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# **MONTANA ADMINISTRATIVE REGISTER**

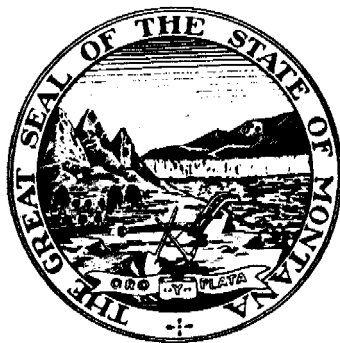
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1995 ISSUE NO. 19  
OCTOBER 12, 1995  
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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF A PROPOSED AMEND-  
amendment of ARM 4.12.3402 ) MENT TO THE SEED LABORATORY  
 ) ANALYSIS FEES RULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 11, 1995, the department of agriculture proposes to amend the above mentioned rule 4.12.3402 for samples of seeds analyzed and tested.

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

4.12.3402 SEED LABORATORY ANALYSIS FEES (1) The Montana Seed Laboratory, Montana State University, Bozeman, Montana will test samples of seeds submitted for purity, germination and miscellaneous tests. All samples of seed analyzed and tested shall be at the following rates:

FEE SCHEDULE

KIND OF SEED	PURITY ONLY	GERMINATION ONLY	PURITY & GERMINATION
Bentgrasses & Redtop	<del>16.50</del> 17.00	<del>13.50</del> 14.00	<del>29.50</del> 31.00
Bluegrass	<del>16.00</del> 17.00	<del>10.50</del> 14.00	<del>24.00</del> 31.00
Bluestems	<del>24.00</del> 36.00	<del>26.00</del> 20.00	<del>37.50</del> 56.00
Bromegrass	<del>13.50</del> 17.00	<del>10.50</del> 14.00	<del>22.50</del> 31.00
Canarygrass	<del>10.50</del> 14.00	<del>10.50</del> 11.00	<del>19.50</del> 25.00
Cereals, i.e., barley*, wheat, rye, triticale, corn, oats, spelt, emmer	9.00 <del>10.50</del> 3.50	7.50 6.00 10.50	15.00 16.50 16.50
Fescues	<del>13.50</del> 17.00	<del>10.50</del> 14.00	<del>22.50</del> 31.00
Flax	<del>7.50</del> 10.00	<del>7.50</del> 8.00	<del>13.50</del> 18.00
Foxtails-creeping* meadow	<del>24.00</del> 36.00	<del>16.00</del> 20.00	<del>37.50</del> 56.00
Indian ricegrass*	<del>13.50</del> 15.00	<del>12.00</del> 20.00	<del>24.00</del> 35.00
Legumes*, large & small seeded, i.e., Alfalfa, cicer milkvetch, clovers, sweetclover, birdsfoot trefoil, beans, peas, lentils, faba, chickpeas, medic, sainfoin	7.50 10.00 <del>10.50</del> 17.00 10.50 14.00 13.50 15.00 13.50 17.00 13.50 36.00 13.50 12.00 17.00 7.50 10.00 12.00	7.50 8.00 8.00 14.00 9.00 11.00 12.00 20.00 10.50 14.00 12.00 20.00 10.50 10.50 14.00 10.50 8.00 12.00	13.50 18.00 18.00 31.00 18.00 25.00 24.00 35.00 22.50 31.00 24.00 56.00 22.50 21.00 31.00 16.50 18.00 22.50

Saltbushes-fourwing,	12.00	15.00	9.00	20.00	19.50	35.00
nutlett						
Sorghums-grain,		10.00		8.00		18.00
Gundangrass	10.50	10.00	10.50	8.00	10.50	18.00
Sugarbeets	7.50	10.00		8.00	16.00	18.00
Sunflower	7.50	10.00	10.50	8.00	16.50	18.00
Timothy	12.00	14.00	10.50	11.00	21.00	25.00
Wheatgrasses*		13.50	10.50		22.50	
a beardless, bluebunch, crested,						
intermediate, pubescent, slender,						
streambank, tall,						
thickspike		17.00		14.00		31.00
a western		20.00		20.00		40.00
Wildryes	13.50	17.00	10.50	14.00	22.50	31.00
Vegetables	7.50	10.00	7.50	8.00	12.50	18.00

MIXTURES:

2 kinds (See hourly rate) 13.50 ————— 12.00 ————— 24.00

~~2 or more kinds figured on hourly rate of \$10.00 per hour~~

~~BARLEY STRIPE MOSAIC VIRUS TEST (BSMV) — \$52.50 —————~~

Tetrazolium Test (TZ): each kind of seed listed above: \$25.00

Cereals ————— \$15.00

Small and large seeded legumes ————— \$12.00

Grasses ————— \$22.50

Seed Identification (ID) ————— \$10.00 per hour (minimum \$5.00)

Indigenous seeds and/or samples of time consuming nature due to excessive dirt, chaff, weed seeds, etc. will be charged an hourly rate of: \$10.00

Rush Orders — 50 % additional charge (48 hour turn around time for these tests that can physically be performed in 48 hours). Express service or 24 hour turn around time — \$100 per test.

Faxing reports — Actual faxing cost in addition to test fees.

Sprout damage — \$10.00

\* May contain dormant seed, — dormant seed determination (in addition to germination charges) cereals — \$7.50, grasses — \$15.00, utricic fill determination (in addition to germination charges) — \$7.50.

(2) Fees for additional services provided by the seed laboratory:

Hourly rate \$ 18 (for services including testing mixtures, excessively dirty or time consuming samples)

Rush \$ 25 (expedite sample before routine samples)

Express rush \$100 (expedite sample before all rush samples)

BSMV \$ 30 (Barley Stripe Mosaic Virus Test)

Seed ID \$ 5 (per seed identification)  
Dormancy \$ 15 (in addition to germination charges)  
Utricle Fill \$ 15 (in addition to germination charges)  
FAX \$ 2 (to send analysis reports)  
Phone \$ 2 (to send analysis reports)  
USA Noxious \$ 5 (in addition to normal rate)  
Canadian ISTA \$ 5 (samples tested in accordance with  
Canadian or ISTA rules)

AUTH: 80-5-112 MCA IMP: 80-5-108 AND 80-5-110 MCA

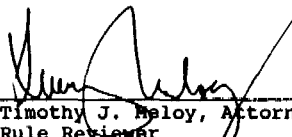
REASON: The adoption of these amendments to the seed laboratory analysis fees will allow the laboratory to keep up with rising costs and to meet their budget needs including maintenance of equipment, salaries for lab personnel and develop new services that will benefit their users. The proposed fees are comparable with the rates being charged for these services in surrounding states.

3. Interested persons may submit their written data, views, or arguments concerning this proposed amendment to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, no later than November 9, 1995.

4. If a party who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 no later than November 9, 1995.

5. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 36 persons based on agricultural seed licenses issued.

  
W. Ralph Peck, Director  
DEPARTMENT OF AGRICULTURE

  
Timothy J. Maloy, Attorney  
Rule Reviewer

Certified to the Secretary of State October 2, 1995



BEFORE THE PROFESSIONAL AND OCCUPATIONAL  
LICENSING BUREAU  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the transfer ) AMENDED NOTICE OF PUBLIC HEARING  
and proposed amendment, repeal ) ON THE TRANSFER AND PROPOSED  
and adoption of rules pertain- ) AMENDMENT, REPEAL AND ADOPTION  
ing to fire prevention and ) OF RULES PERTAINING TO FIRE  
investigation ) PREVENTION AND INVESTIGATION

TO: All Interested Persons:

1. On September 28, 1995, the Professional and Occupational Licensing Bureau of the Department of Commerce published a notice of public hearing at page 1825, 1995 Montana Administrative Register, issue number 18. The public hearing will be held on November 6, 1995 at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 N. Jackson, Helena, Montana. The deadline for submission of comments is also November 6, 1995, at the close of the hearing.

2. In the original notice, the Bureau published the proposed amendment of ARM 8.19.112 (formerly 23.7.133 under Department of Justice). The Bureau inadvertently omitted proposed amendments to (1) and (2), and indicated that those subsections would remain the same. The amendment of ARM 8.19.112 should have read as follows: (new matter underlined, deleted matter interlined)

"8.19.112 EXAMINATION FOR ENDORSEMENT (1) The  
department shall issue an endorsement for ~~pre-engineered~~ fire  
alarm systems, special fire agent suppression systems or fire  
extinguishing systems to an individual who pays the required  
fee and submits satisfactory documentation that the applicant  
~~holds current certification approved by the department or who~~  
~~submits a copy of NICET's notification letter confirming the~~  
~~applicant's successful completion of the examination elements~~  
~~for level-II for the relevant system or systems for which~~  
~~endorsement is sought and who pays the required fee;~~  
satisfies one of the following:

(a) currently holds the equivalent of endorsement in  
another jurisdiction (state, territory, federal government,  
federally-recognized tribe, country, or local government);  
provided that the endorsement or equivalent was obtained by the  
applicant through passage of an examination approved by the  
department;

(b) has passed the examination elements for a level II  
certification from NICET, for the system(s) for which  
endorsement is sought;

(c) has successfully completed an approved apprenticeship  
program that included successful passage of an examination,  
approved by the department, as a component of successful  
completion; or

(d) is currently licensed as an engineer in any jurisdiction (state, territory, federal government, federally-recognized tribe, country, or local government), that has licensure standards as stringent as or more stringent than those for licensure as an engineer in the state of Montana.

~~(2) The department shall issue an endorsement for non pre-engineered fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who submits a copy of NICET's notification letter confirming the applicant's successful completion of the examination elements for level II for the relevant system or systems for which endorsement is sought, or has successfully completed an approved apprenticeship program, or is a licensed engineer, and who pays the required fee.~~

~~(3) Individuals applying for any endorsement described herein may be issued a provisional endorsement. The provisional endorsement will expire on December 31, 1994. At the time of renewal, the applicant must submit appropriate documentation verifying that the applicant qualifies for endorsement."~~

Auth: Sec. 50-3-102, 50-3-103, 50-39-107, MCA; IME, Sec. 50-3-102, 50-39-101, ~~50-39-102~~, 50-39-103, 50-39-104, 50-39-105, 50-39-106, 50-39-107, MCA

**REASON:** The proposed amendment to this rule is necessary to comply with the Department's rulemaking authority under 50-39-107, MCA. The current rule provides for a distinction between pre-engineered and non pre-engineered systems that is not supported in the provisions of Title 50, chapter 39, part 1. The Department has also proposed necessary clarification to the types of examinations that will be approved which is necessary to eliminate the current ambiguity in which types of examinations will be approved.

3. As noted above, public comment will be accepted through the close of the hearing to be held on November 6, 1995.

PROFESSIONAL AND OCCUPATIONAL  
LICENSING BUREAU  
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, October 2, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Teacher	)	PROPOSED NEW RULE I CLASS 7 AMERICAN
Certification	)	INDIAN LANGUAGE AND CULTURE
	)	SPECIALIST

To: All Interested Persons

1. On November 30, 1995 at 9:30 a.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education Offices, 2500 Broadway, Helena, in the matter of the proposed new rule I Class 7 American Indian Language and Culture Specialist.

2. The rule as proposed provides as follows:

NEW RULE I. CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE  
SPECIALIST (1) Term: 5 years - renewable.

(2) Basic qualification: The office of public instruction shall issue a class 7 certificate based upon verification by the American Indian tribe for which the language and culture certification is desired that the individual has met tribal standards for competency and fluency as a requisite for teaching that language and culture. Candidates for Class 7 certification must meet all non-academic requirements for certification in Montana.

(3) Qualification criteria: Each tribe will develop its own criteria for qualifying an individual as competent to be a specialist in its language and culture.

(4) Renewal: Sixty units (60) of renewal activities authorized and verified by the tribe will be required for renewal of a class 7 certificate.

(5) responsibilities: A school district may assign an individual certified under this rule to teaching or specialist services within the field of American Indian language and culture under such supervision as the district may deem appropriate. No additional teaching certificate or endorsement is required for duties within this prescribed field.


(6) Sunset provision: This rule shall expire fifteen years (15) after the date of adoption as established by the board of public education.

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-103, 20-4-106 MCA

3. The board proposes this new rule to provide formal recognition of special competency for teachers of American Indian language and culture as per Article X, Section 1, (2) of the Montana constitution which states, in part: "The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity."

4. Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Wilbur Anderson, chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than November 15, 1995.

5. Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, has been designated to preside over and conduct the hearing.

  
Wayne Buchanan, Executive Secretary  
Board of Public Education

Certified to the Secretary of State on 9/19/95.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PROPOSED  
of rule 18.6.211 concerning ) AMENDMENT  
application fees for outdoor )  
advertising ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Interested Persons.

1. On November 14, 1995, the Montana Transportation Commission, formerly the Montana Highway Commission, intends to amend rule 18.6.211 concerning permits. The Department published a notice at page 1294 of the Montana Administrative Register, Issue No. 13, of the proposed temporary amendment of this rule and now intends to permanently amend the rule.

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

18.6.211 PERMITS (1) Applications for permits may be obtained at any of the Department of ~~Highways~~ transportation district offices located in Missoula, Butte, Great Falls, Glendive and Billings.

(2) A permit must be obtained for each sign and the application for the permit must be accompanied by ~~an initial fee of six dollars (\$6.00)~~ a nonrefundable initial application fee as follows:

<u>32 sf or less</u>	<u>.....\$20</u>
<u>33 sf to 64 sf</u>	<u>.....\$25</u>
<u>65 sf to 128 sf</u>	<u>.....\$30</u>
<u>129 sf to 256 sf</u>	<u>.....\$35</u>
<u>257 sf to 512 sf</u>	<u>.....\$40</u>
<u>513 sf to 672 sf</u>	<u>.....\$45</u>

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

AUTH: Sec. 75-15-121 and 75-15-122, MCA; IMP: Sec. 75-15-122, MCA

REASON: The proposed amendments are made necessary by the amendments to section 75-15-122, MCA. More specifically, the Commission is to make the proposed amendments based upon Chapter 510 of the 1995 Legislative Session. In that legislation, the fees are to be determined by the square footage of the sign face and established by rule by the Commission to cover the cost of administering and enforcing section 75-15-122, MCA.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Transportation Commission or to the Coordinator of Outdoor Advertising, Richard Munger, Department of Transportation, P.O.

Box 201001, Helena, MT 59620-1001. Comments must be received no later than November 10, 1995.


4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Richard Munger, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001. A written request for hearing must be received no later than November 10, 1995.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 15 persons based on an estimated 150 permit applications per year.

MONTANA TRANSPORTATION COMMISSION

By:

  
THORM FORSETH, Chairman

  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State September 27, 1995.

BEFORE THE DEPARTMENT OF JUSTICE  
DIVISION OF FORENSIC SCIENCES  
OF THE STATE OF MONTANA

In the matter of the amendment )	
of Rules 23.14.201, 23.14.212, )	
23.14.213 and 23.14.217 and )	
the adoption of new Rule I )	NOTICE OF PUBLIC HEARING ON
concerning the administration )	PROPOSED AMENDMENT AND
of preliminary alcohol )	ADOPTION OF RULES
screening tests and the )	
training of peace officers who )	
administer the tests. )	

TO: All Interested Persons.

1. On Thursday, November 2, 1995, at 10:00 a.m., a public hearing will be held at the conference room of the Division of Forensic Sciences, 554 West Broadway, 6th floor, Missoula, Montana, to consider the amendment of rules 23.14.201, 23.14.212, 23.14.213 and 23.14.217 and the adoption of new rule I, pertaining to the certification and training of peace officers who administer preliminary alcohol screening tests.

The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you desire an accommodation, please contact the Department no later than October 30, 1995, to advise us of the nature of the accommodation that you need. Please contact Rob Smith, Office of the Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620-0401, (406) 444-2026.

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

23.4.201 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

(1) through (7) (a) remain the same.

(b) any approved device which is designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration. Analyses from this type of device, e.g. a roadside alcohol screening device preliminary breath tester, are to be considered as probable cause evidence only.

(8) through (18) remain the same.

(19) "Breath Test Specialist" means a person qualified under these rules to use a breath analysis instrument or preliminary breath tester. Depending on the person's degree of training as set forth in 23.4.216, he/she may be certified as:

(a) a breath test specialist/operator;

(b) a breath test specialist/senior operator; and/or

(c) a breath test specialist/technician.

Unless the context clearly indicates otherwise, where the term breath test specialist or specialist is used alone, it encompasses all three specialties.

(19) and (20) remain the same but are renumbered (20) and (21).

(22) "MLEA" means Montana law enforcement academy.

(23) "NHTSA" means national highway traffic safety administration.

(24) "POST council" means police officer standards and training advisory council of the Montana board of crime control.

(25) "Preliminary breath tester" or "PBT" means any device meeting the definition of 23.4.201(7)(b). Where the context clearly indicates, PBT also means preliminary breath test.

(21) remains the same but is renumbered (26).

(27) "Probable cause test" means any analysis of the breath using preliminary breath testers or any approved field sobriety or approved psycho-motor maneuver designed to indicate the presence of or demonstrate the influence of alcohol or other intoxicating substances.

(22) remains the same but is renumbered (28).

(29) "SFST/HGN" means standardized field sobriety testing/horizontal gaze nystagmus.

(23) through (25) remain the same but are renumbered (30) through (32).

AUTH: Section 61-8-405, MCA IMP: Section 61-8-405, MCA

23.4.212 BREATH ANALYSIS INSTRUMENTATION AND ASSOCIATED EQUIPMENT Subsections (1) through (5)(a) remain the same.

(b) All manufacturers/vendors must provide technical manuals, schematics and other material necessary for operation, preventative maintenance and repair of the breath analysis instruments and associated equipment.

(c) The manufacturer/vendor shall provide at least two breath analysis instruments for the approval process. The manufacturer/vendor shall provide at least two (or more at the request of the division) associated equipment devices for the approval process.

(d) The manufacturer/vendor shall send at least one representative knowledgeable in the technology and electronic configurations of the breath analysis instrument and capable of providing training for the personnel in the DUI section of the division of forensic sciences. The manufacturer/vendor shall, if requested to do so, send at least one representative knowledgeable in the technology and electronic configurations of the associated equipment device.

(e) The manufacturer/vendor must provide all information concerning any modification, change or upgrade to an approved breath analysis instrument or approved associated equipment within two months of that modification change or upgrade. The division of forensic sciences will evaluate such modifications, changes or updates and determine if such modification, change or



update necessitates reapproval of the breath analysis instrument, or associated equipment.

(f) remains the same.

(6) through (8) remain the same.

AUTH: Section 61-8-405, MCA IMP: Section 61-8-405, MCA

23.4.213 FIELD CERTIFICATION (1) Breath analysis instruments shall be field certified for ~~proper calibration accuracy~~ at least once every seven (7) days by a breath test specialist/senior operator, or in the event of a senior operator's absence, his/her authorized designee, using a solution of ethyl alcohol approved by the division of forensic sciences and using the field certification report form for the breath analysis instrument being certified.

(a) through (i) remain the same.

(i) A breath analysis instrument's field certification shall be considered valid for seven (7) days forward from the date of a proper field certification.

(2) All devices meeting the definition of "associated equipment" contained in 23.4.201(7)(b), shall be field certified for accuracy at least once every thirty one (31) days by a breath test specialist who has received training approved by the division in the proper methods for conducting such analyses.

(a) A PBT's field certification shall consist of a series of no less than two (2) analyses using an ethyl alcohol/water or ethyl alcohol/gas standard approved by the division.

(b) A field certification is valid when the results of the approved ethyl alcohol standard test is at target value plus or minus one hundredth (.01) gram per two hundred and ten liters. The results of the field certification must be recorded and maintained in the agency's files.

(c) Results of a field certification analysis outside the range specified in 23.4.213(2)(b) shall be confirmed by using a fresh/new standard. If the test results are still out of the specified range, the PBT will be removed from service.

(d) A field certification shall be performed whenever a new device is placed in service or when a device is returned to service. The field certification results must be on file with the agency before the PBT can be used for subject testing.

(e) The individual law enforcement agencies using PBTs shall maintain a record of the field certifications of each individual device. Such record shall include but not be limited to: the date of the field certification, the serial number of the PBT, the results obtained, and the name of the individual conducting the analysis.

(f) A PBT's field certification shall be considered valid for thirty one (31) days from the date of a proper field certification.

AUTH: Section 61-8-405, MCA IMP: Section 61-8-405, MCA

23.4.217 RECERTIFICATION OF BREATH TEST PERSONNEL (1) The division of forensic sciences ~~shall provide a videotape~~

~~containing all material needed~~ must approve any course given for the recertification of the breath test specialist/operator. The division of forensic sciences shall place a copy of the recertification exam in the custody of the breath test specialist/senior operator.

(2) The breath test specialist/senior operator shall have the responsibility of presenting the approved recertification ~~video course~~ and monitoring the examination of all personnel seeking recertification. The division of forensic sciences may, if it determines that the circumstances warrant, give recertification training ~~that is equivalent to that on videotape to any individual(s) seeking recertification directly from the division.~~

(3) remains the same.

(4) ~~A notice~~ Permits shall be issued to all individuals successfully completing the ~~operator's breath test specialist~~ recertification training. Such ~~notification permit~~ shall have the specialist's ~~expiration certification~~ date displayed. ~~Certification~~ The permit expires the last day of the month, in the following year, in which the specialist was certified.

(5) All breath test specialist/operators shall be recertified on an annual basis by attending a recertification course approved by the division.

(6) In addition to the annual recertification, ~~A~~ all breath test specialists/senior operators must be recertified by a representative of the division of forensic sciences once every two years on a schedule to be determined by the division.

(7) Training ~~shall~~ may include, but ~~is~~ is not be limited to, the following subjects: toxicology and pharmacology of alcohol in the human system, breath analysis instrument theory, breath analysis instrument operation, current legal decisions, training techniques and any area deemed appropriate by the division of forensic sciences.

(8) remains the same.

(9) ~~A notice~~ permit will be issued to all individuals successfully completing the senior operator's recertification training. Such notification shall have the specialist's ~~expiration certification~~ date displayed. Certification expires the last day of the month, in the following year, in which the specialist was certified.

(10) and (11) remain the same.

(12) If a breath test specialist fails to recertify within the specified time frame, he/she must either attend an initial certification course or file a request, in writing, for an exemption. Exemption requests will be reviewed and a decision will be presented to the individual in writing.

(13) If a breath test specialist fails the recertification examination he/she may retake the examination within 30 days of notification of failure. After a second test failure, all candidates for recertification must retake the appropriate breath test specialist course.

AUTH: Section 61-8-405, MCA IMP: Section 61-8-405, MCA

3. The proposed new rule will read as follows:

NEW RULE 1 PROBABLE CAUSE TESTS

- (1) PRELIMINARY BREATH TESTERS (PBTs)
  - (a) All models and/or types of PBTs used for development of probable cause evidence must be approved by the division. A list of approved PBTs will be maintained at the division.
  - (b) Individuals conducting PBTs as authorized by statute must be certified as breath test specialists.
  - (c) Individuals certified as breath test specialists pursuant to 23.4.216 on or before July 1, 1995 are deemed to be PBT-certified after attending a PBT operation course approved by the division of forensic sciences. Individuals certified as breath test specialists after July 1, 1995 are deemed to be PBT-certified.
  - (d) Individuals responsible for field certification of the PBT must receive training approved by the division outlining the procedures for conducting such certifications.

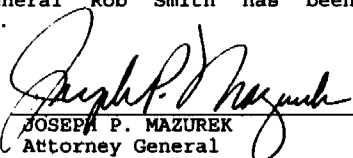
AUTH: Section 61-8-405, MCA IMP: Section 61-8-405, MCA

4. RATIONALE: These rules are necessitated by the enactment of Section 61-8-409, MCA, in 1995.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment and adoption of rules either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Phil Lively, Forensic Sciences Division, Montana Department of Justice, 554 West Broadway, Missoula, MT 59802, no later than November 10, 1995.

6. Assistant Attorney General Rob Smith has been designated to conduct the hearing.

  
\_\_\_\_\_  
Kathy Seely  
RULE REVIEWER

  
\_\_\_\_\_  
JOSEPH P. MAZUREK  
Attorney General

Certified to the Secretary of State October 2, 1995

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the repeal )	
of Rules 26.2.628, 26.2.629, )	
26.2.630, 26.2.634, 26.2.639, )	NOTICE OF PROPOSED REPEAL
and 26.2.641 through 26.2.663 )	
pertaining to rules imple- )	
menting the Montana )	NO PUBLIC HEARING
environmental policy act )	CONTEMPLATED

TO: All Interested Persons.

1. On November 11, 1995, the Department of Natural Resources and Conservation proposes to repeal rules 26.2.628 through 26.2.630, 26.2.634, 26.2.639, and 26.2.641 through 26.2.663 pertaining to rules implementing the Montana environmental policy act. A Notice of Repeal was incorrectly published in the Montana Administrative Register Issue No. 18 on p. 1954, which will not be effective.

2. Rules 26.2.628, 26.2.629, and 26.2.630 are on pages 26-50 through 26-52 of the Administrative Rules of Montana. Rules 26.2.634 and 26.2.639 are on pages 26-53 and 26-56 of the Administrative Rules of Montana. Rules 26.2.641 through 26.2.663 are on pages 26-56 through 26-74 of the Administrative Rules of Montana.

AUTH: Section 2-4-201, MCA  
IMP: Section 2-4-201, MCA

3. The proposed repeal of Rules 26.2.628 through 26.2.630, 26.2.634, 26.2.639, and 26.2.641 through 26.2.663 is necessary because the Department of State Lands was eliminated by Section 500, Chapter 418, Laws of Montana 1995. As a result of the reorganization of natural resource management functions the existing Department of Natural Resources and Conservation rules are deemed appropriate for coverage of the functions being transferred from the Department of State Lands. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301. Any comments must be received no later than November 9, 1995.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

  
for ARTHUR R. CLINCH, DIRECTOR

  
DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State

October 3, 1995

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of Rules 26.2.703 through	)	
26.2.707 pertaining to	)	NO PUBLIC HEARING
citizen participation in	)	CONTEMPLATED
agency decisions	)	

TO: All Interested Persons.

1. On November 11, 1995, the Department of Natural Resources and Conservation proposes to repeal Rules 26.2.703 through 26.2.707 pertaining to citizen participation in agency decisions. A Notice of Repeal was incorrectly published in the Montana Administrative Register Issue No. 18 on p. 1957, which will not be effective.

2. The proposed repeal of Rules 26.2.703 through 26.2.707 is necessary because the Department of State Lands was eliminated by Section 500, Chapter 418, Laws of Montana 1995. As a result of the reorganization of natural resource management functions the existing Department of Natural Resources and Conservation rules are deemed appropriate for coverage of the functions being transferred from the Department of State Lands. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation.

3. Rules 26.2.703 through 26.2.707, the rules proposed for repeal are on pages 26-82 and 26-83 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301. Any comments must be received no later than November 9, 1995.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

  
ARTHUR R. CLINCH, DIRECTOR

  
DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State October 3, 1995.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION ) NOTICE OF THE PROPOSED ADOPTION  
of New Rule I relating to ) OF NEW RULE I RELATING TO  
Itemized Deductions for ) ITEMIZED DEDUCTIONS FOR HEALTH  
Health Insurance ) INSURANCE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 23, 1995, the Department of Revenue proposes to adopt Rule I relating to Itemized Deductions for Health Insurance.

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

RULE I DEDUCTION FOR HEALTH INSURANCE PREMIUMS (1) For tax years beginning after December 31, 1994, a Montana resident who is an employee is allowed an itemized deduction of fifty percent of the medical health insurance premium payments that they actually paid during the tax year.

Example: Taxpayer X is an individual whose only income is from employment with XYZ company. His out-of-pocket costs for medical health insurance premiums during the year is \$2,000. Under Montana law, he is allowed a fifty percent deduction of the \$2,000 or \$1,000 as an itemized deduction not subject to any reduction. The remaining \$1,000 can be used as a medical expense that is subject to the percentage threshold amount in 15-30-121, MCA.

(2) A self-employed individual is allowed an itemized deduction of fifty percent of the sum of the medical health insurance premium payments paid during the tax year less the amount claimed as a self-employed health insurance deduction when arriving at their federal adjusted gross income.

Example: Taxpayer Z is a self-employed individual who pays \$2,000 medical health insurance premiums during the year. Thirty percent of \$2,000 or \$600 is allowed as a self-employed health insurance deduction when arriving at federal adjusted gross income. Under Montana law the following formula is used:

\$2,000 health premiums paid	
- 600	30% self-employed health insurance deductions
\$1,400	
\$1,400 remaining balance of premiums paid	
- 700	50% of balance
\$ 700	

The first \$700 can be deducted as an itemized deduction not subject to a percentage threshold amount. The remaining \$700 of medical health insurance premiums can be deducted under 15-30-121, MCA, subject to the percentage of Montana adjusted gross income threshold amount.

(3) If a person is both an employee and is self-employed, the calculation of the allowable medical health insurance itemized deduction is the same as in subsection (2).

(4) Medical health insurance premiums paid during the year cannot be deducted more than once in arriving at Montana adjusted gross income or as an itemized deduction.

(5) Those premiums that qualify as deductible medical health insurance premiums are the same as those allowed under federal law.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-121, MCA

3. This rule is proposed to be adopted to explain how taxpayers are to calculate the fifty percent deduction for health insurance.

Since Montana is tied to the federal tax law, a self-employed taxpayer may also take a deduction for health insurance before itemizing deductions.

The rule states that Montana's fifty percent itemized deduction for health insurance is calculated from the total health insurance premium and not after reduction of the federal self-employed health insurance deduction.

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

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

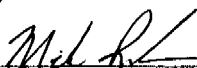
no later than November 10, 1995.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 10, 1995.

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 greater than 25.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 2, 1995



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED  
of ARM 42.31.2101, 42.31.2121,) AMENDMENT OF ARM 42.31.2101,  
42.31.2122, 42.31.2131, ) 42.31.2121, 42.31.2122,  
42.31.2132, 42.31.2133, ) 42.31.2131, 42.31.2132,  
42.31.2141, 42.31.2142, and ) 42.31.2133, 42.31.2141,  
42.31.2143 and ADOPTION of ) 42.31.2142, AND 42.31.2143  
New Rule I relating to ) AND ADOPTION OF NEW RULE I  
Contractor Gross Receipts ) RELATING TO CONTRACTOR GROSS  
RECEIPTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 23, 1995, the Department of Revenue proposes to amend ARM 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, 42.31.2141, 42.31.2142, and 42.31.2143 and adopt New Rule I relating to Contractor Gross Receipts.

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

42.31.2101 TERMINOLOGY DEFINITIONS (1) A "public contractor" is anyone who submits a proposal to or enters into a contract with a governmental agency or department for the construction or reconstruction of any public work, the cost of such construction or reconstruction being greater than \$5,000. The term "public contractor" includes subcontractors.

(2) ~~For the purpose of determining the type of work which requires a public contractors license, the words "public construction work", as referred to in 15-50-101(1)(a), MCA, are~~ broadly construed to include any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever. This rule applies to all contracts exceeding \$5,000 whether or not such contracts require performance of service, maintenance, repair, or any other type of work in addition to or as part of the work as above construed.

AUTH: Sec. 15-1-201 MCA  
IMP: Sec. 15-50-101 MCA

42.31.2121 CONTRACT AWARD REPORT BY AGENCY (1) Whenever a contract for the performance of public construction or reconstruction is awarded by any governmental agency, ~~including the federal government,~~ or departments thereof or any contractor subletting a contract, the awarding agencies, departments or contractors shall must complete and file with the department of

revenue a contract award report (form PC-1) which ~~shall~~ must contain the following information:

(1) ~~(a)~~ the name of the governmental agency, department thereof, or ~~prime~~ awarding contractor awarding the contract;

(2) ~~(b)~~ the contract number, location and general description of construction to be performed, and the date the contract or subcontract, whichever the case may be, was awarded;

(3) ~~(c)~~ the name and address of the contractor or subcontractor awarded the contract;

(4) ~~the address of the contractor or subcontractor awarded the contract;~~

(5) ~~(d)~~ the total value in money, credits, or other valuable consideration specified in the contract, that is to be paid for the completion of the contract;

(6) ~~(e)~~ the date when the construction is to be completed; and

(7) ~~(f)~~ the date when the increments of the contract costs are to be paid the contractor or subcontractor, the amounts of such payments, and the percentage of the increment withheld from each payment to insure satisfactory completion of the job ~~etc., if any.~~

(2) The above information must be transmitted to the department of revenue within 10 days from the date that the contract is awarded.

AUTH: Sec. 15-1-201 MCA IMP: Sec. 15-50-301 MCA

42.31.2122 GROSS RECEIPTS WITHHOLDING BY AGENCY (1) The governmental agencies ~~or department thereof~~ that have awarded a contract for the performance of public construction or reconstruction works and are making payment for the satisfactory performance of said contract, or any increment thereof, ~~shall~~ must withhold 1% of the amount due and transmit such amount withheld to the department of revenue along with a gross receipts withholding report (form PC-2) which ~~shall~~ must contain the following:

(a) the governmental agency ~~or department thereof~~ that awarded the contract and ~~that~~ is making payment;

(b) the contract number, location and general description of construction to be performed, and the date contract was awarded;

(c) the name and address of the contractor to whose account the 1% payment is to be credited;

(d) the total ~~sum of increment~~ due the contractor, including amounts to be withheld until completion of the contract;

(e) the total ~~sum of increment~~ due the contractor less any amount to be withheld until completion of the contract by including the 1% withholding;

(f) the net amount paid the contractor at time of reporting; and

(g) the amount transmitted to the department of revenue at time of reporting.

(2) The withholding agent or agency must in all cases issue a receipt to the contractor for all monies withheld under Title 15, Chapter 50, MCA.

AUTH: Sec. 15-1-201 MCA IMP: Sec. 15-50-206 MCA

42.31.2131 CONTRACT AWARD REPORT BY CONTRACTOR AWARDED CONTRACT (1) Whenever a contract for the performance of public construction or reconstruction works is awarded by the federal government ~~or the state of Montana, by the counties or cities,~~ or by any agencies ~~or departments thereof~~ or when a contractor sublets a contract, the contractor awarded the contract ~~shall~~ must complete and file with the department of revenue a contract award report (form PC-1) which ~~shall~~ must contain the following information:

(a) the name of the governmental agency, ~~department thereof,~~ or prime contractor awarding the contract;

(b) the contract number, location and general description of construction to be performed, ~~and the contract or subcontract, whichever the case may be, was awarded;~~

(c) the name and address of the contractor or subcontractor awarded the contract;

~~(d) the address of the contractor or subcontractor awarded the contract;~~

~~(e)~~ (d) the total value in money, credits, or other valuable consideration specified in the contract, that is to be paid for the completion of the contract;

~~(f)~~ (e) the date when the construction is to be completed; and

~~(g)~~ (f) the date when the increments of the contract costs are to be paid the contractor or subcontractor, the amount of such payments, and the percentage of the increment withheld from each payment to insure satisfactory completion of the job ~~etc., if any.~~

(2) The above information must be transmitted to the department of revenue within 10 days from the date that the contract is awarded.

AUTH: Sec. 15-1-201 MCA IMP: Sec. 15-50-301 MCA

42.31.2132 GROSS RECEIPTS PAYMENT BY CONTRACTOR (1) If the 1% of gross receipts is not withheld by the contracting governmental agency ~~or department,~~ or awarding contractor, the contractor ~~shall~~ must make payment of such amounts to the department of revenue within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor. Payment by the contractor ~~shall~~ must be accompanied by a completed gross receipts withholding report (form PC-2).

(2) In the case where the state of Montana, counties, cities, or any agencies ~~or departments~~ and awarding contractors thereof, fail to withhold the gross receipts fees, the contractor ~~shall~~ must pay 1% of the gross receipts received by the contractor.

(3) In all cases where the federal government or any agency ~~or department thereof~~ is the sole governmental agency ~~or department~~ awarding the contract, payment ~~shall~~ must be made by the contractor to the department of revenue in an amount equal

to 1% of the gross receipts received by the contractor as payment for work performed by the contractor. The payment of such amount to the department of revenue is the duty of the contractor without any specific request or notice, relative to a particular payment, that such payment must be made to the department of revenue.

AUTH: Sec. 15-1-201 MCA IMP: Sec. 15-50-206 MCA

42.31.2133 ADDITIONAL REPORT AND WITHHOLDING REQUIREMENTS IN CASE OF SUBLET CONTRACT (1) Whenever a contract for the performance of public construction or reconstruction has been awarded by any governmental agency, including the federal government, ~~or department thereof~~ and a contractor sublets a contract in connection with such construction or reconstruction, the contractor awarding the subcontract ~~shall~~ must complete and file with the department of revenue a contract award report (form PC-1) which ~~shall~~ must contain the information specified in ARM 42.31.2131(4).

(2) Any contractor subletting a contract is also required to withhold 1% of the amount due his subcontractor but will not transmit such amount to the department of revenue. He will complete the gross receipts withholding report (form PC-2) checking the box marked "Subcontractor Allocation". The amount withheld (amount shown on line 8 on form PC-2) will then be credited to the subcontractor and deducted from the original 1% which was withheld from the prime contractor. For failure to file the allocation report within the required 30 day period, provided for in ARM 42.31.2132, a penalty of 10% of the tax withheld from the subcontractor shall be due from the prime contractor.

AUTH: Sec. 15-1-201 MCA IMP: Secs. 15-50-206 and 15-50-301 MCA

42.31.2141 PERSONAL PROPERTY TAX CREDIT REFUND (1) Public contractors, who have had the 1% contractors gross receipts tax withheld from them by any governmental agency or prime contractor, ~~shall~~ will be allowed, as a refund ~~of~~ any of those personal property taxes and motor vehicle fees incurred between January 1 and December 31 of the year the withholding occurred. The refund applies only to personal property taxes on equipment used in the construction business of the contractor.

(2) These refunds ~~shall~~ will only be allowed, after all necessary reports are filed and copies of paid personal property tax and motor vehicle fee receipts are submitted to the department of revenue. Contractors claiming this credit must submit a current copy of their certificate of registration as required by 39-9-204, MCA, with their refund request. Failure to provide the necessary documents will result in denial of the credit until such time as their current registration certificate is provided.

(3) All overpayment refunds and personal property tax and motor vehicle fee refund requests are due July 1 of the calendar year following the year the tax liability or overpayment occurred. For any given year in which a tax liability or overpayment occurred, refund requests will be accepted annually

up to five years after the original July 1 due date for that year.

AUTH: Secs. 15-1-201 and 15-50-301 MCA IMP: Secs. 15-50-207; 15-50-304 and 39-9-204 MCA

42.31.2142 CORPORATION LICENSE TAX CREDIT (1) A corporation is allowed a credit against its Montana corporation license tax liability for "public contractor's gross receipts tax" paid pursuant to the provisions of 15-50-205 and 15-50-206, MCA. The credit is allowed with respect to the corporation's Montana corporation license tax liability determined for the taxable period within which the net income from contracts subject to the gross receipts tax is reported. If the corporation reports its income from contracts on a percentage of completion basis, the credit must be allocated accordingly. The amount of credit allowable is the net public contractor's gross receipts tax (after personal property tax credit) actually imposed against and paid by the corporation but not in excess of its Montana corporation license tax liability. The credit is allowed without regard to the fact that the public contractor's gross receipts tax is an allowable deduction in determining net income subject to Montana corporation license tax.

(2) In the event the public contractor's gross receipts tax is paid by a joint venture or a partnership, the members thereof shall be entitled to the credit for the tax as their respective interests appear.

(3) Contractors claiming this credit must submit a current copy of their certificate of registration as required by 39-9-204, MCA, with their corporation tax return. Failure to provide the necessary documents will result in denial of the credit until such time as their current registration certificate is provided.

AUTH: Sec. 15-1-201 MCA IMP: Sec. 15-50-207 and 39-9-204 MCA

42.31.2143 STATE INCOME TAX CREDIT (1) and (2) remain the same.

(3) Contractors claiming this credit must submit a current copy of their certificate of registration as required by 39-9-204, MCA, with their income tax return. Failure to provide the necessary documents will result in denial of the credit until such time as their current registration certificate is provided.

AUTH: Sec. 15-1-201 MCA IMP: Sec. 15-50-207 and 39-9-204 MCA

### 3. The New Rule I is as follows:

#### RULE I ESTIMATION OF TAX UPON FAILURE TO FILE AND PAY TAX

(1) If a contractor fails to file the statement required by 15-50-206, MCA, and fails to pay the tax due within the required 30 days, the department will estimate the amount due from sources available to the department, and issue an assessment of taxes due, including penalty and interest as defined in 15-50-309, MCA. If a contractor ignores the department's attempt to collect the tax due, a warrant for distraint will be filed against the contractor as defined by 15-50-310, MCA.

AUTH: Sec. 15-1-201 MCA IMP: Secs. 15-50-308; 15-50-309; 15-50-310 MCA

4. These amendments are proposed because the Public Contractor's License was repealed by HB 601 in the 1994 legislature session. Therefore, it is necessary to delete any reference to the term in our rules and clean up the language in other rules.

Under the previous law, contractors were required to put their Montana public contractor license number on all forms filed with the department. This was necessary to assure refunds or credits were not given to a contractor that was not licensed by the state. Under SB 354 as codified to 39-9-204, MCA, they must put their contractor registration number on all forms for the same reason and the department is amending its rules to comply with this change in the law.

HB 601 gave the department the authority to estimate the tax due if a person fails, neglects or refuses to file the returns required under this chapter.

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

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

no later than November 9, 1995.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 9, 1995.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 greater than 25.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 2, 1995

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED  
of ARM 42.15.416, 42.15.507, ) AMENDMENT of ARM 42.15.416,  
42.15.508 and 42.15.509 ) 42.15.507, 42.15.508 and  
relating to Recycling Credit ) 42.15.509 relating to Recycling  
Credit ) Credit

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 23, 1995, the Department of Revenue proposes to amend ARM 42.15.416, 42.15.507, 42.15.508 and 42.15.509 relating to recycling credit.
2. The rules as proposed to be amended provide as follows:

42.15.416 ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) Businesses, including corporations, individuals and partnerships, may take an additional ~~5%~~ 10% deduction of the expenses related to the purchase of recycled products used within Montana in their business if the recycled products purchased contain ~~at least 98% reclaimed material recycled material at a level consistent with industry standards and/or standards established by the environmental protection agency when such standards exist. The Montana department of revenue may request the assistance of the Montana department of environmental quality to determine if the product qualifies as a recycled product. Due to continuing technological advances in the recycling industry the standards will be subject to constant change. The industry standards to be used will be those in effect at the time the product was purchased.~~

(2) For a taxpayer paying individual income tax, the deduction is an adjustment to federal adjusted gross income for individual income tax. The deduction is available for tax years 1992 through ~~1995~~ 2001.

(3) For a corporation paying income/license tax, the deduction is an adjustment to federal taxable income for corporation income/license tax. The deduction is available for tax years 1992 through ~~1995~~ 2001.

(4) Any deductions claimed are subject to review by the Montana department of revenue. The responsibility to maintain accurate records to substantiate deductions remains with the taxpayer.

AUTH: Sec. 15-32-611 MCA; IMP: Secs. 15-32-601 through 15-32-610 MCA.

42.15.507 DEFINITIONS ~~(1) (2) text remains the same.~~  
~~(2) (6) "Reclaimed material" is post-consumer material used in manufacturing which is comparable to and used in lieu of~~

virgin material in the production of a finished product that has been collected and used in a process designed to produce recycled material.

~~(3)~~ (7) "Post consumer material" is only those materials generated by consumers which include households, businesses and industries that have served their intended end uses and have been separated from the solid waste stream. "Recycled material" means a material that can be readily utilized without further processing in place of raw or virgin material in manufacturing a product and consists of materials derived from post consumer waste, industrial scrap, material derived from agricultural wastes and other items, all of which can be used in the manufacture of new products.

~~(4)~~ (3) text remains the same.

~~(5)~~ (4) text remains the same.

~~(6)~~ (5) "Process or processing" means preparation, treatment, including treatment of hazardous waste as defined in 75-10-403, MCA, or conversion of a product or material by an action, change or function or a series of actions, changes, or functions that bring about a desired end result.

~~(7)~~ (1) text remains the same.

AUTH: Sec. 15-32-611 MCA; IMP: Secs. 15-32-601 through 15-32-610 MCA.

42.15.508 CREDIT FOR INVESTMENTS IN DEPRECIABLE EQUIPMENT OR MACHINERY TO COLLECT, PROCESS OR MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL, OR PROCESS SOILS CONTAMINATED BY HAZARDOUS WASTES (1) The 25% credit is subject to the limitations outlined in 15-32-602, MCA, and is available only for the acquisition of machinery and/or equipment that is depreciable, as defined in the Internal Revenue Code Section 167. The machinery and/or equipment must be used in Montana primarily for the collection or processing of reclaimable material or in the manufacture of finished products from reclaimed material.

(2) The credit is also allowed, and subject to the limitations outlined in 15-32-602, MCA, for depreciable equipment used to treat soils contaminated by hazardous wastes. The credit only applies to property that actually treats contaminated soil and not to auxiliary property.

~~(2)~~ (3) The basis for the credit is generally the cost of the property before consideration of trade-in equipment. An exception to this is that the basis shall be reduced by any trade-in which has had this credit previously taken on it. This includes the purchase price, transportation cost (if paid by the purchaser) and the installation cost before depreciation or other reductions. This credit does not increase or decrease the basis for tax purposes. Leased equipment is restricted to capital leases and the credit is calculated on the amount capitalized for balance sheet purposes under generally accepted accounting principles.

~~(3)~~ (4) Recycling machinery and/or equipment must be located and operating in Montana on the last day of the taxable



year for which the credit is claimed. The machinery or equipment must be used to collect, process, separate, modify, convert or treat solid waste into a product that can be used in place of a raw material for productive use or treat soil that has been contaminated by hazardous wastes. Examples may include, but are not limited to: balers, ~~bobcats~~, briquetters, compactors, containers, conveyors, conveyor systems, cranes with grapple hooks or magnets, crushers, end loaders, exhaust fans, fork lifts, granulators, lift-gates, magnetic separators, pallet jacks, perforators, pumps, scales, screeners, shears, shredders, two-wheel carts, and vacuum systems. This does not include transportation equipment, unless it is specialized to the point that it can only be used to collect and process reclaimable material or treat soil that has been contaminated by hazardous wastes.

(4) (5) In the instance of the specialized mobile equipment that does qualify and is used both within and outside of Montana, the credit must be prorated using the following calculation:

$$\frac{\text{Days Used in Montana}}{\text{Total Days Used}} \times 25\% \times \text{Cost of Equipment} = \text{Credit allowed}$$

$$\frac{D}{T} \times C \times E = \text{Credit allowed}$$

C = credit % in 15-32-602, MCA

D = days used in Montana

E = cost of equipment

T = total days used

(5) (6) Absent a specific agreement to the contrary, the owners of a small business corporation, partnership or sole proprietorship must pro-rate the credit in the same proportion as their ownership in the business.

(6) (7) Only a taxpayer that owns an interest, either directly or through a passthrough entity such as a partnership or s corporation, and is operating the equipment as the primary user on the last business day of the year, may claim the credit.

(7) (8) The credit is limited to the amount of the taxpayer's income or corporation tax liability. Any excess credit is not refundable, nor can it be carried back or forward to other tax years.

(8) (9) The department may disallow a credit resulting from a sale or lease when the overriding purpose of the transaction is not to collect or process reclaimable material, ~~or~~ manufacture a product from reclaimed material, or process soil contaminated by hazardous wastes.

AUTH: Sec. 15-32-611 MCA; IMP: Secs. 15-32-601 through 15-32-610 MCA.

42.15.509 PERIOD COVERED FOR THE RECLAMATION AND RECYCLING

CREDIT (1) The recycling credit is available for tax years 1992 through ~~1995~~ 2001. The credit must be taken in the tax year in which the machinery/equipment was acquired and placed into service. The only exception is for machinery/equipment acquired and placed into service after January 1, 1990 and before December 31, 1992. The credit for this exception must be taken on the 1992 tax return.

(2) To be eligible for ~~this the recycling credit~~, qualifying equipment, ~~other than equipment used to treat contaminated soil as described in (3) below~~, must be purchased and installed after January 1, 1990 and prior to January 1, ~~1996~~ 2002.

~~(3) To be eligible for the soil processing credit, qualifying equipment used to treat soil contaminated by hazardous wastes must be purchased and installed after December 31, 1995 and before January 1, 1998.~~

~~(3)(4)~~ Any credit claimed is subject to review by the Montana department of revenue. ~~The department may request the assistance of the Montana department of environmental quality when making its determinations.~~ The responsibility to maintain accurate records to substantiate the credit remains with the taxpayer.

AUTH: Sec. 15-32-611 MCA; IMP: Secs. 15-32-601 through 15-32-610 MCA.

3. The proposed amendments to ARM 42.15.416 are necessary to comply with legislative changes made during the 1993 legislative session to 15-32-601 through 15-32-610, MCA.

Additional amendments were made by the 1995 legislative session through SB 358. One of the changes was to provide the assistance of the Montana department of environmental quality when making eligibility determinations. Section 15-32-601, MCA, was also amended to extend the termination date to 2001.

Amendments to ARM 42.15.507 are necessary to identify the difference between the definition of "reclaimed material" and "recycled material." The law provides for a definition of "postconsumer material" and therefore it is not necessary to repeat that definition in the rule.

Amendments to ARM 42.15.508 and 42.15.509 are necessary because the law was expanded to allow the credit to include depreciable property used for the treatment of soils contaminated by hazardous wastes. The amount of the credit, and how it is computed, was also revised. Also, the termination date for the recycling credit on other qualifying equipment was extended and ARM 42.15.509 reflects this extension.

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

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

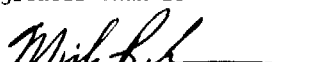
no later than November 10, 1995.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 10, 1995.

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 greater than 25.



CLEO ANDERSON  
Rule Reviewer



MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 2, 1995

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING ON
of ARM 42.31.101, 42.31.102, )	THE PROPOSED AMENDMENT OF
42.31.108, 42.31.111, 42.31. )	ARM 42.31.101, 42.31.102,
131, 42.31.202, 42.31.204, )	42.31.108, 42.31.111,
42.31.205, 42.31.211, 42.31. )	42.31.131, 42.31.202,
212, 42.31.213, 42.31.302, )	42.31.204, 42.31.205,
42.31.309, 42.31.331, 42.31. )	42.31.211, 42.31.212,
335, and 42.31.345 relating )	42.31.213, 42.31.302,
to Cigarette and Tobacco )	42.31.309, 42.31.331,
)	42.31.335 and 42.31.345
)	relating to Cigarette and
)	Tobacco

TO: All Interested Persons:

1. On November 8, 1995, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.31.101, 42.31.102, 42.31.108, 42.31.111, 42.31.131, 42.31.202, 42.31.204, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.309, 42.31.331, 42.31.335, and 42.31.345 relating to cigarette and tobacco rules.

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

42.31.101 AFFIXING CIGARETTE TAX INSIGNIA (1) ~~The affixing of cigarette tax insignia must be accomplished within the state of Montana.~~ Only those licensed wholesalers ~~or~~ retailers who have obtained approval from the department to use tax stamping equipment may affix Montana cigarette tax insignia. Unstamped cigarettes must be obtained directly from cigarette manufacturers, sole distributors or licensed wholesalers.

AUTH: Sec. 16-11-103 MCA

IMP: Secs. 16-11-113 and 16-11-115 MCA

42.31.102 MARKING UNSTAMPED CIGARETTES (1) All cigarettes sold in Montana must have a tax insignia stamp except sales made to military reservations. Indian reservations that have entered into a cooperative agreement and require their own stamp and licensed wholesalers which sales are subject to the provisions of ARM 42.31.108.

(2) The method of marking may either be by metered stamp, roll stamps or by hand ~~and/or~~ heat applied decals. The system of marking must be uniform and consistent. The marking system must facilitate a visible review to insure that cigarettes are stamped as required by 16-11-111, MCA.

AUTH: Sec. 16-11-103 MCA

IMP: Secs. 16-11-111, 16-11-113, and 16-11-156 MCA

42.31.108 SALES OF UNSTAMPED CIGARETTES (1) and (2) remain the same.

(3) Cigarettes stamped with another state stamp are considered unstamped cigarettes for Montana purposes.

AUTH: Sec. 16-11-103 MCA

IMP: Secs. 16-11-132 and 16-11-156 MCA

42.31.111 PURCHASING ROLL, METERED OR CIGARETTE TAX AND HAND APPLIED CIGARETTE TAX INSIGNIA DECALS (1) Metered cigarette tax units shall be purchased at designated county treasurer offices on either a cash or credit basis.

(a) Cash remittances shall be made payable to the Montana department of revenue or the state treasurer and shall be collected by county treasurers before setting meters.

(b) A cigarette tax surety bond, as referenced in 16-11-117, MCA, must be on file with the Montana department of revenue and written authorization given to county treasurer by the department before credit purchases are allowed.

(c) The original copy of form CT-201, order for Montana metered cigarette tax ~~or hand and/or heat applied cigarette tax decals~~, shall be submitted to the department by county treasurers to report each cash or credit purchase.

(d) County treasurers shall keep ledgers verifying ascending and descending settings on cigarette tax meters.

~~(2) Form CT 201 is submitted to the department by wholesalers requesting purchases of cigarette tax insignia hand applied decals and is used for both cash and credit transactions.~~ Roll or hand applied stamp orders shall be submitted on form CT 201, directly to the department on a cash or credit basis.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-115 and 16-11-117 MCA

42.31.131 CIGARETTE TAX REFUNDS/DISTRIBUTIONS (1) through (4) remains the same.

(5) No credit or refund for non-taxed (quota) sales on an Indian reservation will be allowed to a wholesaler once the retailer/reservation has depleted the quota amount. (See ARM 42.31.107 for qualifying sales.) Amounts on form CT-207 received during the month will be reconciled with amounts on form CT-206 filed at the appropriate time. Any discrepancies found will be added to or subtracted from the amount requested for ~~credit stamps~~/refunds of the current month. Added/subtracted amounts will be applied to the request of the wholesaler that causes the discrepancy to develop.

AUTH: Sec. 16-11-103 MCA

IMP: Secs. 15-1-503, 16-11-112, and 16-11-156 MCA

42.31.202 PAYMENT OF TAX -- BOND (1) The wholesaler shall remit the appropriate tax calculated at the statutory rate on the wholesale price paid for tobacco products, ~~other than cigarettes~~, purchased and delivered from manufacturers, less 5% of the computed tax for collection, together with copies of the itemized invoices and Form No. TP-101, Tobacco Products Tax Reporting Form. Such remittance shall be made to the department of revenue by the 10th of each month covering purchases of tobacco products, ~~other than cigarettes~~, made during the previous month. Forms will be supplied by the department of revenue upon request.

(2) remains the same.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-203 MCA

42.31.204 PAYMENT OF TAX BY RETAILER (1) Any individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed, who is engaged in the business of selling tobacco products to the ultimate consumer and who purchases tobacco products, ~~other than cigarettes~~, on which the statutory tobacco products tax has not been precollected and paid to the department of revenue must comply with all the provisions of Title 16, chapter 11, part 2, MCA, and these rules to prepay the tax before offering to sell such tobacco products.

(2) remains the same.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-202 and 16-11-205 MCA

42.31.205 DISPLAY OF NOTICE OF TAX (1) Any person selling tobacco products, ~~other than cigarettes~~, at retail shall display in the premises where such products are sold a notice of the tax included in the selling price.

(2) Below is a sample format of the notice:

NOTICE

NOTICE is hereby given that a Montana tax, calculated at the statutory rate on the wholesale price of tobacco products, ~~other than cigarettes~~, to the wholesaler is included in the price of all tobacco products, ~~other than cigarettes~~, sold in this store.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-202 MCA

42.31.211 WHOLESALER INVOICES (1) remains the same.

(2) The tax is on the wholesale price of the tobacco products without any deductions. Examples of deductions include but are not limited to early payment discounts, cash discounts or volume discounts.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-202 and 16-11-203 MCA

42.31.212 STATEMENT BY WHOLESALER (1) All invoices or sales slips issued by wholesalers covering sales to retailers of all tobacco products, ~~other than cigarettes~~, must contain a statement (typed, printed, or stamped) that the applicable Montana tobacco products tax is included in the total billing cost.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-202 and 16-11-203 MCA

42.31.213 WHOLESALER AND RETAILER RECORDS (1) Every wholesaler shall keep at its place of business complete and accurate records for that place of business, including legible copies of all invoices for tobacco products, ~~other than cigarettes~~, held, purchased and delivered, or sold in this state by the wholesaler. All records must be preserved for a period of 5 years from the date of purchase or from the date of last entry in the records.

(2) Every retailer shall keep at its place of business complete and accurate records for that place of business, including legible copies of all itemized invoices of purchases of tobacco products, ~~other than cigarettes~~, purchased and delivered from all wholesalers. The invoices shall show the name and address of the wholesaler and the date of purchase. All records must be preserved for a period of 5 years from the date of purchase or from the date of last entry in the records.

AUTH: Sec. 16-11-103 MCA

IMP: Sec. 16-11-118, 16-11-202 and 16-11-203 MCA

42.31.302 COMPLAINTS, AND INVESTIGATIONS, AND PENALTIES

(1) through (3) remains the same.

(4) Violations of Title 16, Chapters 10 and 11 shall be punished by applying penalties using a progressive procedure. The first violation in any 3-year period will result in a written warning. A second violation in the same three year period may result in a fine of \$500 and/or suspension of the violator's license for a period of time not less than 5 nor more than 20 consecutive business days. The third and any other subsequent violation may result in a fine of \$500 and/or suspension of license for a period of not less than 20 consecutive business days nor more than one year. No person who has their license suspended for one year may reapply for a license until one year after the year for which the license was suspended.

AUTH: Sec. 16-10-104 and 16-11-103 MCA

IMP: Sec. 16-10-305 and 16-11-118 MCA

42.31.309 DEFINITIONS (1) As used in this subchapter the following definitions apply in addition to those found in 16-10-103, MCA:

(a) through (d) remain the same.

~~(e) "Invoice cost of cigarettes to the retailer" means the cost of cigarettes to the retailer in the quantity as indicated on the wholesaler's invoice for the cigarettes to which the invoice applies or the wholesaler's invoice for the cigarettes last purchased, by the retailer, whichever is lower, as shown on the wholesaler's invoice. No deductions may be made for trade discounts, cash discounts or any other deduction that would reflect a cost lower than minimum.~~

~~(f) "Invoice cost of cigarettes to the wholesaler" means the cost of cigarettes to the wholesaler in the quantity as indicated on the manufacturer's invoice for the cigarettes to which the invoice applies or the manufacturer's invoice for the cigarettes last purchased, by the wholesaler, whichever is lower, as shown on the manufacturer's invoice before any deductions for trade or cash discounts or any other manufacturer's discount offered.~~

~~(g)(e) "Montana Cigarette Sales Act" means the laws codified in Title 16, chapter 10, MCA.~~

~~(h)(f) "Trade discounts" represent adjustments to the purchase price granted by a vendor. The discount may vary depending upon the quantity of purchases, or other factors established by the vendor. If a discount is always allowed irrespective of time of payment, it is considered to be a trade discount.~~

~~(i)(g) "Manufacturer's base cost" means the manufacturer's list cost per unit, before any cash or trade discounts are applied. There is only one base cost for each brand/style of cigarette.~~

~~(h) "Conspicuous" means a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.~~

AUTH: Sec. 16-10-104 MCA

IMP: Secs. 16-10-103 and 16-10-301 MCA

42.31.331 SALES FROM VENDING MACHINES (1) remains the same.

(2) For places open to the general public the vending machine must be located in a place where the owner or an employee of the establishment can see it to ensure individuals under the age of 18 do not use the machine. For example, all tobacco vending machines in a hotel or motel must be located in the lobby where the desk clerk can see who is making the purchase from the machine. ~~licensees are responsible to insure there is a system of supervision in place to prevent violations.~~

AUTH: Sec. 16-11-312 MCA

IMP: Secs. 16-11-305 and 16-11-306 MCA

42.31.335 SIGNS (1) The retailer must conspicuously display a sign at each place on the premises that tobacco products are sold or displayed; each sign must include the language shown in ARM 42.31.330~~(2)~~. This includes all cash



registers, display racks, vending machines or other places where tobacco products are available to the consumer or where the consumer pays for the tobacco product.

(2) The department will furnish the signs. However, if the retailer wishes to furnish the sign(s), the sign must contain the language shown in ARM 42.31.330(2).

(3) Signs must be conspicuously placed at each place tobacco products are displayed and sold. To determine whether signage is conspicuous, the reasonableness test must be applied, i.e., would a reasonable person get the message? Some examples of conspicuously displayed signs are:

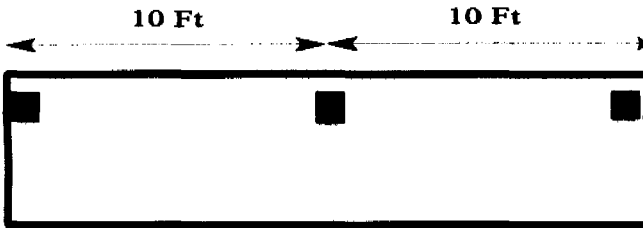
(a) Linear displays: signs posted at least every 10 feet. If a display area is 10 feet long, a sign placed in the center, not less than 4 feet or more than 8 feet above the floor should meet the reasonableness test.

(b) If the display area is 20 feet long, signs placed in the center and two feet from each end and not less than 4 feet or more than 8 feet above the floor should be adequate.

(c) Non-linear displays: signs posted on each side of a square display area where tobacco products are offered; signs posted every 5 feet in a circular display should be adequate.

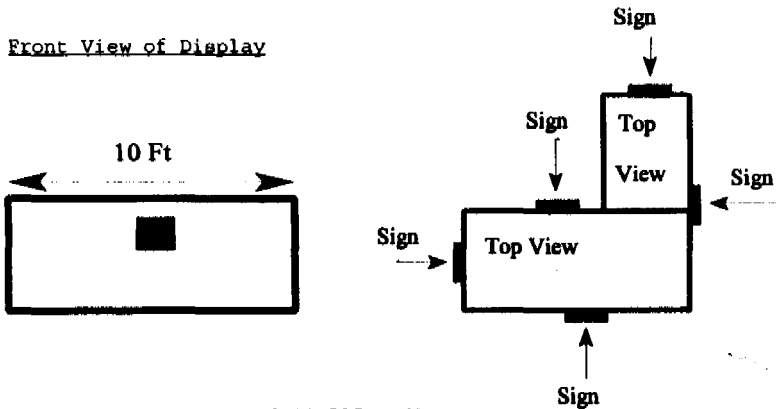
Example:

Front View of Display



Top View of Display  
(all sides are less than 10 ft long)

Front View of Display



AUTH: Sec. 16-11-312, MCA

IMP: Secs. 16-11-304, 16-11-305 and 16-11-306, MCA

42.31.345 PENALTIES (1) The penalties mandated under 16-11-308, MCA, will be enforced and collected by the department of revenue, county attorney in the county where the violation occurred.

(2) The tobacco education fees mandated under 16-11-308, MCA, will be enforced and collected by the Department of Public Health and Human Services.

AUTH: Sec. 16-11-312 MCA; IMP: Sec. 16-11-308 MCA


3. The Department is proposing these amendments because the 1995 Legislature enacted legislation which either conflicts with the present rules or requires additional rulemaking to clarify the new laws. House Bill 587 simplified the language in the statute making it easier to understand. It also clarified language to reflect current administration and industry practices. The rules are amended where appropriate to reflect the alignment of the definitions in Title 16, sections 10 and 11 to eliminate confusion regarding these definitions. The Department was involved in litigation with members of the industry which resulted in the elimination of the wholesaler residency requirement, McLane Western, Inc. v. Department of Revenue, First Judicial District Court Cause No. ADV-92-054. The result of this litigation requires amendments to the current rules. The Legislature repealed 16-10-401, MCA and replaced the criminal penalty with a civil penalty for violations of minimum pricing. Additional amendments to the Department rules were required to coincide with the legislative change. House Bill 539 was amended to clarify the penalty and enforcement language specifically related to the Youth Access Law and the Department's rule amendments reflect these changes in law.

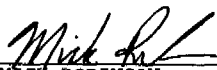
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than November 17, 1995.

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

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 2, 1995

BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of )	NOTICE OF ADOPTION,
new rules, amending Rules )	AMENDMENT AND
2.44.301A, 2.44.307, 2.44.409, )	REPEAL OF
2.44.502, 2.44.509, 2.44.510, )	RULES, RELATING TO
2.44.518 and 2.44.524 for the )	THE TEACHERS'
purpose of clarification and )	RETIREMENT SYSTEM
complying with amendments adopted )	
by the 1995 legislature and repeal )	
of Rules 2.44.303, 2.44.405, )	
2.44.406, 2.44.520 and 2.44.521 )	
relating to the Teachers' )	
Retirement System )	

TO: All Interested Persons.

1. On June 15, 1995, the Teachers' Retirement Board published notice of a public hearing on the proposed adoption of the above new rules, amendment and repeal of rules relating to the Teachers' Retirement System in Administrative Register, Issue number 11, starting at page 977 and inclusive of page 984.

2. On July 13, 1995 at 10 a.m. at the Teachers' Retirement System, 1500 Sixth Avenue, Helena, Montana, a public hearing was held pursuant to the June 15, 1995 notice. Jody May, representing Montana State University, was present and submitted written testimony.

3. The following written comments were received by the board:

COMMENT: Rule 2.44.509. Jody B. May, Director, Payroll & Benefits Services Office, Montana State University, submitted written comments saying that the proposal will have an adverse impact on retirement income for TRS members retiring mid-year under 12-month fiscal year contracts. A distinction needs to be made in prorating fiscal year 12-month contract compensation and academic year 9-month contract compensation on mid-year terminations.

RESPONSE: Under the proposed amendments, each member, regardless of his contract status, will have his average final compensation (AFC) calculated on the same basis as service is credited to his or her account.

However, because of the few members that retire mid-term, and to help simplify the calculation of average final compensation for members retiring mid-term, the board has modified the proposed rule to prorate compensation based on the amount of the member's contract reported their final fiscal year, plus any additional compensation earned during the final three years.

**COMMENT:** Rule 2.44.510. Jody B. May, Director of Payroll & Benefits Services Office, Montana State University, submitted written comments stating he agreed that the proposal would create efficiencies for TRS in tracking post-retirement contracts. However, proration would unnecessarily restrict a department from hiring a retiree immediately after retirement. Allowing a retiree to earn up to the yearly maximum during any part of a fiscal year would further simplify TRS record keeping and not produce any adverse impact on the employee or employer.

**RESPONSE:** The Board agrees and has modified the proposed rule to state the period for determining the amount a retiree may earn while receiving retirement benefits shall be the fiscal year.

4. The following verbal comments were received by the Board:

**COMMENT:** Rule I, (1) and (1)(c) provided for the calculation of the cost to purchase service when a member applies. If the member is not eligible at the time they apply, there could be some confusion regarding how the cost to purchase service will be calculated.

**RESPONSE:** The board has inserted "or are eligible" following "apply" in each subsection.

**COMMENT:** Rule V. It was brought to the board's attention that IRS provisions covering rollovers do not allow direct transfers between defined benefit pension plans. Therefore, other public retirement systems cannot directly transfer a member's account to the Montana Teachers' Retirement System. However, a member can, within 60 days of receipt of a qualified refund, rollover the taxable portion of the refund with the TRS.

**RESPONSE:** The board has changed the title to "ROLLOVER OF OUT-OF-STATE CONTRIBUTIONS" and deleted any reference to a direct transfer.

**COMMENT:** Rule 2.44.518. The example used in rule 2.44.518 was not clear.

**RESPONSE:** The rule, as adopted, has a clearer example.

5. The Teachers' Retirement Board has adopted the proposed rules with the following changes:

**RULE 1. CREDITABLE SERVICE FOR MEMBERS AFTER JULY 1, 1989**

(1) The actuarial cost to purchase creditable service by members who first became members on or after July 1, 1989 will vary by the member's compensation, age and years of service at the time they apply or are eligible to purchase the additional service.

(a) through (b) remain the same.

(c) The years of service will be determined by the total

number of years of creditable service the member is eligible to receive on the date they apply or are eligible to purchase service under this rule.

(2) remains the same

Rule V. DIRECT-TRANSFER-OR-ROLLOVER OF OUT-OF-STATE CONTRIBUTIONS

(1) Members purchasing additional service and who have ~~not~~ withdrawn their account from another public retirement system qualified under section 401(a) of the Internal Revenue Code, may, within 60 days of receipt of a qualified refund, apply for a direct transfer of the to roll over the taxable portion of the refund account balance. The amount ~~transferred~~ rolled over must not exceed the amount owed to purchase additional service.

2.44.509 COMPUTATION OF SALARY AVERAGE FINAL COMPENSATION EARNED (1) remains the same.

(a) ~~the equivalent of 3 full consecutive years' earned compensation reported contracts immediately preceding retirement will be prorated on the same basis as service is credited through the final fiscal year. For example: if a member retires effective January 1, and has received service credit of 0.50 in their final fiscal year, then the compensation reported in the final fiscal year, plus 100% of the compensation reported in the 2 preceding fiscal years, plus 50% of the 3rd fiscal year's compensation preceding the date of termination, must be used to calculate average final compensation the equivalent of the final three consecutive years' contracts reported to the system, based on the percentage of the member's final contract reported during their last fiscal year, plus any additional compensation reported during the same period. For example, if 50% of the member's contract is reported during their final fiscal year, then we would calculate AFC using the compensation reported during the last fiscal year, plus the salary reported the first fiscal year preceding retirement, plus the salary reported the second fiscal year preceding retirement, plus 50% of the salary reported the third fiscal year preceding retirement; or~~

(b) ~~the any 3 full consecutive fiscal years' compensation which yield the highest average.~~

(2) remains the same

2.44.510 ADJUSTMENT OF BENEFITS

(1) remains the same.

(2) remains the same.

(3) Effective July 1, 1995, the period for determining the amount that a retiree may earn while receiving retirement benefits shall be the fiscal year, July 1, through June 30, irrespective of the month in which they retired. The amount a retiree may earn following a mid-year retirement must be prorated based on the ratio of the number of months remaining in the fiscal year divided by 12.

2.44.518 LIMIT ON EARNED COMPENSATION (1) through (4) remains the same.

	YEAR	0	1	2	3	TOTAL EXCESS
AY COMP:		45,000	50,000	54,000	60,000	
SUMMER COMP (1/9 Per mo.)		1,000	10,000	0	0	
EXTRA COMP		0	0	1,500	0	
THE CAP		NONE	49,500	54,450	59,400	
EXCESS			500	1,050	600	2,150
FINAL COMP:			59,500	54,450	59,400	

	YEAR	0	1	2	3	TOTAL EXCESS
AY COMP:		45,000	50,000	54,000	60,000	
SUMMER COMP (1/9 Per mo.)			1,000	1,000	0	
EXTRA COMP		0	0	1,500	1,500	
TOTAL COMPENSATION		45,000	51,000	56,500	61,500	
THE CAP	NA		49,500	55,550	62,150	
DIFFERENCE (BUT NOT < 0.00)			1,500	950	0	
LESS EXEMPT EARNINGS			1,000	1,000	0	
EXCESS (BUT NOT < 0.00)			500	0	0	500
AVERAGE FINAL COMPENSATION		50,500	56,500	61,500		

Average final compensation is equal to the total compensation less excess earnings.

6. The board has adopted new Rules II, III, IV, VI, and VII, and amended Rules 2.44.301A, 2.44.307, 2.44.409 and 2.44.502, and 2.44.524 substantially as noticed.

7. The board has repealed Rules 2.44.303, 2.44.405, 2.44.406, 2.44.520 and 2.44.521 as proposed.

8. The new rules which have been adopted will be numbered as follows:

Rule I 2.44.413  
Rule II 2.44.525  
Rule III 2.44.414  
Rule IV 2.44.526  
Rule V 2.44.415  
Rule VI 2.44.517A  
Rule VII 2.44.527

By:

  
Dal Smille, Chief Legal Counsel  
Rule Reviewer

  
David L. Senn, Administrator  
Teachers' Retirement System

Certified to the Secretary of State October 2, 1995.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption ) CORRECTED NOTICE OF ADOPTION  
of new rule I (ARM 4.12.219) by ) OF NEW RULE AND REPEAL OF  
reference and repeal of ARM ) RULES PERTAINING TO FEED AND  
4.12.201 through ARM 4.12.217 ) PET FOOD REGULATIONS

TO: All Interested Persons

1. On July 13, 1995, the Department of Agriculture published notice of adoption and repeal of the above-stated rules at page 1321 of the 1995 Montana Administrative Register, issue no. 13.

2. The department has adopted the new rule and repealed rules as proposed in MAR issue no. 4, page 243 with the following clarification. (Replacement pages for this corrected notice have been submitted).

3. This corrected notice serves to clarify that the new rule will be effective October 1, 1995 but the department will not enforce compliance until October 1, 1996 to allow feed label registrants one year transition into compliance. In the interim, the effective date of the repeal will be October 1, 1996 so that the department will have enforceable rules. All labels for commercial feeds and pet foods sold in Montana after October 1, 1996, must be in compliance with this notice.

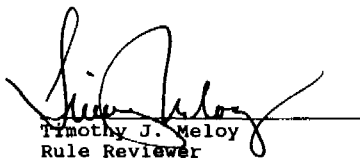
AUTH: 80-5-110 MCA

IMP: 80-5-108 AND 80-5-110

DEPARTMENT OF AGRICULTURE



W. Ralph Peck  
Director



Timothy J. Meloy  
Rule Reviewer  
Department Attorney

Certified to the Secretary of State this 4th day of October  
1995.



BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the general revision of ) NOTICE OF AMENDMENT  
rules (6.6.5001, 5004, 5008, 5020, 5024, ) AND REPEAL  
5028, 5032, 5036, 5044, 5050, 5058, 5060, )  
5062, and 5066) regarding small employer )  
health benefit plans and reinsurance and )  
repeal of existing rules 6.6.5012, )  
5016, 5040, 5094, and 5098 )

1. On August 10, 1995, the State Auditor and Commissioner of Insurance (Auditor) published notice at pages 1472 through 1494 of the Montana Administrative Register, Issue No. 15, to consider the amendment of ARM 6.6.5001, 5004, 5008, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5058, 5060, 5062, and 5066 and the repeal of ARM 6.6.5012, 5016, 5040, 5094, and 5098.

2. On September 7, 1995, a public hearing was held in Helena concerning the proposed revisions in the small employer health benefit plans and reinsurance program. There were representatives from a Health Service Corporation, the Montana Hospital Association, HEAL Montana, and the Auditor's office. Additional comments were received from a Health Management Organization.

3. After consideration of the comments received on the proposed rule amendments and rule repeals, the Auditor has repealed the rules as proposed; adopted the proposed amendments to rules 6.6.5024, 6.6.5028, 6.6.5032, 6.6.5044, 6.6.5050, 6.6.5058, 6.6.5060, 6.6.5062, 6.6.5066 with conversion from session law to statute as codified and made the following changes to proposed rules:

6.6.5001 DEFINITIONS For the purposes of this sub-chapter, the following terms have the following definitions:

(1) through (7) remain the same as proposed.

(8) "Eligible employee" means any employee defined in 33-22-1803(12), MCA. All employees who work an average of 30 hours a week or more shall be considered an eligible employee unless, at the sole discretion of the employer, the insurance contract has specified in an endorsement a different hourly requirement of between 20 and 40 hours a week as contemplated in ~~rule~~ARM 6.6.5058(3). An eligible employee does not include an employee who works on a part-time, temporary or substitute basis.

(8) (a) through (13) remain the same as proposed.

AUTH: 33-1-313 and  
33-22-1822, MCA

IMP: 33-22-1802, 33-22-1803,  
and 33-22-1813, MCA

6.6.5004 APPLICABILITY, SCOPE, AND TRANSITION

(1) through (5) remain the same as proposed.

(6) A group qualifies as a small employer group if it meets the definition in 33-22-1803(25), MCA, and employs at least 3 but not more than 25 eligible employees regardless of whether the eligible employee intends to enroll in the group's health benefit plan. The number of eligible employees includes every employee who meets the hourly requirement set by the employer as defined in 33-22-1803(12), MCA, and ARM 6.6.5001(8). A small employer group must meet a carrier's participation requirement for issuance of a policy.

(7) through (11) remains the same as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1808,  
33-22-1822, MCA; and 33-22-1812, MCA

6.6.5008 COVERED SERVICES OF POLICIES UNDER STANDARD PLAN (1) through (2)(b) remain the same as proposed.

(2)(c) Coverage for all statutory mandated benefits, including, but not limited to those mandated by 33-22-132, MCA, (mammography examinations); ~~33-22-303~~, 33-22-512, MCA, 33-230-1014, MCA (well child care); 33-22-703, MCA (mental illness, and chemical dependency); 33-22-114, MCA, (services of physician's assistants - certified); 33-22-125, MCA, (independent chiropractic examination and review); 33-22-130, MCA, (treatment of adopted children); 33-22-131, MCA, (phenylketonuria treatment); 33-22-301, MCA, 33-22-504, MCA, and 33-30-1001, MCA, (newborns); 33-22-304, MCA, 33-22-506, MCA, and 33-30-1004, MCA, (continuation of coverage for the handicapped); 33-22-305 through 33-22-311, MCA (the Individual Family Disability Insurance Continuation of Coverage Act); 33-22-503, MCA (regarding continuation of benefits to dependents); 33-22-507, MCA (regarding continuing group coverage after reduction of work schedule); 33-22-508, MCA (regarding conversion on termination of eligibility); 33-22-509, MCA (regarding imposition of pre-existing conditions to a converted policy covered by a group contract); and 33-22-510, MCA (insured family-conversion entitlement).

(d) Standard plans must comply with 49-2-309, MCA.

(3) remains the same as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812

6.6.5012 COVERED PREVENTIVE CARE AND HEALTH MAINTENANCE SERVICE OF POLICIES UNDER STANDARD PLAN is hereby repealed as proposed.

Auth: 1-3-204 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812, MCA

6.6.5016 SERVICES THAT MAY BE EXCLUDED FROM COVERAGE UNDER THE STANDARD PLAN is hereby repealed as proposed.

Auth: 1-3-204 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812, MCA

6.6.5020 DEDUCTIBLE CHARGES, COINSURANCE, MAXIMUM ALLOWABLE OUT-OF-POCKET CHARGES, AND LIFETIME MAXIMUM BENEFIT LEVEL UNDER THE STANDARD PLAN (1) Policies of insurance offered under the standard health benefit plan contemplated by NEW SECTION 6 of HB466 must provide an annual deductible of ~~\$250~~\$500 or less per person and ~~\$500~~\$1,000 or less per family. Such deductible must be applicable to all benefits, except as specifically exempted by these rules or statute.

(2) and (3) remain the same.

(4) Policies of insurance offered under the standard health benefit plan contemplated by NEW SECTION 6 of HB466 must provide a lifetime maximum benefit of not less than \$1,000,000 ~~or more~~.

AUTH: 33-1-313 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812

6.6.5024 HMO COST SHARING SCHEDULE AND EXCEPTION TO STANDARD PLAN PROVISIONS adopted as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812, MCA

6.6.5028 CONTRACT LANGUAGE adopted as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812, MCA

6.6.5032 CRITERIA OF POLICIES OFFERED UNDER BASIC PLAN adopted as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802 and  
33-22-1822, MCA 33-22-1812, MCA

6.6.5036 CALCULATION OF BENEFIT VALUES (1) For the purposes of determining whether a health benefit plan is a basic health benefit plan under ARM 6.6.5032, a benefit value method may be developed and used by the small employer carrier as contemplated in 33-22-1803(6), MCA. The carrier has the option to use the following computations to determine a benefit value must may be used, together with the values listed, to determine a benefit value for major medical health insurance plans. This calculation may not be used for HMO rule benefit plans. The values in Table I in (1)(d) of this section may not be used for any health benefit plans with only partial medical coverage, such as hospital-only expense plans or hospital and surgical expense plans. The calculation and

its result are subject to review and approval by the commissioner.

(a) through (e) remain the same.

(2) Filing of basic plans for approval by the department as stipulated in 6.6.5044 must include a description of the small employer carrier's benefit value method, an actuarial certification that the formula's expected claims costs, utilization rates and values used are based on commonly accepted actuarial assumptions, and the calculation of the benefit values of the carrier's standard and basic plans.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1809,  
33-22-1812, MCA and 33-22-1812, MCA

6.6.5044 FILING AND APPROVAL OF BASIC AND STANDARD PLANS remains the same as proposed.

AUTH: 33-1-313, 33-1-501 IMP: 33-22-1802, 33-22-1811,  
and 33-22-1822, MCA and 33-22-1812, MCA

6.6.5050 STATUS OF CARRIERS AS SMALL EMPLOYER CARRIERS remains the same as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1812,  
33-22-1822, MCA and 33-22-1814, MCA

6.6.5058 REQUIREMENT TO INSURE ENTIRE GROUPS remains the same as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1811,  
33-22-1822, MCA and 33-22-1812, MCA

6.6.5060 COVERAGE THROUGH ASSOCIATIONS remains the same as proposed.

AUTH: 33-1-313, 33-1-501 IMP: 33-22-1802 and  
and 33-22-1822, MCA 33-22-1803, MCA

6.6.5062 RESTORATION OF COVERAGE remains the same as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1809,  
33-22-1822, MCA 33-22-1812, and 33-22-1814, MCA

6.6.5066 QUALIFYING PREVIOUS AND QUALIFYING EXISTING COVERAGES remains the same as proposed.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1810,  
33-22-1822, MCA 33-22-1811, and  
33-22-1812, MCA

4. The agency has fully considered all written and oral submissions respecting the proposed rules and responds as follows:

COMMENT: Rule 6.6.5098 should not be repealed in its entirety, but modified to reflect changes in law.

RESPONSE: HB 466 eliminates all rule-making authority related to Section 33-22-1809, MCA. The Commissioner of Insurance does not have general rule-making authority, along with the fact that this act very specifically designates rule making authority for particular provisions. Although law retains requirements such as actuarial certification of rates and restrictions of premium rates, no rules can be written related to this section of law. Insurers can contact the Department of Insurance with questions on meeting the requirements of Section 33-22-1809, MCA.

COMMENT: Does Rule 6.6.5004 new section 6 preclude a minimum participation requirement?

RESPONSE: The intent of new section 6 of ARM 6.6.5004 is to clarify that group size is based on eligible employees, not the number of enrolled employees. The adopted rule clarifies that this rule does not eliminate the prerogative for insurers to require minimum participation in a small group plan for issuance of a policy.

COMMENT: Rule 6.6.5008 erroneously cites Sections 33-22-303 and 33-20-1014, MCA.

RESPONSE: These errors were corrected in rule 6.6.5008.

COMMENT: Rules 6.6.5008 and 6.6.5032 require that basic and standard plans must comply with the non-gender insurance statute. Compliance must occur and it is redundant to state this in rule.

RESPONSE: This provision in rule is stated to clarify to carriers the applicability of the non-gender insurance statute. The rule does not expand the applicability of the non-gender insurance statute and is therefore appropriate in rule.

COMMENT: The proposed rule change for Rule 6.6.5020 failed to change the deductible levels for standard plans as stipulated in HB 466.

RESPONSE: The adopted rule corrects this omission.

COMMENT: Does Rule 6.6.5020 section 3 require refiling and approval of all small group health plans, including plans previously approved?

RESPONSE: The intent of this rule is to require filing of any new small group policy and any previously approved policy that has a status change as basic, standard or non-basic/non-standard plan. Any form previously approved that is not changing status, does not need to be re-filed. This rule does require each small group carrier to submit a statement to the department listing the plans designated as standard and basic even if the plans were previously approved and there is no change in the status of the plan as basic or standard or non-basic/non-standard. The statement should list all of a carrier's small groups plans by form number, the status of the plan as basic, standard or neither and whether the plan was previously approved by the Department.

COMMENT: Rule 6.6.5001 (8), the definition of "Eligible employee" omitted the words "sole discretion of [the] employer" which are part of the statutory language.

RESPONSE: Language has been added to the adopted rule to make the recommended clarification.

COMMENT: In Rule 6.6.5020 the statute says that the maximum lifetime benefit "may not be less than \$1 million", while the rule refers to maximum lifetime benefit of \$1 million or more.

RESPONSE: While the language means the same, it avoids some confusion if the language is the same as the statute and the rule is changed accordingly.

COMMENT: The denominator for the standard plan's Benefit Value Calculation should be .75.

RESPONSE: The denominator of .8 in the benefit value calculation is to adjust for the fact that the claim costs derived from the Tillinghast manual are based on an assumed coinsurance of 80/20. Dividing by .8 results in a claim cost reflecting 100% coverage by the insurer, which is then adjusted by multiplying by the coinsurance portion the carrier's plan will cover. It has nothing to do with the former requirement that the standard plan provide 80/20 coinsurance.

The formula, now an optional formula, provides claim costs based on Tillinghast's 1994 Group Medical Insurance Rate Manual. An actuarial certification would not be needed if these factors are used. It is a good idea to require an actuarial certification from companies who use their own estimates and formulas. These benefit value calculation submissions should require actuarial certifications that the formula, expected claim costs, utilization rates and any other values are based on commonly accepted actuarial assumptions.

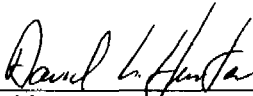
COMMENT: It was suggested that the Calculation of Benefit Values be further defined so to restrict use of these factors

to major medical types of plans, and authorize the commissioner to review and approve all benefit value calculations made by the small employer carrier.

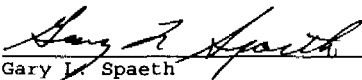
RESPONSE: This suggestion was adopted and the rule was changed to reflect this comment.

MARK O'KEEFE  
State Auditor

BY:

  
\_\_\_\_\_  
David L. Hunter  
Deputy State Auditor

BY:

  
\_\_\_\_\_  
Gary L. Spaeth  
Rules Reviewer

Certified to the Secretary of State this 2nd day of October, 1995.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF NEW RULES
adoption of new rules I	)	PERTAINING TO THE SUPERVISION,
(ARM 6.6.5501) through	)	REHABILITATION AND LIQUIDATION
rule VIII (6.6.5514)	)	OF SELF-FUNDED MULTIPLE EMPLOYER
	)	WELFARE ARRANGEMENTS

1. On August 10, 1995, the State Auditor and Commissioner of Insurance (Auditor) published notice at pages 1470 through 1471 of the Montana Administrative Register, Issue No. 15, to consider a new rule relating to supervision, rehabilitation and liquidation of self-funded multiple employer welfare arrangements.

2. On September 7, 1995, a public hearing was held in Helena concerning the proposed adoption and one comment was received from a group of MEWAs.

3. After consideration of the comments received on the proposed rules, the Auditor has amended the proposed rule with the following changes and added new rules II through VIII.

RULE I (6.6.5501) SUPERVISION, REHABILITATION, AND LIQUIDATION (1) The commissioner has the authority to impose sanctions on any self-funded multiple employer welfare arrangement (MEWA) for failure to maintain sufficient reserves as required by 33-35-209, MCA. The commissioner may impose and take any action or sanction as is authorized pursuant to the provisions of Title 33, chapter 2, part 13, MCA, which are adopted herein by reference and excepting therefrom 33-2-1303(1) and (10), MCA; 33-2-1335, MCA; 33-2-1342(6)(b) and (6)(c), MCA; 33-2-1344, MCA; 33-2-1349, MCA; and 33-2-1379 through 33-2-1390, MCA. A copy of the statutes is available for public inspection at and a copy may be obtained from the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, MT 59620-4009.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE II (6.6.5502) AUTHORITY IS LIMITED TO INSOLVENCY (1) The commissioner's authority to supervise, rehabilitate and liquidate any self-funded multiple employer welfare arrangement applies only to those instances where they fail to maintain the level of reserves as are required by 33-35-209, MCA.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE III (6.6.5504) INAPPLICABILITY OF THE LIFE AND HEALTH GUARANTY PROVISIONS (1) The provisions of Title 33, chapter 10, part 2, MCA, do not apply to a MEWA nor do any of



the provisions of Title 33, chapter 2, part 13, MCA, such as 33-2-1303(10) and 33-2-1371(3), MCA as they relate to the Life and Health Guaranty Association.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE IV (6.6.5506) APPLICATION OF THESE RULES ARE TO BE CONSISTENT WITH ERISA (1) These rules are to be interpreted so as to be consistent with the provisions of the Employee Retirement Income Security Act (ERISA) and to the extent that they conflict with ERISA they shall not apply.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE V (6.6.5508) DEFINITIONS (1) "Delinquency proceeding" as it appears in the statutory provisions means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating or reorganizing, or conserving such insurer due to the insolvency of the insurer.

(2) "Insurer" as it appears in the statutory provision shall be deemed to refer to a self-funded multiple employer welfare arrangement as defined in 33-35-103(4), MCA.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE VI (6.6.5510) COMMISSIONER'S SUMMARY ORDERS AND SUPERVISION PROCEEDINGS (1) 33-2-1321(1), MCA, shall be deleted and in its place shall be inserted: "Whenever the commissioner has established that an insurer is insolvent, he may make and serve upon the insurer and any other person involved such orders as are reasonably necessary to correct such failure."

(2) Subsections (2) and (6) of 33-2-1321, MCA, are not adopted.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE VII (6.6.5512) TERMINATION OF POLICY COVERAGE (1) 33-2-1343, MCA, shall be deleted and in its place shall be inserted: "All policies issued by an insurer in effect at the time of issuance of an order of liquidation shall terminate upon issuance of the order of liquidation."

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

RULE VIII (6-6.5514) PRIORITY OF DISTRIBUTION (1) The introductory language in 33-2-1360(1), MCA, shall be deleted and in its place the following language shall be inserted: "As soon as practicable but not more than 180 days from the date of an order of liquidation of an insurer which provides for assessment of its member employers, the liquidator shall make a report to the court setting forth." 33-2-1360(1)(a) through (d), MCA, are adopted as written in the statute.

AUTH: 33-35-209, MCA

IMP: 33-35-209, MCA

4. The agency has fully considered all written and oral submissions respecting the proposed rule and responds as follows:

COMMENT 1: A comment on limiting the authority of the commissioner to intervene in connection with a multiple employer welfare arrangement (MEWA) in those situations where the MEWA is insolvent.

RESPONSE: The commissioner agrees with this comment and it is adopted.

COMMENT 2: MEWA's are not subject to the Montana guaranty fund and the statutory provisions applicable to the guaranty fund should expressly be made inapplicable to the MEWA's.

RESPONSE: The commissioner agrees with this comment and it is adopted.

COMMENT 3: A suggestion was made that the rules should expressly state that the rules and law should be construed in a fashion consistent with ERISA.

RESPONSE: The commissioner agrees with this comment.

COMMENT 4: A concern was raised about the ancillary jurisdiction issues which would not likely apply to the liquidation of a MEWA and for the sake of brevity should not be incorporated in the regulations.

RESPONSE: While the commissioner agrees with this comment, it would not be incorporated at this time but will be done at a later date to obtain more input on the subject.

COMMENT 5: There were several suggested changes for 33-2-1303, MCA, which involved making the section more applicable to a MEWA.

RESPONSE: The commissioner agrees with this suggestion and where appropriate has adopted the changes.

COMMENT 6: It was suggested that 33-2-1321(2), MCA, not be adopted by reference.

RESPONSE: The commissioner agrees with this suggestion and has adopted it. See new rule VI where subsection (2) and the companion reference in subsection (6) are not adopted.

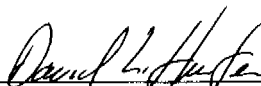
COMMENT 7: It was recommended that the following sections not be incorporated by reference: 33-2-1303(1) and (10), 33-2-1335, 33-2-1342(6)(b) and (6)(c), 33-2-1344, 33-2-1349, and 33-2-1379 through 33-2-1390, MCA.

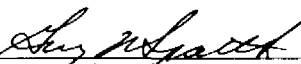
RESPONSE: The commissioner adopts this suggestion.

COMMENT 8: It was suggested that section 33-2-1360 be changed to allow for an assessment against its member employers so as to more appropriately apply to a MEWA.

RESPONSE: The commissioner agrees with this suggestion and accordingly adopts it.

MARK O'KEEFE  
STATE AUDITOR

By:   
David L. Hunter  
Deputy State Auditor

  
Gary M. Spaeth  
Rules Reviewer

Certified to the Secretary of State this 2nd day of October, 1995.

BEFORE THE CLASSIFICATION AND RATING COMMITTEE  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION
Rule I and the amendment of rules	)	AND AMENDMENT
6.6.8001 through 6.6.8203 and rule	)	
6.6.8301 and adopting the 1996 Ed.	)	
of the NCCI Basic Manual for	)	
Workers Compensation and	)	
Employers Liability	)	

TO: All Interested Persons.

1. On June 15, 1995, the classification and rating committee published a notice of proposed adoption of new Rule I Informal Advisory Hearing Procedure and proposed amendments to Rules 6.6.8001 agency organization, 6.6.8101 adoption of model rules, 6.6.8201 definitions, 6.6.8202 administrative appeal of classification decision, 6.6.8203 general hearing procedure, and 6.6.8301 updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance at page 985, 1995 Montana Administrative Register, issue number 11. The only comments received were made by Committee members.

2. After discussion and consideration, the amendments to rules 6.6.8001 through 6.6.8203 and 6.6.8301 were adopted as proposed and rule 6.6.8202A (New Rule I) was adopted with the following changes (underlined material):

6.6.8202A (NEW RULE I) INFORMAL ADVISORY HEARING PROCEDURE (1) Remains the same as proposed.

(2) The parties may stipulate the facts involved orally or in writing. Contesting parties shall provide to the committee secretary, c/o NCCI, relevant information to be exchanged not less than fifteen (15) days prior to the date of the hearing to allow sufficient time to review background material prior to the hearing.

(3) through (6) remain the same as proposed.

(7) The party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision rendered after a hearing conducted pursuant to this section rule within thirty days after the expiration of the thirty day notice deadline specified in paragraph 6 herein initiate an informal contested case proceeding pursuant 2-4-604, MCA, before the committee and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6. This informal contested case proceeding shall be conducted pursuant to the provisions of Sections 6.6.8204 -

6.6.8206 ARM. If the party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision does not initiate such informal contested case proceeding within the thirty (30) days deadline, such advisory decision shall be binding upon the parties.

COMMENT 1: It was suggested that the contesting party should specifically define the nature of the dispute in writing.

RESPONSE: This requirement is already contained in the rules and therefore no amendment to the rules as proposed was deemed necessary.


COMMENT 2: It was suggested that contesting parties should exchange information relevant to the subject matter of the hearing fifteen (15) days in advance of the hearing date to allow sufficient time to review background material prior to the hearing. Exchanged documents should also be sent to the Committee secretary, c/o NCCI for the general record.

RESPONSE: The suggestion was carefully considered, found to be reasonable, and the proposed rules were amended as deemed necessary.


COMMENT 3: It was suggested that upon issuance of the advisory opinion of the Committee, each party to the informal hearing should notify the Committee and each other party in writing of their intent to be bound or not bound by the Committee's decision. It was further suggested that such written notice should be made within 30 days of the date the committee mails the written copy of its advisory decision to the parties and that if a party does not respond within thirty days, the Committee should deem that the party will be bound by the advisory opinion.

RESPONSE: The suggestions were carefully considered and discussed, and were found to have merit. The proposed rules were amended as deemed necessary.

By:

  
Robert Carlson, Chairperson  
Classification Review Committee

By:

  
Gary L. Spaeth  
Rules Reviewer  
State Auditor's Office

Certified to the Secretary of State this 2nd day of October, 1995.

BEFORE THE DEPARTMENT OF COMMERCE  
PROFESSIONAL AND OCCUPATIONAL  
LICENSING BUREAU  
STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION OF A NEW  
of a new rule pertaining to ) RULE PERTAINING TO RENEWAL  
renewal dates ) DATES

TO: All Interested Persons:

1. On August 24, 1995, the Department of Commerce published a notice of proposed adoption of a new rule pertaining to renewal dates, at page 1600, 1995 Montana Administrative Register, issue number 16.

2. The Department is adopting new rule I (8.2.208) as proposed, but with the following changes:

"8.2.208 RENEWAL DATES (1) Specific procedures and grace periods for renewal are set forth by board rule, statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates set forth in this rule. An existing license expires on the renewal date set forth for each profession and occupation listed. If a timely and sufficient application is submitted on or prior to such date, the applicant's continued practice is governed under 2-4-631, MCA. In order for an application to be timely and sufficient, it must be completed with truthful information, accompanied by the appropriate fee and submitted so that it ~~is postmarked~~ bears a U.S. postal service post mark prior to or on the renewal date for the applicable profession.

(2) will remain the same as proposed.

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

(e) April 1 is the renewal date for licenses and other authorities granted by the boards of physical therapy examiners ~~and horse racing~~;

(f) through (h) will remain the same as proposed.

(i) June 30 is the renewal date for licenses and other authorities granted by the boards of hearing aid dispensers, landscape architects, ~~optometry~~ professional engineers and land surveyors (every even-numbered year), pharmacy pharmacies and pharmacists (regulated by the board of pharmacy), and sanitarians;

(j) through (m) will remain the same as proposed.

(n) October 31 is the renewal date for physician assistants-certified, nutritionists, acupuncturists and podiatrists (regulated by the board of medical examiners), ~~and property managers, (regulated by the board of realty regulation)~~;

(o) through (q) will remain the same as proposed.

(r) December 31 is the renewal date for licenses and other authorities granted by the boards of outfitters, nursing, public accountants, realty regulation, social work examiners and professional counselors, and is the renewal date for property managers (regulated by the board of realty regulation), dangerous drug registration (regulated by the

board of pharmacy) and cosmetology, manicuring and electrology schools and cosmetologists, manicurists, electrologists and instructors (regulated by the board of cosmetologists)."

Auth: Sec. 37-1-101, MCA; IMP, Sec. 37-1-101, MCA

3. The Department has thoroughly considered all comments and testimony received. Those comments and the Department's responses thereto, follow:

COMMENT: The Board of Psychologists suggested that (1) be amended to provide for a U.S. Postal Service postmark. The Board explains that it has had trouble in the past with licensee's metering their own mail with a back date.

RESPONSE: The Department has amended the rule as suggested.

COMMENT: The Board of Cosmetologists suggests an amendment to (2)(r) to include manicurists, electrologists, and instructors.

RESPONSE: The Department has amended the rule as suggested.

COMMENT: The Board of Pharmacy suggests that (2)(i) be amended to clarify that June 30 is the renewal date only for pharmacists and pharmacies. The Board notes that it issues licenses and registrations for several other programs that are addressed elsewhere in this rule.

RESPONSE: The Department accepts the comment.

COMMENT: The Board of Optometry stated that optometrists are listed in both (i) and (k) and requested that optometrists be removed from (i).

RESPONSE: The Department has amended the rule as requested.

COMMENT: The Board of Realty Regulation suggested that property managers should have a renewal date of December 31 and requested that property managers be removed from (n) and be added to (r).

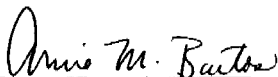
RESPONSE: The Department has amended the rule as requested.

COMMENT: The Board of Horse Racing suggested that renewal dates for professions under its jurisdiction be removed from the notice because it is not a licensing board under Title 37. The administration of the horse racing program is under Title 23. Therefore, the Department lacks authority to set renewal dates for these professions.

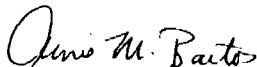
RESPONSE: The Department has amended the rule as requested.

DEPARTMENT OF COMMERCE  
PROFESSIONAL AND OCCUPATIONAL  
LICENSING BUREAU  
STEVE MELOY, BUREAU CHIEF

BY:



ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 2, 1995.



BEFORE THE BOARD OF PSYCHOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of a rule pertaining to fees ) 8.52.616 FEE SCHEDULE

TO: All Interested Persons:

1. On August 24, 1995, the Board of Psychologists published a notice of proposed amendment of the above-stated rule at page 1607, 1995 Montana Administrative Register, issue number 16.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF PSYCHOLOGISTS  
PASTOR JEFF OLSGAARD, 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, October 2, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT
adoption of amendment	)	TO ARM 10.57.218
of Teacher Certification	)	RENEWAL UNIT VERIFICATION

TO: All Interest Persons

1. On June 15, 1995, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.218 Renewal Unit Verification at page 995 of the Administrative Register, Issue number 11.

2. The board has adopted the rule as proposed.

3. No comments were received.

  
\_\_\_\_\_  
WAYNE BUCHANAN, Executive Secretary  
Board of Public Education

Certified to the Secretary of the State on 9/19/95.

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

In the matter of the ) NOTICE OF ADOPTION OF NEW  
adoption of 4 new rules ) RULES  
related to personal assistants )  
and the application of certain )  
labor laws (HB 504) )

TO ALL INTERESTED PERSONS:

1. On August 24, 1995, the Department of Labor and Industry published notice at pages 1627 through 1630 of the Montana Administrative Register, Issue No. 16, to consider the adoption of new rules I through IV.

2. On September 18, 1995, a joint public hearing was held in Helena and at remote locations via video teleconference concerning the Department's proposed new rules and new rules proposed by the Department of Public Health and Human Services.

3. The Department of Labor and Industry did not receive any comments or testimony from members of the public on its proposed rules prior to the closing date of September 25, 1995.

4. The Department of Labor and Industry has adopted its rules exactly as proposed:

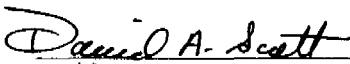
RULE I (24.11.833) STATUS OF CERTAIN PERSONAL ASSISTANTS  
FOR THE PURPOSE OF UNEMPLOYMENT INSURANCE LAWS

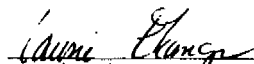
RULE II (24.16.111) STATUS OF CERTAIN PERSONAL ASSISTANTS  
FOR THE PURPOSE OF WAGE AND HOUR LAWS

RULE III (24.29.711) STATUS OF CERTAIN PERSONAL  
ASSISTANTS FOR THE PURPOSE OF WORKERS' COMPENSATION LAWS

RULE IV (24.30.2507) STATUS OF CERTAIN PERSONAL  
ASSISTANTS FOR THE PURPOSE OF THE SAFETY CULTURE ACT

5. Because the statute granting rule-making authority to the Department does not go into effect until October 1, 1995, notice of the adoption of these rules cannot be published until October 12, 1995. The rules so adopted will be applied retroactively to October 1, 1995.

  
David A. Scott  
Rule Reviewer

  
Laurie Ekanger, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 2, 1995.

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

In the matter of the ) NOTICE OF ADOPTION OF NEW  
adoption of 3 new rules ) RULES  
related to the operation of )  
the contractor registration )  
program (SB 354) )

TO ALL INTERESTED PERSONS:

1. On August 10, 1995, the Department published notice at pages 1548 through 1550 of the Montana Administrative Register, Issue No. 15, to consider the adoption of new rules I through III.

2. On September 1, 1995, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. No additional written comments were received prior to the closing date of September 8, 1995.

3. After consideration of the comments received on the proposed rules, the Department has adopted Rule I and Rule III exactly as proposed:

RULE I (24.33.121) CONTRACTOR REGISTRATION FEES

RULE III (24.33.141) ACCEPTABLE FORMS OF SECURITY

4. After consideration of the comments received on the proposed rules, the Department has adopted Rule II as proposed with the following changes:

RULE II (24.33.131) EVIDENCE OF COMPLIANCE WITH LAWS

(1) Compliance with workers' compensation laws must be demonstrated by either:

(a) a certificate of insurance issued by the contractor's workers' compensation insurer (or self-insured group) stating that the contractor's employees are covered for liability under the Montana Workers' Compensation Act and Occupational Disease Act; or

(b) ~~(i) a copy of the contractor's independent contractor exemption certificate issued by the department; and~~

~~(ii) a written statement, made under penalty of perjury, that the contractor does not have any employees that are required to be covered for workers' compensation purposes oath, declaring the basis for each and every exemption to the coverage requirements of the Workers' Compensation Act that the applicant contends applies. If the applicant claims the independent contractor exemption, a copy of the applicant's exemption or an application for exemption must be attached to the registration application form.~~

(2) Compliance with unemployment insurance laws must be demonstrated by either:

(a) the Montana unemployment insurance account number; or  
(b) a written statement, made under ~~penalty of perjury~~  
oath, that the contractor does not have any employees that are  
required to be covered for unemployment insurance purposes.  
AUTH: Sec. 39-9-103 MCA IMP: Sec. 39-9-202 MCA

5. The Department has numbered the new rules with the intent that reserved rule numbers will be available for future rules related to definitions and other matters that would logically precede the rules adopted in this Notice. As noted elsewhere in this Notice, the Department anticipates that additional rulemaking on the subject of contractor registration will be undertaken in the near future.

6. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: A commenter stated that the rule needed to provide for other exemptions to the coverage requirements of the Workers' Compensation Act, not just the independent contractor exception.

Response 1: The Department agrees with the comment and has amended the Rule II accordingly.

Comment 2: A commenter suggested that the rules define who must register under the contractor registration law.

Response 2: As stated in the Notice of Public Hearing, the 3 proposed rules are interim rules, and further rulemaking is anticipated. The Department will keep the suggestion in mind when drafting additional rules, and see if such a rule is practical.

Comment 3: Several commenters made statements at the public hearing that indicated confusion as to whether contractor registration was the same as the independent contractor exemption process.

Response 3: Contractor registration (Senate Bill 354, enrolled as Chapter 500, Laws of 1995, and codified at Title 39, chapter 9, MCA) applies only to persons and businesses engaged in the construction industry. The independent contractor exemption to the coverage requirements of the Workers' Compensation Act is available under certain circumstances and conditions to persons who render service in the course of their occupation, without regard to the nature of that occupation.

Comment 4: Several commenters stated that there was inadequate notice of the rulemaking proceedings. One commenter stated that notice concerning the rulemaking should have been published in the newspaper.

Response 4: The Department believes that it has fully complied with the requirements of the Montana Administrative Procedure Act ("MAPA") in giving notice of this rulemaking proceeding. Although MAPA does not require that notice of rulemaking be placed in any newspaper in the state, the Department will keep the suggestion in mind when giving notice of the next rulemaking concerning contractor registration. The Department notes that there is no single list in existence that gives the name and address of all persons or entities that potentially fall under the ambit of the contractor registration law. The Department will add the names of those commenters making this comment to its list of interested persons for contractor registration and independent contractor exemption purposes.

Comment 5: Commenters also stated that there was inadequate notice regarding the contents of Senate Bill 354 during the legislative session and that they were not aware of the bill until after it was signed into law. The commenters stated that they were not aware of the effect of Senate Bill 354 on businesses.

Response 5: The Department notes that most Montana daily newspapers carried lists of the subject matter of newly introduced bills and a daily hearing schedule throughout the 1995 legislative session. In addition, the Legislative Council maintained an electronic bulletin board giving information about bill status throughout the legislative session. The Department also notes that it has worked closely with the Montana Building Industry Association, the Montana Contractors Association, and other interested persons during the last few months concerning SB 354 and the proposed rules.

Comment 6: More than one commenter expressed the opinion that the contractor registration law is a bad piece of legislation.

Response 6: The Department suggests that the commenters make their opinion known to members of the Legislature.

Comment 7: A commenter stated that Rule II(1)(b) creates a barrier to new businesses wishing to become established.

Response 7: The Department believes that it is not the rule that creates what the commenter perceives to be a barrier to new businesses, but the coverage requirement that is contained in 39-71-401, MCA, for sole proprietors, working members of a partnership and others holding themselves out as independent contractors. The issue of whether or not independent contractors should be required to either cover themselves for workers' compensation purposes or obtain an independent contractor's exemption is a matter that can only be resolved by the Legislature. See also the comments under paragraph 7.

Comment 8: Several commenters stated that they were opposed to the registration fee.

Response 8: The requirement for a registration fee is contained in the contractor registration law. The Department has set the registration fee at the level that the Governor's Budget Office

projected would be necessary to adequately fund the contractor registration program during its initial phase. 15% of the contractor registration fee is earmarked for education for the construction industry and the public about the contractor registration law. The Department will re-evaluate the program costs and program income after the law has been in effect for a period, and determine whether the fee can be lowered.

Comment 9: A commenter stated that it was unfair to charge the same fee for registration regardless of the size of the contractor's operations, and that small operations should have a lower fee than large operations.

Response 9: The Department believes that the administrative costs of operating the contractor registration program are essentially the same for all contractors, regardless of the size of the contractor's operations. The Department will keep the suggestion in mind when it undertakes additional rulemaking in this area.

Comment 10: Several commenters stated that they were opposed to the requirement for posting security. A commenter stated that there were some contractors that could not afford posting a \$4,000 or \$6,000 security deposit.

Response 10: The requirement for posting security is contained in the contractor registration law, as is the minimum amount required for specialty and general contractors. The Department notes that a contractor is not required to post a cash deposit; providing a surety bond, an irrevocable letter of credit or a certificate of deposit are all acceptable forms of security. The Department discourages contractors from posting cash as security, and instead suggests that at least the deposit be in the form of a certificate of deposit so that the contractor can earn interest. The commenters may wish to make their views on the security deposit requirement known to the Legislature.

Comment 11: A commenter suggested that contractor registration law should go into effect in July 1996, rather than on October 1, 1995. Other commenters indicated their support for that proposal.

Response 11: The Legislature set October 1, 1995, as the effective date of the law. The Department cannot by rule change the effective date of the law.

Comment 12: A commenter stated that it is improper for the Legislature to pass a law that interferes with a contractor's ability to sue to collect on a contract or enforce lien rights.

Response 12: The Department believes that Montana law has for years recognized the power of the Legislature to pass a law that limits the ability of an entity to maintain a lawsuit if that entity has not complied with certain registration requirements. For example, an out-of-state corporation cannot maintain a lawsuit in Montana unless the corporation has properly registered with the Montana Secretary of State. See § 35-1-1027, MCA. Likewise, a person or business that has not properly

registered an assumed business name cannot maintain a suit or action under that business name. See § 30-13-215, MCA.

The Montana Supreme Court, in upholding laws requiring medical malpractice claims to first be submitted to a special claims panel before a suit can be filed in court, has stated that a person's right of access to the courts (for matters not involving fundamental constitutional rights) may be hindered if there is a rational basis for doing so. See: *Linder v. Smith*, 193 Mont. 20, 629 P.2d 1187 (1981). The Department believes that there is a rational basis for the contractor registration law.

Comment 13: A commenter questioned whether there would be a list of registered contractors available to the public.

Response 13: In addition to a regularly updated list of registered contractors, the Department will maintain a toll-free telephone number for persons to call to verify whether a contractor's registration number is still valid.

Comment 14: A commenter wanted to know whether this law would help homeowners avoid doing business with unscrupulous contractors.

Response 14: The Department believes that the contractor registration will benefit all Montanans. By law, at least 15% of the registration fees are to be spent on education about the contractor registration laws. That education will be directed not just to the building industry but also to the public in general, including homeowners. To the extent that unethical contractors generally ignore laws, this legislation will make it more difficult for them to operate in Montana.

7. In addition to the comments made on the proposed contractor registration rules, several persons at the public hearing made comments about the independent contractor's exemption that is available to certain individuals under the Workers' Compensation Act. Although the comments do not pertain to the proposed contractor registration rules, and the Department does not believe that it is required to respond to the comments as part of the rulemaking process, the Department has nevertheless summarized the gist of those comments and has briefly responded to those comments:

Comment 15: Several commenters opposed the process of having to apply for an independent contractor exemption from the Department of Labor and Industry. Some of those commenters suggested that a person's declaration of independent contractor status should be enough to justify granting that person an independent contractor exemption.

Response 15: Montana's legislature and courts have established the legal standards for determining whether a person is an independent contractor. The Department does not have the authority to certify that a person is an independent contractor for the purposes of workers' compensation and unemployment



insurance law solely upon the person's declaration of that status, without other supporting evidence.

Comment 16: Several commenters generally stated that because the law requires persons seeking an independent contractor exemption to show that they have been working as an independent contractor, it is impossible for a person to enter into business and also comply with the law.

Response 16: The independent contractor exemption is an exemption from the coverage requirements of the Montana Workers' Compensation Act that is available to qualified individuals engaged in business. If a person does not qualify for the exemption from coverage, the person may still operate a business as an independent contractor, but the person must obtain workers' compensation coverage to cover himself/herself.

The Department believes that the independent contractor exemption process should not be viewed as a burden on businesses, but a benefit to the business community. The independent contractor exemption allows a business owner to avoid the cost of being covered personally for workers' compensation purposes. The exemption also lets parties to a contract be sure that there will not be an unexpected (and unintended) employer-employee relationship created by law, thus providing assurance to the other party that additional statutory and financial liability will not be imposed.

Comment 17: The commenters generally stated that the law concerning the independent contractor exemption should not make it difficult for persons to start a new business here in Montana.

Response 17: The Department notes that the Legislature is free to expand or eliminate the coverage requirements under the Workers' Compensation Act, including the "independent contractor" exemption that is currently available. The 1995 Legislature has chosen to require that independent contractors obtain an exemption from the Department in order to avoid having to cover themselves for workers' compensation purposes. The Department suggests that the commenters make their views known to the members of the Legislature.

Comment 18: Some commenters made statements to the effect that if a person was not registered as an independent contractor, businesses would be required to withhold 20% of the contract price.

Response 18: The Department of Labor and Industry does not have anything in its rules that authorizes or prohibits a business from withholding any money from an independent contractor. The Department's jurisdiction does not extend to such contract matters. Businesses are required to make payroll withholdings for employees, but not for independent contractors. The commenters may be noting that effective October 1, 1995, only those persons holding an independent contractor exemption will be considered to be an independent contractor, and that in the

absence of an exemption, a worker is considered to be an employee.

Comment 12: A commenter expressed concern over whether he could face a penalty as of October 1, 1995, for using the services of an individual who does not have an independent contractor exemption.

Response 12: The Department believes that starting October 1, 1995, any business that hires a person who purports to be an "independent contractor" but cannot document that status with an independent contractor exemption from the Department of Labor and Industry runs the risk of having that worker deemed to be an employee of the business. The Department also notes, however, that an individual homeowner (not in the business of selling or renting real estate) who hires such a person probably will not be subject to that risk.

8. Because the statute granting rule-making authority to the Department does not go into effect until October 1, 1995, notice of the adoption of these rules cannot be published until October 12, 1995. The rules so adopted will be applied retroactively to October 1, 1995.



David A. Scott  
Rule Reviewer



Laurie Ekanger, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 2, 1995.

BEFORE THE BOARD OF LAND COMMISSIONERS  
OF THE STATE OF MONTANA

In the matter of the amendment	)	CORRECTED
of ARM 26.6.411, pertaining to	)	NOTICE OF AMENDMENT
nonexport agreement for timber	)	
sales from state lands.	)	

To: All Interested Persons

1. On September 14, 1995, the agency published a notice at page 1803 of the Montana Administrative Register, Issue No. 17, of the amendment of ARM 26.6.411, pertaining to changes in the nonexport agreement for timber sales from state lands.

2. The reason for the correction is that the notice of amendment incorrectly listed the wrong citation for Rule 26.6.411. The corrected citation reads as follows:

26.6.411. AGREEMENT NOT TO EXPORT STATE LOGS (1) through (5) remain the same.

AUTH: 77-4-5-201, MCA  
IMP: 77-4-5-201, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on September 30, 1995.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

  
ARTHUR R. CLINCH, DIRECTOR

  
DONALD D. MACINTYRE,  
RULE REVIEWER

Certified to the Secretary of State Oct 3, 1995.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules 46.10.512	)	RULES 46.10.512 AND
and 46.10.514 pertaining to	)	46.10.514 PERTAINING TO
AFDC earned income	)	AFDC EARNED INCOME
disregards	)	DISREGARDS

TO: All Interested Persons

1. On August 24, 1995 the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.10.512 and 46.10.514 pertaining to AFDC earned income disregards at page 1661 of the 1995 Montana Administrative Register, issue number 16.

2. The Department has amended rules 46.10.512 and 46.10.514 as proposed.

3. No written comments or testimony were received.

*Dawn Olson*  
Rule Reviewer

*Russell E. Coker, acting*  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 2, 1995.

**TO: All Interested Persons**

46.12.4828 HEALTH MAINTENANCE ORGANIZATIONS, THIRD PARTY

Montana Administrative Register

that the HMO need not provide an aspect of any of these services that is specified in (2) IS NOT REQUIRED TO PROVIDE ANY OF THE SERVICE COMPONENTS SPECIFIED IN (2):

(1) (a) through (3) (a) (vii) remain the same. (3) (b) through (3) (d) remain as proposed. Subsections (3) (b) through (3) (d) were inadvertently left out of the notice of adoption.  
(4) and (5) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

46.12.4813 HEALTH MAINTENANCE ORGANIZATIONS: CONTRACTS FOR SERVICES

(1) remains the same.

(2) An HMO, entering into a contract with the department, must meet the requirements in ~~section (5) of Chapter 502, Laws of Montana, 1995~~ 53-6-705, MCA.

(3) through (7) remain the same. (7) (a) through (7) (c) remain as proposed. Subsections (7) (a) through (7) (c) were inadvertently left out of the notice of adoption.

(8) through (14) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116 MCA

4. All portions of the September 28, 1995 notice of adoption not specifically changed by this amended notice remain the same.

Dawn Levin  
Rule Reviewer

Russell E. Coker, M.D.  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 2, 1995.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules	)	RULES 46.13.303, 46.13.304
46.13.303, 46.13.304 and	)	AND 46.13.401 PERTAINING TO
46.13.401 pertaining to low	)	LOW INCOME ENERGY
income energy assistance	)	ASSISTANCE PROGRAM
program	)	

TO: All Interested Persons

1. On August 10, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.13.303, 46.13.304 and 46.13.401 pertaining to low income energy assistance program at page 1557 of the 1995 Montana Administrative Register, issue number 15.
2. The Department has amended rules 46.13.303, 46.13.304 and 46.13.401 as proposed.
3. No written comments or testimony were received.

Dawn Gliva  
Rule Reviewer

Ruthell E. Carter acting  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 2, 1995.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT
of rules 44.5.107, 44.5.108, )	AND ADOPTION
and 44.5.112 pertaining to )	
Fees for Assumed Business )	
Names and Limited Liability )	
Companies and Limited )	
Liability Partnerships )	

TO: All Interested Persons.

1. On August 10, 1995, the Secretary of State published notice of proposed amendment of the above stated rules at page 1551 of the 1995 Montana Administrative Register, Issue number 15.

2. The Secretary of State has amended 44.5.108 and 44.5.112 as proposed. The Secretary of State has amended 44.5.107 as proposed with the following changes:

44.5.107 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - ASSUMED BUSINESS NAMES OR LIMITED LIABILITY PARTNERSHIPS The secretary of state shall charge and collect for:

(1) filing an application for registration of ~~limited liability partnership~~ or assumed business name and issuing a certificate, \$20.00 ~~(plus a \$50.00 license fee for limited liability partnerships);~~

(2) filing an application for renewal of registration of ~~limited liability partnership~~ or assumed business name and issuing a certificate, \$20.00;

(3) filing an application for an amendment to the registration of ~~limited liability partnership~~ or assumed business name and issuing a certificate, \$20.00;

(4) filing an application to reserve an ~~limited liability partnership name~~ or assumed business name and issuing a certificate, \$10.00;

(5) filing an application for cancellation of ~~limited liability partnership~~ or assumed business name, \$5.00;

(6) filing any other disclosure statement or report of an assumed business name, ~~or limited liability partnership~~, \$20.00. Authority Sec. 30-13-217, MCA; IMP, Sec. 30-13-217, MCA

3. The references to limited liability partnerships have been removed from 44.5.107 and inserted in new rule I (44.5.113) which is the same rule except it applies to limited liability partnerships instead of assumed business names. New Rule I provides as follows:

RULE I (44.5.113) FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - LIMITED LIABILITY PARTNERSHIPS The secretary of state shall charge and collect for:



(1) filing an application for registration of limited liability partnership and issuing a certificate, \$20.00 (plus a \$50.00 license fee);

(2) filing an application for renewal of registration of limited liability partnership and issuing a certificate, \$20.00;

(3) filing an application for an amendment to the registration of limited liability partnership and issuing a certificate, \$20.00;

(4) filing an application to reserve a limited liability partnership name and issuing a certificate, \$10.00;

(5) filing an application for cancellation of limited liability partnership, \$5.00;


(6) filing any other disclosure statement or report of a limited liability partnership, \$20.00.

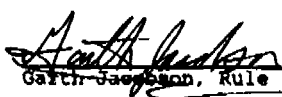
Authority Sec. 30-13-217, MCA; IMP, Sec. 30-13-217, MCA

4. The new rule was created to aid the user by separating the fees for filing and issuing certificates for assumed business names and limited liability partnerships.

5. No comments or testimony were received.

6. Rules 44.5.108, 44.5.112 and 44.5.113 will be applied retroactively to October 1, 1995. The amendments to 44.5.107 will be effective December 31, 1995.

  
By: Secretary of State Mike Cooney

  
Garth Jackson, Rule Reviewer

Dated this 2nd day of October, 1995.

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):**

- |  |   |
|--|---|
| <b>Known<br/>Subject<br/>Matter</b>          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| <b>Statute<br/>Number and<br/>Department</b> | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1995. This table includes those rules adopted during the period July 1, 1995 through September 30, 1995 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1995, 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 1994 and 1995 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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