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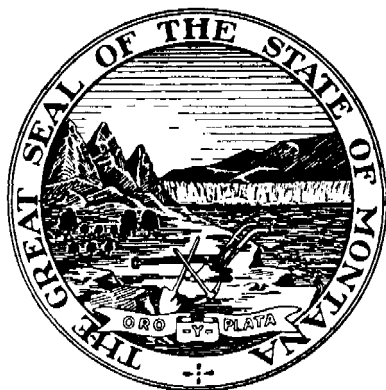
MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

**1980 ISSUE NO. 20
PAGES 2845-2884**



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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TO: All Interested Persons.

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

(3)(4) Priority applications will be given first consideration in the order of number of unsuccessful notices submitted. First consideration will be given these applications only for license years 1981, 1982, and 1983. No priority will be recognized after the 1983 license year. When the number of priority applications exceeds the number of permits to be issued, a drawing will be held to determine successful priority applicants.

~~44~~(5) For the license year beginning May 1, 1980, and each succeeding year thereafter, the number of special licenses to be made available for hunting moose, mountain sheep, and mountain goat under this rule shall be allocated as follows:

(a) At least 75% of the number of licenses available for a species in each hunting district shall be allocated to applicants with preference for that species under this rule. ~~or building such preference under this rule.~~

(b) The remaining number of licenses (approximately 25%) available for a species in each hunting district shall be allocated to applicants who do not hold preference for that species under this rule.

(c) ~~An Applicant~~ applicant for a special license for a species under this subsection (b) by ~~electing to apply~~ making application for a special license ~~from the remaining licenses available~~ under the provisions of this subsection, or by failing to apply any preference held toward the licenses available under subsection (a), forfeits any and all preference previously obtained under provisions of this rule; and further, failure to obtain a license under this subsection may not be counted toward building preference under this rule.

~~4e~~(d) The 10% limitation applicable to nonresidents shall be determined from the total number of special licenses available for a species in a hunting district. This limitation will be applied to the 75% drawing. If the limitation is reached, no further nonresidents will be considered. However, if the limitation is not reached, the remaining 10% limitation for the hunting district will be applied to the 25% drawing.

(6) Applicants for licenses under this rule may apply for only one hunting district for each species for which application is made.

(7) After January 31, 1981, no further priority under this rule may be obtained by any person. Those persons holding 8, 7, 6, and 5 years' priority on January 31, 1981 and who properly apply this priority for license years 1981, 1982, and 1983 will be included in the 75% portion of any drawing under this rule in the order of their number of years' priority.

(8) Those persons who receive or should have received notice of unsuccessful application for the 1980 limited special moose, sheep, and mountain goat drawings must submit notice of error or other comments or statements related to those unsuccessful notices to the department in writing by March 1, 1981. The comments or statements must be delivered to the department's Helena office on or before the March 1 deadline, addressed to the department of fish, wildlife, and

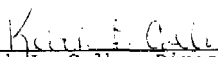
parcs, 1420 East 6 Avenue, Helena, Mt. 59601, attention
special licensing.

4. The commission is proposing this amendment because the present system does not meet its original purpose, is an economic drain on the hunting and fishing license revenues of the department, and is a continuing source of complaint and dissatisfaction for hunters in the state.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Larry Putnam, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Mt. 59601, no later than December 1, 1980.

6. F. Woodside Wright, of the department's Helena office, 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 87-1-304, MCA, and the rule implements section 87-1-304.



Keith L. Colbo, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State October 17, 1980

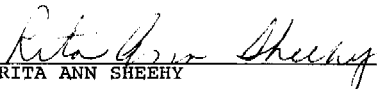
BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE SUPPLEMENTING
of rules 16.42.101 regulating	)	NOTICES OF PUBLIC
occupational noise and 16.42.102	)	HEARING ON PROPOSED
regulating occupational air	)	AMENDMENT OF RULES
contaminants	)	16.42.101 (Occupational
		Noise) and
		16.42.102 (Occupational
		Air Contaminants)

TO: All Interested Persons

1. On October 16, 1980, MAR Notices No. 16-2-158 and 16-2-159 were published in Issue No. 19, Montana Administrative Register, on pages 2706 through 2728. Due to typographical errors, the dates of the public hearings on these rules were erroneously given as November 21, 1989. Both of these hearings will be held on November 21, 1980.


JOHN F. MCGREGOR, M.D. Chairman

By 
RITA ANN SHEEHY

Certified to the Secretary of State October 21, 1980

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rule 38.3.1901)	OF RULES 38.3.1901 and
regarding Transportation of)	38.3.1902 (Safety Require-
Hazardous Materials, and Rule)	ments)
38.3.1902 regarding Motor)	NO PUBLIC HEARING
Carrier Safety Regulations.)	CONTEMPLATED

TO: All Interested Persons

1. On December 1, 1980, the Department of Public Service Regulation proposes to amend Rules 38.3.1901 and 38.3.1902 which adopt by reference the regulations of the U.S. Government concerning transportation of hazardous wastes, motor carrier safety regulations, and noise emission requirements.

2. The proposed amendments would bring the Rules into strict compliance with 2-4-307, MCA. Rule 38.3.1901 and 38.3.1902 as proposed to be amended are as follows (matter to be stricken is interlined; new matter is underlined):

38.3.1901 TRANSPORTATION OF HAZARDOUS MATERIALS

(1) Transportation of hazardous materials in regard to all motor carriers, railroads, pipelines or utilities under the jurisdiction of this Commission and hereby adopted by the Commission are those rules and regulations promulgated by the various federal departments and agencies including Department of Transportation, Interstate Commerce Commission, Federal Power Commission, and the Federal Communications Commission. These rules may be found in the Code of Federal Regulations, Title 49, Chapter 1; they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

38.3.1902 DEPARTMENT OF TRANSPORTATION AND I.C.C. RULES

(1) All motor carriers operating under the jurisdiction of this Commission shall comply with the motor carrier safety regulations and noise emission requirements of the Department of Transportation and the Interstate Commerce Commission, as amended from time to time; and this Commission by reference, hereby adopts the motor carrier safety regulations promulgated and adopted by the Department of Transportation and the Interstate Commerce Commission, as amended from time to time. These regulations may be found in the Code of Federal Regulations, Title 49, Chapter III; they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

3. The rules are proposed to be amended to come into strict compliance with 2-4-307, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Rob Smith, 1227 11th Avenue, Helena, Montana 59601, no later than December 1, 1980.

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 Rob Smith, 1227 11th Avenue, Helena, Montana 59601, no later than December 1, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 70 persons based on the approximately 700 certificated intrastate motor carriers in the State of Montana.

7. The authority of the agency to make the proposed amendment is based on Section 69-12-201, MCA, and the rule implements Section 2-4-307, MCA.


GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 21, 1980

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the proposed)	NOTICE OF PUBLIC HEARING FOR
amendment of ARM 40.60.402)	THE PROPOSED AMENDMENT OF ARM
subsection (1) concerning)	40.60.402 (1) DEFINITIONS AND
definitions and the proposed)	THE PROPOSED ADOPTION OF NEW
adoption of new rules con-)	RULES CONCERNING SPEECH PATH-
cerning speech pathology and)	LOGY AND AUDIOLOGY AIDES
audiology aides.)	

TO: All Interested Persons:

1. On Wednesday, December 3, 1980 at 10:30 a.m., a public hearing will be held in the Conference Room of the Lalonde Building, 42½ South Last Chance Gulch, Helena, Montana, to consider the proposed amendment of ARM 40.60.402 concerning definitions of speech pathology and audiology aides and the proposed adoption of new rules concerning the aides.

2. The proposed amendment of ARM 40.60.402 will delete subsection (1) of the current rule in its entirety. The rule is located at page 40-957 Administrative Rules of Montana.

3. The amendment is proposed because the board is proposing adoption of new rules which will replace subsection (1) of the current rule.

4. The proposed adoption of the new rules will read as follows:

" I. SUPERVISOR-RESPONSIBILITY FOR AIDE (1) All persons working in the capacity of a speech pathology or audiology aide must be under the direct supervision of a licensed speech pathologist or audiologist. This supervisor assumes full legal and ethical responsibility for the tasks performed by the aide and for any services or related interactions with a client.

(2) The licensed speech pathologist or audiologist who supervises one or more aides should have a commitment to working with and utilizing the services of the aide(s). This supervisor should have training in the supervisory skills necessary to work with the aide(s). The work setting of the supervisor must allow for adequate direct and indirect supervision and monitoring of the aide(s).

II. SCHEDULE OF SUPERVISION - CONTENTS (1) For monitoring purposes, the supervisor must develop and register with the board, on forms supplied by the board, an acceptable schedule of supervision. The schedule of supervision must be periodic, comprehensive and sufficiently documented so as to provide disinterested third parties adequate justification for assuming that the well being of the client is paramount.

(2) The schedule of supervision must contain the name of the aide, a job description for that aide as

well as the schedule to be followed by the supervisor. All contacts, phone calls, and transfer of data must be logged.

(3) It is recognized that the time commitments of a supervisor to an aide may vary. However, the schedule of supervision must include direct supervision for 20% of the employment time of the aide. Most of the contacts by the supervisor must be in person, but other avenues of contact may be made.

(4) In addition, if there is a significant change in the direction of therapy, such as long or short range therapy goal modification or disagreement between the supervisor and aide, the modification or problem must become a matter of record so as to provide disinterested third parties adequate information for making a judgment regarding the merits of the situation.

(5) The schedule of supervision must be signed by the proposed supervisor and by a responsible representative of the employing agency. The schedule must be reviewed and approved by the board before the delivery of services by the aide.

III. TERMINATION OF SUPERVISOR-AIDE RELATIONSHIP

(1) In the event of need to terminate the relationship between an aide and supervisor before the agreed upon time, there must be clear, written documentation detailing the efforts made to achieve agreement. The termination of the aide-supervisor relationship must be in writing. The supervisor must provide a copy of this document to the board at least 10 working days before the actual date of termination.

IV. NONALLOWABLE FUNCTIONS OF AIDES (1) The supervisor is obligated to ensure that the aide assist only in the provision of those services which are within the abilities of the aide as determined by the training and experience of that aide. The supervisor is directly responsible for all decisions affecting the client in all phases of diagnosis, treatment and disposition.

(2) It does not seem feasible to develop guidelines that attempt to specify job tasks peculiar to any specific employment setting. However, it does seem possible to speak to those functions that an aide shall not perform regardless of employment setting. The aide shall not:

- (a) interpret data or clinical experiences into diagnostic statements or clinical management policies;
- (b) transmit clinical information to anyone other than the professional directly supervising him/her;
- (c) determine the selection of cases; or
- (d) refer clients."

5. The board is proposing the adoption of the rules for speech pathology and audiology aides to clarify and add more specificity to the function of the aide and supervisor who is responsible for the services provided by that individual. This is clearly intended to add additional protection to the service provided the consumer.

6. Interested parties may present their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Speech Pathologists and Audiologists, Lalonde Building, Helena, Montana 59601 no later than November 28, 1980.

7. The board or its designee will preside over and conduct the hearing.

8. The authority of the board to make the proposed amendment and adoption is based on section 37-15-202 MCA and implements section 37-15-102 (4) and (6) MCA.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
CHARLES H. LEWIS, CHAIRMAN

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, October 21, 1980.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PUBLIC HEARING ON
MENT OF RULES 42.21.101,	)	PROPOSED AMENDMENTS TO RULES
42.21.106, 42.21.107,	)	42.21.101, 42.21.106,
42.21.123, 42.21.131, and	)	42.21.107, 42.21.123,
42.21.132, relating to the	)	42.21.131, and 42.21.132, re-
valuation of various types	)	lating to the valuation of
of personal property.	)	various types of personal
	)	property.

TO: All Interested Persons:

1. On December 9, 1980, at 9:00 a.m. (and at 1:00 p.m. also, if necessary) a public hearing will be held in the Fourth Floor Conference Room in the Mitchell Building, Helena, Montana, to consider the amendment of Rules 42.21.101, (aircraft), 42.21.106, (large trucks and commercial trailers), 42.21.107, (trailers and campers), 42.21.123, (farm machinery and equipment), 42.21.131, (heavy equipment), and 42.21.132, (mining machinery and equipment and manufacturing equipment), relating to the valuation of various types of personal property.

2. The proposed amendments replace present rules 42.21.101, 42.21.106, 42.21.107, 42.21.123, 42.21.131, and 42.21.132 found in the Administrative rules of Montana. The proposed amendments provide the basis for determining market value for various types of personal property for the tax year beginning January 1, 1981.

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

42.21.101 AIRCRAFT (1) The 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) The department may add or delete equipment or high hours according to the instructions set forth in the editor's note to the Bluebook.

(3) Electrical equipment is depreciated using a schedule established by the department. A copy of the schedule is available for inspection at the office of the county assessor or at the offices of the department in Helena.

(2) (4) This rule ~~would be~~ is effective for tax years beginning after December 31, ~~1978~~ 1980.

42.21.106 LARGE TRUCKS AND COMMERCIAL TRAILERS (1) The average market value for large trucks, those rated over 1 ton, shall be the average retail values of such property as shown in the "Truck Bluebook Official Used Truck Valuation," January 1 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 the average market value will be determined using the depreciation schedule in subsection (3).

(3) The following ~~10-year~~ depreciation schedule ~~will be~~ is used to determine the average market value of large trucks that cannot be valued under subsection (1) and of commercial trailers.

<u>AGE</u>	<u>DEPRECIATION</u>
1 year old	80%
2 years old	70%
3 years old	65%
4 years old	60%
5 years old	50%
6 years old	45%
7 years old	37%
8 years old	30%
9 years old	25%
10 years old and older	20%

<u>Purchased New</u>		<u>Purchased Used</u>	
<u>Model Year</u> <u>Purchased New</u>	<u>Depreciation</u>	<u>Year Purchased</u> <u>Used</u>	<u>Depreciation</u>
1981	95%	1981	95%
1980	75%	1980	89%
1979	67%	1979	79%
1978	59%	1978	70%
1977	53%	1977	63%
1976	47%	1976	56%
1975	42%	1975	50%
1974	37%	1974	44%
1973	33%	1973	39%
1972	30%	1972	35%
1971	26%	1971	31%
1970	23%	1970	28%
1969	21%	1969	25%
1968	19%	1968	22%
1967	16%	1967 and before	20%
1966 and before	15%		

(4) ~~The average market value of commercial trailers will be determined using the depreciation schedule in subsection (3). The schedule in subsection (3) also applies to prorated large trucks~~

and commercial trailers. For all large trucks that cannot be valued under subsection (1) and commercial trailers, the owner or applicant must certify to the department or its agent the year acquired, the acquisition cost, and whether acquired new or used.

(5) This rule is effective for tax years beginning after December 31, ~~1978~~ 1980.

42.21.107 TRAILERS AND CAMPERS (1) The minimum assessed value of boat trailers shall be the ~~low-book~~ coded or suggested retail value of such property as shown in "Official Boat Trailer Trade-In Guide Blue Book," January Edition, ABOS Marine Publications Intertec Publishing Corp., 1014 Wyandotte, Kansas City, Mo. 64105.

(2) The minimum assessed value of camping and travel trailers shall be the wholesale value (W/S) 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 value of truck campers and motor homes shall be the wholesale value (W/S) 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.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) Average market value of 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, NREFA Publications, Inc., 2340 Hampton, St. Louis, Missouri 63139. 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 the average market value of farm machinery will be determined using the depreciation schedule and trend factor analysis in subsection (3).

(3)(a) In order to arrive at market value, the original cost of the property will be trended annually to reflect changes in price indices published by the Bureau of Labor Statistics.

(b) The following 15-year depreciation schedule will be used to determine the average market value of farm machinery

that cannot be valued as provided in subsection (1):

<u>AGE</u>	<u>DEPRECIATION</u>
1 year old	83%
2 years old	72%
3 years old	63%
4 years old	54%
5 years old	45%
6 years old	37%
7 years old	33%
8 years old	29%
9 years old	26%
10 years old	23%
11 years old	20%
12 years old	18%
13 years old	16%
14 years old	14%
15 years old and older	12%

<u>Year</u>	<u>Percentage Depreciation</u>	<u>Trend Factor</u>	<u>Percentage Trended Depreciation</u>
1980	83%	1.000	83%
1979	72%	1.048	75%
1978	63%	1.160	73%
1977	54%	1.255	68%
1976	45%	1.341	60%
1975	37%	1.436	53%
1974	33%	1.503	50%
1973	29%	1.840	53%
1972	26%	1.929	50%
1971	23%	2.000	46%
1970	20%	2.084	42%
1969	18%	2.229	40%
1968	16%	2.342	37%
1967	14%	2.442	34%
1966 or older	12%	2.528	30%

(4) This rule is effective for tax years beginning after December 31, ~~1978~~ 1980.

42.21.131 **HEAVY EQUIPMENT** (1)(a) The market value of heavy equipment is the average resale value of such property as shown in "Green Guides", Volumes I and II, "Green Guides Older Equipment Guide", "Green Guides Lift Trucks", or "Green Guides Off Highway Trucks and Trailers", using the current volumes of the year of assessment. This guide may be reviewed in the

Department or purchased from the publisher: Equipment Guide Book Company; 3980 Fabian Way; P. O. Box 10113; Palo Alto, California 94303.

(b) If the above-named publications cannot be used to value these properties then a trended depreciation schedule established by the department of revenue shall be used to determine the average market value. The schedule is found in subsection (2).

~~(2)(a)(i) For the calendar year commencing January 1, 1979, the following schedule is used for heavy equipment:~~

TABLE 1A

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.053	88%
3 Years Old	76%	1.119	85%
4 Years Old	67%	1.248	84%
5 Years Old	58%	1.446	84%
6 Years Old	49%	1.497	73%
7 Years Old	39%	1.547	60%
8 Years Old	30%	1.639	49%
9 Years Old	24%	1.744	42%
10 Years Old and Older	20%	1.820	36%

~~(ii) For 1979 models, a percentage trended depreciation figure of 95% is used.~~

~~(b)(i) For the calendar year commencing January 1, 1980 1981, the following schedule is used for heavy equipment:~~

TABLE IB WHEEL LOADERS LIFT TRUCKS CRAWLER TRACTORS LOG SKIDDERS CONCRETE EQUIPMENT BELT LOADERS HYDRAULIC CRANES CRAWLER CRANES AND SHOVELS TRUCK MOUNTED CRANES AND SHOVELS OFF HIGHWAY HAUL UNITS		TABLE IIB CRUSHING EQUIPMENT ROAD MAINTENANCE EQUIPMENT MOTOR GRADERS CRAWLER LOADERS ASPHALT FINISHERS ALL OTHER MISC. EQUIPMENT NOT INCLUDED IN TABLE IB OR IIIB		TABLE IIIB AIR EQUIPMENT HYDRAULIC EXCAVATORS MOTOR SCRAPER WHEEL TRACTORS DITCHERS ROLLERS OTHER COMPACTION EQUIPMENT	
YEAR OF PURCHASE	R.C.L.N.D. MARKET VALUE	YEAR OF PURCHASE	R.C.L.N.D. MARKET VALUE	YEAR OF PURCHASE	R.C.L.N.D. MARKET VALUE
1980	100%	1980	100%	1980	100%
1979	96%	1979	78%	1979	74%
1978	93%	1978	75%	1978	72%
1977	89%	1977	72%	1977	68%
1976	86%	1976	66%	1976	64%
1975	81%	1975	65%	1975	59%
1974	78%	1974	59%	1974	57%
1973	86%	1973	66%	1973	63%
1972	77%	1972	60%	1972	56%
1971	74%	1971	52%	1971	52%
1970	69%	1970	52%	1970	46%
1969	65%	1969	51%	1969	36%
1968	61%	1968	51%	1968	33%
1967	57%	1967	49%	1967	30%
1966	56%	1966	48%	1966	28%
1965	50%	1965	45%	1965	24%
1964	46%	1964	44%	1964	22%
1963	44%	1963	44%	1963	22%
1962	40%	1962	40%	1962	17%
1961	34%	1961	34%	1961	17%
1960	34%	1960	32%	1960	14%
& Older		& Older		& Older	
R.C.L.N.D. — REPLACEMENT COST LESS NORMAL DEPRECIATION					

TABLE I

Wheel Loaders, Life Trucks, Crawler Tractors, Log Skidders, Concrete Equipment, Belt Loaders, Hydraulic Cranes, Crawler Cranes and Shovels, Truck Mounted Cranes and Shovels, Off-Highway Haul Units.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	---	---	100%
1980	96%	1.000	96%
1979	84%	1.051	88%
1978	74%	1.161	86%
1977	67%	1.261	84%
1976	59%	1.356	80%
1975	53%	1.444	77%
1974	47%	1.545	73%
1973	40%	1.935	77%
1972	37%	2.037	75%
1971	33%	2.108	70%
1970	29%	2.187	63%
1969	26%	2.344	61%
1968	23%	2.458	57%
1967	22%	2.595	57%
1966	19%	2.684	51%
1965	17%	2.789	47%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	12%	2.991	36%

TABLE II

Crushing Equipment, Road Maintenance Equipment, Motor Graders, Crawler Loaders, Asphalt Finishers, All Other Miscellaneous Equipment not Included in Table I or III.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	---	---	100%
1980	78%	1.000	78%
1979	68%	1.051	71%
1978	60%	1.161	70%
1977	51%	1.261	64%
1976	47%	1.356	64%

1975	40%	1.444	58%
1974	36%	1.545	56%
1973	31%	1.935	60%
1972	26%	2.037	53%
1971	25%	2.108	53%
1970	23%	2.187	50%
1969	22%	2.344	52%
1968	20%	2.458	49%
1967	19%	2.595	49%
1966	17%	2.684	46%
1965	16%	2.789	45%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	11%	2.991	33%

TABLE III

Air Equipment, Hydraulic Excavators, Motor Scrapers,
Wheel Tractors, Ditchers, Rollers, Other Compaction
Equipment.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	---	---	100%
1980	74%	1.000	74%
1979	65%	1.051	68%
1978	57%	1.161	66%
1977	50%	1.261	63%
1976	43%	1.356	58%
1975	39%	1.444	56%
1974	34%	1.545	53%
1973	29%	1.935	56%
1972	26%	2.037	53%
1971	22%	2.108	46%
1970	16%	2.187	35%
1969	14%	2.344	33%
1968	12%	2.458	29%
1967	11%	2.595	29%
1966	9%	2.684	24%
1965	8%	2.789	22%
1964	8%	2.862	23%
1963	6%	2.911	17%
1962	6%	2.984	18%
1961 and older	5%	2.991	15%

(2)(b) In addition to the schedule in subsection (2)(b)(1) (2)(a), the department multiplies the ~~R.C.L.N.D. market value percentages~~ PERCENTAGE TRENDED DEPRECIATION in Tables ~~IB, IIB, and IIIB I, II, and III~~ by a factor based on equipment use. The multiplier is determined from the following table:

ANNUAL HOURS OF USE (T)	MULTIPLIER
0 ≤ T ≤ 3,120	1
3,120 < T ≤ 4,680	.8
4,680 < T	.667

(3) ~~The tables in subsection (2) (a) were compiled using depreciation schedules with a residual value of 20%.~~ The tables in subsection (2)(b)(1) were compiled to approximate depreciation as given by the resale values of the green guides. The trend factors were compiled using comparative cost multipliers based on data published by the Marshall and Swift Publication Company. More detailed information concerning the table entries can be obtained from the department.

42.21.132 MINING MACHINERY AND EQUIPMENT AND MANUFACTURING MACHINERY. (1)(a) The average market value for the mobile equipment used in mining, including coal and ore haulers, shall be the average resale value of such property as shown in "Green Guides", Volumes I and II, Older Equipment, Off Highway Trucks and Trailers, and Lift Trucks, using the current volumes of the year of assessment. This guide may be reviewed in the Department or purchased from the publisher: Equipment Guide Book Company; 3980 Fabian Way; P. O. Box 10113; Palo Alto, California 94303.

(b) If the above-named guides cannot be used to value these properties, then trended depreciation tables established by the department of revenue shall be used to determine the average market value. The tables are found in subsection (2).

(2)(a)(i) ~~For the calendar year commencing January 1, 1979, the following table is used for mobile mining equipment:~~

TABLE 1A

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TREND</u> ED DEPRECIATION
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.053	88%
3 Years Old	76%	1.119	85%
4 Years Old	67%	1.248	84%
5 Years Old	58%	1.446	84%
6 Years Old	49%	1.497	73%

7 Years Old	39%	1.547	60%
8 Years Old	30%	1.639	49%
9 Years Old	24%	1.744	42%
10 Years Old and Older	20%	1.820	36%

(ii) For 1979 models, a percentage trended depreciation figure of 95% is used.

(b)(i) For the calendar year commencing January 1, 1980 1981, the following table is used for mobile mining equipment:

TABLE IB WHEEL LOADERS LIFT TRUCKS CRAWLER TRACTORS LOG SKIDDERS CONCRETE EQUIPMENT BELT LOADERS HYDRAULIC CRANES CRAWLER CRANES AND SHOVELS TRUCK MOUNTED CRANES AND SHOVELS OFF HIGHWAY HAUL UNITS		TABLE IIB CRUSHING EQUIPMENT ROAD MAINTENANCE EQUIPMENT MOTOR GRADERS CRAWLER LOADERS ASPHALT FINISHERS ALL OTHER MISC. EQUIPMENT NOT INCLUDED IN TABLE IB OR IIIB		TABLE IIIB AIR EQUIPMENT HYDRAULIC EXCAVATORS MOTOR SCRAPERS WHEEL TRACTORS DITCHERS ROLLERS OTHER COMPACTION EQUIPMENT	
YEAR OF PURCHASE	R.C.L.N.D. OF MARKET VALUE	YEAR OF PURCHASE	R.C.L.N.D. OF MARKET VALUE	YEAR OF PURCHASE	R.C.L.N.D. OF MARKET VALUE
1980	100%	1980	100%	1980	100%
1979	96%	1979	78%	1979	74%
1978	93%	1978	75%	1978	72%
1977	89%	1977	72%	1977	68%
1976	86%	1976	66%	1976	64%
1975	81%	1975	65%	1975	59%
1974	78%	1974	59%	1974	57%
1973	86%	1973	66%	1973	63%
1972	77%	1972	60%	1972	56%
1971	74%	1971	52%	1971	52%
1970	69%	1970	52%	1970	46%
1969	65%	1969	51%	1969	36%
1968	61%	1968	51%	1968	33%
1967	57%	1967	49%	1967	30%
1966	56%	1966	48%	1966	28%
1965	50%	1965	45%	1965	24%
1964	46%	1964	44%	1964	22%

1963	44%	1963	44%	1963	22%
1962	40%	1962	40%	1962	17%
1961	34%	1961	34%	1961	17%
1960	34%	1960	32%	1960	14%
& Older	---	& Older	---	& Older	---
R.C.L.N.D. - REPLACEMENT COST LESS NORMAL DEPRECIATION					

TABLE I

Wheel Loaders, Life Trucks, Crawler Tractors, Log Skidders, Concrete Equipment, Belt Loaders, Hydraulic Cranes, Crawler Cranes and Shovels, Truck Mounted Cranes and Shovels, Off-Highway Haul Units.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	---	---	100%
1980	96%	1.000	96%
1979	84%	1.051	88%
1978	74%	1.161	86%
1977	67%	1.261	84%
1976	59%	1.356	80%
1975	53%	1.444	77%
1974	47%	1.545	73%
1973	40%	1.935	77%
1972	37%	2.037	75%
1971	33%	2.108	70%
1970	29%	2.187	63%
1969	26%	2.344	61%
1968	23%	2.458	57%
1967	22%	2.595	57%
1966	19%	2.684	51%
1965	17%	2.789	47%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	12%	2.991	36%

TABLE II

Crushing Equipment, Road Maintenance Equipment, Motor Graders, Crawler Loaders, Asphalt Finishers, All Other Miscellaneous Equipment not Included in Table I or III.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	---	----	100%
1980	78%	1.000	78%
1979	68%	1.051	71%
1978	60%	1.161	70%
1977	51%	1.261	64%
1976	47%	1.356	64%
1975	40%	1.444	58%
1974	36%	1.545	56%
1973	31%	1.935	60%
1972	26%	2.037	53%
1971	25%	2.108	53%
1970	23%	2.187	50%
1969	22%	2.344	52%
1968	20%	2.458	49%
1967	19%	2.595	49%
1966	17%	2.684	46%
1965	16%	2.789	45%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	11%	2.991	33%

TABLE III

Air Equipment, Hydraulic Excavators, Motor Scrapers, Wheel Tractors, Ditchers, Rollers, Other Compaction Equipment.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	---	----	100%
1980	74%	1.000	74%
1979	65%	1.051	68%
1978	57%	1.161	66%
1977	50%	1.261	63%
1976	43%	1.356	58%
1975	39%	1.444	56%
1974	34%	1.545	53%
1973	29%	1.935	56%
1972	26%	2.037	53%
1971	22%	2.108	46%

1970	16%	2.187	35%
1969	14%	2.344	33%
1968	12%	2.458	29%
1967	11%	2.595	29%
1966	9%	2.684	24%
1965	8%	2.789	22%
1964	8%	2.862	23%
1963	6%	2.911	17%
1962	6%	2.984	18%
1961 and older	5%	2.991	15%

(ii)(b) In addition to the schedule in subsection (2)(b)(i) (2)(a), the department multiplies the ~~R.C.L.N.D. market value percentages~~ percentage trended depreciation in tables ~~IB, IIB, and IIIB~~ I, II, and III by a factor based on equipment use. The multiplier is determined from the following table:

ANNUAL HOURS OF USE (T)	MULTIPLIER
$0 \leq T \leq 3,120$	1
$3,120 < T \leq 4,680$	.8
$4,680 < T$	.667

(3) The average market value for stationary machinery and equipment used in mining shall be determined using trended depreciation tables established by the department of revenue. These are 10-year tables and reflect the average life of these properties. The tables are found in subsection (4).

(4)(a) ~~For the calendar year commencing January 1, 1979, the following table is used for stationary mining machinery and equipment:~~

TABLE 2A

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1-Year Old	92%	1.000	92%
2-Years Old	84%	1.078	91%
3-Years Old	76%	1.140	87%
4-Years Old	67%	1.216	81%
5-Years Old	58%	1.392	81%
6-Years Old	49%	1.610	79%
7-Years Old	39%	1.667	65%
8-Years Old	30%	1.725	52%

9 Years Old	24%	1.829	44%
10 Years Old and Older	20%	1.949	39%

(b) For the calendar year commencing January 1, 1980 1981, the following table is used for stationary mining machinery and equipment:

TABLE 2B

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.053	88%
3 Years Old	76%	1.145	87%
4 Years Old	67%	1.232	83%
5 Years Old	58%	1.324	77%
6 Years Old	49%	1.416	69%
7 Years Old	39%	1.746	68%
8 Years Old	30%	1.821	55%
9 Years Old	24%	1.885	45%
10 Years Old and Older	20%	1.966	39%

TABLE 2

<u>Age</u>	<u>Percentage Depreciation</u>	<u>Trend Factor</u>	<u>Percentage Trended Depreciation</u>
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.055	89%
3 Years Old	76%	1.157	88%
4 Years Old	67%	1.257	84%
5 Years Old	58%	1.353	78%
6 Years Old	49%	1.454	71%
7 Years Old	39%	1.555	61%
8 Years Old	30%	1.917	58%
9 Years Old	24%	2.000	48%
10 Years Old and Older	20%	2.070	41%

(5) The ~~tables~~ table in subsections (2)(a) and subsection (4) ~~were~~ was compiled using depreciation schedules with a residual value of 20%. The tables in subsection (2)(b)(i) were com-

piled to approximate depreciation as given by the resale values of the green guides. The trend factors were compiled using comparative cost multipliers based on data published by the Marshall and Swift Publication Company. More detailed information concerning the table entries can be obtained from the department.

(6) The term "manufacturing machinery", as used in [Class 4, Section 84-301, R.C.M. 1947] shall include all equipment, whether permanently or temporarily in place (other than hand tools), that is used to transform raw or finished materials into something possessing a new nature and name and adopted to a new use.

4. The Department proposes to amend the rules to provide tables for January 1, 1981. The changes occur in the trend factors. These factors are based on July 1, 1980 figures. If it appears that the trend factors are too high as of January 1, 1981, because of changes in the economy, the Department will use the emergency rule procedure to amend the factors. The other changes are self-descriptive and are made to enable the Department to better measure market value. It should be noted that for large trucks and commercial trailers (ARM 42.21.106), the depreciation schedule is now based on a 15-year life rather than a 10-year life. For boat trailers (ARM 42.21.107), the Department proposes to use coded or suggested retail figures rather than low book values.

The Department anticipates some further amendments to other personal property valuation rules and will announce any additional proposals in the Montana Administrative Register published November 14, 1980. These additional proposals will also be considered at the hearing announced in this notice.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than December 9, 1980, to:


Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

6. Ross Cannon has been designated to preside over and conduct the hearing.

7. Authority of the Department to make the proposed amendments is based on Section 15-1-201, MCA. The proposed amend-

-2869-

ments implement Sections 15-6-135, 15-6-138, 15-6-139, 15-6-140,
and 15-8-111, MCA.


MARY L. CRAIG, Director

Certified to the Secretary of State 10-21-80

MAK Notice No. 42-2-168

20-10/30/90

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

In the matter of the amendment)	NOTICE OF AMENDMENT
of rule 16-2.18(10)-S1852)	OF RULE 16-2.18(10)-S1852
[recodified as 16.28.202],)	[RECODIFIED AS 16.28.202]
Reportable Diseases)	(Reportable Diseases)

TO: All Interested Persons

1. On June 12, 1980, the department published notice of proposed amendment of rule 16-2.18(10)-S1852 [16.28.202] concerning reportable diseases at page 1557 of the 1980 Montana Administrative Register, issue number 11.
2. The department has amended the rule as proposed.
3. No comments or testimony were received.


A. C. KNIGHT, Director

By 
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State October 21, 1980

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amend-)	NOTICE OF THE AMENDMENT
ment of Rule 23-2.6A1(6)-S6183)	OF RULE 23-2.6A1(6)-
specifying who is eligible)	S6183
for the Driver Rehabilitation)	
Program.)	

TO: All Interested Persons:

1. On June 26, 1980, the Department of Justice published notice of a proposed amendment of rule 23.3.203 (formerly rule 23-2.6A1(6)-S6183) at pages 1686-87 of the 1980 Montana Administrative Register, issue number 12.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.


MIKE GREELY
Attorney General

Certified to the Secretary of State October 1, 1980.

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

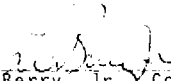
In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
ARM 26.4.405, 26.4.1118 and)	26.4.405, 26.4.1118 and
26.4.1201, relating to)	26.4.1201 RELATING TO
procedures for permit review,)	PROCEDURES UNDER THE STRIP
site inspections, and bond)	AND UNDERGROUND MINE
forfeiture, all under the)	RECLAMATION ACT
Strip and Underground Mine)	
Reclamation Act)	

TO: All Interested Persons:

1. On August 18, 1980 the Board of Land Commissioners and Department of State Lands published notice of proposed amendment of ARM 26.4.405, 26.4.1118 and 26.4.1201 relating to procedures for permit application review, site inspections, and bond forfeiture under the Montana Strip and Underground Mine Reclamation Act. The notice appeared at page 2340 of the 1980 Montana Administrative Register, issue no. 15.

2. The Board and Department have amended the rules as proposed.

3. No comments were received on the proposed amendments.


Leo Berry, Jr., Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE October 21, 1980.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of ARM 26.4.1233, 1236, 1238,)	ARM 26.4.1233, 1236, 1238,
1241 and 1242 relating to the)	1241 and 1242. RELATING
reclamation of abandoned coal)	TO ABANDONED COAL MINED
mined lands)	LANDS RECLAMATION

T0: All Interested Persons:

1. On August 14, 1980, the Board of Land Commissioners published notice of proposed amendment of ARM 26.4.1233, 1236, 1238, 1241 and 1242 regarding procedures for administration of the state abandoned coal mined land reclamation program. The notice appeared at page 2323 of the 1980 Montana Administrative Register, issue no. 15.
2. The Board has amended the rules as proposed.
3. No comments were received on the proposed amendments.

In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of ARM 26.4.123, 128 and 131)	26.4.123, 128 and 131
relating to the reclamation of)	RELATING TO ABANDONED HARD
abandoned hard rock mined)	ROCK MINED LANDS
lands)	RECLAMATION

T0: All Interested Persons:.

1. On August 14, 1980 the Board of Land Commissioners published notice of proposed amendment of ARM 26.4.123, 128 and 131 regarding procedures for the administration of the state abandoned hard rock mined land reclamation program. The notice appear at page 2336 of the 1980 Montana Administrative Register, issue no. 15.
2. The Board has amended the rules as proposed.
3. No comments were received on the proposed amendments.

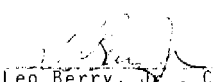
In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of ARM 26.4.223, 228 and 231)	26.4.223, 228 and 231
relating to the reclamation of)	RELATING TO ABANDONED
abandoned opencut mined lands)	OPENCUT MINED LAND
)	RECLAMATION

T0: All Interested Persons:

1. On August 14, 1980 the Board of Land Commissioners published notice of proposed amendment of ARM 26.4.223, 228 and 231 regarding procedures for administration of the state opencut mined land reclamation program. The notice appeared

at page 2332 of the 1980 Montana Administrative Register,
issue no. 15.

2. The Board amended the rules as proposed.
3. No comments were received on the proposed amendments.


Leo Berry, Jr., Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE October 21, 1980.

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

In the matter of adoption of	)	NOTICE OF ADOPTION OF NEW
rules regarding award of	)	RULES 26.4.1307, 26.4.1308
costs, expenses and attorney	)	26.4.1309, 26.4.1210 and
fees in administrative pro-	)	26.4.1121, PERTAINING TO
ceedings, bonding and issuance)	)	AWARD OF COSTS, EXPENSES
of cessation orders under the	)	AND ATTORNEY FEES, BONDING
Strip and Underground Mine	)	AND CESSATION ORDERS
Reclamation Act)	

TO: All Interested Persons:

1. On August 18, 1980 the Board of Land Commissioners and Department of State Lands published notice of proposed adoption of new rules pertaining to award of attorney fees, costs and expenses, bonding and issuance of cessation orders, all under the Montana Strip and Underground Mine Reclamation Act. The notice appeared at page 2329 of the Montana Administrative Register, issue no. 15.

2. The board and department have adopted the rules on bonding and cessation orders as proposed and the rules on attorney fees, costs and expenses with the following changes:

26.4.1307 LITIGATION EXPENSES: WHEN DEPARTMENT MAY AWARD (1) Whenever any final order is issued at the request of any person other than the permittee, permit applicant, or the department as a result of any administrative proceeding under the act, appropriate and reasonable costs, expenses, and attorney fees incurred for or in connection with that person's participation in those proceedings may be assessed against either party.

(2) Whenever any final order is issued in any administrative proceeding under the act at the request of the permittee, permit applicant, or the department, appropriate and reasonable costs, expenses and attorney fees incurred by the permittee, permit applicant, or the department for or in connection with participation in the proceeding may be assessed against any party if it is demonstrated that the party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee, permit applicant, or the department.

(3) For the purposes of subsections (1) and (2), a final order is considered to have been issued at a person's request if the person made a substantial contribution to the issuance of that order.

(4) Attorney fees, costs and expenses recoverable under subsections (1) and (2) include attorney fees, costs and expenses reasonably and necessarily incurred in seeking an

award under this rule.

26.4.1308 LITIGATION EXPENSES: FILING OF PETITION

The petition for an award of costs, expenses, and attorney fees must be filed within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

26.4.1309 LITIGATION EXPENSES: CONTENTS OF PETITION

AND ANSWER (1) A petition for costs, expenses, or attorney fees shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

(a) an affidavit setting forth in detail all costs and expenses including attorney fees reasonably incurred for or in connection with, the person's participation in the proceedings;

(b) receipts or other evidence of such costs and expenses; and

(c) where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(2) Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

26.4.1210 CESSATION ORDERS: ADDITIONAL AFFIRMATIVE OBLIGATIONS

If a cessation order will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the commissioner or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

26.4.1121 BONDING: EXEMPTION FOR STATE AGENCIES AND POLITICAL SUBDIVISIONS

(1) The department may require agencies and political subdivisions of the state to file bonds for non-test pit prospecting operations.

(2) Agencies and political subdivisions of the state must file a bond that meets the requirements of section 82-4-223 and Rules 26.4.1101 through 1120 before the department may issue a mining permit or test pit prospecting permit.

3. Comments were received from Westmoreland Resources Inc. and the Department of Interior, Office of Surface Mining. The following is a summary of the comments received and the board and department's responses to those comments:

(1) COMMENT (Westmoreland): Rule 26.4.1307 should be amended to clearly indicate that a person may receive attorney fees, costs and expenses even if the final order issued is not precisely the order petitioned for.

RESPONSE: The board agrees that an award should not be precluded by incorporation of minor changes in the final order. Clarifying language has been adopted.

(2) COMMENT (OSM): Rule 26.4.1308 should provide that failure to file a petition for attorney fees, costs and expenses "may" constitute a waiver of the right to petition for such award. There may be circumstances in which 45 days may not be sufficient time in which to file such a petition.

RESPONSE: The mandatory language is contained in the federal rules and is required for a state to enter into a cooperative agreement to allow the state to regulate mining on federal land. The suggested change has been made.

(3) COMMENT (OSM): The rules should specifically indicate that award should include expert witness fees and all costs and expenses reasonably incurred in seeking the award of fees, costs and expenses.

RESPONSE: The rule uses the language of the federal and state statutes. However, some persons may not be aware from the statutory language that they may petition for fees, costs and expenses in obtaining the fee, cost and expense award. Language to this effect has therefore been added.

(4) COMMENT (OSM): The limitation on the award of attorney fees against persons other than permittees, permit applicants or DSL should not be limited to situations in which the person acted in bad faith or for purposes of harassment.

RESPONSE: This limitation is a specific requirement of 43 CFR 4.1294. Because adoption of this limitation is a condition of the Secretary of Interior's approval of Montana's permanent regulatory program, failure to adopt would result in federal preemption of the Montana program. The comment is therefore rejected.

(5) COMMENT (OSM): Because the meaning of the term "either party" is not definite, Rule 26.4.1307 should be amended to specifically provide that attorney fees, costs

and litigation expenses may be assessed against the department.


RESPONSE: The federal statute 30 U.S.C. 1275(e) and the state statute (82-4-251(7)) both use the term "either party." The department will soon formally petition OSM to repeal the rule allowing for the award of attorney fees, costs and expenses against the regulatory authority on grounds that the rule is not authorized by the federal statute. If the department is incorrect in its interpretation, the use of the statutory language will allow for assessment against the department without a rule change. The comment is therefore rejected.

(6) COMMENT (OSM): Rule 26.4.1307 should be altered to limit awards of attorney fees, costs and expenses against persons other than the permittee or department to notice of violation and cessation order hearing only because of the possible chilling effect on public involvement in other types of hearings.

RESPONSE: Section 82-4-251(7) provides no authority for making such a limitation. A chilling effect will not occur because awards against persons other than the permittee and department may be made only if bad faith or harassment is shown on the part of the applicant for the award. This comment is therefore rejected.

(7) COMMENT (OSM): It should be made clear that the decision on award of costs is subject to administrative appeals if not made initially by the highest administrative authority.

RESPONSE: Section 82-4-251(7) provides that the department shall make the determination on attorney fees.


Leo Berry, Jr., Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE October 21, 1980.

VOLUME NO. 38

OPINION NO. 109

CONSTITUTIONS - Right to know: form of requests;
CONSTITUTIONS - Right to know: state employee's title, dates and duration of employment, and salary;
EMPLOYEES, PUBLIC - Title, dates and duration of employment, and salary as public information;
OPEN RECORDS - Form of requests;
OPEN RECORDS - State employee's title, dates and duration of employment, and salary;
PUBLIC INFORMATION - Form of requests;
PUBLIC INFORMATION - State employee's title, dates and duration of employment, and salary;
SALARIES - State employee's salary as public information;
MONTANA CONSTITUTION - Article II, sections 9 and 10;
OPINIONS OF THE ATTORNEY GENERAL - 37 OP. ATT'Y GEN. NO. 107 (1978); 37 OP. ATT'Y GEN. NO. 112 (1978); 38 OP. ATT'Y GEN. NO. 1 (1979).

- HELD: 1. A state employee's title, dates and duration of employment, and salary are public information.
2. A state agency may require that requests for disclosure of a state employee's title, dates and duration of employment, and salary be in writing. However, the agency may not require that justification for the requests be given.

16 October 1980

David M. Lewis, Director
Department of Administration
Sam W. Mitchell Building
Helena, Montana 59601

Dear Mr. Lewis:

You have asked for my opinion on the following questions:

1. Is a state employee's title, dates and duration of employment and a verification of salary range public information?
2. If they are public information, may agencies require that requests for this information be made in writing or must this information be released on demand?

The "right to know" of every Montanan is guaranteed by Article II, section 9 of the Montana Constitution, which states:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The right of individual privacy referred to in this provision is guaranteed by Article II, section 10 of the Montana Constitution, which states:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

The Constitution requires that a potential conflict between the public's right to know and an individual's right of privacy be resolved by applying a balancing test. In 37 OP. ATT'Y GEN. NO. 107 at 2 (1978), I set forth the steps involved in a proper application of this balancing test:

(1) determining whether a matter of individual privacy is involved, (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and (3) deciding whether the demand of individual privacy clearly outweighs the demand of public disclosure.

It is the duty of each agency, when asked to disclose information, to apply these steps and make an independent determination within the guidelines of the law, subject to judicial review. See 37 OP. ATT'Y GEN. NO. 107 at 2, 6 (1978); 37 OP. ATT'Y GEN. NO. 112 (1978); 38 OP. ATT'Y GEN. NO. 1 (1979). Such a determination requires a knowledge concerning the information and the people involved that often only the custodian has. It is useful, however, to examine legal precedent in determining and weighing the merits of privacy or disclosure. Therefore, I have researched the questions presented, and offer the following opinion.

With respect to a state employee's title, I find that no matter of individual privacy is even arguably involved.

Individual privacy is involved only "when the information at issue reveals facts about an individual's attitudes, beliefs, behavior, and any other personal aspect of that individual's life." 37 OP. ATT'Y GEN. NO. 107, *supra*, at 3 (1978). A state employee's job title reveals no personal aspect of that individual's life. It is related purely to his or her public role as a public employee. Because no demand of individual privacy is present, no balancing is required, and the public's right to know the job title of a state employee is clearly guaranteed.

The determination of whether a matter of individual privacy is involved with respect to an employee's dates of employment and salary is only slightly more difficult. I reach the same conclusion -- no privacy right is infringed by the disclosure of a state employee's dates of employment and salary. My research has revealed a number of cases from other jurisdictions that support this conclusion, and none that contradict it.

For example, in Penokie v. Michigan Technological University, 93 Mich. App. 650, 287 N.W.2d 304 (1980), the Michigan Court of Appeals held that the names and salaries or wages of each of the persons employed by a state university from 1970 on were public. The court said:

The names and salaries of the employees of defendant university are not "intimate details" of a "highly personal" nature. Disclosure of this information would not thwart the apparent purpose of the exemption to protect against the highly offensive public scrutiny of totally private personal details. The precise expenditure of public funds is simply not a private fact.

287 N.W.2d at 309. Accord, People ex rel. Recktenwald v. Janura, 59 Ill. App.3d 143, 376 N.E.2d 22, 25 (1978); Hastings & Sons Publishing Co. v. City Treasurer, ___ Mass., 375 N.E.2d 299, 303 (1978); Mans v. Lebanon School Board, 112 N.H. 160, 290 A.2d 866, 868 (1972); Gannett Co. v. County of Monroe, 45 N.Y.2d 954, 383 N.E.2d 1151, 411 N.Y.S.2d 557 (1978), aff'g 59 App. Div.2d 309, 399 N.Y.S.2d 534, 536 (1977) (holding that names, job titles, and salary levels of county employees who had been terminated were not information of a personal nature).

In Penokie, *supra*, the Michigan court went on to say that even if the information being sought did infringe on the

privacy of the employees, it would have to be disclosed because "[t]he minor invasion occasioned by disclosure of information which a university employee might hitherto have considered private is outweighed by the public's right to know precisely how its tax dollars are spent." 287 N.W.2d at 310 (footnote omitted).

The balancing test was also applied by the Utah Supreme Court in a case in which the plaintiff sought the names and gross salaries of employees of a state college, Redding v. Brady, ____ Utah 2d ____, 606 P.2d 1193 (1980). The court stated:

Inasmuch as the very existence of public institutions depends upon finances provided by the public, it does not strike us as being discordant to reason that the public would want to know and ought to know, how their money is spent. In regard to the defendant's expressed fears that the exposure of such information will have an adverse effect upon its ability to operate the College, it seems to us that there is even a greater potential for evil in permitting public funds to be expended secretly. In this connection it is also to be realized that by accepting employment at the college its employees are not merely private citizens, but become public servants in whose conduct and in whose salary the public has a legitimate interest.

* * *

In harmony with what has been said herein, it is our conclusion that the rights of freedom of speech and of the press, and of the public to have and to publish the information as to the salaries paid to employees of the college, outweighs considerations as to the right of privacy of the employees, or of the institution to carry on its operations in secret.

606 P.2d at 1196-97.

Even if the information you have asked about did infringe on an individual's privacy, Montana's balancing test likewise would require it to be disclosed.

When applying the final step of balancing the merits of public disclosure and the demands of individual privacy, the general rule must be that

government records are open to the public, with the burden placed upon the custodian of the records to affirmatively show the demands of individual privacy clearly outweigh the merits of public disclosure.

37 OP. ATT'Y GEN. NO. 107, at 4 (1978). In this case, the slight demand of individual privacy does not outweigh the great merit of allowing the public to know who its employees are, what their jobs are, and how much they are being paid. Disclosing such information increases public confidence in its government, and consequently increases government's ability to serve the public.

You have also asked for my opinion as to whether agencies may require that requests for this information be made in writing. In 37 OP. ATT'Y GEN. NO. 107 at 3 (1978), I said:

This initial decision by the [custodian to disclose or withhold information] is subject to judicial review at the insistence of an aggrieved party. ... Art. III, Section 9 of the 1972 Montana Constitution could be asserted in a declaratory judgment action. In order to provide an accurate basis for possible litigation the [custodian] must require all requests for information be in writing and be specific. In turn, any grants or denials of access given by the [custodian] must be in writing and specifically state the reasons therefor.

That opinion involved a situation in which the demand of individual privacy was substantial and the custodian was required to make determinations concerning disclosure on a case-by-case basis. In situations such as that, I adhere to my opinion that requests and responses must be in writing.

In the situation you have presented, however, the demand of individual privacy, if any, is slight, and it is possible to establish a policy covering all cases, rather than make case-by-case determinations. In that circumstance, it is not necessary that requests and responses be in writing. On the other hand, the Constitution does not prohibit a requirement that requests be in writing. An agency, after considering such factors as its own efficiency and the likelihood of individual complaints about disclosure, may, in its discretion, require that requests be in writing.

An agency may not, however, require that justification for the request be given. Our constitution, guaranteeing the public's right to know, is alone sufficient justification. The constitutional provision is "concerned with the necessity of an open government and the public's ability to observe how its government operates regardless of each person's subjective motivation." 37 OP. ATT'Y GEN. NO. 107 at 4 (1978) (emphasis added). The New Hampshire Supreme Court, in Mans v. Lebanon School Board, supra, held similarly, saying:

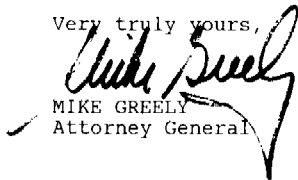
One consideration not relevant to our inquiry is the plaintiff's lack of a sufficient personal reason for seeking the information. ... Plaintiff's rights ... do not depend upon his demonstrating a need for the information.

290 A.2d at 867.

THEREFORE, IT IS MY OPINION:

1. A state employee's title, dates and duration of employment, and salary are public information.
2. A state agency may require that requests for disclosure of a state employee's title, dates and duration of employment, and salary be in writing. However, the agency may not require that justification for the requests be given.

Very truly yours,



MIKE GREELY
Attorney General