85-2-113, MCA

IMP: 85-2-113 , MCA

36.13.301 IMPRACTICAL EXTENSION OF DEADLINE FOR INSTALLATION ~~in order for the~~ The board ~~to may~~ establish a deadline for acquiring and installing measuring devices beyond two (2) years from the department's identification of a chronically dewatered watercourse or portion of a watercourse for the following circumstances:

(1) The board may consider an extension of the deadline for installation of measuring devices on a watercourse or portion of a watercourse identified by the department as chronically dewatered if the owners of at least fifty per cent (50%) of the appropriation facilities or the owners of twenty (20) appropriation facilities, whichever is less, must petition the board to establish a deadline beyond two (2) years from the department's identification of a watercourse or portion of a watercourse as chronically dewatered. The petition must be accompanied by a written justification addressing the finding that must be made by the board. The petition must be received by the board at least one hundred eighty (180) days prior to the ordered deadline. The board must approve or deny the extension within ninety (90) days of receiving the petition. The board may extend the deadline by a maximum of two (2) years. The board's finding must be made from information presented by petitioners and participants at a scheduled board meeting.

~~(b) (a)~~ At a minimum the board must find:

~~(a) (i)~~ The two (2) year deadline is not practical for at least fifty per cent (50%) of the appropriation facilities.

~~(b) (ii)~~ Installation of measuring devices is not practical because of factors including the availability of materials, labor and construction equipment, the time period

necessary to obtain permits and to finance, acquire, and install controlling and measuring devices.

(c) (iii) The public welfare will not be negatively impacted by an extended deadline because:

(i) (A) there are no significant adverse environmental impacts; and

(ii) (B) there are no adverse effects on the quality of water for existing beneficial uses.

(4) (2) An owner or owners of an individual appropriation facility on an identified watercourse may request an extension of a deadline for installation of measuring devices. The request for extension must be presented to the board at least one hundred eighty (180) days prior to the ordered deadline. The board will determine if an extension is to be granted and if so will specify a length of the extension. The board may request the department to investigate the request and report its findings to the board. Additional requests for individual extensions may be considered by the board. ~~Ne-public-notice-of individual-extensions-will-be-made.~~ Reasons for an individual extension will be limited to:

(a) extreme health or financial circumstances;

(b) circumstances beyond the owners control which delay any necessary permits from being obtained; or

(c) an owner who takes possession of the appropriation facility with insufficient time to acquire and install controlling and measuring devices before the established deadline.

(3) The board may extend the deadline for having a suitable controlling device and measuring device installed on an appropriation facility which is not currently used because the land to which the water is applied is contracted under a state or federal conservation set-aside program or the existing water right is leased pursuant to 85-2-436, MCA or the existing water right has a temporary change pursuant to 85-2-407, MCA. However the appropriation facility must have a suitable controlling and measuring device before it can be put into service. It is the responsibility of the owner or operator of the appropriation facility to request the board to consider an extension of the deadline.

(4) The board may extend the deadline for having a suitable measuring device for an established instream water right for a beneficial use dependent upon an appropriation facility on an identified chronically dewatered watercourse or portion of a watercourse. If there are no junior water rights or a measuring device will probably not help to solve the chronically dewatered condition or resolve conflicts among water right holders, an extension of the deadline may be granted by the board. The owner or owners of an instream water right must request an extension from the board. The extension will be for up to two (2) years. Additional requests for extensions may be considered by the board.

(a) instream water rights for livestock drinking directly from a watercourse and waterspreading and natural overflow irrigation rights will not be required to have a

measuring device.

(5) A one (1) year extension of the deadline for acquiring and installing measuring devices may be granted by the board for the owner or owners of appropriation facilities who are consolidating diversions or ditches. ~~No public notice will be made.~~

~~(2) (6) The board must place a notice of consideration of an extension in the legal section and paid advertisement of a newspaper of general circulation in the area of the identified watercourse or portion of watercourse. The notice shall be made at least thirty (30) days before the date of a scheduled board meeting. Actual advertisement costs must be paid by the petitioners owners or operators requesting an extension. (Individual notice is not given). The board's finding must be made from information presented by petitioners and participants at a scheduled board meeting.~~

(7) Notice of an order issued under this rule must be pursuant to 36.13.701.

AUTH: 85-2-113, MCA

IMP: 85-2-113, MCA

36.13.401 ENFORCEMENT (1) The department may verify to the extent possible, owner compliance with the requirement for suitable controlling and measuring devices.

(2) Entry upon land to verify compliance may be made pursuant to 85-2-115, MCA.

(3) Penalties for violating, refusing, or neglecting to comply with these rules or a board order are defined in 85-2-122, MCA.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-115, and 85-2-122, MCA

36.13.501 COMPLAINTS (1) Complaints alleging a violation of these rules or a board order shall be submitted to the board, the department, and the alleged violator in a written affidavit.

(2) The alleged violator will respond in writing to the board, the department, and the complainant within ten (10) days of receiving the complaint.

(3) The department may investigate the complaint and report its findings to the board in writing.

(4) Only complaints regarding the installation, operation, and/or maintenance of a controlling or measuring device will be considered. Complaints regarding the validity of the water rights, property rights, and/or easements will not be considered.

AUTH: 85-2-113, MCA

IMP: 85-2-113 and 85-2-122, MCA

36.13.601 MEASUREMENTS AND RECORDS (1) ~~An owner or operator of an appropriation facility on a watercourse or portion of a watercourse identified as chronically dewatered by the department, shall keep records of diversions. Measurements will be recorded at a reasonable interval determined by the department after consultation with the affected owner or operator. To improve the management of a~~

watercourse or portion of watercourse identified by the department as chronically dewatered, the owners or operators of appropriation facilities and/or the owners or operators of instream water rights which require a measuring device will record and report to the department or another designated entity water measurements at reasonable intervals determined by the department after consultation with the affected owners or operators.

AUTH: 85-2-113, MCA

IMP: 85-2-113, MCA

36.13.701 NOTICE OF DEADLINE OR EXTENSION-BOARD-ACTIONS

(1) Upon action by the board establishing a deadline or granting an extension of time, the department shall prepare a notice containing the facts pertinent to the order and shall publish the notice once in a newspaper of general circulation in the area of the identified watercourse.

(2) Before the date of publication, the department shall serve the notice by first-class mail upon:

(a) appropriators of water according to the records of the department who may be affected by the board action.


(b) any purchaser under contract for deed, as defined in 70-20-155, MCA, of the property that may be affected by the board action.

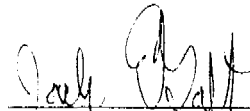
(c) any other person or agency the department feels may be interested in or affected by the board action.

(3) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

AUTH: 85-2-113, MCA.

IMP: 85-2-150, MCA.


Donald D. MacIntyre
Chief Legal Counsel
Rules Reviewer


Jack E. Galt, Chairman
Board of Natural Resources
and Conservation

Certified to the Secretary of State, April 5, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.2.602; 42.2.603 and)	ARM 42.2.602; 42.2.603; and
42.2.605 relating to Taxpayer)	42.2.605 relating to Taxpayer
Appeal Rules)	Appeal Rules


TO: All Interested Persons:

1. On February 11, 1993, the Department published notice of the proposed amendment of ARM 42.2.602; 42.2.603 and 42.2.605 relating to taxpayer appeal rights at pages 247 of the 1993 Montana Administrative Register, issue no. 3.

2. A Public Hearing was held on March 11, 1993, to consider the proposed amendments. No one appeared to testify and no written comments were received.

3. The Department has adopted the amendments to the rule as proposed.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 5, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT
of ARM 42.15.101, 42.15.102,)	ARM 42.15.101, 42.15.102,
42.15.104, 42.15.111, 42.15.)	42.15.104, 42.15.111, 42.15.
112, 42.15.201, 42.15.202,)	112, 42.15.201, 42.15.202,
42.15.203, 42.15.506 and)	42.15.203, 42.15.506, and
REPEAL of ARM 42.15.103)	REPEAL of ARM 42.15.103
relating to Change of Domicile)	relating to Change of
)	Domicile

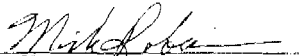
TO: All Interested Persons:

1. On February 11, 1993, the Department published notice of the proposed amendment and repeal of the rules indicated above relating to income tax rules pertaining to a change in domicile at pages 244 of the 1993 Montana Administrative Register, issue no. 3.

2. A Public Hearing was held on March 10, 1993, to consider the proposed amendments and repeal. No one appeared to testify and no written comments were received.

3. The Department has adopted the amendments to the rules as proposed and repealed ARM 42.15.103 as proposed in the notice published on February 11, 1993.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State April 5, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT
of ARM 42.26.101, 42.26.201,)	of ARM 42.26.101, 42.26.201,
42.26.205, 42.26.206, 42.26.)	42.26.205, 42.26.206,
215, 42.26.217,)	42.26.215, 42.26.217,
42.26.262, 42.26.264, 42.26.)	42.26.262, 42.26.264,
265, 42.26.269, 42.26.273,)	42.26.265, 42.26.269,
42.26.275, 42.26.286 and the)	42.26.273, 42.26.275, 42.26.286
REPEAL of ARM 42.26.214,)	and the REPEAL of ARM
42.26.227, 42.26.258, 42.26.)	42.26.214, 42.26.227,
281, and 42.26.291 relating to)	42.26.258, 42.26.281, and
Corporation License Tax)	42.26.291 relating to Corpora-
Multistate Activities)	tion License Tax Multistate
)	Activities

TO: All Interested Persons:

1. On February 11, 1993, the Department published notice of the proposed amendment and repeal of the rules listed above relating to corporation license tax multistate activities at pages 250 of the 1993 Montana Administrative Register, issue no. 3.

2. No public comments were received regarding these rules.

3. The Department has adopted the amendments to the rules as proposed and has repealed the rules specified in the notice of intent published on February 11, 1993.



CLEO ANDERSON

Rule Reviewer



MICK ROBINSON

Director of Revenue

Certified to Secretary of State April 5, 1993.

VOLUME NO. 45

OPINION NO. 2

CITIES AND TOWNS - Distribution of proceeds from tax deed sale;
COUNTIES - Distribution of proceeds from tax deed sale;
LIENS - Effect of tax deed sale on special assessments;
TAXATION AND REVENUE - Distribution of proceeds from tax deed sale;
MONTANA CODE ANNOTATED - Sections 7-8-2301, 7-8-2306, 15-17-317 to 15-17-319, 15-18-214;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 38 (1989).

HELD: MCA § 7-8-2306, which governs the distribution of proceeds from a sale of county tax deed land, requires that city assessments be included and prorated as part of the allocation of monies received from that sale, regardless of when those assessments became payable.

April 5, 1993

Mr. David N. Hull
Helena City Attorney
City-County Administration Building
316 North Park
Helena, MT 59623

Dear Mr. Hull:

You have requested my opinion regarding the allocation of proceeds from a sale of tax deed land. Specifically, you have asked:

When a county sells tax deed land pursuant to MCA § 7-8-2301, and the proceeds of the sale are not sufficient to cover the taxes and assessments, are city assessments to be included and prorated as part of the allocation of the monies received from the tax deed sale?

This question arises because the City of Helena [City] and Lewis and Clark County [County] have taken contrary positions regarding the interpretation of MCA § 7-8-2306. This statute governs the distribution of proceeds of the sale of tax deed land, and provides in relevant part:

The proceeds of each sale or lease under this part or part 25 must be paid over to the county treasurer, who shall apportion and distribute the proceeds in the following manner:

(1)(a) Upon a sale of the property, the proceeds of each sale must be credited to the county general fund

for reimbursement of expenditures made from it in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there is any money remaining after the payment of the amount specified in subsection (1)(a) and the remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the general fund of the county; or

(ii) less in amount than the aggregate of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.

The City asserts that its assessments constitute a "fund" or "purpose" to which excess proceeds must be allocated on a pro rata basis in accordance with subsection (b)(ii) of this statute. The County, on the other hand, argues that the City is not eligible for proceeds under MCA § 7-8-2306, because it has an alternative means of protecting its interest in tax deed property.

It is true that the City, unlike other entities, has a statutory right to protect its interest in tax sale property which is purchased by the county under MCA § 15-17-214. In accordance with MCA § 15-17-317, a county which has become a purchaser of property at the tax sale and which is requested to do so by a municipality must assign its interest in tax sale property upon payment of all delinquent taxes, excluding assessments, plus costs without penalty or interest. The municipality is then required to hold the property in trust for the improvement fund into which the delinquent special assessments are payable. MCA § 15-17-317. Alternatively, the municipality may assign its interest or sell or lease the property, thereby recouping all costs associated with the transfer of tax deed property, as well as delinquent assessments and interest thereon. MCA §§ 15-17-318 and -319; see also 43 Op. Att'y. Gen. No. 38 at 120, 123-24 (1989).

If a municipality exercises its right of assignment in accordance with MCA § 15-17-317, it forecloses the right of

other entities to share in tax sale proceeds under MCA § 7-8-2306. In this respect, municipalities enjoy a significant advantage over other entities with similar interests in tax deed property. However, the right of assignment is not the sole means by which the City can cover the cost of delinquent assessments.

There is nothing in the language of MCA § 7-8-2306(1)(b)(ii) or MCA § 15-17-317 which suggests that the City's failure to exercise its right of assignment constitutes a waiver of its right to receive remaining proceeds on a pro rata basis. To infer this limitation would be contrary to the rule of statutory construction whereby the law must be construed as it is found without inserting what has been omitted. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968).

The language of MCA § 7-8-2306 is clear and unambiguous: If there is any money remaining after the county is reimbursed for its costs associated with the procurement of the tax deed and that money is insufficient to pay the aggregate amount of *all taxes and assessments* accrued against the property for *all funds and purposes*, the proceeds are prorated "in the proportion that the amount of taxes and assessments accrued against the property for *each fund or purpose* bears to the aggregate amount of taxes and assessments accrued against the property for *all funds and purposes*." MCA § 7-8-2306(1)(b)(ii) (emphasis supplied).

Nothing therein suggests that city assessments are not included or are not prorated as part of the allocation of monies received from the sale of county tax deed land. Statutes are to be construed according to the plain meaning of their terms, and the plain meaning of the term "all" precludes the county's interpretation of this statute. Norfolk Holdings, Inc. v. Montana Dep't of Revenue, 249 Mont. 40, 43, 813 P.2d 460, 461 (1991).

I conclude that, where a city has not requested and received assignment of the county's rights to the tax sale property, the city assessments must be included and prorated as part of the allocation of monies received from a sale of county tax deed land under MCA § 7-8-2306(1)(b)(ii). Since the same operative language is used in subsection (b)(i) of that statute, I also conclude that city assessments must be included and credited as provided therein if the remaining money from the sale of the county tax deed land exceeds the aggregate value of all taxes and assessments.


This conclusion is unaffected by the fact that issuance of a tax deed grants title "free and clear of all liens and encumbrances," including special assessments which become payable prior to issuance of the deed. MCA § 15-18-214. In 43 Op. Att'y. Gen. No. 38 at 125 (1989), Attorney General Radicot held that if either a county or a municipality takes a tax deed

to property, the only special assessments which survive issuance of the tax deed are those which first become payable *after* issuance of the deed. *Id.* at 125. The County suggests that, in light of this statute and corresponding opinion, it need only prorate those assessments which become payable after issuance of the deed. While MCA § 15-18-214 does in fact extinguish all liens which become payable prior to issuance of the deed, it does not affect the amount to be distributed upon sale under MCA § 7-8-2306. MCA § 7-8-2306(1)(b)(i) states that "the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid *before becoming delinquent.*" (Emphasis supplied.) Likewise, subsection (b)(ii) states that proceeds must be prorated "between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property *for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.*" (Emphasis supplied.) There is no correlation between the method of distribution outlined in MCA § 7-8-2306 and the effect of a tax deed in MCA § 15-18-214.

THEREFORE, IT IS MY OPINION:

MCA § 7-8-2306, which governs the distribution of proceeds from a sale of county tax deed land, requires that city assessments be included and prorated as part of the allocation of monies received from that sale, regardless of when those assessments became payable.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/brf

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 December 31, 1992. This table includes those rules adopted during the period January 1, 1993 through March 31, 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 December 31, 1992, this table and the table of contents of this issue of the MAR.

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

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