MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 3
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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NOTICE SECTION

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

In the matter of the amendment of Rule 16-2.14(1)-S1490, prescribing restrictions on open burning	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 16-2.14(1)-S1490, OPEN BURNING RESTRICTIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 11, 1979, the Board of Health and Environmental Sciences proposes to amend rule 16-2.14(1)-S1490, which prescribes restrictions on open burning.

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

16-2.14(1)-S1490 OPEN BURNING RESTRICTIONS

(1)-(4) the same

(5) Emergency open burning permits. The department may issue an emergency open burning permit to allow burning of substances not otherwise approved for burning under this rule if certain conditions exist. Before the department shall issue such a permit it must be satisfied that the applicant has demonstrated that the substance sought to be burned poses an immediate threat to public health and safety, or plant and animal life for which no other alternative is reasonably available.

Application for such a permit may be made to the department by telephone. Upon completion of the burn, the recipient of the emergency open burning permit shall provide the department with a written report of the burn. It shall discuss why alternative methods of disposing of the substance posed an immediate threat to human health and safety or plant and animal life; the legal description of where the burn occurred; the amount of material burned; and the date and time of the burn.

The department will issue emergency open burning permits for disposing of oil from oil field sludge pits under this section if the above procedures are met. After July 1, 1980 such burning will be prohibited. Owners and operators of oil fields with sludge pits shall submit to the department by ~~January 1~~ July 1, 1979 a plan which provides for their disposing of oil wastes from sludge pits by alternative methods other than burning not later than July 1, 1980.

3. The rule is proposed to be amended in response to a request by the Montana Petroleum Association, which represents approximately 90% of the oil companies affected by it. Due to heavy work schedules and difficulties on the part of the Association in organizing members in order to develop the required plan, the original deadline for its submission was missed. Since the amount of sludge being burned is small, the Department of Health and Environmental Sciences recommended that the rule be amended in order to extend the plan submission date until July 1, rather than take enforcement action.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Bob Raisch, Air Quality Bureau, Cogswell Bldg, Helena, Montana 59601 (phone: 449-3454), no later than May 10, 1979.

5. 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 John Bartlett, Montana Foundation for Medical Care, 2700 Airport Way, Helena, Montana 59601, no later than March 16, 1979.

6. If the Board receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed amendment is based on Section 75-2-111, MCA (Section 69-3909, R.C.M. 1947).

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State February 6, 1979.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 18-2.10(14)-S10120, Special Permits, relating to issuance of Single Trip and Term Overwidth permits; movement on Saturdays prior to 12 noon; and flagman escort requirements.	NOTICE OF PROPOSED AMENDMENT OF RULE 18-2.10(14)-S10120, SPECIAL PERMITS. NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On March 17, 1979, the Department of Highways proposes to amend rule 18-2.10(14)-S10120, Special Permits, sub-sections (1), (7), (8), and (11) only. The proposed rule changes will become effective April 2, 1979.

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

" 18-2.10(14)-S10120 SPECIAL PERMIT (Dimensions - Exceeding statutory limits.) (1) Types of Special Permit (hereafter referred to as "permit"). A permit may be issued for either width, height, or length in excess of the statutory limits, or a combination of any of the three dimensions. A permit shall be issued for an irreducible load only, except when otherwise expressly set forth in the rules and regulations. The duration of a permit may be either a Single Trip or a Term Permit.

(a) Single Trip. A Single Trip Permit shall be issued under the following conditions:

The load, vehicle, combination of vehicles, or other thing exceeds any one of these dimensions: Width, 15 feet; Length, 85 feet; or Height, 14 1/2 feet.

Montana license for a powered vehicle is a Montana Temporary Trip Permit.

Applicant is engaged in a single movement or does not specify otherwise.

Permit is transmitted by telegram, telecopier, telex, or communication service, except mail.

~~The truck truck tractor, trailer or semi trailer exceeds 96 inches (8 feet) on completed interstate highway.~~

Truck, truck tractor, trailer, or semi trailer is unladen and of a width exceeding ~~102~~ 120 inches ~~(8-1/2-feet)~~ (10 feet.)

(b) Term Permit. A Term Permit may be issued under the following conditions:

Load, vehicle, combination of vehicles, or other thing is 15 feet or less in width, 85 feet or less in length, or 14 1/2 feet or less in height."

Sub-sections (2) through (6) would remain unchanged.

Sub-section (7) would read as follows:

"(7) Restrictions. A permit may not be issued under the following conditions:

~~(a) When the vehicle carrying a load is of a greater width than the load:~~

(a) ~~(b)~~ For travel on ~~Saturdays,~~ Sundays, holidays, after 12 noon on Saturdays, or at night unless special permission is obtained from the Helena G.V.W. Office and specifically noted on the face of the permit, except that either a Trip Height Permit or a Term Height Permit may be issued for travel at any time if the load is not in excess of 14 1/2 feet in height.

The holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and Friday preceeding any above-named holiday when the holiday is on Saturday, and Monday following any above-named holiday, when holiday is on Sunday.

Alteration of any word or figure on the face of a permit will void the permit immediately and will be subject to confiscation by the inspecting officer.

A permit which requires alteration must be replaced by purchase of another permit.

A permit is not transferable from one person to another, nor is it transferable with the change of ownership of a vehicle."

Sub-section (8) would read as follows:

"(8) Flagman Requirements - (Except house trailers and mobile homes. See requirements in MAC 18-2.10(14)-S10180.)

Vehicles or loads with a total outside width up to and including 144 inches are not required to utilize flagman escorts.

Vehicles or loads with a total outside width in excess of 144 inches shall be preceded by a flagman escort on all two lane highways for the purpose of warning other highway users.

On completed four lane highways, no flagman escort is required on vehicles or loads up to and including 168 inches (14 feet) in width.

Vehicles or loads exceeding 168 inches (14 feet) on completed four lane highways are required to be followed by a flagman escort.

The vehicle or load shall properly display lights which meet the standard requirements in Section 61-9-219, M.C.A. 1979, (32-21-134, R.C.M. 1947).

If the vehicle or load passes through a hazardous area, or load being transported continuously infringes upon the adjacent lane of traffic, a flagman must be placed front and rear.

The flagman requirement does not apply to dual wheel tractors under 15 feet in overall width, unless the vehicle is travelling through a hazardous area."

Sub-sections (9) and (10) would remain unchanged.

Sub-section (11) would read as follows:

"(11) Width. A Term Permit, to and including 9

feet, may be issued for a truck, truck tractor, trailer, or semi trailer and the following built up loads:

Baled or loose hay - farm, ranch, or commercial.

Forest products in natural state: logs, cants, ties, studs, pulp wood hauled crosswise.

Culverts lengthwise.

Tanks lengthwise.

Beams.

Logging equipment.

Contractors equipment.

Oilfield equipment.

Christmas trees.

Permits for the above may be issued for travel night, Saturdays, Sundays, and holidays, provided load displays lights the full width.

Width Restrictions. A Term Width Permit may be issued for equipment (S.M.) not exceeding 15 feet. The permit shall be for exact dimensions.

~~A width permit shall NOT be issued when the truck, truck tractor, trailer, or semi trailer carrying an overwidth load is of greater width than the width of the load.~~

~~A Term Permit shall NOT be issued to any vehicle which, because of its construction, is overwidth.~~

~~A Single Trip Width Permit may be issued for an over width vehicle without load by special permission from the Helena G.V.W. Office.~~

A Term Permit may be issued for a truck, truck tractor, trailer, or semi trailer up to and including 120 inches (10 feet) in width. Each vehicle qualifying for a term permit is to be issued a separate permit for the exact dimensions.

Vehicles exceeding 120 inches (10 feet) in width are limited to single trip permits and may be issued by permission from the Helena G.V.W. Office.

Vehicles 108 inches (9 feet) in width or wider may not carry reducible type loads.

A permit for width is required when load travelling on the interstate exceeds 96 inches.

A "Wide Load" or similiar sign shall be displayed on all loads exceeding 10 feet in width."

The remainder of Rule 18-2.10(14)-S10120 would remain unchanged.

3. This rule is proposed to be amended in response to requests from the Montana Motor Carriers Association and the Montana Contractors Association.

Sub-Section (1) is proposed to be amended to allow the issuance of Term (Annual) Permits up to and including 10 feet in width. We presently issue term permits up to 9 feet in width for certain built up loads and it is logical to do the same for oversize vehicles also. Vehicles up to 9 feet in width would have no restrictions on travel and those over 9 feet would be limited to daylight travel only. There are

relatively few 10 foot wide trailers in use and it is felt these could be included for term permits also as a matter of convenience to the carriers.

Regarding the proposed changes to sub-section (7), mobile homes have been allowed to move on Saturday mornings for over three years with no problems or complaints from the public. It seems reasonable that other type movements should be allowed also.

Sub-section (8) is proposed to be changed because it is felt a flagman escort preceeding a load on a four lane highway is of no value and should be following the load. Loads properly marked should be able to move safely on four lane highways without escort up to and including 14 feet in width.

Regarding the proposed amendments to sub-section (11), it seems only reasonable to allow overwidth equipment trailers to carry a load of lesser width than the vehicle when the occasion arises. The regulation was adopted many years ago with the idea of discouraging the use of these trailers. With the change in equipment over the years, the wider trailers have become an important safety element and with present costs and energy conservation, it is logical that they be used for back hauls of irreducible loads.

The proposed rule changes will enable carriers to provide better and more economical service to customers through increased utilization of equipment.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than March 15, 1979.

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 the Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than March 15, 1979.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, 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 100 persons based on an estimate of 1,000 resident and non-resident operators and carriers subject to these movement regulations.

7. The authority of the agency to make the proposed amendment is based on sections 61-10-121 and 61-10-122, MCA, 1979, (32-1123.1 through 32-1131, R.C.M. 1947).

In the matter of the amendment) of Rule 18-2.10(14)-S10170,) Mobile Homes, relating to sub-) section (3)(f), Wide Load) Signs)	NOTICE OF PROPOSED AMENDMENT OF RULE 18-2.10(14)-S10170, MOBILE HOMES.
	NO PUBLIC HEARING CONTEMPLATED.

To: All Interested Persons

1. On March 17, 1979, the Department of Highways proposes to amend rule 18-2.10(14)-S10170, Mobile Homes, Sub-section (3), Oversize Movement Requirements, sub-section (f).

2. The rule as proposed to be amended would read as follows:

"(f) The bottom of the toter "Wide Load" sign shall be mounted a minimum of 8 feet above the highway surface and flashing amber lights shall be mounted at each end of the sign. The amber lights used for this purpose shall be (5) five inch minimum diameter, a minimum candle power of 50 and a flashing frequency of 60 to 90 per minute. THE FLASHING AMBER LIGHTS SHALL BE OPERATING AT ALL TIMES WHEN MOVING A MOBILE HOME. THE "WIDE LOAD" SIGN SHALL NOT BE VISIBLE WHEN NOT MOVING A MOBILE HOME. THE TOTER DRAWING A MOBILE HOME OVER 9 ~~FEET WIDE TO AND INCLUDING~~ 10 FEET WIDE SHALL HAVE "WIDE LOAD" SIGN ON FRONT OF THE TOTER."

3. The rule is proposed to be amended merely to remove the contradiction created by paragraph (m) of the same sub-section (3), which states this requirement is not necessary for mobile homes 10 feet or less in width.

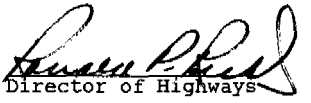
4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than March 15, 1979.

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 the Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than March 15, 1979.

6. If the agency receives requests for a public hearing in the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, 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 100 persons based on an estimate of 1,000

resident and non-resident operators and carriers subject to these movement regulations.

7. The authority of the agency to make the proposed amendment is based on sections 61-10-121 and 61-10-122, MCA, 1979, (32-1123.1 through 32-1131, R.C.M. 1947).



Director of Highways

Certified to the Secretary of State February 6, 1979.

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
adoption of rules on)	ADOPTION OF RULES
surface leasing of)	NO PUBLIC HEARING
State land)	CONTEMPLATED

TO: All Interested Persons:

1. On March 19, 1979 the Board of Land Commissioners propose to adopt rules concerning surface leases on state land.

2. The proposed rules provide as follows:

Rule I DEFINITIONS When used herein, unless a different meaning clearly appears from the context;

(1) "State" means the state of Montana;

(2) "Board" means the board of land commissioners of the state of Montana;

(3) "Commissioner" means commissioner of state lands, chief administrative officer of the department of state lands;

(4) "Department" means department of state lands as provided in section 2-15-3201 M.C.A.;

(5) "State Lands" means all lands the surface leasing of which is under the jurisdiction of the board as defined by section 77-1-202 M.C.A.;

(6) "Person" means any individual, firm, association, corporation, governmental agency or other legal entity;

(7) "Sublease" means any agreement, written or oral, between a lessee and a third party whereby the third party is accorded the use of all or any part of the lessee's leasehold interest, including those agreements whereby the third party pastures cattle or other grazing animals on the lessee's leased land and pays the lessee therefor.

(8) "Lessee' means the person or persons in whose name a surface lease appears on record in the offices of the department, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a surface lease but with whom a formal surface lease has not been completed and finalized;

(9) "Sublessee" means the person or persons to whom a lessee has leased all or part of the unexpired term of his lease and who appear as such on record in the offices of the department;

(10) "Lease" means a surface lease on state land available for leasing under Rule IV, unless a different type of lease is clearly indicated;

(11) "Standard Lease Form" means the lease form then currently in use and approved by the board;

(12) "Qualified Applicant" means any person who may become a qualified lessee as set forth in Rule V;
(13) "Unleased" land means land that is not under lease at the time of an application to lease or land on which the lease has been recently cancelled by the department or surrendered by the lessee.
(14) "Surface" means the superficial part of land including the soil and waters which lie above any minerals;
(15) "Grazing Land" means land which is principally valuable for pasturage or the feeding of livestock on growing grass or herbage;
(16) "Agricultural land" means land which is principally valuable for the production of crops;
(17) "Timber land" means land which is principally valuable for the timber that is on it, for the growing of timber or for watershed protection;
(18) "Crop" means such products of the soil as are planted, or severed and saved by manual labor, including, but not limited to, cereals, vegetables and grass maturing for harvest or harvested, but not including grass used for pasturage;
(19) "Animal Unit" means 1 cow and calf, 1 horse, 5 sheep or 5 goats;
(20) "Animal-Unit-Month Carrying Capacity" (A.U.M.) means that amount of natural feed necessary for the complete subsistence of one animal unit for one month.
(21) "Best Interests of the State" means those considerations that will produce the maximum return to the state with the least damage to the long-term productivity of the land.

Rule II GENERAL PROVISIONS The board, as established by the constitution of Montana (Article X, Section 4), has the authority to direct, control, lease, exchange, and sell school lands and other lands granted for the support of education. It has the authority to issue leases for agriculture, grazing, timber harvest, mineral production and any other use under such terms and conditions as best meets the duties of the board to the school trust and the state of Montana. The board shall administer state land under the concept of multiple-use management.

Rule III ADMINISTRATIVE DETAILS AND INFORMATION (1) The offices and records of the Department are maintained at 1625 East Eleventh Avenue, Helena, Montana, under the direction and administration of the Commissioner. Requests for information, application for leases and other matters should be addressed to the Department of State Lands, Capitol Station, Helena, Montana, 59601. Payment of all money required or permitted under these rules or pursuant to the provisions of

any surface lease shall be made to the department. All checks, drafts and money orders shall be made payable to "Department of State Lands, Montana". Sight drafts will not be accepted.

(2) The department shall maintain records of all state land. Such records shall contain all pertinent information concerning a particular tract of state land. Such records shall be open for public inspection at all times during regular business hours.

Rule IV LANDS AVAILABLE FOR LEASING (1) Lands available for leasing under these rules include any state land under the jurisdiction of the board not classified as timber land. Timber land is managed by the Department of Natural Resources and Conservation, Division of Forestry.

(2) The department shall classify and reclassify land in accordance with its capability to support a particular use. The following classes are established in accord with Section 77-1-401 M.C.A.:

Class I shall be grazing land;

Class II shall be timber land;

Class III shall be agricultural land;

Class IV shall be land other than grazing, timber or agricultural.

No land shall be leased for any purpose other than that for which it is classified or reclassified; however, this does not prohibit multiple use management.

(3) In order to insure that any unleased portion of state land in any leased section is not made more difficult to lease, lands shall be leased in compact bodies and an attempt will be made not to separate parts of any section from public highways and available water supplies.

(4) Unsurveyed land, including islands, shall be available for leasing provided that any applicant for a lease on such lands shall supply the department with a legal and sufficient description thereof, by courses and distances (metes and bounds). The department shall assume no liability or responsibility for the correctness, completeness and validity of such description. The department shall issue all leases of islands only under such title as the state of Montana then has or thereafter shall acquire. In the event is it established that the state has less than a fee simple title, it shall not be liable for any refunds or damages.

Rule V WHO MAY LEASE (1) Any person authorized by law to hold land may lease state land and may hold more than one lease and more than one section of land; however, in order to hold a state lease a person must be at least 18 years old or the head of a family.

(2) When it is in the public interest the board may lease

state land to the United States on terms which will protect the interests of the state and will promote the public welfare.

Rule VI ISSUANCE OF LEASE ON UNLEASED LAND (1) A person who desires a lease on unleased land may apply on the standard application form prescribed by the department. The department shall send an application form to any person who informs the department of his desire to lease a specific tract of state land. The application form must be returned to the Department and may be accompanied by a bid. Such application shall be deemed an offer to lease the land described therein and a bid therefore in the amount of the minimum required rental if no bid is submitted. No application fee is required; however, each application shall constitute an undertaking to pay the first year's rental.

(2) When the department receives an application to lease an unleased tract, it shall advertise for written bids on the tract for a reasonable time in the official county newspaper of the county wherein the unleased tract lies. The tract will be leased to the highest bidder unless the Board determines that the bid is not in the best interests of the state. If the high bid is rejected, the board will issue its reasons for the rejection in writing. The lease shall then be issued, at a rental determined by the Board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

(3) When a lease is cancelled by the board or department, or surrendered by the lessee, the department shall attempt to release the land. Application and bid forms will be mailed to all persons who have expressed an interest in leasing the land. The Department shall receive application and bid forms from potential lessees for a reasonable time after the date on which the first such application and bid form is mailed, and the land will be leased in accordance with paragraphs (1) and (2).

(4) Any person who has had his lease cancelled, and not reinstated, by the board or department for any reason shall not be allowed to bid upon the lease unless the lease was cancelled for nonpayment of rentals; however, if no other bids are received, the former lessee may be allowed to bid.

Rule VII ISSUANCE OF LEASE ON LAND CURRENTLY UNDER LEASE (1) Any interested person may request notice of the expiration of any lease. Such requests shall include an adequate description of the state land involved and the address of the person requesting notice. An application and bid form will be mailed to the last known address of each person requesting notice, allowing reasonable time for response.

(2) A person who desires to lease state land currently

under lease shall apply for such lease in the manner specified in Rule VI (1), and the application shall be accepted under the same conditions as specified in that section; however, applications for land currently under lease will only be accepted after December 1 of the year preceding the expiration of the current lease. Application forms must be postmarked on or before January 28 of the year in which the lease expires. Only applications on the standard application form will be accepted.

(3) Any person who desires to bid a higher rental rate than the minimum required by law must submit such bid with his application. The bid shall be in writing on the form prescribed by the department and then in current use. Blank forms may be secured from the department at no cost. Once a bid has been submitted to the department and opened it may not be withdrawn except for good cause as determined by the department. A certified check, cashier's check or money order in an amount equal to $1 per acre for each acre of agricultural land and 20% of the annual rental bid for grazing land must be submitted as a deposit, with any bid along with a refundable lease fee in the amount required by the Montana Administrative Code (MAC) Rule. The deposit of any unsuccessful bidder shall be returned by May 1 of the year in which the lease bid for expired.

(4) The high bidder for the lease of the land described in the application shall be deemed to have leased such land at the rental price bid by him, subject to the preference right of the current lessee as described in Rule VIII; however, the Board may withdraw any land from further leasing for such period as the Board determines to be in the best interests of the State.

Rule VIII RENEWAL OF LEASE (1) A current lessee shall be sent an application to renew his lease. The application shall be accepted under the same conditions as specified in Rule VI (1); however, application for renewal will only be accepted from December 1 of the year preceding the expiration of the lease until February 28, the date of expiration.

(2) A surface lessee has a preference right to renew his lease provided all rentals have been paid and the terms of the previous lease have not been violated. The lease shall be renewed at the rental rate provided by law, provided no other applications for the lease have been received by the department 30 days prior to the expiration of the lease.

(3) If other applications are received by January 28 of the year the lease expires the lessee shall have a preference right to renew his lease provided he meets the bid of the high bidder for such lease. Such bid is deemed to be met if the amount of the high bid is received by the department prior to

the expiration of the lease or in the case of agricultural land leased solely on a crop share rental basis, if the lessee agrees in writing to meet the high bid prior to the expiration of the lease. A lessee may request a hearing before the commissioner after he meets the high bid if he considers the bid too high to be in the best interests of the state. The lessee shall submit evidence of rental rates in the area for similar land with his request. The commissioner may grant or deny a request for a hearing and if the request is granted the commissioner may recommend to the board that the bid be lowered only if he feels that it is in the best interests of the state to do so. The Board may accept or reject the commissioner's recommendation. The lessee is obligated to lease the property at the rate determined by the Board. The lease of such land shall be such as to return to the state revenue commensurate with the highest and best use of the land or portions thereof, as determined by the Department.

(4) Regardless of any provision to the contrary in these rules, the board, at renewal time, may withdraw any land, or portion of land from further leasing for an indefinite period. The department may provide in any lease at time of execution or renewal that the land may be withdrawn from further leasing after reasonable notice, if the department considers such action to be in the best interests of the state.

(5) When land, under lease, has previously been sold and the certificate of purchase has been cancelled, any later reinstatement of the certificate of purchase shall not have the effect of cancelling any lease except that the current lessee shall loose his right to renew the lease.

Rule IX FORM OF BIDS FOR GRAZING LEASES All competitive bids for grazing leases shall be submitted in the form of $X.XX per A.U.M. in addition to the minimum fee per A.U.M. as set by the legislature. In the event that the legislature should raise or lower the minimum fee per A.U.M., the Department shall notify the lessee in order that he may adjust the annual rental accordingly. Bids for any lease may only be submitted for the present classified use unless the bidder submits a proposed reclassified use in accordance with the Rule XIII.

Rule X LEASE FORMS AND BONDS The board must approve all lease forms and changes in lease forms prior to their use. The original of the lease shall be mailed to the lessee and the department shall keep the duplicate original on file. Leases shall be issued without bond unless required by the board. If a bond is required by the department it shall be under such conditions and in a form prescribed by the department.

Rule XI TERM OF LEASE In general a lease for agricultural or grazing lands shall be for a 5 or 10 year period and shall expire Febrauary 28, 10 years or less from the beginning date of the lease. Pursuant to section 77-6-111 M.C.A., and in order to make lease renewals more uniform the department is authorized to issue 4-, 5- and 6-year agricultural and grazing leases during the 5-year period 1979-1983. A lease for uses other than agriculture, grazing, timber harvest or mineral production may be up to 25 years. Leases for power sites or school sites may be for longer than 25 years.

Rule XII MINIMUM RENTAL RATES (1) All leases of agricultural land shall be on a crop share basis unless there are unusual circumstances in which case the rental shall be at least equal to the usual landlord's share in the area and the Department shall record the unusual conditions and the rental price. All crop share leases shall be on a crop share rental basis of not less than 1/4 of the annual crops to the state or the usual crop share prevailing in the district, whichever is greater. In the case of crops involving high production costs the board may approve a crop share of less than 1/4 of the annual crop. The board does not delegate its authority to approve leases for less than 1/4 of the annual crop.

(2) The rental rate for all leases of grazing land shall be on the basis of the animal-unit-month carrying capacity of the land to be leased.

(a) The department shall appraise and reappraise the grazing lands under its jurisdiction in accordance with section 77-6-201 M.C.A., to determine the carrying capacity and shall maintain records of such appraisals in its files. Such determination shall be made from time to time as the department considers necessary, but at least once every 10 years.

(b) As provided in section 77-6-507 M.C.A., the board will compute the per annum base rental rate per animal-unit-month (A.U.M.) of all grazing lands by multiplying three times the average price per pound of beef cattle on the farm in Montana for the previous year, as determined by the United States Department of Agriculture at the time of computation or from another reliable source which is current at the time of computation, plus 50 cents.

(i) The minimum annual rental for grazing lands with a carrying capacity of less than 15 animal units per section is 10 cents less than the base rental.

(ii) The minimum annual rental for grazing lands with a carrying capacity of more than 14 and less than 20 animal units per section is the base rental.

(iii) The minimum annual rental for grazing lands with a carrying capacity of more than 19 animal units per section is

10 cents more than the base rental.

(c) The minimum rental charge on agricultural or grazing land shall be subject to change either by a legislative act or by reappraisal of carrying capacity on grazing land by the department. A lessee of state land is required to comply with the new required annual rental from the time it becomes effective.

(d) When a lease term begins after February 28 but before July 1 during the first year of the lease, the lessee shall pay a rental price equal to the rental price for an entire year. When the lease term begins after June 30 but before February 28 of the next year, the lessee shall pay a rental price equal to 1/2 of the yearly annual rental. Summer fallowing shall not entitle any lessee to a refund or reduction of the rental.

(3) All leases of Class IV land shall be based on a determination of fair market value made by the Department. This determination shall be made at least once during the term of every lease, and a record made thereof.

Rule XIII ALTERNATIVE USES Any person desiring to lease a tract of state land for any use other than the present use must submit a letter proposing an alternative use. Such letter must be postmarked before June 30 of the year prior to the year in which the lease on that tract expires. The department may analyze the tract and if it determines such proposed use to be in the best interests of the state, the tract may be reclassified and leased for such alternative use. The person submitting such proposal will be notified of the department's decision at least 90 days prior to the date applications and bids are due.

Rule XIV PAYMENTS - WHEN DUE (1) In the case of the lease, the rental price of which is not based on a crop share, the first year's rental shall be paid on or before the date of execution and the rental for each succeeding year shall be due on March 1. If the rental is not paid by April 1 the lease shall be cancelled and after notifying the lessee with a certified letter sent to the address given on the lease the land may be leased to other qualified applicants, in a manner which the department feels will serve the best interests of the state. When such a lease takes effect after September 30 and before February 28 of the next year, the lessee shall pay both the rental for 1/2 of the yearly rental due for the fractional part of a year and the whole yearly rental due for the next succeeding year, before the lease is executed.

(2) In the case of a lease, the rental price of which is based both on a cash price and a crop share whichever is greater, the greater of the two rentals shall be paid immediately

after harvest and marketing but no later than November 1. If there are special circumstances the lessee may obtain an extension by the department.

(3) In the case of land leased solely on crop share basis the rental for all years shall be due and payable immediately after harvest and marketing but no later than November 1. If there are special circumstances the lessee may obtain an extension by the department. Failure to pay rental when due may result in cancellation of the lease.

(4) When the United States is the lessee of any state land the rental shall not be due until the expiration of each year of the lease.

Rule XV SALES The board may sell any land under lease under the same terms and conditions as land not under lease. The lessee shall be entitled to compensation for improvements as provided in Rule XXVI. The purchaser will be given possession of land sold on March 1 next succeeding the date of sale unless the lessee and purchaser agree in writing on another date.

Rule XVI RESERVATIONS (1) The state reserves to itself and its representatives and authorized lessees the right to enter upon state lands for the purpose of prospecting for, exploring for, mining, drilling for, developing or removing any valuable substance beneath the surface of the land, for the purpose of cutting and removing forest products and to inspect the premises. It also reserves the right to grant a permit upon any state land for advertising purposes.

(2) Reprensentatives of the Montana historical society have the right to enter any state lands at any reasonable time to perform their duties in connection with the "State Antiquities Act", Part 4, Chapter 3, Title 22, M.C.A. Any person discovering an object or site of historic, prehistoric, archeological, paleontological, scientific, architectural or cultural interest on state land shall report such discovery to the Montana historical society and take all steps necessary to preserve such site or object.

(3) The right to sell or otherwise dispose of any interest other than that for which the lessee has leased the premises including hunting or fishing access privileges on state land shall remain with the state; however, the lessee may post state land in order to prevent trespass by unauthorized persons.

(4) The state reserves the right to withdraw all or any portion of land which is leased for grazing or agricultural purposes from the lease upon 6 months notice. Notice of such withdrawal shall be made only during the period from May 1 through October 31 of any calendar year. The lands may be withdrawn to promote the duties and responsibilities of the

board and the department. The lessee shall be entitled to reasonable compensation for any improvements on the withdrawn land.

Rule XVII OPERATION AGREEMENTS (1) Failure to comply with any of the following provisions, or of those contained in any other rule, is grounds for cancellation of the lease or assessment of any other penalty specified herein or by law. The department has the authority to make management decisions in unusual circumstances in order to protect the best interests of the state.

(2) A lessee of state land shall keep the land free of noxious weeds and pests and assume all responsibility for fire prevention and suppression necessary to protect the forage, trees and improvements. The lessee shall perform these duties at his own cost and in the same manner as if he owned the land. In the event that any state land shall be included in a weed control or weed seed extermination district, the lessee shall be required to comply with section 7-22-2149 M.C.A., which requires that the lessee be responsible for all assessments and taxes levied by the board of county commissioners for the district.

Rule XVIII CULTIVATION OF STATE LANDS Prior to the cultivation of any land leased for grazing purposes the lessee must apply to the department for permission to cultivate and such application must be approved. In general state land will not be considered for breaking unless it is classified as Class III or better land by the U.S. Soil Conservation Service. Other factors are also considered and application will be considered on a case by case basis. Applications shall be made on the form prescribed and in current use by the department. Blank forms may be obtained free of charge, from the department. Failure to obtain approval before cultivating state land shall result in either cancellation of the lease or a rental fee of twice the regular agricultural rental on the land illegally cultivated, as provided by section 77-6-209 M.C.A. Such determination shall be subject to the appeal procedures in Rule XXV.

Rule XIX REPORTS The lessee may be required to submit various reports on forms supplied by the department, including but not limited to the following:

(a) A seeding report shall be completed and returned to the department immediately after spring planting, but not later than June 15, on all agricultural land leased on a crop share basis.

(b) A crop report shall be completed and returned to the department immediately after harvest and marketing, but no later than November 1, on all agricultural land leased on a crop

share basis. All elevator checks and stubs shall be included with the report.

(2) The lessee of any state land shall comply with applicable provisions of the federal farm program and shall indemnify the state against any loss occasioned by noncompliance with such provisions. The state shall receive the same share as it receives for crops, of all payments pursuant to any act or acts of the Congress of the United States in connection with state lands under lease and the crops thereon.

Rule XX DISPOSAL OF CROPS The lessee shall deliver all grain crops to the nearest elevator on or before November 1, free of charge to the credit of the state. If elevators cannot accomodate state grain at harvest time, the lessee shall provide storage, free of charge until marketing. Other crops shall be disposed of at the going market price unless otherwise directed. The department shall permit lessees to purchase the state's share of all crops; however, department approval is required before a lessee may purchase state wheat. Applications shall be made on prescribed forms then in current use, furnished at no cost by the department. The lessee shall be required to submit a protein analysis and a certification of market price for wheat from a licensed grain dealer on forms provided by the department. The lessee shall make payment within 10 days from the date of certification. The lessee may also contract for purchase of state grain; however, all contracts must be approved by the Department in advance and filed with the department.

Rule XXI TRANSFER OF LEASES: ASSIGNMENTS AND SUBLEASES (1) All assignments and subleases shall be made on blanks prescribed by the department and available at no cost. An assignment in order to be binding on the state and a sublease in order to be legal must be approved by the Department. A copy must be filed with the department and a fee as specified in MAC 26.2.401, 26-2.2(10)-S230 must be paid. An assignment or sublease will not be approved if all rentals or other payments due have not been paid or the terms of the lease have been violated. If a sublease or assignment is made on terms less advantageous to the sublessee than terms given by the state or without filing a copy of the sublease and receiving the department's approval, the commissioner shall cancel the lease subject to the appeal procedures provided in Rule XXV.

(2) A lessee of state land shall not sublease such land as part of the sale of his own fee lands. In order to transfer such lease as part of the sale of lands, the lessee must assign the lease as provided in paragraph (1). Failure to comply with the terms of this rule shall be grounds for cancellation of the lease.

(3) State land leases and leasehold interests may be pledged or mortgaged by the lessee. The pledgee or mortgagee shall file the pledge or mortgage or certified copy thereof with the department within 30 days of its receipt by him. Within 30 days after payment of the indebtedness, termination of the pledge agreement, or release of the mortgaged leasehold interest, the lessee shall file proof of that fact with the department.

(4) A lessee who wishes to surrender his lease in whole or in part must submit a request to the department for approval. Also upon request, two or more leases may be combined when held by the same lessee. The request from the lessee must be in writing and if approved, the lease or leases will be combined with the lease which expires first so that no lease shall run longer than its prescribed term.

(5) In the event of a lessee's death the lease shall be transferred to the decedent lessee's estate. The Department shall consider the estate to be the lessee until such time as proof of different ownership is received by the department. In most cases the department shall require a copy of the decree of distribution or assignment by a court appointed personal representative. Exceptions to this rule may be allowed when the Department determines that an unusual situation exists.

Rule XXII EASEMENTS (1) The state reserves to itself the right to grant easements for public purposes on state lands, the surface of which is leased. The board may grant easements upon state lands without the prior consent of the lessee. However, the board will require the grantee to compensate the lessee for damages to improvements, crops or the leasehold interest and file proof of that fact with the department prior to the granting of such easement. In cases where the grantee and lessee cannot agree on just settlement for damages, the arbitration procedure set forth in Rule XXVI (3) shall be followed to arrive at a just settlement. Should the department be required to determine just compensation, it may appoint a qualified appraiser and the department's determination shall be final.

(2) Any person desiring an easement for public purposes shall apply to the department of state lands on a form prescribed by the department. The applicant shall pay full market value for the interest disposed of and the easement shall not terminate until the land ceases to be used for its specified public purpose. The department shall terminate the easement by notifying the grantee at his last known address that the public purpose has ceased.

Rule XXIII WATER RIGHTS If a water right is or has been secured by the lessee for use on the leased land, the lessee

shall be entitled to compensation as provided in Rule XXVI for the reasonable value thereof by any new lessee or purchaser if the water right is sold to the new lessee or purchaser as an improvement. This shall not be construed to make the state liable for the value of any water right. Any water rights hereafter secured by the lessee shall be secured in the name of the state of Montana.

Rule XXIV LIEN ON CROPS AND IMPROVEMENTS The state has a lien on all improvements and crops growing or separated, upon state lands, for any payments due it for that year. This lien shall have priority over all liens except a threshermen's lien or a seed lien and in those cases only to the extent of the indebtedness as evidenced by the contract, excluding any future advances. Any person acquiring an interest in such improvements or crops shall take subject to the lien. The department or sheriff of the county where the land is located may demand payment of monies due and if not paid may seize such property and sell as much of it as is needed to meet the indebtedness at a public sale, giving at least three days notice.

Rule XXV CANCELLATION OF LEASES (1) The department may cancel any lease if the lessee commits fraud or misrepresents facts to the department which, if known, would have had an effect on the issuance of the lease, or uses the land for any purpose not authorized in the lease, or fails to manage the land in a husband-like manner consistent with conservation of the land resources and the perpetuation of its productivity, or for any other cause, in the interests of justice and to protect state interests or for any other reason provided by law. The lessee of a cancelled lease shall not be entitled to any refunds or exemptions from any payments due to the state.

(2) The department shall immediately notify the lessee by certified mail of the cancellation and the reason for it, and the lease shall be deemed cancelled 15 days after such notice is received by the lessee, unless the lessee files a notice of appeal with the department prior to the expiration of the 15 day period, in which case the lease remains in effect until the board decides the matter. Within 10 days after receipt of notice of appeal the department shall notify the lessee of the time and place of the hearing before the board. The time and place of the hearing may be changed by the board after 10 days notice to the lessee. The board shall conduct an open hearing under the rules set out in the Montana Administrative Procedure Act, section 2-4-101 et seq., M.C.A. The burden of proof to show why the lease should not be cancelled shall be on the lessee. The board may reinstate the lease and restore all rights and privileges or it may reinstate the lease and asses

a penalty up to three times the annual rental against the lessee. If the board does not reinstate the lease the land shall be released in accordance with Rule VI.

Rule XXVI IMPROVEMENTS (1) A lessee may place improvements on state land which are necessary for the conservation or utilization of such state land with the approval of the department. The lessee shall apply for permission to place improvements on state land on the form prescribed by the department and then in current use. Blank forms shall be available at no cost.

(2) Prior to the issuance of a new lease a lessee must prove that he has offered to pay or has paid the former lessee the value of the improvements either as agreed upon with the former lessee or as fixed by arbitration or that the former lessee has decided to move the improvements. The department may require a letter from the former lessee stating that he with the lessee has been paid or is moving the improvements. If the former lessee does not agree on the value of the improvements, or begin arbitration procedures pursuant to this rule or remove the improvements, then all improvements remaining 60 days after the lease expired shall become the property of the state. The 60 day period may be extended by the department upon proper application.

(3) When the former lessee wishes to sell improvements and the parties cannot agree upon a reasonable value, such value shall be determined by arbitration. The lessee or purchaser and the former lessee shall each appoint an arbitrator with a third arbitrator appointed by the two arbitrators first appointed. The value of the improvements shall be fixed by the arbitrators and such determination shall be finding on both parties, however, either party may appeal within ten (10) days to the department. Upon appeal by either party, the department may appoint a qualified appraiser to determine the value of the improvements, and the department's determination shall be final. The department shall charge the cost of its examination to the parties in such proportion as justice may require. The compensation for the arbitrators shall be paid in equal shares by both parties.

(4) Summer fallowing, necessary cultivation done after the last crop grown, seeding and growing crops shall all be considered improvements. If the parties cannot agree on the value of seeded acreage or growing crops the purchaser or new lessee may allow the former lessee to harvest the crop and the state shall take its share as provided for in the former lease. The original breaking of the ground shall also be considered an improvement, however; if one year's crops have been raised on the land the value shall not exceed $2.50 per acre and if two year's crops have been raised there shall be no compensation.

Rule XXVII APPLICATIONS FOR RESOURCE DEVELOPMENT PROJECTS

Any lessee of state land may request that the department consider a resource development request form. In order to complete such form the department may require the lessee to furnish certain information including a description of the land involved and a description of the proposed project, including areas involved, potential return to the state, potential costs and other pertinent details. Projects will be undertaken only when, in the judgment of the department, the lessee has a record of good management of the land or shows evidence of improving the management of the land. The department will consider projects to promote such development of land as is in the best interests of the state, including, but not limited to, stock water developments, erosion control projects, irrigation project site preparation and development of certain vegetative practices. The department shall examine each proposal to determine its feasibility and may request assistance in such examination from appropriate state and federal agencies. The lessee shall cooperate with the department in planning the project and in negotiating for a fair return on the development.

(3) The rules are proposed in order to clarify and establish procedures and policies concerning surface leases on state land.

(4) Interested parties may submit their views or arguments concerning the proposed rules by writing to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, MT 59601 no later than March 18, 1979.

(5) If a person who is directly affected by the proposed adoption wishes to express his 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 to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, MT 59601 no later than March 18, 1979.

(6) If the commissioner receives requests for a public hearing on the proposed adoption from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on approximately 8,600 surface leases.

(7) The authority of the board to make the proposed rules is based on section 77-6-104, M.C.A. (Section 81-423 R.C.M. 1947).

(8) Conversion Table:

MCA	R.C.M. 1947
2-4-101	82-4201
2-15-3201	82A-1101
7-22-2149	16-1715
77-1-202	81-103
77-1-401	81-302(1)
77-6-104	81-423
77-6-111	81-407.1
77-6-201	81-404
77-6-209	81-414
77-6-507	81-433

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State January 25, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the Proposed Amendments to ARM 40-3.54(18)-S54100 sub-sections (5) and (6) Emergency Medical Technician - Basic and ARM 40-3.54(18)-S54120 sub-section (1)(d) Suspension or Revocation of Certification.	NOTICE OF PROPOSED AMENDMENTS OF ARM 40-3.54(18)-S54100 (5) and (6) EMERGENCY MEDICAL TECHNICIAN - BASIC and ARM 40-3.54(18)-S54120 (1)(d) SUSPENSION OR REVOCATION OF CERTIFICATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Board of Medical Examiners proposes to amend sub-sections (5) and (6) of ARM 40-3.54(18)-S54100 concerning certification of emergency medical technicians and sub-section (1)(d) of ARM 40-3.54(18)-S54120 concerning suspension or revocation of certification of emergency medical technicians.

2. The proposed amendment of ARM 40-3.54(18)-S54100 amends sub-sections (5) and (6). The lettered sub-section under (5) and (6) remain the same. The proposed amendments read as follows: (new matter underlined, deleted matter interlined)

"(5) Certification. Certification shall be for a period of not less than 19 months, nor more than 30 months. Certificates shall ~~expire~~become due for renewal on December 31. In accordance with the policy of the National Registry of Emergency Medical Technicians, the recertification process must be completed by March 31 of the following year. The Board may certify only those students who: .....

(6) Recertification. The emergency medical technician's certification shall terminate on March 31 following the date of expiration, unless he: ....."

3. The proposed amendment of ARM 40-3.54(18)-S54120 changes sub-section (1)(d) only and will read as follows: (new matter underlined, deleted matter interlined)

"(1) (d) Does not renew his certificate within ~~30~~90 days of the expiration date."

4. The reason for the proposed amendments is that since the Board of Medical Examiners is utilizing the National Registry criteria as the basis for recertification, the above rule changes are necessary to make the state of Montana rules more compatible with the National Registry and their policies.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Medical Examiners, Lalonde Building, Helena, Montana 59601 no later than March 15, 1979.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request

for a hearing and submit this request along with any written comments he has to the Board of Medical Examiners, Lalonde Building, Helena, Montana 59601 no later than March 15, 1979.

7. If the Board receives requests for a public hearing on the proposed amendments from 25 or more of the persons who are directly affected by the proposed amendments, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the Board to make the proposed amendments is based on section 50-6-203 MCA. (69-7008, R.C.M. 1947) IMP 50-6-204 MCA (Sec. 69-7005 R.C.M. 1947)

BOARD OF MEDICAL EXAMINERS
JOHN C. SEIDENSTICKER, M.D.
PRESIDENT

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, February 6, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MORTICIANS

IN THE MATTER of the Proposed Amendments of ARM 40-3.58(6)-S5840 sub-section (1) Applications and ARM 40-3.58(6)-S5870 Renewals	NOTICE OF PROPOSED AMENDMENTS OF ARM 40-3.58(6)-S5840 (1) APPLICATIONS AND ARM 40-3.58(6)-S5870 RENEWALS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Board of Morticians proposes to amend ARM 40-3.58(6)-S5840 sub-section (1) by including an application fee and ARM 40-3.58(6)-S5870 concerning renewal fees.

2. The proposed amendment to ARM 40-3.58(6)-S5840 adds the application fee under sub-section (1) and will read as follows: (New matter underlined, deleted matter interlined)

" (1) All applications for Mortuary Science examinations must be in the hands of the Department at least thirty (30) days prior to the date set for the examination and accompanied by the $50.00 application fee.

3. The proposed amendment to ARM 40-3.58(6)-S5870 sets the annual renewal fees and will read as follows: (new matter underlined, deleted matter interlined)

"(1) The renewal fee for a Mortician's license shall be ~~ten~~-fifteen dollars (~~$10.00~~-$15.00) per year.

(2) The renewal fee for a Funeral Director's license shall be ~~five~~-ten dollars (~~$5.00~~-10.00) per year.

(3) The renewal fee for an Intern's license shall be $3.00 per year.

(4) The annual inspection fee for mortuaries shall be $25.00 per year.

(5) Any license renewal fee not paid by July 1 results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty of $25.00."

4. The reason for the proposed amendments is that sections 37-19-301, 37-19-303, 37-19-304, 37-19-306, and 37-19-403 MCA provide for maximum renewal, application, and inspection fees and allows the Board to set the fee within that maximum. The Board has reviewed its cost of operation and determined that the above stated fees are necessary and adequate to cover these costs.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Morticians, Lalonde Building, Helena, Montana 59601 no later that March 15, 1979.

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 the Board of Morticians, Lalonde Building, Helena, Montana 59601, no later than March 15, 1979.

7. If the Board receives requests for a public hearing on the proposed amendments from 25 or more persons who are directly affected by the proposed amendments, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the Board to make the proposed amendments is based on section 37-19-202 MCA. (Sec. 66-2704 R.C.M. 1947).

BOARD OF MORTICIANS
LORENE L. JOHNSON, CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, February 6, 1979.

Implementing Sections:
37-19-301 MCA (66-2707, R.C.M. 1947)
37-19-303 MCA (66-2709, R. C.M. 1947)
37-19-304 MCA (66-2710, R.C.M. 1947)
37-19-306 MCA (66-2712, R.C.M. 1947)
37-19-403 MCA (66-2713, R.C.M. 1947)

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 42-2.22(2)-S2260 Assessment of Aircraft	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S2260 regarding assessment of aircraft NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S2260 which provides for the assessment of aircraft.

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

42-2.22(2)-S2260 ASSESSMENT OF AIRCRAFT (1) The ~~minimum value of aircraft shall be sixty-six and two-thirds percent (66-2/3%) of the approximate wholesale value~~ average market value of aircraft shall be the approximate retail value of such property as shown in the A.D.S.A. Aircraft Bluebook, "January Edition" (the first quarter) of the year of assessment, P. O. Box 621, Aurora, Colorado 80010. This Bluebook may be reviewed in the Department or purchased from the publisher.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S2270 Assessment of Billboards	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S2270 regarding assessment of billboards NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S2270 which provides for the assessment of billboards.

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

42-2.22(2)-S2270 ASSESSMENT OF BILLBOARDS (1) The ~~minimum assessed value of billboards shall be according to the schedule herein adopted and incorporated by the Department of Revenue by reference. The billboard assessment schedule may be reviewed in this Department or purchased from this Department at cost.~~ average market value of billboards shall be determined using a depreciation table established by the Department of Revenue. This is a ten year table and reflects the average life of these properties.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S2280 Assessment of Bowling Alleys	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S2280 regarding assessment of bowling alleys NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S2280 which provides for the assessment of bowling alleys.

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

42-2.22(2)-S2280 ASSESSMENT OF BOWLING ALLEYS ~~(1) In determining the minimum assessed value of combination automatic pin spotters and lanes, the base value shall be $6,400. After the first year the value shall be $4,670; after the second year the value shall be $3,650; after the third year the value shall be $3,010; after the fourth year the value shall be $2,560; after the fifth year the value shall be $2,175; after the sixth year the value shall be $1,920; after the seventh year the value shall be $1,665; after the eighth year the value shall be $1,475; after the ninth year the value shall be $1,345; after the tenth year and over the value shall be $1,280.~~

~~The minimum assessed value of lanes only shall be a base price of $4,000. After one year the value shall be $2,920; after two years $2,280; after three years $1,080; after four years $1,600; after five years $1,360; after six years $1,200; after seven years $1,040; after eight years $920; after nine years $840; after ten years $800; with a minimum of $500.~~

(1) The average market value of bowling alleys and equipment shall be determined using a depreciation table established by the Department of Revenue. This is a ten year table and reflects the average life of these properties.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S2290 Assessment of Unprocessed Agricultural Products on the Farm	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S2290 regarding assessment of unprocessed agricultural products on the farm NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S2290 which provides for the assessment of unprocessed agricultural products on the farm.

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

42-2.22(2)-S2290 ~~ASSESSMENT OF GRAIN~~ ASSESSMENT OF UNPROCESSED AGRICULTURAL PRODUCTS ON THE FARM OR A STORAGE, EXCEPT PERISHABLE FRUITS, VEGETABLES, LIVESTOCK AND POULTRY

(1) The ~~minimum assessed value of small grains shall be the statewide average U.S.D.A. loan value for which a loan value has been established. The loan value of the year of assessment shall be used.~~ average market value shall be the statewide average on the first day of January of the year of assessment.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22000) Assessment of Heavy Equipment)

NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22000 regarding assessment of heavy equipment
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22000 which provides for the assessment of heavy equipment.

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

42-2.22(2)-S22000 ASSESSMENT OF HEAVY EQUIPMENT (1) The minimum assessed value of heavy equipment shall be the wholesale value average market value of heavy equipment shall be the average resale value of such property as shown in "Green Guides", Volumes I and II, or "Green Guides Older Equipment Guide", "Green Guides Life Trucks", or "Green Guides Off Highway Trucks and Trailers". The current volumes of the year of assessment, Equipment Guide Book Company, 3980 Fabian Way, P. O. Box 10113, Palo Alto, California 94303. This guide may be reviewed in the Department or purchased from the publisher.

(2) If the above named publication cannot be used to value these properties then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.

(3) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes.

This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22010 Assessment of Livestock) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22010 regarding assessment of livestock NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22010 which provides for the assessment of livestock.

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

42-2.22(2)-S22010 ASSESSMENT OF LIVESTOCK. (1) ~~-The minimum assessed value of livestock shall be approximately forty percent (40%) of the average sale price for the preceding twelve (12) months to the year of assessment.~~ The average market value for cattle shall be determined by multiplying the weighted average price per cwt. for beef cattle, marketed in Montana during the preceding twelve month period December through November, times established factors for each of the seven catagories of cattle. The established factors are:

Bulls - 9 months thru 20 months	15
Bulls - 21 months and older	17.5
Cattle - 9 months thru 20 months	5
Cattle - 21 months thru 32 months	6.25
Cows - 33 months and older	7.5
Steers - 33 months and older	10
Dairy Cows - 21 months and older	10

(a) The average market value for blooded or registered cattle shall be thirty percent (30%) more than the average market value for stock cattle.

(2) ~~The minimum assessed value of blooded or registered livestock shall be 30% more than the minimum assessed valuation for other livestock.~~ The average market value for sheep shall be determined by multiplying the average price per cwt. for slaughter lambs, marketed in Montana during the preceding

twelve month period December through November, times established factors for each of the four catagories of sheep. The established factors are:

Registered Bucks - 9 months and older	2.6
Stock Bucks - 9 months and older	2
Sheep - 9 months thru 70 months	.7
Sheep - 71 months and older	.2

(3) The average market value for swine shall be determined pursuant to Section 84-5222, R.C.M. 1947.

(a) The most recent five year average U.S.D.A. Omaha quotation prices are: Grades 1 to 3 at 200 to 240 pounds $40.68; sows 270 to 330 pounds $34.51.

(4) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22030 Assessment of Mobile Homes) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22030 regarding assessment of mobile homes NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22030 which provides for the assessment of mobile homes.

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

42-2.22(2)-S22030 ASSESSMENT OF MOBILE HOMES (1) The ~~minimum-assessed-value~~ average market value of mobile homes shall be in accordance with the mobile home assessment schedule herein adopted and incorporated by the Department of Revenue by

reference. This schedule may be reviewed in the Department or purchased from the Department at cost.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22040 Assessment of House Trailers	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22040 regarding assessment of house trailers NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22040 which provides for the assessment of house trailers.

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

42-2.22(2)-S22040 ASSESSMENT OF HOUSE TRAILERS (1) The ~~minimum assessed value~~ average market value of house trailers shall be the ~~wholesale value~~ used retail value of the property as shown in the "N.A.D.A. Recreation Vehicle Appraised Guide," January Edition of the year of assessment, National Automobile Dealers Association, P.O. Box 1407, Covina, California, 91722. This guide may be reviewed in the Department or purchased from the publisher.

~~(2) If the "N.A.D.A. Recreational Vehicle Guide," does not value the house trailer, the value shall be 75% of the zone 3 value as shown in the "Official Mobile Home Market Report," January Edition of the year of assessment, Judy Berner Publishing Company, 10060 West Roosevelt Road, West Chester, Illinois, 60153. This report may be reviewed in the Department or purchased from the publisher.~~

~~(3)~~ (2) If ~~either of~~ the above-named publications ~~does not value the house trailer,~~ cannot be used to value these properties, then ~~the depreciation~~ a schedule ~~for house trailers~~ established by the Department of Revenue shall be used to ~~value the property.~~ determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.

(3) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22050 Assessment of Farm Machinery)	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22050 regarding assessment of farm machinery NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22050 which provides for the assessment of tractor and farm equipment.

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

42-2.22(2)-S22050 ASSESSMENT OF ~~TRACTOR-AND-FARM-EQUIPMENT~~ FARM MACHINERY AND EQUIPMENT (1) The ~~assessed-value-of tractors-and-farm-equipment-shall-be-the-loan-value~~ average market value of large farm machinery shall be the average resale price of such property shown in "Official Guide Tractors and Farm Equipment", Spring Edition of the year of assessment, NRFEA Publications, Inc., 2340 Hampton, St. Louis, Missouri 63139. This guide may be reviewed in the Department or purchased from the publisher.

(2) ~~Farm-machinery-not-listed-in-the-above-publication including,-but-not-limited-to,-farm-irrigation-systems,-shall-be-assessed-from-a-schedule-based-upon-a-fifteen-year-life depreciation-to-a-minimum-of-nineteen-percent-(19%)-of-original cost,-if-still-in-use,-times-a-seventy-percent-(70%)-loan value.~~ If the above named publication cannot be used to values these properties, then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.

(3) The average market value of other farm machinery which includes, but is not limited to, farm irrigation systems, shall be determined using a schedule established by the Department of Revenue. This schedule may be reviewed in the Department or purchased from the Department at cost.

(4) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amend- ment of Rule 42-2.22(2)-S22060) Assessment of Automobiles)	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22060 regarding assessment of automobiles NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22060 which provides for the assessment of automobiles.

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

42-2.22(2)-S22060 ASSESSMENT OF AUTOMOBILES (1) The ~~minimum-assessed-value~~ average market value of automobiles shall be the average ~~loan~~ retail value of such property as shown in N.A.D.A. Official Used Car Guide, Mountain States January Edition of the year of assessment, National Automobile Dealers Used Car Guide, 200 OK Street Northwest, Washington, D.C. 20006. This guide may be reviewed in the Department or purchased from the publisher.

(2) If the above named publication cannot be used to value these properties, then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.

(3) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule

would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22070) Assessment of Oil Field Machinery and Supplies) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22070 regarding assessment of oil field machinery and supplies NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22070 which provides for the assessment of oil field machinery and supplies.

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

42-2.22(2)-S22070 ASSESSMENT OF OIL FIELD MACHINERY AND SUPPLIES (1) ~~The assessed value for oil field machinery equipment and supplies shall be forty percent (40%) of the current market price.~~ The average market value of oil and gas field equipment, fixtures, machinery, and supplies shall be in accordance with the oil and gas field equipment schedule herein adopted and incorporated by the Department of Revenue by reference. This schedule may be reviewed in the Department or purchased from the Department at cost.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22110) Assessment of Television Cable System) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22110 regarding assessment of television cable system NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22110 which provides for the assessment of Television Cable Systems.

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

42-2.22(2)-S22110 ASSESSMENT OF TELEVISION CABLE SYSTEM (1) The ~~minimum-assessed~~ average market value of television cable systems is ~~$800~~ 2,000 per mile of co-arial cable (transmission line), ~~$225~~ 565 per mile of telplex cable (or equivalent) and ~~$10~~ 25 per service drop.

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22120) Assessment of Trucks and Commercial Trailers	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22120 regarding assessment of trucks and commercial trailers NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22120 which provides for the assessment of trucks and commercial trailers.

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

42-2.22(2)-S22120 ASSESSMENT OF ~~TRUCKS AND COMMERCIAL TRAILERS~~ LARGE TRUCKS WHICH HAVE A RATED CAPACITY OVER 1 1/2 TONS AND COMMERCIAL TRAILERS (1) ~~The minimum assessed value of trucks and trailers shall be in accordance with the Truck and Commercial Trailer Schedule, herein adopted and incorporated by the Department of Revenue by reference. This schedule may be reviewed in the Department or purchased from the Department at cost.~~ The average market value for large trucks, those rated over 1 1/2 tons, shall be the average retail values of such property as shown in the "Truck Bluebook Official Used Truck Valuation," January first edition of the year of assessment, National Market Report, Inc., 900 South Wabash Ave.,

Chicago, Illinois 60600. This guide may be reviewed in the Department or purchased from the publisher.

(2) If the above named publication cannot be used to value these properties, then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.

(3) The average market value of commercial trailers shall be in accordance with the schedule established by the Department of Revenue. This schedule may be reviewed in the Department or purchased from the Department at cost.

(4) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22140 Assessment of Boats and Motors)	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22140 regarding assessment of boats and motors NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22140 which provides for the assessment of boats and motors.

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

42-2.22(2)-S22140 ASSESSMENT OF BOATS AND MOTORS (1) The ~~minimum-assessed~~ average market value of outboard boats shall be the ~~low-book-value~~ suggested retail price of such property in the "Official Outboard Boat Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(2) The ~~minimum-assessed~~ average market value of outboard motors shall be the ~~low-book-value~~ suggested retail price of such property in the "Official Outboard Motor Trade In Guide Bluebook", January Edition of the year of assessment, ABOS

Marine Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(3) The ~~minimum-assessed~~ average market value of inboard/outboard boats shall be the ~~low-book-value~~ suggested retail price of such property as shown in the "Official Inboard/Outboard Boat Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(4) The average market value of sailboats shall be the suggested retail price as shown in the "Official Sailboat Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publishing Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(5) If the above-named publications do not value these properties, then a depreciation schedule established by the Department of Revenue shall be used to determine the average market value for them. This schedule may be reviewed in the Department or purchased from the Department at cost.

(6) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22150 Assessment of Trailers/Campers)	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22150 regarding assessment of trailers/campers NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22150 which provides for the assessment of trailers/campers.

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

42-2.22(2)-S22150 ASSESSMENT OF ~~TRAILERS/CAMPERS~~ BOAT TRAILERS, CAMPING AND TRAVEL TRAILERS, TRUCK CAMPERS AND MOTOR HOMES (1) The ~~minimum-assessed~~ average market value of boat trailers shall be the ~~low-book-value~~ suggested retail price of such property as shown in "Official Boat Trailer Trade-In Guide ~~Blue-Book~~ Bluebook," January Edition, ABOS Marine Publications Intertec Publishing Corp., 1014 Wyandotte, Kansas City, ~~Mo.~~ Missouri 64105. This bluebook may be reviewed in the Department and purchased from the publisher.

(2) The ~~minimum-assessed~~ average market value of camping and travel trailers shall be the ~~low-book-value~~ used retail price of such property as shown in the "N.A.D.A. Recreation Vehicle Appraisal Guide," January Edition of the year of assessment. National Automobile Dealers Association, P. O. Box 1407, Covina, California~~,~~ 91722. This guide may be reviewed in the Department or purchased from the publisher.

(3) The ~~minimum-assessed~~ average market value of truck campers ~~and-motor-homes~~ shall be the ~~wholesale-value-(W/S)~~ used retail price of such property as shown in the "N.A.D.A. Recreation Vehicle Guide," January Edition of the year of assessment. National Automobile Dealers Association, P. O. Box 1407, Covina, California~~,~~ 91722. This guide may be reviewed in the Department or purchased from the publisher.

(4) ~~If-the-above-named-publication-does-not-value-the property,-then-the-depreciation-schedule-established-for-the property-by-the-Department-of-Revenue-shall-be-used-to-value the-property.--This-schedule-may-be-reviewed-in-the-Department or-purchased-from-the-Department-at-cost.~~ The average market value of motor homes shall be the used retail price of such property as shown in the "N.A.D.A. Recreation Vehicle of Appraisal Guide," January Edition of the year of assessment. National Automobile Dealers Association, P. O. Box 1407, Covina, California 91722. This guide may be reviewed in the Department or purchased from the publisher.

(5) If the above-named publications do not value these properties, then the depreciation schedule established by the Department of Revenue shall be used to determine the average market value from them. This schedule may be reviewed in the Department or purchased from the Department at cost.

(6) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should

be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22160) Assessment of Snowmobiles and ATV's	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22160 regarding assessment of snowmobiles and ATV's NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22160 which provides for the assessment of snowmobiles and ATV's.

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

42-2.22(2)-S22160 ASSESSMENT OF SNOWMOBILES AND ATV'S

(1) The ~~minimum-assessed~~ average market value of snowmobiles shall be the ~~low-book-value~~ suggested retail price of such property as shown in "Official Snowmobile and ATV Trade-In Guide ~~Blue-Book~~ Bluebook," Current Season, Technical Publications Division, Intertec Publishing Corp., 1014 Wyandotte, Kansas City, ~~Mo.~~ Missouri 64105. This ~~blue-book~~ guide may be reviewed in the Department or purchased from the publisher.

(2) If the above-named publication does not value the property, then a depreciation schedule established by the Department of Revenue shall be used to value the property. This schedule may be reviewed in the Department or purchased from the Department at cost.

(3) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22170) Assessment of Motorcycles	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22170 regarding assessment of motorcycles

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22170 which provides for the assessment of motorcycles.

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

42-2.22(2)-S22170 ASSESSMENT OF MOTORCYCLES (1) The ~~minimum-assessed~~ average market value for motorcycles shall be the ~~low-book-value~~ suggested retail price of such property as shown in the "Official Motorcycle and Mini-Bike Trade-In Guide," January Edition of the year of assessment, Technical Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri ~~64015~~ 64105. This guide may be reviewed in the Department or purchased from the publisher.

(2) If the above-named publication does not value the property, then a depreciation schedule established by the Department of Revenue shall be used to value the property. This schedule may be reviewed at the Department or purchased from the Department at cost.

(3) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(2)-S22174 Assessment of Ski Lift Equipment	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22174 regarding assessment of ski lift equipment NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(2)-S22174 which provides for the assessment of ski lift equipment.

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

42-2.22(2)-S22174 ASSESSMENT OF SKI LIFT EQUIPMENT (1) The ~~assessed~~ average market value of ski lift equipment, which are classifed as Aerial Lifts, Surface Lifts, Portable Lifts and Tows and which include the towers, cables, ropes, sheave assemblies, the conveying devices, power units, and all accessories, shall be determined using ~~assessment~~ depreciation tables and procedures established by the Department of Revenue.

(2) The ~~assessment~~ depreciation table reflects the average remaining life of these properties ~~times a sixty percent (60%) equalization factor~~.

(3) The installation cost of these properties can be determined by applying the designated percentage, by life classification, to the invoice cost.

(4) The minimum ~~assessed~~ average market values for the lift equipment shall be ~~(15%)~~ (25%) of its installed cost.

(5) Five percent (5%) of the installed cost of the entire lift will be used as the cost of the tower bases and will be appraised and assessed as are all other improvements to real estate.

DEPRECIATION TABLE FOR ~~ASSESSMENT~~
SKI LIFT EQUIPMENT

Installed Cost X ~~Assessment Factor~~ Percent Good = ~~Assessed~~ Average Market Value

YEAR	~~ASSESSMENT FACTOR~~ PERCENT GOOD TABLE	
1st	~~55%~~	92%
2nd	~~54%~~	90%
3rd	~~53%~~	88%
4th	~~49%~~	82%
5th	~~44%~~	73%
6th	~~39%~~	65%
7th	~~34%~~	57%
8th	~~29%~~	48%
9th	~~23%~~	38%
10th	~~19%~~	32%
11th and Older	~~15%~~	25%

Method of determining installation cost using invoice price of equipment by classification invoice price x percent for that classification = installation cost.

CLASSIFICATION	PERCENT OF INVOICE FOR INSTALLATION
Aerial Lifts (Gondola-Chair)	40%
Surface Lifts (T-Bar, J-Bar, Platter)	30%
Tows (Rope, Cable)	20%
Portable Lift	10%

Note: 5% of installed costs on Aerial and Surface Lifts will be placed in Class 11, Improvements to Real Property. Taxpayer must list each year as of January first.

(a) All equipment by year of installation.

(b) Invoice costs as per year of installation.

(c) Make special note of any addition or deletion from previous years list, with invoice cost.

(6) This rule would be effective for tax years beginning after December 31, 1978.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the change by providing that the subject property should be valued at market value for property tax purposes. This rule would be effective for tax years beginning after December 31, 1978.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to R. Bruce McGinnis, Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than March 15, 1979.

5. The authority of the department to make the proposed amendments is based on Section 15-1-201, MCA (Section 84-708.1, R.C.M. 1947). Implementing Section 15-6-101 (2), MCA, (Section 84-301.1, R.C.M. 1947).

LAURY M. LEWIS
Acting Director
Department of Revenue

Certified to the Secretary of State February 6, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 42-2.22(1)-S2200) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(1)-S2200 regarding Real Property NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(1)-S2200 which provides for the assessment of real property.

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

42-2.22(1)-S2200 ~~MONTANA APPRAISAL MANUAL AND~~ MARSHALL VALUATION SERVICE (1) The Department of Revenue has herein adopted and incorporated the ~~"Montana Appraisal Manual, 1972 Edition, by reference. Copies of this manual may be reviewed in this Department or purchased for $10.00 per copy from the Department.~~ "Marshall Valuation Service," 1916 Beverly Boulevard, Los Angeles, California 90026 by reference. Copies of this publication may be reviewed in this Department or purchased from the publisher.

(a) Marshall Valuation Service shall be used for the valuation for tax purposes, in all Montana counties, of real and personal properties not specifically or sufficiently covered in ~~the 1972 edition of Montana Appraisal Manual or~~ other valuation schedules made a part of administrative codes by reference for property tax purposes.

(b) Replacement sections and updated cost multiplier tables for Marshall Valuation Service, that are received monthly, shall be used to replace the outdated sections only as of ~~July~~ January of each year ~~or when all appraisals have been completed for the current tax year.~~ This will insure that the same levels of values are used for the appraisal of all properties valued from the publication for the assessment year.

~~(c) Montana Appraisal Manual and Marshall Valuation Service. The Department of Revenue has herein adopted and incorporated the "Marshall Valuation Service", 1916 Beverly Boulevard, Los Angeles, California 90026 by reference. Copies of this publication may be reviewed in this Department or purchased from the publisher.~~

(c) This rule would be effective for tax years beginning after December 31, 1978.

3. Rule 42-2.22(1)-S2200 is proposed to be amended pursuant to Section 84-429.7 wherein the Department is required to establish uniform methods for the appraisal of all real property and improvements in the State of Montana. This rule implements that provision by adopting a nationally recognized appraisal service rather than the Department of Revenue as has been the practice in the past, making its own appraisal manual. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(1)-S2220) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(1)-S2220 regarding Assessment of City and Town Lots NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(1)-S2220 which provides for the assessment of city and town lots and improvements.

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

42-2.22(1)-S2220 ASSESSMENT OF CITY AND TOWN LOTS AND IMPROVEMENTS (1) The assessment of city and town lots and the assessment of rural and urban improvements ~~for 1963 and thereafter shall be at the rate of 40% of the appraisals made pursuant to the provision of~~ shall be at market value as determined by appraisal using Montana Appraisal Manual and Marshall Valuation Service. Said Appraisals shall have been made in the same manner as provided in Section 84-429.7 through 429.13, R.C.M. 1947.

~~(2) The assessments of improvements constructed after the date of completion of the appraisals made pursuant to the provisions of Section 84-429.7 through 429.13, R.C.M. 1947, shall be based on 40% of the appraisals of such property. Said appraisals shall have been made in the same manner as provided in said Sections 84-429.7 through 429.13, R.C.M. 1947.~~

(2) This rule would be effective for tax years beginning after December 31, 1978.

3. Rule 42-2.22(1)-S2220 is proposed to be amended because the legislature pursuant to Chapter 566, Laws 1977 (House Bill 70) has abolished the concept of assessed value. Therefore the Department of Revenue is amending this regulation to reflect that city and town lots may be appraised at market value by using an accepted appraisal manual. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(1)-S2230) NOTICE OR PROPOSED AMENDMENT OF RULE 42-2.22(1)-S2230 Assessment of Timber for Certain Counties NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(1)-S2230 which provides for the assessment of timber for Flathead, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties.

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

42-2.22(1)-S2230 ASSESSMENT OF TIMBER FOR FLATHEAD, GRANITE, LAKE, LEWIS AND CLARK, LINCOLN, MINERAL, MISSOULA, POWELL, RAVALLI, AND SANDERS COUNTIES (1) The assessed value of timber shall be according to the schedules in subsection (11) of the rule.

(2) The values shown on the schedule in subsection (11) are per acre assessed values by access and topography classes for each condition class. They are not necessarily the same as those in an adjoining county because of differences in stand volumes and species distribution between different areas. Condition class designations are abbreviated to speed up valuation computation. For instance, the condition classes P9WM and P9MM are valued alike, so only one designation, P9M is shown. Likewise P9P includes P9WP, P9MP and P9PP; and L9P includes L9WP, L9MP, and L9PP, etc.

(3) The following factors have been considered and reflected in the attached valuations:

(a) Updated lumber selling prices including chips and miscellaneous by-products, updated manufacturing and logging costs and updated overrun percentages.

(b) Revised stand volume tables including 9" and 10" diameters as saw logs.

(c) Differentials in logging costs between lands with favorable, average, and difficult accessibility and topography.

(d) Differentials in logging costs due to varying board foot volumes of timber per acre.

(4) These values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timber lands. They also include the minimum or G6 grazing value. For timber lands on which a grade of grazing higher than G6 is established, add to the values furnished as follows:

For G5 grazing, add $0.65 per acre
For G4 grazing, add 1.70 per acre
For G3 grazing, add 2.90 per acre
For G2B grazing, add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

(5) A valuation record must be kept for each owner of timber lands in the county. Both timber and agricultural land classifications must be checked to determine proper acreages in each classification and the applicable access and topography classes. Only acreages under the headings ~~NG~~ NF (non-forest), NC (non-commercial), CO (cottonwood), and OH (other hardwoods) appearing on timber classification records will be assessed as grazing or in some other agricultural designation. The balance of the lands appearing on your timber classification records must be assessed as timber lands even though, in some cases, the value of the grazing may exceed the value of timber. In the case of seedling and sapling stands, designated by map symbol 7, and non-stocked areas, map symbol 6,

there is no calculable timber value so they must be assessed at their grazing value plus land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timber lands and a possible Christmas tree value if they are being harvested.

(6) The following instructions for valuation of timber and timber lands are issued for that portion of Flathead County that was cruised by county personnel to determine timber inventories and topography and accessibility characteristics. These instructions supersede all instructions and values previously furnished by ~~this Board~~ the State Board of Equalization, and it is hereby ordered that they be used for assessment of timber and timber lands in your county for the year 1973 and succeeding years unless rescinded by ~~this Board~~ the Department of Revenue. The changes from previous valuation schedules and instructions are the result of a concerted effort to equalize timber assessments in Flathead County with surrounding counties having similar lands.

(a) The following factors have been considered and reflected in the attached valuation instructions:

(i) Updated lumber selling prices including chips and miscellaneous by-products, updated manufacturing and logging costs and updated overrun percentages.

(ii) Differentials in logging costs between lands with favorable, average and difficult accessibility and topography.

(iii) Pole values that have not previously been considered in timber valuation in Flathead County.

(b) The following schedule will be used in determining saw log values:

Per Thousand Board Feet

A. &. T.	Species Group I	Species Group II	Species Group III
Favorable	$ 2.92	$ 1.41	$ 1.28
Average	2.19	.68	.55
Difficult	1.32	.00	.00

(c) Pole values will be calculated at $0.32 per cord.

(d) All volumes will be calculated for all acreages.

(e) Land values of $1.65 per acre for Favorable, $1.00 per acre for Average and $0.40 per acre for Difficult Accessibility and Topography will be added to total timber values. Lands having total A. and T. grade points under 5 shall be considered Favorable, points 5, 6 and 7 shall be Average and 8 and 9 shall be Difficult.

(f) Actual grazing values by classified grade will also be added.

(g) A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

(h) Timber lands with no calculable timber value shall be valued at their grazing value plus the land value as explained above. Any merchantable Christmas tree values may be added.

(i) Non-forest lands, non-commercial timber lands (timber that never will have commercial value) and lands bearing only cottonwood or other hardwoods shall not be assessed as timber lands.

(j) All values quoted in this directive are assessed values.

(7) The timber valuation schedules take topography, distance to market, and accessibility by roads into account to a greater extent than former schedules by reflecting favorable, average, and difficult accessibility and topography in the per acre assessed values for each species group.

(8) Timber land served by a private road is valued the same as timber land served by a public road.

~~(9)--The future net income from a private timber road, not reflected in the land value schedules, may be separately assessed by counties through the capitalization of such additional net income.~~

~~(10)--Any county or counties wishing to assess the value arising from the future net income from a private timber road, not reflected in the land value schedules may do so by establishing such bases of value as the amount of and duration of the additional expected income, at a hearing before the Board of Commissioners, as provided in Section 84-429.11, R.C.M. 1947.~~

TIMBER AND TIMBERLAND VALUATION SCHEDULE
FLATHEAD COUNTY
(For Portion Classified by State Forestry Personnel)

Schedule I

	Access and Topography Class				Access and Topography Class		
P	Favorable	Average	Difficult	D	Favorable	Average	Difficult
9M	$35.84	$25.51	$13.83	9M	$21.73	$12.02	$ 2.09
9P	14.84	9.56	4.76	9P	14.06	7.22	2.26
8P	3.86	2.51	1.28				

L				LP			
9W	35.70	21.76	5.53	9W	8.61	3.70	1.53
9M	22.17	12.37	1.83	9M	5.82	2.14	1.25
9P	11.11	5.18	1.56	9P	4.43	2.10	1.25
8W	9.00	3.96	1.38	8W	9.68	4.23	1.28
8M	6.75	2.81	1.34	8M	5.77	2.34	1.31
8P	5.68	2.60	1.33	8P	5.44	2.47	1.41
S				TF			
9P	16.69	8.43	1.24	8M	3.62	2.22	1.26

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $ .65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
GRANITE COUNTY

Schedule 2

P	Access and Topography Class Favorable	Average	Difficult	D	Access and Topography Class Favorable	Average	Difficult
9W	$28.81	$20.91	$12.08	9W	$54.21	$33.98	$10.34
9M	22.24	15.65	8.61	9M	36.33	21.65	4.60
9P	17.04	11.20	5.64	9P	18.40	9.65	1.22
8W	10.98	6.78	3.20	8W	9.03	3.98	1.38
8M	9.01	5.49	2.50	8M	5.28	2.10	1.28
8P	3.76	2.46	1.28	8P	4.40	2.13	1.28
D				DL			
9W	20.10	10.50	1.30	9W	46.33	28.25	7.25
9M	12.85	6.22	1.22	9M	29.52	17.24	3.12
9P	9.85	4.49	1.33	9P	13.63	6.81	1.58
8W	7.33	3.03	1.34	8W	7.11	3.09	1.38
8M	5.38	2.26	1.26	8M	4.93	2.44	1.31
8P	4.48	1.98	1.27	8P	4.58	2.28	1.29
S				LP			
9W	29.55	16.76	2.22	9W	12.37	5.65	1.63
9M	21.97	11.89	1.26	9M	10.72	4.67	1.26
9P	11.37	5.17	1.23	9P	6.90	2.61	1.27
8W	6.82	2.84	1.36	8W	6.71	2.65	1.30
8M	5.11	2.51	1.29	8M	5.41	2.38	1.31
8P	4.02	2.38	1.28	8P	3.96	2.31	1.31

TF	Access and Topography Class Favorable	Average	Difficult	WLP	Access and Topography Class Favorable	Average	Difficult
9W	$16.59	$ 8.24	$ 1.76		$	$	$
9M	12.42	5.94	1.70	9M	9.45	3.80	1.24
9P	9.34	3.58	1.31	9P	4.85	1.93	1.23
8W	4.83	2.41	1.28	8W	5.23	2.15	1.25
8M	3.70	2.24	1.26	8M	3.57	1.95	1.23
8P	3.15	2.10	1.25	8P	3.40	1.94	1.23

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
LAKE COUNTY
(For Area East of Highway 93 and Flathead Lake)

Schedule 3

P	Access and Topography Class Favorable	Average	Difficult	L	Access and Topography Class Favorable	Average	Difficult
9W	$67.48	$50.80	$31.46	9W	$43.35	$27.66	$ 9.43
9M	33.42	22.54	10.12	9M	24.19	13.37	1.90
9P	13.48	8.50	4.16	9P	11.23	5.23	1.33
8W	7.91	4.88	2.32	8W	9.03	3.98	1.38
8M	6.14	3.81	1.80	8M	6.74	2.80	1.34
8P	3.86	2.51	1.28	8P	5.66	2.59	1.33

D				DL			
9W	32.45	18.73	3.08	9W	38.17	23.25	5.95
9M	20.87	11.65	2.08	9M	22.10	12.25	2.12
9P	10.86	5.08	1.56	9P	11.44	5.45	1.45
8W	6.39	2.57	1.31	8W	6.34	2.60	1.33
8M	3.91	2.06	1.24	8M	5.56	2.34	1.26
8P	4.10	1.99	1.26	8P	4.64	2.16	1.25

S				LP			
9W	53.97	32.57	7.98				
9M	26.10	14.70	1.78				
9P	11.98	5.40	1.24				
8W	6.86	2.86	1.36	8W	7.87	3.12	1.34
8M	4.88	2.52	1.29	8M	5.77	2.34	1.31
8P	4.98	2.84	1.32	8P	5.44	2.47	1.41

	Access and Topography Class				Access and Topography Class		
WH	Favorable	Average	Difficult	TF	Favorable	Average	Difficult
9M	$19.50	$10.63	$ 2.74	9M	$18.73	$ 9.69	$ 1.78
9P	6.44	2.50	1.38	9P	8.94	3.80	1.23
				8W	3.05	1.86	1.22
				8M	2.81	1.83	1.22
				8P	2.68	1.85	1.22

C				WLP			
9W	29.10	17.22	4.26	9W	15.69	7.58	1.24
9M	17.77	9.14	1.78	9M	10.27	4.43	1.24
9P	10.65	4.63	1.33	9P	4.88	1.94	1.23
8W	5.65	2.52	1.29	8W	5.22	2.48	1.28
				8M	4.08	2.36	1.27
				8P	3.62	2.29	1.27

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
LAKE COUNTY
(For Area West of Highway 93 and Flathead Lake)

Schedule 4

P	Access and Topography Class Favorable	Average	Difficult	L	Access and Topography Class Favorable	Average	Difficult
9W	$34.49	$24.98	$14.22	9W	$35.33	$21.59	$ 5.62
9M	21.82	14.33	6.91	9M	16.44	8.48	1.24
9P	8.20	4.60	2.26	9P	9.64	4.39	1.26
8W	7.91	4.88	2.32	8W	9.00	3.95	1.38
8M	6.14	3.81	1.80	8M	6.40	2.63	1.33
8P	3.86	2.51	1.28	8P	5.67	2.59	1.33

DL				D			
9W	32.57	19.29	4.08	9W	29.16	16.35	1.88
9M	18.58	9.84	1.52	9M	21.50	11.63	1.38
9P	13.18	6.41	1.70	9P	17.30	9.19	2.28
8W	10.85	5.01	1.40	8W	13.18	6.18	1.40
8M	5.42	2.31	1.27	8M	5.32	2.26	1.26
8P	4.28	2.18	1.26	8P	3.61	2.02	1.26

S				LP			
9W	36.71	21.35	3.64	9W	8.61	3.70	1.53
9M	23.86	13.05	1.26	9M	5.82	2.14	1.25
9P	20.68	10.97	1.24	9P	5.24	2.67	1.42
8W	6.89	2.87	1.36	8W	9.68	4.23	1.28
8M	5.03	2.19	1.26	8M	5.77	2.34	1.31
8P	3.43	1.95	1.25	8P	5.44	2.47	1.41

LAKE COUNTY
(For Area West of Highway 93 and Flathead Lake)

TF	Access and Topography Class Favorable	Average	Difficult	WLP	Access and Topography Class Favorable	Average	Difficult
	$	$	$	9W	$15.69	$ 7.58	$ 1.24
9M	12.62	6.12	1.70	9M	10.27	4.43	1.24
9P	6.42	2.25	1.23	9P	4.88	1.94	1.23
8W	4.78	2.69	1.30	8W	4.08	2.36	1.27
8M	3.62	2.22	1.26	8M	4.08	2.36	1.27
8P	3.29	2.14	1.25				

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timber lands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
LEWIS AND CLARK COUNTY
(West of Continental Divide)

Schedule 5

P	Access and Topography Class Favorable	Average	Difficult
	$	$	
9M	18.31	12.33	
9P	14.93	9.86	
8W	7.03	4.34	
8M	5.98	3.81	
8P	5.28	3.41	

D	Access and Topography Class Favorable	Average	Difficult
9W	$17.45	$ 9.00	
9M	13.01	6.39	
9P	6.15	2.48	
8W	8.47	3.91	
8M	4.17	2.18	
8P	3.70	2.04	

S		
9M	10.57	4.61
9P	5.22	2.06
8W	6.82	2.84

LP		
9P	7.86	2.94
8W	8.85	3.54
8M	6.77	2.82
8P	5.76	2.44

TF		
8W	5.94	2.82
8M	4.93	2.75

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add $1.70 per acre
For G3 add $2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
LINCOLN COUNTY

Schedule 6

	Access and Topography Class				Access and Topography Class		
WP	Favorable	Average	Difficult	P	Favorable	Average	Difficult
9W	$51.79	$37.06	$	9W	$52.87	$38.66	$22.18
9M	33.32	21.65		9M	35.84	25.44	13.68
9P	17.89	10.76		9P	16.45	10.76	5.42
8W	9.47	5.25		8W	7.91	4.88	2.32
8M	6.38	3.51		8M	7.03	4.34	2.06
8P	3.62	2.24		8P	3.86	2.51	1.28

L.D. & DL				S			
9W	37.07	21.97	4.59	9W	44.58	27.23	7.00
9M	26.21	15.21	2.93	9M	35.42	21.06	4.56
9P	12.74	6.55	2.13	9P	14.63	7.25	1.38
8W	8.50	3.77	1.58	8W	7.28	2.92	1.32
8M	5.69	2.37	1.27	8M	5.03	2.05	1.24
8P	5.39	2.23	1.30	8P	6.27	2.72	1.34

LP				WH,TF & C			
9W	19.29	9.99	1.68	9W	21.90	11.57	1.55
9M	15.61	7.70	1.24	9M	18.80	10.24	2.84
9P	9.93	4.03	1.35	9P	10.35	5.55	2.54
8W	9.07	3.61	1.30	8W	8.99	3.94	1.74
8M	7.34	2.76	1.34	8M	6.21	2.91	1.54
8P	5.57	2.61	1.46	8P	5.37	2.66	1.41

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
MINERAL COUNTY

Schedule 7

WP	Access and Topography Class Favorable	Average	Difficult	P	Access and Topography Class Favorable	Average	Difficult
9W	$50.76	$34.88		9W	$41.02	$30.30	
9M	36.34	23.60		9M	27.94	19.27	
9P	24.67	16.22		9P	13.85	8.93	
8W	9.39	4.85		8W	11.01	6.38	
8M	5.19	2.71		8M	7.31	3.93	
8P	3.67	2.24		8P	3.62	2.34	
L.D. & DL				S			
9W	34.13	20.29		9W	46.10	28.00	
9M	20.27	11.20		9M	32.47	19.20	
9P	12.49	6.18		9P	13.38	6.34	
8W	6.19	2.69		8W	7.50	2.84	
8M	5.68	2.44		8M	4.98	2.07	
8P	3.22	2.10		8P	3.83	2.12	

3-2/15/79

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LP			TF		
9W	24.93	13.78	9W	31.16	18.68
9M	16.85	8.34	9M	26.57	15.40
9P	9.48	3.98	9P	7.38	3.01
8W	4.83	1.84	8W	6.67	3.10
8M	5.06	2.10	8M	6.29	2.48
8P	4.20	2.41	8P	3.22	2.11

	Access and Topography Class		
C	Favorable	Average	Difficult
9M	$14.19	$ 6.71	
9P	11.95	5.58	
8W	6.73	3.10	

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $..40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
MISSOULA COUNTY

Schedule 8

WP	Access and Topography Class Favorable	Average	Difficult
	$	$	$
9M	39.49	25.91	
9P	17.41	10.86	
8W	7.23	3.50	
8M	5.19	~~1.71~~ 2.71	

P	Access and Topography Class Favorable	Average	Difficult
9W	$56.83	$42.62	$
9M	34.32	24.66	
9P	18.29	12.14	
8W	10.99	6.79	
8M	9.01	5.49	
8P	3.76	2.46	

L			
9W	44.69	27.45	7.36
9M	29.73	17.34	3.08
9P	14.40	7.26	1.35
8W	9.03	3.98	1.38
8M	6.07	2.48	1.32
8P	4.52	2.13	1.28

D			
9W	35.26	20.72	4.27
9M	21.97	12.40	2.37
9P	8.71	3.92	1.57
8W	6.27	3.23	1.37
8M	4.41	2.50	1.29
8P	3.92	2.24	1.30

DL			
9W	41.13	24.99	6.38
9M	26.17	15.04	2.44
9P	12.71	6.41	1.58
8W	7.11	3.09	1.38
8M	4.93	2.44	1.31
8P	4.16	2.08	1.27

S			
9W	54.46	33.49	
9M	34.37	19.72	
9P	17.20	8.75	
8W	6.93	2.86	
8M	5.19	2.52	
8P	4.10	2.39	

LP	Access and Topography Class Favorable	Average	Difficult
9W	$ 8.76	$ 3.58	$
9M	8.20	3.17	
9P	5.00	2.24	
8W	6.95	2.61	
8M	6.23	2.48	
8P	5.21	2.45	

TF	Access and Topography Class Favorable	Average	Difficult
	$	$	$
9M	26.99	15.82	4.18
9P	6.25	2.27	1.23
8W	7.44	2.75	1.28
8M	7.40	2.76	1.28
8P	3.42	2.20	1.26

C			
9M	14.10	6.71	1.36
9P	11.78	5.41	1.68

WLP			
9M	13.27	6.08	1.29
9P	5.04	2.13	1.25
8W	8.07	3.07	1.26
8M	6.18	2.19	1.26
8P	3.83	2.07	1.24

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
POWELL COUNTY

Schedule 9

P	Access and Topography Class Favorable	Average	Difficult
	$	$	$
9M	32.87	23.24	
9P	17.26	11.53	
8W	7.03	4.34	
8M	6.25	3.86	
8P	5.57	3.49	
D			
9W	22.27	12.29	1.97
9M	17.03	9.32	2.16
9P	8.05	3.84	1.66
8W	8.47	3.91	1.58
8M	4.17	2.18	1.26
8P	3.70	2.04	1.26
S			
9M	20.48	11.04	1.54
9P	10.21	4.61	1.44
8W	6.80	2.84	1.36
8M	4.85	2.51	1.29
8P	4.10	2.40	1.28

L	Access and Topography Class Favorable	Average	Difficult
9W	~~$45.02~~ 45.01	$27.90	$
9M	29.88	17.42	
9P	13.35	6.59	
8W	9.03	3.98	
8M	6.09	2.48	
8P	4.52	2.13	
DL			
9W	40.52	24.50	6.06
9M	25.08	14.45	2.44
9P	11.59	5.58	1.55
8W	7.11	3.09	1.38
8M	4.93	2.44	1.31
8P	4.16	2.08	1.27
LP			
9M	6.82	2.62	1.30
9P	6.55	2.85	1.32
8W	8.76	3.50	1.37
8M	6.77	2.82	1.36
8P	5.84	2.44	1.42

TF				WLP			
8M	7.40	2.76	1.28	8W	8.07	3.07	1.26

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
RAVALLI COUNTY

Schedule 10

	Access and Topography Class				Access and Topography Class		
P	Favorable	Average	Difficult	D	Favorable	Average	Difficult
9W	$41.81	$30.25	$	9W	$28.90	$16.79	$ 2.80
9M	33.96	23.98		9M	19.18	10.37	1.77
9P	17.92	11.98		9P	8.16	3.78	1.58
8W	12.04	7.92		8W	10.77	4.92	1.37
8M	9.01	5.49		8M	5.19	2.38	1.28
8P	3.77	2.46		8P	4.60	2.29	1.29

S			LP		
9W	52.57	32.16	9W	16.16	8.15
9M	32.29	18.44	9M	8.19	3.16
9P	13.70	6.58	9P	4.92	2.20
8W	6.93	2.86	8W	5.63	2.13
8M	5.19	2.52	8M	7.89	3.16
8P	3.57	2.30	8P	5.88	2.64

TF		
9P	5.00	1.92
8M	4.17	2.26
8P	3.25	2.11

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue.

TIMBER AND TIMBERLAND VALUATION SCHEDULE
SANDERS COUNTY

Schedule 11

WP	Access and Topography Class Favorable	Average	Difficult	P	Access and Topography Class Favorable	Average	Difficult
9W	$50.80	$34.92	$16.54	9W	$67.40	$51.04	$32.08
9M	36.08	23.48	9.08	9M	43.98	31.82	17.81
9P	24.71	16.26	7.86	9P	18.83	12.48	6.32
8W	4.75	2.56	1.43	8W	12.58	7.95	3.56
8M	5.69	2.78	1.45	8M	8.65	5.20	2.35
8P	3.67	2.24	1.26	8P	3.77	2.46	1.28
DL				D			
9W	36.40	21.80	5.02	9W	32.27	19.34	4.61
9M	25.73	14.99	3.46	9M	24.21	14.09	3.16
9P	14.69	7.57	1.98	9P	14.82	7.89	2.34
8W	6.15	2.70	1.42	8W	4.05	2.02	1.26
8M	5.30	2.28	1.26	8M	5.35	2.34	1.27
8P	3.07	2.02	1.24	8P	3.11	2.07	1.24
L				S			
9W	39.55	24.13	6.38	9W	54.78	34.03	9.99
9M	28.65	16.82	3.35	9M	32.61	18.67	2.57
9P	15.77	8.06	1.64	9P	15.76	7.98	1.24
8W	9.77	4.89	2.04	8W	7.14	2.88	1.34
8M	6.09	2.48	1.32	8M	4.76	1.94	1.23
8P	3.48	2.14	1.25	8P	3.75	2.05	1.26

LP	Access and Topography Class Favorable	Average	Difficult	TF	Access and Topography Class Favorable	Average	Difficult
9W	$14.23	$ 6.09	$ 1.64	9W	$31.41	$18.92	$ 5.42
9M	13.77	6.46	1.25	9M	24.77	14.45	4.16
9P	9.56	4.02	1.34	9P	8.23	3.22	1.40
8W	7.01	2.58	1.32	8W	7.91	3.19	1.26
8M	5.53	2.74	1.48	8M	3.38	1.82	1.22
8P	3.65	2.22	1.30	8P	2.62	1.82	1.22

The above values are per acre assessed values. They include land values of $1.65 on Favorable, $1.00 on Average and $.40 on Difficult timberlands. They also include a G6 grazing grade. For grazing graded higher than G6, add the following:

For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

A value for Christmas trees that are being harvested may also be added at the discretion of the ~~county commissioners~~ Department of Revenue

(9) This rule would be effective for tax years beginning after December 31, 1978.

3. Rule 42-2.22(1)-S2230 is proposed to be amended because the legislature gave the Department of Revenue the responsibility for the appraisal and assessment of all property in the State of Montana. This amendment updates rules previously adopted by the State Board of Equalization to reflect that legislative enactment. The amendment to schedule 8 is to correct an error in the adoption of the rule by the State Board of Equalization. This rule would be effective for tax years beginning after December 31, 1978.

In the matter of the amendment of Rule 42-2.22(1)-S2240) NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(1)-S2240 regarding assessment of timber for all counties east of the Continental Divide
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 17, 1979, the Department of Revenue proposes to amend rule 42-2.22(1)-S2240 which provides for the assessment of timber for all counties east of the Continental Divide, including Deer Lodge and Silver Bow Counties.

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

42-2.22(1)-S2240 ASSESSMENT OF TIMBER FOR ALL COUNTIES EAST OF THE CONTINENTAL DIVIDE, INCLUDING DEER LODGE AND SILVER BOW COUNTIES (1) The assessed value for timber shall be according to the schedules in subsection (10) of this rule.

(2) Condition class designations are abbreviated to speed up valuation computation. For instance, the condition classes P9WM and P9MM are valued alike, so only one designation, P9M is shown. Likewise, P9P includes P9WP, P9MP and P9PP; and L9P includes L9WP, L9MP and L9PP, etc.

(3) The following factors have been considered and reflected in the attached valuation.

(a) Updated lumber selling prices including chips and miscellaneous by-products, updated manufacturing and logging costs and updated overrun percentages.

(b) Revised stand volume tables include 9" and 10" diameters as saw logs.

(c) Differentials in logging costs due to varying board foot volumes of timber per acre.

(4) These values are per acre assessed values. They include the minimum or G6 grazing value. For timber lands on which a grade of grazing higher than G6 is established, add to the values furnished as follows:

For G5 grazing, add $0.65 per acre
For G4 grazing, add 1.70 per acre
For G3 grazing, add 2.90 per acre
For G2B grazing, add 4.60 per acre

(5) A valuation record must be kept for each owner of timber lands in the county. Both timber and agricultural land classifications must be checked to determine proper acreages in each classification. All of the timber lands shown on the valuation schedule that may be present in your county will be assessed as timber lands. The balance of the lands appearing on your timber classification records must be assessed as grazing lands or in some other agricultural designation.

(6) The timber valuation schedules take topography, distance to market, and accessibility by roads into account to a greater extent than former schedules by reflecting favorable, average, and difficult accessibility and topography in the per acre assessed values for each species group.

(7) Timber land served by a private road is valued the same as timber land served by a public road.

~~(8)--The future net income from a private timber road, not reflected in the land value schedules, may be separately assessed by counties through the capitalization of such additional net income.~~

~~(9)--Any county or counties wishing to assess the value arising from the future net income from a private timber road, not reflected in the land value schedules may do so by establishing such bases of value as the amount of and duration of the additional expected income, at a hearing before the Board of County Commissioners, as provided in Section 84-429.11, R.C.M. 1947.~~

TIMBER LAND VALUATION SCHEDULE
COUNTIES EAST OF CONTINENTAL DIVIDE
PLUS SILVER BOW AND DEER LODGE COUNTIES

Schedule 1

P	Access and Topography Class Favorable and Acreage	D	Access and Topography Class Favorable and Acreage
9W	5.57	9W	11.30
9M	2.54	9M	5.56
9P	1.47	9P	2.50
8W	1.16	8W	~~2.05~~ 2.06
8M	.98	8M	1.46
8P	.84	8P	1.08

S		LP	
9W	14.04	9W	11.03
9M	8.95	9M	8.20
9P	4.10	9P	2.74
8W	2.30	8W	2.83
8M	1.38	8M	2.06
8P	1.10	8P	1.38

TF		WLP	
9W	7.68	9W	9.27
9M	4.17	9M	4.50
9P	2.14	9P	2.40
8W	1.44	8W	1.68
8M	1.24	8M	1.48
8P	1.10	8P	1.02

The above values are per acre assessed values. They include a G6 grazing grade. For grazing graded higher than G6, add the following:

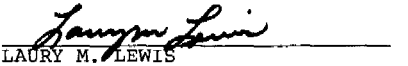
For G5 add $0.65 per acre
For G4 add 1.70 per acre
For G3 add 2.90 per acre
For G2B add 4.60 per acre

(8) This rule would be effective for tax years beginning after December 31, 1978.

3. Rule 42-2.22(1)-S2240 is proposed to be amended because the legislature gave the Department of Revenue the responsibility for the appraisal and assessment of all property in the State of Montana. This amendment updates rules previously adopted by the State Board of Equalization to reflect that legislative enactment. The amendment to schedule 1 is to correct an error in the adoption of the rule by the State Board of Equalization.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to R. Bruce McGinnis, Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than March 15, 1979.

5. The authority of the department to make these proposed amendments is based on Sections 15-7-101 and 15-7-216, MCA (Section 84-429.7, R.C.M. 1947). Implementing Section 15-7-103, MCA (Section 84-429.12, R.C.M. 1947).



LAURY M. LEWIS
Acting Director
Department of Revenue

Certified to the Secretary of State February 6, 1979.

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

In the matter of the amendment of Rules 46-2.10(14)-S11240, 46-2.10(14)-S11250, 46-2.10(14)-S11260, and 46-2.10(14)-S11280 all pertaining to work registration requirements (WIN).	NOTICE OF PROPOSED AMENDMENTS OF RULES 46-2.10(14)-S11240, 46-2.10(14)-S11250, 46-2.10(14)-S11260, and 46-2.10(14)-S11280 all pertaining to work registration requirements (WIN). NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On March 19, 1979, the Department of Social and Rehabilitation Services proposes to amend Rules ARM 46-2.10(14)-S11240, ARM 46-2.10(14)-S11250, ARM 46-2.10(14)-S11260, and ARM 46-2.10(14)-S11280(2)(a) pertaining to work registration requirements (WIN).

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

46-2.10(14)-S11240 WORK REGISTRATION REQUIREMENTS (WIN)

(1) All persons applying for and receiving Aid to Families with Dependent Children must make every reasonable effort to seek gainful employment, including registration for employment with the Montana Employment Security Commission. Exceptions to the above-noted requirements will be:

(a) Mothers or members of the household who have responsibility for the care of any children under six (6) years of age, or of an incapacitated adult or child.

(b) Students, age 16-21, who are enrolled full time, as defined by the institutional program in which they are enrolled, in any school or training program recognized by federal, state or local government agencies.

(c) Persons who are aged 65 or over.

(d) Persons physically or mentally incapable of engaging in gainful employment as verified by medical or psychological reports.

~~(e) A person so remote from a work incentive project that his effective participation is precluded;~~

~~(f)~~ (e) Under the age of 16.

~~(g)~~ (f) A mother or other female caretaker of a child, when the non-exempt father or other non-exempt adult male is registered and is willing to participate.

(2) All persons may contest a determination of non-exempt status by his right to a fair hearing.

(3) Clients determined to be exempt from registration must be informed of their right to volunteer for the program and their right to withdraw at any time without loss of AFDC benefits.

(4) Any change which affects the WIN registration status must be reported to the WIN office within three (3) days.

46-2.10(14)-S11250 DESCRIPTION OF FORMS (WIN) (1) The registration forms to be completed for WIN are as follows:

(a) WIN-2, Case Review Document.

(b) ~~WIN-6, WIN Activity Summary.~~ WIN-7, Status Change.

(c) WIN-8, Referral for Registration.

~~(d) SAU 3, Welfare Savings Record.~~

~~(e)~~ (d) EA-22, WIN Medical Evaluation Form.

46-2.10(14)-S11260 REGISTRATION REQUIREMENT (WIN)

(1) Persons required to register for employment are also required to:

(a) Report for an appraisal interview conducted by WIN project staff, and to participate effectively in the program as determined by the WIN staff.

(b) Assist in redetermination and reappraisal to maintain a current registration status once every six months so that the WIN staff can maintain a current file on the person.

~~(c) Changes in registrant status can be effected immediately, but no later than the next scheduled redetermination.~~

3. 46-2.10(14)-S11280(2)(a) is proposed to be amended as follows:

46-2.10(14)-S11280 FAILURE TO COMPLY (WIN)

(2) As long as an individual is certified to the WIN program and refuses without good cause to participate in the Work Incentive Program or to accept a bona fide offer of employment, then:

(a) If such individual is a caretaker relative receiving AFDC, his needs will not be taken into account in determining the family's need for assistance, and assistance in the form of protective or vendor payments or of foster care will be provided. Under such circumstances, the caretaker relative may not be the protective payee.

4. The Department proposes to amend these rules in order to bring about federal compliance in this program.

5. The authority of the department to make the proposed amendment to the rule is based on Section 53-2-201, MCA (Section 71-210, R.C.M. 1947). The implementing authority is based upon Section 53-2-201, MCA (Section 71-210, R.C.M. 1947).

6. Although no public hearing is contemplated, such a hearing will be held upon the request of interested parties in accordance with Section 2-4-302(4), MCA (Section 82-4204, R.C.M. 1947). Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than March 19, 1979.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 6, 1979.

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

In the matter of the amendment of Rule 46-2.10(14)-S11130(1)(b) pertaining to protective and/or vendor payments	) NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(14)-S11130(1)(b) pertaining to protective and/or vendor payments. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On March 20, 1979, the State Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(14)-S11130(1)(b) pertaining to protective and/or vendor payments.

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

(b) Selection of the protective payee will be made by the recipient, or with his participation and consent, to the extent possible. Selection of protective payee may be made among relatives, friends of the family, the clergy, a community service group, a voluntary social service agency, or departmental staff. ~~etc., except in no instance are departmental employees, county commissioners, landlords, grocers, or other vendors of goods or services dealing directly with the client to serve as protective payee.~~ If it is in the best interest of the recipient for a staff member of the public welfare department to serve as protective payee, a staff member will be appointed. The selection of protective payees may not include: county commissioners; executive heads of the public welfare department; persons determining financial eligibility to the family; special investigative or resource staff; staff handling fiscal processes; landlords; grocers or other vendors of goods or services dealing directly with the client.

3. The Department's rationale for amending this rule is to bring the Montana rule into compliance with the Federal Regulation on protective payees, 45 C.F.R. Section 234.60.

4. Although no public hearing is contemplated, such a hearing will be held upon the request of interested parties in accordance with Section 2-4-302(4), MCA (Section 82-4204, R.C.M. 1947). Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than March 19, 1979.

5. The authority of the Department to make the proposed amendment is based on Section 53-4-212, MCA (Section 71-503, (Part e), R.C.M. 1947).

Keith S. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 6, 1979.

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

In the matter of the adoption of Rule ARM 46-2.10(14)-S11091 pertaining to AFDC assistance after return of absent parent and the repeal of Rule ARM 46-2.10(14)-S11090 pertaining to AFDC assistance during adjustment period.	NOTICE OF PROPOSED ADOPTION OF RULE 46-2.10(14)-S11091 pertaining to AFDC assistance after return of absent parent and the REPEAL OF RULE 46-2.10(14)-S11090. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On March 20, 1979, the Department of Social and Rehabilitation Services proposes to adopt Rule ARM 46-2.10(14)-S11091 which pertains to AFDC assistance after return of absent parent and repeal Rule ARM 46-2.10(14)-S11090 which pertains to AFDC assistance during adjustment period.

2. The rule proposed to be adopted provides as follows: 46-2.10(14)-S11091 AFDC: ASSISTANCE AFTER RETURN OF ABSENT PARENT Aid to Families with Dependent Children assistance payments may continue for 90 days after the date of return of an absent parent if the family is otherwise eligible for such payments during that time.

3. The rule proposed to be repealed is on page 65.1 and 66 of the Administrative Rules of Montana.

4. This rule is intended to encourage family reconciliation by allowing AFDC assistance payments to continue for 90 days after an absent parent returns to the family, to give the family time to develop a means of self-support. This rule will replace an earlier rule which specified the circumstances of return of the parent which would qualify the family for such continued assistance, and which allowed up to 180 days of assistance. The rule changes are intended to conform the Montana rule to federal requirements.

5. Although no public hearing is contemplated, such a hearing will be held upon the request of interested parties in accordance with Section 2-4-302(4), MCA (Section 82-4204, R.C.M. 1947). Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than March 19, 1979.

6. The authority of the agency to make the proposed rule is based on Section 53-4-212, MCA (Section 71-503, R.C.M. 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 6, 1979.

BEFORE THE SUPERINTENDENT OF PUBLIC
INSTRUCTION OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.18(22)-S18390 relating to the establishment of resource instruction and services for the handicapped.	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 48-2.18(22)-S18390 RESOURCE INSTRUCTION AND SERVICE

TO: All interested persons:

1. On March 7, 1978, at 1:30 p m. a public hearing will be held in the conference room of the Office of Public Instruction, 1300 Eleventh Avenue, Helena, Montana, to consider the amendment of rule 48-2.18(22)-S18390.

2. The proposed amendment replaces present rule 48-2.18(22)-S18390 found in the Administrative Rules of Montana. The proposed amendment would alter the criteria for the establishment of resource instruction and services for the handicapped.

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

(1) Remains the same.

(2) Caseload of a Resource Service.

(a) A teacher of a resource service should have a minimum caseload of ~~eight~~ twelve handicapped students before establishing a full-time service. The maximum number of handicapped students assigned to each resource service is ~~to be determined by the school administration utilizing the recommendations of the Child Study Teams~~ twenty-five students per week. ~~The recommended maximum is 15 students per day.~~ In situations where fewer than ~~eight~~ twelve can be documented, the Full-Time Equivalent to be approved is to be negotiated with the Office of Public Instruction based on special education needs of the children.

4. The rule is proposed to be amended to respond to difficulties that have arisen when resource service caseloads are too small. Children in very small resource classes receive such individualized attention that they experience difficulty adjusting to a normal classroom. The proposed rule would increase caseloads from between 8 and 15 students to between 12 and 25 students.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. Richard E. Gillespie, 2031 Eleventh Avenue, Helena Montana, has been designated to preside over and conduct

the hearing.

7. The authority of the agency to make the proposed amendment is based on section 20-7-402, MCA. (Sec. 75-7802, R.C.M. 1947).

Georgia Rice

Georgia Rice
Superintendent of Public
Instruction

Certified to the Secretary of State February 6, 1979.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule ARM 2-2.11(1)-S11050 concerning standards governing the certification of municipal and county building code programs.	NOTICE OF THE ADOPTION OF RULE ARM 2-2.11(1)-S11050 pertaining to standards governing the certification of municipal and county building code programs.

TO: All Interested Persons:

1. On November 30, 1978, the Department of Administration published notice of a proposed adoption of a rule concerning building code programs. Notice of the proposed adoption was published on pages 1541-1544 of the 1978 Montana Administrative Register, Issue Number 16.

2. The agency has adopted the rule with minor editorial changes but substantially as proposed.

2-2.11(1)-S11050 STANDARDS GOVERNING THE CERTIFICATION OF MUNICIPAL AND COUNTY BUILDING CODE PROGRAMS (1) Intent. The following rules are the result of the requirements set forth in Section ~~3, 69, 2112, Chapter 504, Montana Session Laws 1977. This particular legislation~~ 50-60-302, MCA, which requires local governments to file the building codes adopted and a plan for enforcement with the Division before entering into an enforcement program. ~~The legislation~~ This section further requires that the Division set forth rules and standards governing the certification of local building code enforcement programs. ~~(2)~~ Since ~~the legislation~~ this is an expansion of the existing law covering building codes, the Division will be applying the following requirements to all local government code programs even though they might now be in existence. This is the only way the intent of the ~~legislation~~ law can be satisfied, that being statewide uniform building code enforcement.

~~(3)~~ (2) Extent of Local Programs. (a) Municipalities. Municipalities, as ~~covered in Sec. 69-2107, R.C.M. 1947,~~ provided by Section 50-60-102, MCA, may adopt codes to cover all building within their jurisdictional area, which when approved by the building Codes Division, could include the area within 4½ miles ~~for~~ of the municipal limits.

(b) Counties. Counties, as ~~covered in Sec. 69-2107, R.C.M. 1947,~~ provided by Section 50-60-102, MCA, may adopt codes to cover only "public places", meaning any place which a county, a municipality, or the state maintains for the use of the public, or a place where the public has a right to go and be. "Public places", as thus construed, ~~to~~ mean any building used for residential occupancy, duplex and above, or any commercial occupancy.

~~(4)~~ (3) Certification Requirements for Local Government Code Enforcement Programs. (a) Codes. The codes adopted by local governments must be the same as those adopted by the Division. This is as required by Section ~~3, 69-2112, Chapter 504, Montana Session Laws 1977~~ 50-60-301, MCA. However, local governments need only adopt those codes which they intend to enforce; that is, plumbing, electrical, building, mechanical,

etc. The codes adopted by local governments must also be of the same edition as those adopted by the Division. Each time the Division updates the codes, local governments must also update their codes. The Division will notify local governments of these code updates, at which time ~~the~~ local governments will have 90 days from receipt of the notice to update their codes.

(b) Coordination of Plan Reviews. Local governments must submit a written procedure explaining how plan reviews will be handled at the local level. That procedure shall include a time schedule for reviews, and a requirement that all affected departments will have an opportunity to review and approve plans before issuance of a permit, and shall include the designation of the official responsible for plan review coordination.

(c) Inspections. Local governments must submit a procedure for building inspections. Included in this procedure must be a list of staffing, how coordination of inspections between departments will be handled, and how final inspections and occupancy certificates will be handled.

(d) Inspector Qualifications. The hiring of qualified inspectors is very difficult to say the least. However, due to the hazards to life safety involved with the work to be inspected, it is extremely important that some discretion be used in the selection of inspectors to perform the various functions. Therefore, local governments must submit to the State written job descriptions for each position involved in the code enforcement program. These job descriptions will be used by local governments in qualifying and hiring employees.

(e) Minimum Staffing Requirements. Local governments shall retain adequate staffing, as determined by them, to carry out the code enforcement program. The staffing plan for the local government program must be filed with the Division.

(f) Extension of Municipalities Jurisdictional Area. Section ~~69-2105, R.C.M. 1947,~~ 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to 4½ miles from their corporate limits upon written request and upon approval by the Division. The written request must include a list of adopted codes, a list of staff and their qualifications, a statement as to how the additional work load will be handled, the written consent of the county government as to the municipality's right to inspect in the county area, and a budget breakdown. If the county is already inspecting in the area which the municipality wishes to inspect, the request for the jurisdictional extension will be denied unless ~~they~~ the county intends not to continue ~~their~~ its inspections within the area to be covered by the city.

(g) Funding of Code Enforcement Program. The establishment of permit fees shall be left to local governments. A list of permit fees must be submitted to the Division. In addition, all fees for funding the code enforcement shall be accounted for separately and there shall be an audit route for expenditures charged against the account.

(h) Factory-Built Buildings. Once factory-built buildings are approved by the Division as meeting the codes, the units shall be subject only to ~~to~~ local government inspection

and fees for zoning, utility connections, and foundations. As part of the submittal to the Division, provisions must be included stating how factory-built buildings will be handled and the charges for permits covering these types of units.

(i) School Plans. Section ~~11-75-8206, Chapter 504, Montana Sessions Laws 1977,~~ 20-6-622, MCA, requires that all school buildings in the State must be approved by the Division. This does create a problem since local governments may have a program that also covers the school buildings. Since the Division is responsible for coordinating plan reviews at the State level, the plan review responsibility cannot be delegated to local governments, and thus the Division will be charging for a plan review covering school building plans. The inspection of this construction will be left to local governments unless otherwise arranged. In order to prevent the double charging of fees to school districts, local governments ~~will~~ may not charge a plan review fee for the review of school plans. In addition, before approval of the school plans is issued by the State, local governments must notify the Division of their approval of the site, sewer, water, and other local requirements.

(j) Revocation of Local Government Programs. Local government inspection programs having any of the following deficiencies in their programs will have their certification revoked if the deficiencies are not corrected: lack of qualified and adequate staff, lack of inspections, lack of plan reviews, use of permit fees for other than code related activities, or use of codes other than those adopted by the ~~State~~ Division. The Division ~~shall~~ will notify, in writing, the local government as to what deficiencies exist and establish, in cooperation with the local government, a time frame for the correction of the ~~same~~ deficiencies. If the corrections are not completed within the set time frame, a hearing will be held ~~as per~~ under the Montana Administrative ~~Rules of Montana~~ Procedure Act to decide if the certification should be revoked. If certification is revoked, the Division will then handle code enforcement in the area.

3. Comments and testimony were received. However, nobody spoke against the rule. Most comments were toward style. Also, many people who attended the hearing asked questions regarding implementations of the rule. All questions were satisfactorily answered at the hearing. Accordingly, minor editorial changes were made, but the rule was adopted substantially as proposed.

David M Lewis

DAVID M. LEWIS
Director
Department of Administration

Certified to the Secretary of State January 31, 1979

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

In the matter of the amendment of rule ARM 16-2.14(1)-S1440, particulate matter, airborne	NOTICE OF THE AMENDMENT OF RULE ARM 16-2.14(1)-S1440 (Particulate Matter, Airborne)

TO: All Interested Persons:

1. On October 12, 1978, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16-2.14(1)-S1440, concerning restrictions on the emission of airborne particulate matter at page 1410 of the 1978 Montana Administrative Register, issue number 13.

2. The Board has amended the rule with changes from the noticed version noted in capital letters below:

16-2.14(1)-S1440 PARTICULATE MATTER, AIRBORNE

~~(1)--No person shall cause or permit the handling or transporting or storage of any material in a manner which allows or may allow controllable particulate matter to become airborne.~~

~~(2)--No person shall cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures as may be required to prevent particulate matter from becoming airborne.--The director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including, but not limited to, paving or frequent cleaning of roads, driveways and parking lots, application of dust-free surfaces, application of water, and the planting and maintenance of vegetative ground cover.~~

(1) No person shall cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of airborne particulate matter are taken. Such emissions of airborne particulate matter FROM ANY STATIONARY SOURCE shall not exhibit an opacity of 20 percent or greater AVERAGED OVER SIX CONSECUTIVE MINUTES, except for emission of airborne particulate matter originating from any transfer ladle or operation engaged in the transfer of molten metal which was installed or operating prior to November 23, 1968.

~~(2)--No person shall cause or authorize emissions of airborne particulate matter to be discharged into the outdoor atmosphere from any transfer ladle or operation engaged in the transfer of molten metal which was installed or operating prior to November 23, 1968, which exhibits an opacity of 40 percent or greater.~~

(2)~~(3)~~ No person shall cause or authorize the use of any street, road, or parking lot without taking reasonable precautions to control emissions of airborne particulate matter.

(3)~~(4)~~ No person shall operate a construction site or demolition project unless reasonable precautions are taken to control emissions of airborne particulate matter. Such emissions of airborne particulate matter FROM ANY STATIONARY SOURCE shall not exhibit an opacity of 20 percent or greater AVERAGED OVER SIX CONSECUTIVE MINUTES.

(4) WITHIN ANY AREA DESIGNATED NON-ATTAINMENT FOR EITHER THE PRIMARY OR SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) FOR TOTAL SUSPENDED PARTICULATE (TSP), ANY PERSON WHO OWNS OR OPERATES:

(a) ANY EXISTING SOURCE OF AIRBORNE PARTICULATE MATTER SHALL APPLY REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT);

(b) ANY NEW SOURCE OF AIRBORNE PARTICULATE MATTER THAT HAS A POTENTIAL TO EMIT LESS THAN 100 TONS PER YEAR OF PARTICULATES SHALL APPLY BEST AVAILABLE CONTROL TECHNOLOGY (BACT);

(c) ANY NEW SOURCE OF AIRBORNE PARTICULATE MATTER THAT HAS A POTENTIAL TO EMIT MORE THAN 100 TONS PER YEAR OF PARTICULATES SHALL APPLY LOWEST ACHIEVABLE EMISSION RATE (LAER).

~~(5) Within any area designated non-attainment for total suspended particulate (TSP) for primary or secondary National Ambient Air Quality Standards (NAAQS), no person shall cause or authorize the use of any paved road or street which exhibits an emission factor for airborne particulate matter greater than that allowed by the following table:~~

~~ADT or EADT~~	~~Allowable Emission Factor (lb/VMT)~~
~~0-100~~	~~.208~~
~~100-200~~	~~.200~~
~~200-400~~	~~.192~~
~~400-600~~	~~.184~~
~~600-800~~	~~.176~~
~~800-1000~~	~~.170~~
~~1000-1500~~	~~.154~~
~~1500-2000~~	~~.138~~
~~2000-3000~~	~~.106~~
~~3000-4000~~	~~.080~~
~~4000-5000~~	~~.068~~
~~5000-6000~~	~~.057~~
~~6000-8000~~	~~.030~~
~~8000-10,000~~	~~.016~~
~~10,000-12,000~~	~~.011~~
~~12,000-15,000~~	~~.009~~

~~The determination of the actual emission factor for an applicable paved road shall be based on the following equation:~~

~~OPEN DUST SOURCE: Vehicular Traffic on Paved Roads~~

~~$EF = 0.45 \left(\frac{S}{10}\right) \left(\frac{L}{5000}\right) \left(\frac{W}{3}\right)^{0.8}$ lb/veh-mi~~

~~where: s = silt content of road surface material (%)~~

~~W = average vehicle weight (tons)~~

~~b = surface dust loading on traveled portion of road (lb/mile)~~

~~Value determination for the above variables (S,W,b) shall be based on procedure specified by the Department.~~

(5) THE PROVISIONS OF THIS RULE SHALL NOT APPLY TO EMISSIONS OF AIRBORNE PARTICULATE MATTER ORIGINATING FROM ANY ACTIVITY OR EQUIPMENT ASSOCIATED WITH THE USE OF AGRICULTURAL LAND OR THE PLANTING, PRODUCTION, HARVESTING, OR STORAGE OF AGRICULTURAL CROPS (THIS EXEMPTION DOES NOT APPLY TO THE PROCESSING OF AGRICULTURAL PRODUCTS BY A COMMERCIAL BUSINESS).

~~(6) Within any area designated non-attainment for TSP for either primary or secondary NAAQS, no person shall cause or authorize the use of any unpaved road or street which exhibits an emission factor for airborne particulate matter greater than that allowed by the following table:~~

~~ADT or EADT~~	~~Allowable Emission Factor (lb/VMF)~~
~~0-100~~	~~4.15~~
~~100-200~~	~~4.10~~
~~200-400~~	~~4.05~~
~~400-600~~	~~4.00~~
~~600-800~~	~~3.95~~
~~800-1000~~	~~3.90~~
~~1000-1500~~	~~3.78~~
~~1500-2000~~	~~3.67~~
~~2000-3000~~	~~3.45~~
~~3000-4000~~	~~3.26~~
~~4000-5000~~	~~3.10~~
~~5000-6000~~	~~2.92~~
~~6000-8000~~	~~2.62~~
~~8000-10,000~~	~~2.35~~
~~10,000-12,000~~	~~2.12~~
~~12,000-15,000~~	~~1.80~~

~~The determination of the actual emission factor for an applicable unpaved road shall be based on the following equation:~~

~~OPEN DUST SOURCE: Vehicular Traffic on Unpaved Roads~~

$$EF = 5.9 \left(\frac{s}{12}\right) \left(\frac{S}{30}\right) \left(\frac{W}{3}\right) 0.8 \left(\frac{d}{365}\right) \text{ lb/veh-mi}$$

~~where: s = silt content of road surface material (1%)~~
~~S = average vehicle speed (mph)~~
~~W = average vehicle weight (tons)~~
~~d = dry days per year~~

~~Value determinations for the above variables (s, S, W, d) shall be based on procedures specified by the Department.~~

~~(7) Within any area designated non-attainment for TSP for either primary or secondary NAAQS, any person who owns or operates a slag pile, strip mine or open pit mine shall apply best available control technology to minimize~~

~~emissions of airborne particulate matter.~~

~~(8) Within any area designated non-attainment for TSP for either primary or secondary NAAQS, the Department may require any person or persons having jurisdiction over any road or street to perform traffic counts on such road, if a preliminary analysis by the Department implies that such road may be exceeding the emission standards established in Sections 5 and 6 of this rule. The Department's preliminary analysis shall be based upon the best available information which may include but is not limited to, air monitoring data, public complaints, or preliminary emission factor calculations utilizing the most current traffic estimates as determined by the applicable state or local agency having responsibility for making such estimates.~~

(6) ~~(9)~~ Definitions: For purposes of this rule, the following definitions apply:

~~(a) "Annual Average Daily Traffic (ADT)" means the annual average number of vehicles, during 24 consecutive hours that pass a particular point on the road over the period of 365 days.~~

~~Annual average daily traffic is calculated by averaging the average daily traffic for each of the 12 months. The average daily traffic for the month is calculated using the equation:~~

$$\text{Average day of month} = \frac{5 \text{ Av. Weekday} + \text{Saturday} + \text{Av.Sunday}}{7}$$

~~Where Av. weekday = average daily volume for all weekdays of month~~
~~Av. Saturday = average daily volume for all Saturdays of month~~
~~Av. Sunday = average daily volume for all Sundays of month~~

~~This procedure is considered the simplest feasible method for providing comparable values when counts for certain days are unusable.~~

~~(b) "Estimated Average Daily Traffic (EADT)" means an average daily traffic derived from short term traffic counts and calculated in accordance with established Montana Department of Highway procedures. Estimated average daily traffic shall be substituted for ADT for any road or street where continuous sampling is not available to calculate ADT.~~

~~(c) "Vehicle Miles Traveled (VMT)" means the vehicle miles traveled normally obtained by multiplying the ADT by 365 and by multiplying the mileage of road to which the ADT is applicable. One VMT is equivalent to one vehicle traveling one mile on an applicable road.~~

(a) ~~(d)~~ "Airborne Particulate Matter" means any particulate matter discharged into the outdoor atmosphere which is

not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations (Revised July 1, 1977).

(b) "REASONABLE PRECAUTIONS" MEANS ANY REASONABLE MEASURE TO CONTROL EMISSIONS OF AIRBORNE PARTICULATE MATTER. DETERMINATION OF WHAT IS REASONABLE SHALL BE ACCOMPLISHED ON A CASE-BY-CASE BASIS TAKING INTO ACCOUNT ENERGY, ENVIRONMENTAL, ECONOMIC, AND OTHER COSTS.

(c) "REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)" MEANS A LIMITATION OF EMISSIONS FROM ANY SOURCE THAT IS DETERMINED ON A CASE-BY-CASE BASIS TO BE REASONABLY AVAILABLE, TAKING INTO ACCOUNT ENERGY, ENVIRONMENTAL, AND ECONOMIC IMPACTS AND OTHER COSTS. SUCH AN EMISSION LIMITATION SHALL ONLY BE REQUIRED AFTER CONSIDERATION OF THE NECESSITY OF IMPOSING SUCH A LIMITATION IN ORDER TO ATTAIN AND MAINTAIN A NATIONAL AMBIENT AIR QUALITY STANDARD (NAAQS) AND ALTERNATIVE MEANS OF PROVIDING FOR ATTAINMENT AND MAINTENANCE OF SUCH A NAAQS.

(d) "BEST AVAILABLE CONTROL TECHNOLOGY (BACT)" MEANS AN EMISSION LIMITATION (INCLUDING A VISIBLE EMISSION STANDARD) BASED ON THE MAXIMUM DEGREE OF REDUCTION FOR EACH POLLUTANT SUBJECT TO REGULATION UNDER THE FEDERAL CLEAN AIR ACT AS AMENDED AUGUST 7, 1977, OR THE MONTANA CLEAN AIR ACT WHICH WOULD BE EMITTED FORM ANY PROPOSED STATIONARY SOURCE OR MODIFICATION WHICH THE DEPARTMENT, ON A CASE-BY-CASE BASIS, TAKING INTO ACCOUNT ENERGY, ENVIRONMENTAL AND ECONOMIC IMPACTS AND OTHER COSTS, DETERMINES IS ACHIEVABLE FOR SUCH SOURCE OR MODIFICATION THROUGH APPLICATION OF PRODUCTION PROCESSES OR AVAILABLE METHODS, SYSTEMS, AND TECHNIQUES, INCLUDING FUEL CLEANING OR TREATMENT OR INNOVATIVE FUEL COMBUSTION TECHNIQUES FOR CONTROL OF SUCH CONTAMINANT. IN NO EVENT SHALL APPLICATION OF THE BEST AVAILABLE CONTROL TECHNOLOGY RESULT IN EMISSION OF ANY CONTAMINANT WHICH WOULD EXCEED THE EMISSIONS ALLOWED BY THE APPLICABLE STANDARD UNDER 40 CFR PART 60 AND 61. IF THE DEPARTMENT DETERMINES THAT TECHNOLOGICAL OR ECONOMIC LIMITATIONS ON THE APPLICATION OF MEASUREMENT METHODOLOGY TO A PARTICULAR CLASS OF SOURCES WOULD MAKE THE IMPOSITION OF AN EMISSION STANDARD INFEASIBLE, IT MAY INSTEAD PRESCRIBE A DESIGN, EQUIPMENT, WORK PRACTICE OR OPERATIONAL STANDARD OR COMBINATION THEREOF, TO REQUIRE THE APPLICATION OF BEST AVAILABLE CONTROL TECHNOLOGY. SUCH STANDARD SHALL, TO THE DEGREE POSSIBLE, SET FORTH THE EMISSION REDUCTION ACHIEVABLE BY IMPLEMENTATION OF SUCH DESIGN, EQUIPMENT, WORK PRACTICE OR OPERATION AND SHALL PROVIDE FOR COMPLIANCE BY MEANS WHICH ACHIEVE EQUIVALENT RESULTS.

(e) THE TERM "LOWEST ACHIEVABLE EMISSION RATE (LAER)" MEANS FOR ANY SOURCE, THAT RATE OF EMISSIONS WHICH REFLECTS:

(i) THE MOST STRINGENT EMISSION LIMITATION WHICH IS

CONTAINED IN THE IMPLEMENTATION PLAN OF ANY STATE FOR SUCH CLASS OR CATEGORY OF SOURCE, UNLESS THE OWNER OR OPERATOR OF THE PROPOSED SOURCE DEMONSTRATES THAT SUCH LIMITATIONS ARE NOT ACHIEVABLE, OR

(ii) THE MOST STRINGENT EMISSION LIMITATION WHICH IS ACHIEVED IN PRACTICE BY SUCH CLASS OR CATEGORY OF SOURCE, WHICHEVER IS MORE STRINGENT. IN NO EVENT SHALL THE APPLICATION OF THIS TERM PERMIT A PROPOSED NEW OR MODIFIED SOURCE TO EMIT ANY POLLUTANT IN EXCESS OF THE AMOUNT ALLOWABLE UNDER APPLICABLE NEW SOURCE STANDARDS OF PERFORMANCE UNDER 40 CFR PART 60 AND PART 61.

3. Representatives of several industries and local government submitted comments concerning the meaning of "reasonable precautions" throughout the proposed rule. The following list summarizes those comments:

(a) The term "reasonable precautions" is unclear and should be further defined.

(b) Such a definition should include considerations of economic, social, environmental, and energy costs.

(c) Industry representatives expressed their fears that too much emphasis would be placed on environmental costs. Other respondents showed concern that economics would dictate what "reasonable precautions" were determined to be.

(d) The rule should include a list of suggested control measures which would define "reasonable precautions."

(e) The term "reasonable precautions" is so vague that it renders the proposed rule unenforceable; as an alternative, the rule should be completely reconstructed around the concept of reasonable control measures, giving consideration to feasibility, reasonableness, and cost of control measures, as well as the practical enforceability of any such measures.

In reviewing the numerous comments it became apparent to the Department that many respondents were concerned with the unclear nature of the term "reasonable precautions". It was likewise apparent that no one had an adequate solution for the problem.

The Department looked into the concept of listing the various control measures which would constitute a reasonable precaution. It decided not to recommend such an approach to the Board because of the difficulty involved in developing a complete list for all source categories. No doubt some control measures would be inadvertently omitted and preclude the initiation of a viable solution.

The existing rule also contains the term "reasonable precautions". In 1968, when the Board adopted the present rule they suggested that the rule was necessary and that discretion could be used in determining reasonable precautions. Realizing that no perfect solution exists, the Department suggested the present definition of "reasonable precautions" be adopted and the Board agreed.

An industry representative suggested that the proposed

"Airborne Particulate Matter" rule was drafted as a control strategy to provide for attainment of National Ambient Air Quality Standards (NAAQS),and therefore should only apply to non-attainment areas. The Department contendedthat the proposed rule does very little to expand the scope of the existing rule except in TSP non-attainment areas. In sections having statewide application, the use of "reasonable precautions" to control emissions of airborne particulate matter is currently enforceable in the existing rule. The only possible extension of authority would have to be in connection with the inclusion of the 20% opacity requirement for emissions from material production, handling, transportation and storage, and construction sites and demolition projects. The use of a numerical opacity standard for these sources of airborne particulate matter will allow for equitable enforcement and improve air quality. The Department believed the adoption of numerical standards would alleviate many of the problems associated with the term "reasonable precautions". The Board concurred in the Department's position.

A comment was made that the rule should only control large, rather than small, sources. The existing and the proposed rules are the only means the Department has to require control of non-stack emissions from sources such as asphalt batch plants, gravel crushers, etc. Often the non-stack emissions at these sources are as significant as the stack emissions. For a person affected by one of these sources it is not important whether the particulate comes from a stack, or from a leak or break in the plant. The Department considered such non-stack emissions as very significant sources, and the Board agreed.

One industry representative expressed concern over whether this rule applied to agricultural and natural sources of airborne particulate matter. In regard to natural sources of airborne particulate matter, the rule clearly was not intended to apply. A review of each section demonstrated that it applies only to material production, handling, transportation, and storage, paved roads, unpaved roads, construction sites, demolition projects, strip mines, slag piles, and open pit mines. All of these sources are either man-caused or aggravated by human activity. Since the rule was not intended to apply to emissions of airborne particulate matter originating from the normal activities associated with farming and ranching, it was amended to clearly exempt these activities.

A large number of comments were received from the industrial sector contending that opacity determination by EPA method 9 is not applicable to emissions of airborne particulate matter. The Board did not agree, based on substantial evidence from the Code of Federal Regulations and EPA documents that method 9 was intended to apply.

EPA cautioned that the use of a six-minute averaging time on intermittent sources may be impractical due to the

inability of obtaining an average opacity which would constitute a violation. For example, even though a source may occasionally emit a plume of 100% opacity, periods of zero opacity would make it impossible to obtain a six-minute average over 20%. The Department would be unable to use an opacity determination on such a source. To clarify this point, the Department suggested and the Board adopted an amendment to the rule to clearly state that a six-minute average will be used.

Numerous comments were received concerning the applicability of the numerical emission standards for non-attainment areas. As a result of these comments the Board believes there is sufficient concern over the applicability of the numerical emission standards to warrant a delay in the adoption of these sections. The specific area of concern involves the relationship between the proposed standards and their impact upon ambient air quality.

With these concerns in mind, the Department recommended and the Board agreed to adopt the rule without proposed sections (5) and (6), and certain subsections of (9). All deleted sections deal exclusively with numerical standards for paved and unpaved roads or comprise support material for these sections, i.e., definitions and sampling requirements.

In connection with inclusion of the revised airborne particulate rule in the state implementation plan (SIP), the Department has developed a study plan and timetable for the development and justification of such numerical standards.

Several industries questioned the use of Best Available Control Technology (BACT) for existing slag piles, strip mines and open pit mines. They recommended that the rule be made consistent with the federal Clean Air Act for existing sources in non-attainment areas by requiring Reasonable Available Control Technology (RACT). The Department concurred with this recommendation and the Board adopted it.

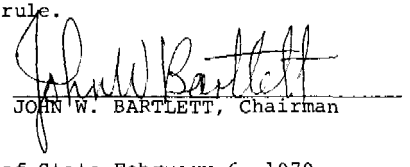
Billings commented that on 80% of the days where there is a particulate problem in that city, the wind velocity is over 40 miles per hour. A review by the Department of total suspended particulate and meteorological data indicates there is little or no relationship between total suspended particulate levels and high wind speed in Billings, so the Board did not take any related action.

A suggestion was made that the procedures for enforcement of the rule be included. It was considered unnecessary, since the enforcement authority of the Department is listed in Section 75-2-401, MCA (Section 69-3914, R.C.M. 1947).

The City of Billings has also suggested that the proposed rule would undermine the local effort to develop a plan for controlling particulates. However, the rule will provide for the enforcement of these local plans as required by the federal Clean Air Act Amendments of 1977 and the EPA. Since both are designed the meet national ambient air quality standards, they reinforce one another.

A Billings official further indicated that the Department failed to analyze the social, economic, and environmental impacts of the proposed rule for a revision to the State Implementation Plan. A preliminary environmental review, to the contrary, has been completed on the individual plan showing no adverse impacts.

One industry recommended the proposed rule should only apply to those sources which emit over 250 tons per year of particulate. This was unacceptable,for the following reasons. It is often the additive effect of a number of small sources that result in ambient standards being exceed. EPA requires the state to control any man-made source which impacts NAAQS and to track any point source which may emit more than 25 tons per year. Furthermore, EPA requires permits for any source greater than 100 tons. In that light, it was considered unreasonable to exempt all sources which emit less than 250 tons per year from the proposed rule.



JOHN W. BARTLETT, Chairman

Certified to the Secretary of State February 6, 1979

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF VETERINARIANS

In the Matter of the Proposed Amendment of ARM 40-3.102(6)-S10270 (1) Continuing Education)	NOTICE OF AMENDMENT OF ARM 40-3.102(6)-S10270 (1) CONTINUING EDUCATION

TO: All Interested Persons:

1. On December 28, 1978, the Board of Veterinarians published a notice of proposed amendment to ARM 40-3.102(6)-S10270 sub-section (1) which concerns continuing education at pages 1669 and 1670 of the 1978 Montana Administrative Register, issue number 18.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received. The Board's reason for the amendment is because the Board has encountered several complaints and problems with the continuing education statute. A grace period will allow a veterinarian enough time to comply with the requirement in order to obtain his certificate of registration each year. The adoption of this rule will enable the Board to act promptly on renewals and eliminate the necessity of a formal hearing each time, which will cut the costs of the Board considerably. Also several of the association meetings are held in June, which under the present restrictions would not qualify for renewal for corresponding years. In addition, there are association meetings in July, August, and September that would enable a veterinarian to comply with the CE requirements. This rule will also allow a veterinarian more latitude in selection of continuing education courses which in fact might be of more benefit to the public, rather than just attending a program to fulfill the requirement. There are times when single or solo practitioners might have to leave a critical patient or situation in order to fulfill the requirements.

BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the Matter of the Proposed) Amendment of ARM 40-3.106(6)-) S10630 (1) and (2) Set and) Approve Requirements and) Standards - General)	NOTICE OF AMENDMENT OF ARM 40-3.106(6)-S10630 SET AND APPROVE REQUIREMENTS AND STANDARDS - GENERAL, SUB-SECTIONS (1) and (2)

TO: All Interested Persons:

1. On December 28, 1978, the Board of Water Well Contractors published a notice of proposed amendment to ARM 40-3.106(6)-S10630, sub-sections (1) and (2) concerning requirements and standards for water well construction at pages 1671 and 1672 of the 1978 Montana Administrative Register, issue number 18.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received. The Board proposed the amendment to include the additions referred to in

the notice. The rule provides what the Board considers reasonable methods for protecting against contamination and unnecessary damage to the casing.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, February 6, 1979.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 1.2.121 Agency Filing Fees in Title 1, Chapter 2, of the Administrative Rules of Montana	))))	NOTICE OF AMENDMENT OF RULE 1.2.121 AGENCY FILING FEES

TO: All Interested Persons:

1. On December 28, 1978, the Secretary of State published notice of a proposed amendment of Rule 1.2.121 concerning Agency Filing Fees at page 1673 of the 1978 Montana Administrative Register, issue number 18.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received. The Secretary of State has amended the rule because the present charge of $.50 per page filing fee barely covers the cost for agencies to prepare no-warrant transfer of funds to my office and the true cost of $6.50 per page may prove an unreasonable burden on the agencies.

In the matter of the adoption of two new rules in Title 1, Chapter 2 of the Administrative Rules of Montana	)))))))	NOTICE OF ADOPTION OF TWO NEW RULES, 1.2.321 OLD TO NEW NUMBERING TABLE, AND 1.2.302 SCHEDULE OF PROSPECTIVE CHAPTER NUMBERS AND PAGE NUMBERS TO BE ASSIGNED DURING RECODIFICATION

TO: All Interested Persons:

1. On December 28, 1978, the Secretary of State published notice of two proposed new rules, (Rule I) 1.2.321 OLD TO NEW NUMBERING TABLE and (Rule II) 1.2.302 SCHEDULE OF PROSPECTIVE CHAPTER NUMBERS AND PAGE NUMBERS TO BE ASSIGNED DURING RECODIFICATION, at page 1674-1675, of the 1978 Montana Administrative Register, issue number 18.

2. The Secretary of State has adopted the rules as proposed.

3. No comments or testimony were received. The Secretary of State has adopted these rules to facilitate the publication of Administrative Rules of Montana(ARM) if the current proposed legislative act in regard to the recodification of ARM is passed.

In the matter of the amendment of Rule 1.2.110 Updating the Code---Procedures in Title 1, Chapter 2 of the Administrative Rules of Montana	)))))	NOTICE OF ADOPTION OF AMENDMENT OF RULE 1.2.110 REGARDING UPDATING THE CODE

TO: All Interested Persons:

1. On December 28, 1978, the Secretary of State published notice of the proposed amendment of Rule 1.2.110 UPDATING THE CODE--PROCEDURES, at page 1676, of the 1978 Montana Administrative Register, issue number 18.

2. The Secretary of State has amended the rule with the following change:

1.2.110 UPDATING THE CODE--PROCEDURES

(1)(b) Accompanying the replacement pages which are distributed to the subscribers to the code on a three month basis, or more frequently if necessary, will be instructions which indicate where the pages are to be inserted and which pages of the existing code have been superseded and should be removed.

3. No comments or testimony were received. The Secretary of State has amended this rule to facilitate the publication of ARM if the current proposed legislative act in regard to the recodification of ARM is passed.

Dated this 6th day of February, 1979

Frank Murray

FRANK MURRAY
Secretary of State

by Leonard Larson
Chief Deputy

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.6(2)-S680 referencing the Board of Public Educations' Indian Studies rule in accreditation standards	NOTICE OF THE AMENDMENT OF RULE 48-2.6(2)-S680

TO: All Interested Persons:

1. On October 12, 1978, the Board of Public Education published notice of a proposed amendment to rule 48-2.6(2)-S680 referencing the Board of Public Education's Indian Studies rule in accreditation standards at pages 1418-19 of the 1978 Montana Administrative Register, issue number 13.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because the Board's Indian Studies rule is to be monitored in school districts' fall reports and, therefore, must be referenced in accreditation standards.

TO: All Interested Persons:

1. On December 28, 1978, the Board of Public Education published notice of a proposed amendment to rule 48-2.10(10)-S10100 concerning Class 1 Professional teaching certificates at pages 1677-78 of the 1978 Montana Administrative Register, issue number 18.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule in order to increase the flexibility of the professional certificate and to accomodate programs at universities.

Harriett C. Meloy

HARRIETT C. MELOY, CHAIRWOMAN
BOARD OF PUBLIC EDUCATION

BY Dick Reese
ASSISTANT TO THE BOARD

Certified to the Secretary of State February 6, 1979.

VOLUME NO. 38 OPINION NO. 5

SCHOOLS - Compulsory attendance, age and grade completion requirements;
MONTANA CODE ANNOTATED - Sections 20-5-102 and 20-5-103 (formerly 75-6303 and 75-6304, R.C.M. 1947).
HELD: Sections 20-5-102 and 20-5-103 MCA require compulsory school attendance for any student who has reached seven years of age prior to the first day of school, and has not yet reached his sixteenth birthday, and has not yet completed the work of the eighth grade.

23 January 1979

Gordon R. Hickman, Esq.
Wheatland County Attorney
Wheatland County Courthouse
Harlowton, Montana 59036

Dear Mr. Hickman:

You have requested my opinion on the following question:

> Is a student who is fifteen years of age, and who has completed the eighth grade, subject to the compulsory school attendance provisions of sections 20-5-102 and 20-5-103 MCA (formerly 75-6303 and 75-6304, R.C.M. 1947)?

Section 20-5-102(1) (formerly section 75-6303, R.C.M. 1947) provides in pertinent part:

> Any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year and has not yet reached his 16th birthday and who has not completed the work of the 8th grade shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111.

The same operative language is found in section 20-5-103 MCA. There are exceptions in both sections which are not relevant here. The plain, unambiguous language of these two sections provides compulsory school attendance for any child who:

1. has reached seven years of age prior to the first day of school, and

2. who has not yet reached his sixteenth birthday, and

3. who has not completed the work of the eighth grade.

Clearly, each of the three criteria apply and all three must be met before the compulsory attendance requirements are satisfied.

This conclusion is reinforced by the fact that 20-5-102 and 20-5-103 MCA were amended in 1973 and 1977 respectively to substitute the word "and" for the word "or" before the requirement that the child finish the work of the eighth grade. (Sec. 3, ch. 91, L. 1973; sec. 8, ch. 266, L. 1977.) Thus, any opinions on this subject prior to these amendments may no longer be relied upon.

THEREFORE, IT IS MY OPINION:

Sections 20-5-102 and 20-5-103 MCA require compulsory school attendance for any student who has reached seven years of age prior to the first day of school, and has not yet reached his sixteenth birthday, and has not yet completed the work of the eighth grade.

Very truly yours,

MIKE GREELY
Attorney General

MG/ABC/br

VOLUME NO. 38 OPINION NO. 6

INTEREST - Delinquent personal property taxes;
PROPERTY, PERSONAL - Taxes not a lien on real estate;
TAXATION AND REVENUE - Collection of personal property taxes not a lien on real estate;
TAXATION AND REVENUE - Interest and penalty on unpaid personal property taxes not a lien on real estate;
TAXATION AND REVENUE - Payment under protest of personal property taxes not a lien on real estate;
MONTANA CODE ANNOTATED - Sections 15-1-402, 15-16-102, 15-16-111, 15-1-113, 15-16-404, 15-16-503, 15-17-901(1);
REVISED CODES OF MONTANA - Sections 84-4103, 84-4181, 84-4201, 84-4502;
OPINIONS OF THE ATTORNEY GENERAL: 14 OP. ATT'Y GEN. NO. 219 (1931); 19 OP. ATT'Y GEN. NO. 65 at 121 (1941); 21 OP. ATT'Y GEN. NO. 138 at 185 (1946); 23 OP. ATT'Y GEN. NO. 102 at 274 (1950).

HELD: 1. Personal property taxes that are not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947), become delinquent thirty days after notification of the taxpayer that taxes are due.

2. Section 15-16-102, MCA, (84-4103, R.C.M. 1947), applies to personal property taxes not a lien on real estate to the extent that those taxes draw interest from the time they become delinquent until they are paid and a penalty is added.

3. Section 15-1-402(1), MCA (84-4502, R.C.M. 1947), providing for payment of taxes under protest before they become delinquent, applies to personal property taxes not a lien on real estate.

26 January 1979

C. Ed Laws
County Attorney
County of Stillwater
Columbus, Montana 59019

Dear Mr. Laws:

You have asked for my opinion on several issues concerning the collection of personal property taxes that are not a

lien on real estate. I have stated your questions as follows:

1. When do personal property taxes that are not a lien on real estate, under section 15-16-113, MCA (84-4202, R.C.M. 1947), become delinquent, if ever?

2. Does section 15-16-102, MCA (84-4103, R.C.M. 1947), which provides a time for payment of taxes and for the accrual of interest and a penalty on unpaid taxes apply to personal property taxes not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947)?

3. Does section 15-1-402, MCA (84-4502, R.C.M. 1947), which provides for payment of taxes under protest before they become delinquent, apply to personal property taxes not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947)?

"Personal property taxes not a lien on real estate" are taxes on personal property, the owner of which does not, at the time of assessment, own sufficient real property to secure payment. Section 15-16-111, MCA (84-4201, R.C.M. 1947), sets forth the duty of the Department of Revenue in the collection of those taxes:

> It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately and in any event not more than 5 days thereafter make a report to the treasurer, setting forth the nature, kind, description, and character of such property....

The corresponding duty of the county treasurer is given in section 15-16-113, MCA (84-4202, R.C.M. 1947):

> (1) The county treasuer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed ... that the amount of such tax is due and payable at

> the county treasurer's office. The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff. ...
>
> (2) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

Section 15-17-901(1), MCA, which was formerly a subsection of the preceding law, section 84-4202(3), R.C.M. 1947, states:

> The tax on personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection .... A resort to any one of the methods provided for does not bar the right to resort to either or both of the other methods. Any of the methods provided for may be used until the full amount of the tax is collected.

No provisions concern specifically when "taxes that are not a lien on real estate" become delinquent, whether they may be paid under protest, or whether penalties and interest accrue. Section 15-16-102, MCA (84-4103, R.C.M. 1947), does provide for interest and a penalty on taxes generally:

> All taxes levied and assessed in the state of Montana, except special assessments made for special improvements in towns and cities shall be payable as follows: (1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year, and one-half on or before 5 p.m. on May 31 of each year. (2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount

> so payable shall become delinquent and shall draw interest at the rate of 2/3 of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty. (3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 2/3 of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty.

Section 15-1-402(1), MCA (84-4502(1), R.C.M. 1947), provides for the payment of tax under protest:

> In all cases of levy of taxes ... which are deemed unlawful by the party whose property is thus taxed ..., such party may, before such tax ... becomes delinquent, pay under written protest such portions of such tax ... deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction ... to recover such portions of such tax ... paid under protest. ...

You have correctly pointed out the conflicts in these statutes. Section 15-16-113(1), MCA (84-4202(1) R.C.M. 1947), appears to require that personal property, the taxes on which are not a lien on real estate, must be seized by the county treasurer and sold on execution immediately upon receiving a report from the Department of Revenue that such property exists. Subsection (2) reinforces this interpretation, providing for the treasurer to be liable on his official bond for failure to seize and sell the property. The first conflict appears in section 15-17-901(1), MCA (84-4202(3), R.C.M. 1947), which says that seizure and sale is not the exclusive method of collection; a civil action for its collection may be brought instead. Furthermore, section 15-17-901(1), MCA (84-4202(3), R.C.M. 1947), allows for the seizure and sale of property "at any time after the date the assessment is made," rather than "within 30 days from the receipt of the department of revenue's report," as section 15-16-113(1), MCA (84-4202(1), R.C.M. 1947), provides.

The provisions for seizure and sale immediately upon receipt of the report, section 15-16-113(1), MCA (84-4202(1), R.C.M. 1947), also conflict with section 15-16-102, MCA (84-4103, R.C.M. 1947), which provides that "all taxes levied and assessed in the state of Montana" are payable in two installments in November and May, and become delinquent and subject to interest and penalty if not paid at those times. Finally, the provisions for immediate seizure and sale refer to all owners of property upon which a tax that is not a lien on real estate has been assessed as "delinquent taxpayer[s]." The implication that the tax is delinquent as soon as it is assessed leaves little rooom for payment under protest pursuant to section 15-1-402(1), MCA (84-4502(1), R.C.M. 1947), which requires that payment to be made "before such tax ... becomes delinquent."

You are not the first person to have been troubled by the apparent inconsistencies in these statutes. Several previous attorneys general have been asked to render their opinion on similar questions and have reached differing conclusions.

In 1931, Attorney General Foot held: (1) personal property taxes that are not a lien on real estate draw interest and a penalty from and after November 30th until paid, and (2) such taxes may not be paid in semi-annual installments. 14 OP. ATT'Y GEN. NO. 219 (1931). He found that the precursor to section 15-16-102, MCA (84-4103, R.C.M. 1947), which refers to "all taxes levied and assessed," was controlling on all matters except where inconsistent with one of the specific provisions of law relating to the payment of personal property taxes that are not secured by a lien on real estate. He concluded that the provision for semi-annual installments was inconsistent with the law requiring the county treasurer to seize the personal property immediately. The latter provision was controlling. Personal property taxes were, therefore, supposed to be collected by the county treasurer prior to November 30th.

> [N]evertheless if said taxes are not collected or paid prior to that date they are included within the term "all taxes" found in [the precursor to section 15-16-201, MCA (84-4103, R.C.M. 1947)], and this provision for the adding of penalties and interest is not inconsistent with the laws relating to the collection of personal property taxes where they are not a lien on real estate.

> If the county treasurer has failed to collect the personal property taxes prior to November 30th this is an omission of a duty on his part but the liability of the property owner to pay the taxes still exists and unless he discharges that liability on or before November 30th he incurs the penalty and interest provided by [the precursor to section 15-16-102, MCA (84-4103, R.C.M. 1947)]....

Id. at 220.

Ten years after this opinion, Attorney General Bonner expressly overruled it. 19 OP. ATT'Y GEN. NO. 65, at 121, 123 (1941). He found two factors to be significant. First, the provision making the county treasurer liable on an official bond for any taxes uncollected by reason of willful failure to seize and sell the property had been added in 1939. Attorney General Bonner concluded:

> It is apparent ... the intention of the Legislature was that the County Treasurer, in his collection of personal property taxes which are not a lien on real estate, is not to wait until the 30th day of November to collect said taxes; but he is directed to collect the same immediately.

Id.

This provided the exclusive method for collection of these taxes. Second, no statute specifically provided for penalty and interest on taxes not a lien on real estate:

> It was no doubt presumed by the Legislature the County Treasurer would perform the duties of his office, as required by law, in regard to the collection of personal property taxes not a lien on real estate. In that event, of course, no penalty or interest would accrue, and no personal property taxes not a lien on real estate would be delinquent, as they would all be paid voluntarily or be collected by sale before the first day of December of each year.

Id.

In 1946, Attorney General Bottomly, in an opinion addressing a different question than the ones you have posed, said that the precursors to sections 15-16-111 and 15-16-113, MCA

(84-4201 et seq., R.C.M. 1947), were only applicable where personal property came into the county, or was found there, before or after the regular assessment period. 21 OP. ATT'Y GEN. NO. 138, at 185, 186 (1946).

In 1950, Attorney General Olsen was asked whether personal property taxes not a lien on real estate that had been assessed ten years earlier but never collected could be collected by seizure of property other than that assessed. He ruled that only the particular property assessed could be seized. 23 OP ATT'Y GEN. NO. 102 at 274 (1950). While pointing out that the law "requir[ed] speedy performance on the part of ... the ... County Treasurer, with a severe penalty ... for neglect of duty," he found that the general provisions for a perpetual prior lien on personal property for unpaid taxes applied to taxes not a lien on real estate. Even after ten years, the county treasurer could seize such personal property and sell it for taxes. Id. at 275. Furthermore, the county treasurer also had the option of bringing an action against the owner of the property where the owner had removed from the county, under a general personal property tax provision, section 15-16-503, MCA (84-4181, R.C.M. 1947). Id. at 276.

In 1963, a major amendment was made of the provisions on the collection of personal property taxes not a lien on real estate. 1963 Mont. Laws, ch. 165. The portion that is presently subsection (1) of section 15-16-113, MCA (84-4202, R.C.M. 1947), was amended to allow the county treasurer to seize and sell "any other personal property in the hands of the delinquent taxpayer" in addition to the property assessed in order to collect the taxes. This provision overruled Attorney General Olsen's 1950 opinion. It also added the first reference to a delinquent taxpayer in connection with this particular kind of tax. Two paragraphs were added to section 84-4202, R.C.M. 1947. One is now section 15-17-901(1), MCA (84-4202(3), R.C.M. 1947), providing for the collection of these taxes by the seizure and sale of property at any time after assessment or by a civil action in addition to other methods. The other paragraph added is now section 15-16-404, MCA (84-4202(4), R.C.M. 1947), which says in part, "The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes not a lien on real estate of the taxpayer." The amendment again refers to delinquent taxes.

In 1964, the Montana Supreme Court decided a case involving the collection of taxes under section 84-4202, R.C.M. 1947, as amended. O'Brien v Ross, 144 Mont. 115, 394 P.2d 1013 (1964). In that case, the treasurer had waited over three years from the time of assessment before noticing up for sale certain personal property under section 84-4202, R.C.M. 1947. The major issue raised by the appellant concerned the proper county for payment of the tax. The Supreme Court held "that the tax ... was valid and the procedures for the collection thereof were in conformity with the statutory requirements." 394 P.2d at 1016. The Court noted that "neither at [the time of assessment] nor any time thereafter did the appellant, either orally or in writing, protest that assessment." Id. at 1014. Thus the Supreme Court appeared to interpret section 84-4202, R.C.M. 1947, as allowing the payment under protest of personal property taxes not a lien on real estate, and the collection of such taxes by seizure and sale after the thirty day statutory time period.

I have set out this lengthy history of the interpretation of these sections (84-4202, R.C.M. 1947) in order to point out the many ways that reasonable persons could disagree thereon. The statutes are ambiguous. Therefore, their construction is controlled by the intent of the Legislature. See, e.g., In re Baier's Estate, ___ Mont. ___, 567 P.2d 943 (1977). To determine that intent, the statutes must be considered as a whole. See, e.g., Vita-Rich Dairy, Inc. v. Department of Business Regulation, ___ Mont. ___, 553 P.2d 980 (1976). However, where two legislative enactments relating to the same subject-matter are in conflict, and cannot be harmonized, the act last enacted controls. Nichols v. School District No. 3, 87 Mont. 181, 287 P. 624, 627 (1930). Here, then, where the 1963 amendments conflict with the original act, the amendments control.

Section 15-17-901(1), MCA (84-4202(3), R.C.M. 1947), which was added as part of the 1963 amendments, states that the county treasurer may use any or all of the usual methods for collection of taxes, including a civil action. County treasurers need not seize a taxpayer's personal property in every case where he or she does not own sufficient real estate to secure a lien for taxes.

The 1963 amendments also added the first references to delinquent personal property taxes not a lien on real estate, indicating the Legislature's intent that those taxes become due at some point after assessment, and delinquent if unpaid when due. The question you have raised is when the

taxes become due. When the Legislature left unchanged the reference in section 15-16-113(1), MCA (84-4202(1), R.C.M. 1947), to action to be taken by the county treasurer within thirty days of notification of taxes due, it apparently intended that those taxes continue to be collected within that thirty-day period, rather than in semi-annual installments as most other property taxes are collected. If personal property taxes not a lien on real estate are unpaid within thirty days after notice is given that taxes are due they are delinquent.

I agree with Attorney General Foot that section 15-16-113, MCA (84-4202, R.C.M. 1947) rather than section 15-16-102, MCA (84-4103, R.C.M. 1947), controls with respect to time of payment of personal property taxes not a lien on real estate. The specific provision controls over the general one, where, as here, they are clearly inconsistent. See e.g., Huber v. Groff, ___ Mont. ___, 558 P.2d 1124, 1134 (1976).

I also agree that there is no inconsistency between the provision of section 15-16-102, MCA (84-4103, R.C.M. 1947), for the accrual of interest and a penalty on delinquent taxes and section 15-16-113, MCA (84-4202, R.C.M. 1947), particularly since the 1963 amendment, (15-17-901(1), MCA) which recognized that the personal property need not actually be sold for taxes within thirty days of the tax bill. I do not agree, however, with Attorney General Foot's opinion that interest does not begin to accrue until November 30th at 5 p.m. The Legislature's intent in enacting section 15-16-102, MCA (84-4103, R.C.M. 1947), was clearly that interest should begin accruing whenever taxes are not paid on time, and are therefore delinquent. In the case of personal property taxes not a lien on real estate, therefore, interest and penalty accrues from the time for payment, thirty days after the tax bill. I cannot agree with Attorney General Bonner's opinion that the interest and penalty provisions do not apply because personal property taxes not a lien on real estate can never become delinquent. As I stated above, the 1963 amendment, with its two references to delinquent taxes, and its provision making collection by sale optional, eliminated the basic premise for that opinion - that seizure and sale is the exclusive method for collection of these personal property taxes.

I also must disagree with the 1946 opinion of Attorney General Bottomly. No authority was cited and I have found none, for his conclusion that section 15-16-113, MCA (84-

4202, R.C.M. 1947), applied only when personal property came into the county, or was found there, before or after the regular assessment period.

Since personal property taxes not a lien on real estate do become delinquent at a specific time after assessment, it follows from the clear language of section 15-1-402, MCA (84-4502, R.C.M. 1947), that they may be paid under protest prior to that time.

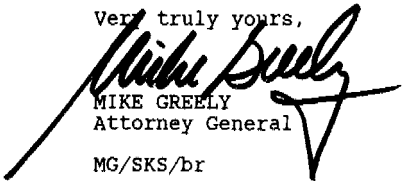
THEREFORE, IT IS MY OPINION:

1. Personal property taxes that are not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947), become delinquent thirty days after notification of the taxpayer that taxes are due.

2. Section 15-16-102, MCA (84-4103, R.C.M. 1947), applies to personal property taxes not a lien on real estate to the extent that those taxes draw interest from the time they become delinquent until they are paid and a penalty is added.

3. Section 15-1-402(1), MCA (84-4502, R.C.M. 1947), providing for payment of taxes under protest before they become delinquent, applies to personal property taxes not a lien on real estate.

Very truly yours,



MIKE GREELY
Attorney General

MG/SKS/br

VOLUME NO. 38 OPINION NO. 7

COUNTIES - Use of revenue sharing funds and local tax revenues; museums, historical societies and community theaters; contracts with private organizations;
LOCAL GOVERNMENT - Self government powers; revenue sharing funds and local tax revenues; museums, historical societies and community theaters; contracts with private organizations;
MONTANA CODE ANNOTATED - Sections 7-1-102, 7-1-106, 7-7-2103, 7-8-2102, 7-8-2203, and 7-16-2201, et seq.;
REVISED CODES OF MONTANA 1949 - Sections 16-805, 16-1008A, 16-1163 to 1165, 47A-7-102 and 47A-7-106;
MONTANA CONSTITUTION (1977) - Article V, sec. 11(5) and Article XI, sec. 6;
ATTORNEY GENERAL OPINIONS - 37 OP. ATT'Y GEN. NO. 25 (1977); 37 OP. ATT'Y GEN. NO. 78 (1977); 37 OP. ATT'Y GEN. NO. 105 (1978).

HELD: A local government with self-government powers may provide the services or functions of a museum, historical society or community theatre. These services or functions may be provided by a contract with a private organization if such a contract is a reasonable and appropriate method for so doing.

30 January 1979

Mr. Ken Korte, Director
Montana Historical Society
225 North Roberts
Helena, Montana 59601

Dear Mr. Korte:

You have requested my opinion on the following question:

> May a local government with self-governing powers use federal revenue sharing funds or local tax revenues or both to fund a museum and art center, a historical society or a community theater?

It is by now well established that a local government with self-government powers has all powers which are not denied by the Montana Constitution, by state law, or by the local charter. 37 OP. ATT'Y GEN. NO. 68. Article XI, section 6, Montana Constitution (1977) and section 7-1-102, MCA (for-

merly 47A-7-102, R.C.M. 1947), specifically provide that a local government with self-governing powers may exercise any power or perform any service or function not prohibited by the Constitution, law or charter. Local self-government powers must be liberally construed and every reasonable doubt must be resolved in favor of the local government power. Section 7-1-106, MCA (formerly 47A-7-106, R.C.M. 1947).

While a local government unit, even with self-government powers, may not make an appropriation to a private organization not under government control (Article V, sec. 11(5), Montana Constitution; section 7-7-2103, MCA (formerly section 16-805, R.C.M. 1947), 37 OP. ATT'Y GEN. NO. 25 (1977), the local government may nonetheless contract with private organizations to perform functions or services which the local government is authorized to provide for its constituents. 37 OP. ATT'Y GEN. NO. 105 (1978). The inquiry is, first, whether the local government has the power to provide the service or function and, second, whether a contract with a private organization is a reasonable and appropriate means of providing that service or function.

First, counties, and therefore local city-county governments with self-government powers, have express authority to establish and maintain museums. Sections 7-8-2102 and 2203 (formerly section 16-1008A); and 7-16-2201 et seq. (formerly sections 16-1163 to 1165). While no comparable express authorization has been found relating to a historical society or a community theatre, a local government with self-government powers may "provide any services or perform any functions not expressly prohibited" by the Constitution, law, or charter. There are no express prohibitions in the Constitution or state law against a local government's providing the service or function of a historical society or community theatre. No local government charter has been submitted with this request for an opinion, so it will be assumed that there are likewise no express charter limitations.

This being the case, the only question remaining is whether a contract with a private organization is a reasonable and appropriate means of providing these services or functions. The choice of a particular mode or manner to accomplish any statutory powers or duties is discretionary with the local governing body, subject only to the requirement that it be reasonable. 37 OP. ATT'Y GEN. NO. 105 (1978). Only in rare cases will the use of a contract for services be held to be an impermissible abuse of discretion.

In 37 OP. ATT'Y GEN. NO. 25 (1977) it was held that a non-profit corporation operating a museum or art gallery is not eligible to receive revenue sharing or county tax funds. That opinion, first, did not involve a local government with self-government powers, and second, dealt with a proposed simple grant or subsidy to a private organization. The issues in the present opinion concerning contracts by the county with a private organization to perform authorized county functions and services were not addressed. Therefore, nothing in 37 OP. ATT'Y GEN. NO. 25 should be construed as being contrary to what is being held herein.

THEREFORE, IT IS MY OPINION:

A local government with self-government powers may provide the services or functions of a museum, historical society or community theatre. These services or functions may be provided by a contract with a private organization if such a contract is a reasonable and appropriate method for so doing.

Very truly yours,

MIKE GREELY
Attorney General

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