RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 23
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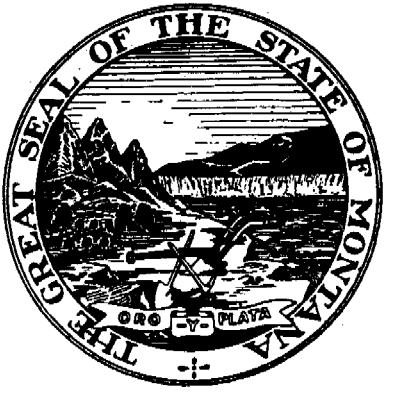

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites member of the public to appear before it or to sent it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1.	Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2.	Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3.	Locate volume and title.
Subject Matter and Title	4.	Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5.	Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6.	Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule in ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1981. This table includes those rules adopted during the period October 1, 1981 through December 31, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1981, this table and the table of contents of this issue of the MAR.

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2.4.113 concerning the use of personal vehicles on state business	NOTICE OF PROPOSED AMENDMENT OF RULE 2.4.113 USE OF PERSONAL VEHICLES - REIMBURSEMENT AT STANDARD RATE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 18, 1982, the Department of Administration proposes to amend rule 2.4.113 which requires that the director of an agency attach a written authorization form to the agency's travel voucher to substantiate reimbursement at the standard mileage rate for the use of personal vehicles on state business.

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

2.4.113 USE OF PERSONAL VEHICLES - REIMBURSEMENT AT STANDARD RATE (1) A department director or designee may authorize an employee to use a personal vehicle on state business and be reimbursed for mileage at the standard rate. ~~The director's written authorization must be attached to the agency's copy of the travel voucher to substantiate reimbursement at the standard mileage rate.~~

3. The amendment is being proposed because the Department of Administration has determined after a review of the need for the personal vehicle use authorization form that the form is not necessary for Department of Administration purposes.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Morris L. Brusett, Director, Department of Administration, Room 155, Mitchell Building, Helena, Montana 59620, no later than January 14, 1982.

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 Morris L. Brusett, Director, Department of Administration, Room 155, Mitchell Building, Helena, Montana 59620, no later than January 14, 1982.

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 subdivision or agency; or from an association having not less than 25 members who

will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be at least 25 persons based on 10% of all state employees, who are potentially directly affected by the proposed amendment.

7. The authority of the agency to make the proposed amendment is based on section 2-18-503, MCA, and the rule implements section 2-18-503, MCA.

MORRIS L. BRUSETT, DIRECTOR
DEPARTMENT OF ADMINISTRATION

By: Morris L. Brusett

Certified to the Secretary of State November 23, 1981 .

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule 4.10.207 RECORDS, rule 4.10.208 VIOLATIONS, rule 4.10.504 RECORDS, rule 4.10.505 VIOLATION; and the adoption of NEW rules regulating the use of endrin, strychnine, aquatic herbicides, and notification.

NOTICE OF PUBLIC HEARING in the matter of the proposed amendment of rule 4.10.207 RECORDS, rule 4.10.208 VIOLATIONS, rule 4.10.504 RECORDS, rule rule 4.10.505 VIOLATION; and the adoption of NEW rules regulating the use of endrin, strychnine, aquatic herbicides, and notification.

TO: All interested persons

1. On January 12, 1982 at 9:30 a.m., Red Rock Village, Miles City, Montana, and on January 14, and January 15, 1982, at 9:30 a.m. in the auditorium, Department of Agriculture/ Livestock Building, 6th and Roberts, Helena, Montana, public hearings will be held to receive testimony in the above entitled matters.

2. Pursuant to authority vested in it by its procedual rules, the Department proposes the amendments and the new rules in this notice in summary form, with a general description of the contents and subject matter of the rules. Any person wishing to obtain a copy of the full text may do so upon request to the Department of Agriculture, Capitol Station, Helena, Montana, (406) 449-2944.

3. The proposed amendment of rule 4.10.207 RECORDS, will;

(a) Make record keeping requirements more specific.

(b) Require submission of records on a monthly basis for restricted use and other pesticides designated by the Department.

(c) Require annual pesticide application reports. (Auth. 80-8-105; Imp 80-8-211.)

4. The proposed amendment of rule 4.10.208 VIOLATIONS, will read as follows:

(1)(a) Refuse or neglect to maintain application records required by ~~this regulation~~ these rules.

(1)(c) Refuse to submit ~~records requested by the department in writting~~ written records as required or as requested by the department. (Auth. 80-8-105; Imp 80-8-211).

5. The proposed amendment of rule 4.10.504 RECORDS, will;

(a) Impose more specific record keeping requirements for restricted use and other pesticides designated by the Department, especially regarding the sale of products to farm applicators.

(b) Require Dealers to report sales of restricted and other Department designated pesticides on a monthly basis.
(c) Require an annual report of all pesticide sales. (Auth. 80-8-105; Imp. 80-8-211).

6. The proposed amendment of rule 4.10.505 VIOLATIONS, will read as follows:
(1)(d) Refuse or, fail to submit ~~records requested in writing by the department~~ written records as required or requested by the department. (Auth. 80-8-105; Imp. 80-8-211).

7. The proposed adoption of new rules regarding the use of endrin will;
(a) Rule I CANCELLATION FOR GRASSHOPPER CONTROL. Cancel the use of endrin for grasshopper control on small grains.
(b) Rule II CONTROL OF CUTWORMS. Only allow the use of endrin to control cutworms in counties approved by the Department.
(c) Rule III RESTRICTION NEAR WATER. Prohibit the application of endrin within a ¼ of a mile of any body of water.
(d) Rule IV VIOLATIONS. State what constitutes a violation of these rules. (Auth. 80-8-105; Imp 80-8-105).

8. The proposed new rule regarding the use of strychnine will;
(a) Rule I BAIT PLACEMENT. Restrict the use to placement of the bait down rodent burrows, in areas where waterfowl has been observed feeding and/or nesting. (Auth. 80-8-105; Imp. 80-8-105).

9. The proposed new rules regarding aquatic herbicides will;
(a) Rule I RESTRICTION OF AQUATIC HERBICIDES. Restrict the sale and use of all aquatic herbicides except for copper sulfate and other copper compounds.
(b) Rule II SALES AND RECORDS. Will restrict sale only to certified applicators and require specific records of such sales.
(c) Rule III CERTIFICATION. Restrict the use to persons certified by the department.
(d) Rule IV QUALIFICATION. Establishes qualifications for certification by training and examination.
(e) Rule V MANAGEMENT PLANS. Requires applicators to submit vegetation management plans to the Department prior to the first aquatic herbicide application per year.
(f) Rule VI REPORTS. Requires applicators to submit post season application reports by November 15.
(g) Rule VII ACCIDENT REPORTS. Requires that all aquatic herbicide accidents be reported immediately to the department.
(h) Rule VIII LIABILITY. Contains a statement concerning liability for damages.
(i) Rule IX VIOLATIONS. State the penalties for violation of the rules. (Auth. 80-8-105; Imp. 80-8-105).

10. The proposed adoption of a new rule regarding notification;

(a) Rule I NOTIFICATION. Requiring notification of property owners of pesticide use precautions. (Auth. 80-8-105; Imp 80-8-105).

11. The authority of the Department to make the proposed amendments is based on section 80-8-105 MCA. The authority of the Department to adopt the new rules is based on 80-8-105 MCA.

12. Interested persons may submit their data, views, or arguments either orally or in writting at the hearing. Written data, views or arguments may also be submitted directly to the Department of Agriculture, Capitol Station, Helena, Montana 59620, no later than January 19, 1982.

13. The Director or his designee will preside over the hearing.

Keith Kelly

Keith Kelly, Deputy Director
Montana Department of Agriculture

Certified to the Secretary of State December 8, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

IN THE MATTER of the Proposed Amendment of ARM 8.18.402 concerning application approvals) NOTICE OF PROPOSED AMENDMENT OF ARM 8.18.402 APPLICATION APPROVAL

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 16, 1982, the State Electrical Board proposes to amend ARM 8.18.402 concerning application approval to include a definition of maintenance.

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

"8.18.402 APPLICATION APPROVAL (1) The practical experience requirement set forth in Sections 37-68-304, 305, MCA, shall be of such nature as is satisfactory to the board.

(a) The board will only accept electrical experience in the construction field. Maintenance work which is exempt under sections 37-68-103, MCA will not be accepted towards fulfillment of the practical experience requirement.

(i) Maintenance is hereby defined as ordinary and customary in-plant or on-site installations, modification, additions, or repairs which shall be limited to: relamping fixtures, replacing ballasts, trouble shooting motor controls, replacing motors, breakers, magnetic starters or connecting some specific item of specialized equipment from an existing branch circuit panel.

(2) All applications shall be approved or disapproved on a case by case basis as the board may deem proper."

3. The board is proposing the amendment as there currently is extensive misinterpretation of section 37-68-103(2), MCA to encompass work which in actuality is not exempt under maintenance.

4. Interested parties may submit their data, views or arguments concerning the rule amendment in writing to the State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407 no later than January 14, 1982.

5. If a person who is directly affected by the proposed amendment 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 State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407 no later than January 14, 1982.

6. If the board 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; 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.

7. The authority of the board to make the proposed amendment is based on section 37-68-201, MCA and implements section 37-68-103 (2), MCA.

STATE ELECTRICAL BOARD
ALBERT BERSANTI, PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 7, 1981.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rules 12.7.201 and 12.7.202) OF RULES RELATING TO
relating to commercial minnow) COMMERCIAL MINNOW SEINING
seining licenses) LICENSES
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. At its January 28, 1982, meeting, the Montana Fish & Game Commission proposes to amend Rule 12.7.201 relating to commercial minnow seining licenses.

2. The rule as proposed to be amended provides as follows: (The interlined and underlined portions are the only affected portions of the rule.)

12.7.201 APPLICATION (1) Any individual desiring to seine for or otherwise capture nongame ~~minnows~~ bait fish (excepting carp, ~~and~~ goldfish, and rainbow smelt) in any lake, stream, or other body of water (other than an artificial pond licensed under Section 87-4-603, MCA) in the state of Montana for sale or commercial distribution, or who desires to transport such ~~minnows~~ bait fish ~~into or out of~~ within the state, must make written application to the director for a commercial ~~minnow~~ bait fish seining license upon a form furnished for that purpose signed by the applicant, stating the name and address of applicant, indicating specifically the waters desired for seining or capturing ~~minnows~~ bait fish, declaring whether or not the applicant has had a seining license revoked at any time and stating the date of revocation if such applies, and indicating ~~whether minnows are to be imported into or exported out of the state~~ the purpose for which the bait fish are being seined.

(2) Said application must be accompanied by a fee of $10 which shall be returned if the application is refused.

(3) Any person seining for or capturing such ~~minnows~~ bait fish who shall have more than 24 dozen minnows in his possession within this state shall be deemed seining for sale or commercial distribution and must be licensed as herein provided.

(4) License shall not be required of any person under 15 years of age who does not seine for or capture more than 24 dozen ~~minnows~~ nongame bait fish per day or have in his possession more than 24 dozen ~~minnows~~ nongame bait fish within this state.

(5) Unless specifically permitted by statute or other department authorization, bait fish may not be imported into or exported from the state of Montana for commercial or other purposes by a licensee or other person.

(6) Each year, the department shall describe waters on which commercial seining for bait fish may take place.

AUTH: Sec. 87-1-301, MCA. IMP: Sec. 87-3-204 and 87-4-602, MCA.

12.7.202 ISSUANCE (1) Before issuing any seining license, the director must first determine that the applicant has not heretofore had a seining license revoked for cause, and that the waters in which applicant desires to seine have been designated by the commission for the seining desired, and if he so finds, he shall be issued a license which shall expire on the ~~30th day of April~~ 31st day of December next following, unless earlier revoked as hereinafter provided. The director shall designate on the license the only waters in which the licensee may seine, the type of seining equipment permitted, and the periods, if any, during the term of the license when seining is not permitted.
AUTH: Sec. 87-1-301, MCA. IMP: Sec. 87-3-204 and 87-4-602, MCA.

3. The proposed amendments are to preserve Montana bait fish resources for private and commercial uses within Montana by prohibiting the import and export by resident or nonresident persons and licensees, clarify existing terms, and change the license expiration from April 30 to December 31 each year.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Art Whitney, Department of Fish, Wildlife, & Parks, 1420 E. 6th Ave., Helena, MT 59620, no later than January 26, 1982.

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 that request along with any written comments to Mr. Whitney at the above address no later than January 18, 1982.

6. If the commission receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. Authority and implementing sections are listed after each rule.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

ATTEST:

James V. Flynn, Secretary
Montana Fish & Game Commission

Certified to Secretary of State December 7, 1981

MAR Notice No. 12-2-104 23-12/17/81

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

In the matter of the adoption of rules regulating fluoride and particulate emissions from existing primary aluminum reduction plants	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Fluoride and Particulate Emissions)

To: All Interested Persons

1. On January 29, 1982, at 10:30 a.m., or as soon thereafter as it may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which regulate fluoride and particulate emissions from existing primary aluminum reduction plants.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I DEFINITIONS For the purposes of this rule, the following definitions apply:

(1) "Aluminum manufacturing" means the electrolytic reduction of alumina (aluminum oxide) to aluminum.

(2) "Emission" means a release into the outdoor atmosphere of total fluorides.

(3) "Existing primary aluminum reduction plant" means any facility manufacturing aluminum, by electrolytic reduction, which was in existence and operating on [date of rule adoption].

(4) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an existing primary aluminum reduction plant.

(5) "Pot" means a reduction cell.

(6) "Total fluorides" means all fluoride compounds as measured by methods approved by the department.

AUTHORITY: Sec. 75-2-111 and 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

RULE II STANDARDS FOR FLUORIDE (1) No owner or operator subject to the provisions of this rule may cause the emission into the atmosphere from any existing primary aluminum reduction plant of any gasses which contain total fluorides in excess of 1.3 kg/Mg (2.6 lb/ton) of aluminum produced at Soderberg plants averaged over any calendar month.

AUTHORITY: Sec. 75-2-111 and 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

RULE III STANDARD FOR VISIBLE EMISSIONS (1) For the purposes of this rule, the board hereby adopts and incorporates herein by reference Method 9 of Appendix A of 40 CFR Part 60. Method 9 is included in the appendix to a federal agency rule and sets forth the method for visual determination of the opacity of emissions from stationary sources

including the determination of plume opacity by qualified observers. The method also includes procedures for the training and certification of observers and procedures to be used in the field for determination of plume opacity. A copy of Test Method 9 may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

(2) No owner or operator subject to the provisions of this rule may cause the emission into the atmosphere of any gasses or particles which exhibit 10% opacity or greater as determined by EPA Reference Method 9 in Appendix A of Title 40, Part 60, of the Code of Federal Regulations.

AUTHORITY: Sec. 75-2-111 and 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

RULE IV MONITORING AND REPORTING (1) For the purpose of this rule the board hereby adopts and incorporates by reference 40 CFR Sec. 60.195 which sets forth test methods and procedures for primary aluminum reduction plants. A copy of this incorporated material may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

(2) An owner or operator shall submit by May 1, 1982 to the department a detailed monitoring program including, but not limited to, a description of monitoring equipment, monitoring procedures, monitoring frequency, and any other information requested by the department. The monitoring program must be approved by the department and may be revised from time to time by the department.

(3) In order to be approved by the department, the monitoring plan must meet the requirements of 40 CFR Sec. 60.195 or equivalent requirements established by the department.

(4) An owner or operator of an existing primary aluminum reduction plant shall submit a quarterly emission report to the department, no later than 45 days following the end of the calendar quarter reported, in a format and reporting parameters as requested by the department.

AUTHORITY: Sec. 75-2-111 and 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

RULE V STARTUP AND SHUTDOWN (1) Operations during periods of startup and shutdown shall not constitute representative conditions for the purpose of determining compliance with this rule, nor shall emissions in excess of the levels required in [Rules II and III] during periods of startup and shutdown be considered a violation of the limits in [Rules II and III].

(2) At all times, including periods of startup and shutdown, owners and operators shall, to the extent practicable, maintain and operate any existing primary aluminum reduction

plant including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

(3) Any owner or operator of an existing primary aluminum reduction plant shall maintain records of the occurrence and duration of any startup or shutdown in the operation of an affected facility and any period during which a continuous monitoring system or monitoring device is inoperative.

AUTHORITY: Sec. 75-2-111 and 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

4. The Board is proposing these rules in order to establish emission standards for existing aluminum reduction plants. These rules provide for an attainable emission limitation at existing aluminum reduction plants. The emission limitation is based upon the standards for new aluminum smelters as provided by the Environmental Protection Agency in 40 CFR Section 60.

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 Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 15, 1982.

6. Sandra R. Muckelston, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed rules is based on sections 75-2-111 and 75-2-203, MCA, and the rules implement section 75-2-203, MCA.

JOHN F. McGREGOR, M.D., Chairman

By
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State December 7, 1981

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

In the matter of the adoption) NOTICE OF VACATION
of a rule setting laboratory) OF MAR NOTICE NO. 16-2-199
fees for analyses of private)
household water supplies)

TO: All Interested Persons

1. On October 29, 1981, the Board of Health and Environmental Sciences published notice of the proposed adoption of a rule setting laboratory fees for analyses of private household water supplies, at pages 1270 and 1271 of the 1981 Montana Administrative Register, issue number 20.

2. The Board vacates the above-referenced notice, and no such rule adoption will occur unless another notice is promulgated in the Montana Administrative Register.

JOHN F. McGREGOR, M.D., Chairman

By JOHN J. DRYNAN, M.D., Director,
Department of Health and
Environmental Sciences

Certified to the Secretary of State December 7, 1981

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

In the matter of the repeal of rule 16.2.201, which sets forth notice procedures for clean air rules	)))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULE ARM 16.2.201 (Clean Air Rules -- Notice)

To: All Interested Persons

1. On January 29, 1982, at 8:30 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the repeal of rule 16.2.201.

2. The rule proposed to be repealed can be found on page 16-19 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because the Clean Air Act was amended in 1979 to delete the requirement contained in subsection (1) of this rule, and the requirements for publishing notice of rulemaking in the Montana Administrative Procedure Act are adequate in light of current governmental fiscal economy measures.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 18, 1982.

5. Sandra R. Muckelston, Helena, MT, has been designated to preside over and conduct the hearing.

6. The authority of the Board to repeal the rule is based on sections 2-4-201 and 2-4-202, MCA, and implements section 75-2-205, MCA.

JOHN F. McGREGOR, M.D., Chairman

By
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State December 7, 1981

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

In the matter of the amendment of rules 16.10.701, 16.10.702, 16.10.703, 16.10.704, 16.10.706, 16.10.707, 16.10.710, 16.10.711, 16.10.712, 16.10.713, 16.10.714, 16.10.715, 16.10.716, pertaining to trailer courts; definitions, layout plan reviews, licensure, inspections, water supply, sewage systems, refuse, vermin control, fuel supply and storage, fire safety, operator requirements, guest registration, and animals.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 16.10.701, 16.10.702, 16.10.703, 16.10.704, 16.10.706, 16.10.707, 16.10.710, 16.10.711, 16.10.712, 16.10.713, 16.10.714, 16.10.715, and 16.10.716. (Tourist Campgrounds and Trailer Courts)

TO: All Interested Persons

1. On January 11, 1982, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.10.701, 16.10.702, 16.10.703, 16.10.704, 16.10.706, 16.10.707, 16.10.710, 16.10.711, 16.10.712, 16.10.713, 16.10.714, 16.10.715, and 16.10.716, pertaining to trailer courts.

2. The rules as proposed to be amended provide as follows (matter to be stricken is interlined, new material is underlined):

16.10.701 DEFINITIONS Terms defined in 50-52-101, MCA, supplement those defined herein. The following definitions apply when used in the act or this sub-chapter unless the context clearly indicates otherwise:

(1) "Act" means the tourist campgrounds and trailer courts act, found in Title 50, Chapter 52, Montana Code Annotated.

(2) "Applicant" means the person whose signature appears on the license application or plan submittal.

~~(1)~~ (3) "Approved" means authorized in writing by the department.

(4) "Building authority" means the building codes division, department of administration, or its local authorized agent.

(5) "Camping trailer" means a canvas or folding structure mounted on wheels and designed for travel, recreation and vacation.

(6) "Campsite" is that part of a tourist campground designated for the placement of a single tent and the exclusive use of its occupants.

~~(2)~~ (7) "Dependent trailer" means a trailer which has no toilet, lavatory, ~~and~~ or bathing facilities.

~~(3)~~ (8) "Health authority" means the ~~department of health and environmental sciences,~~ local health officer, local sanitarian, or other authorized representative.

~~(4)~~ (9) "Independent trailer" means a trailer which has a toilet, lavatory, and bathing facilities. Omission of one or more of these facilities will classify the trailer as a dependent trailer.

(10) "Lateral" means that portion of the water system or sewerage system which extends horizontally from the water or sewer main to the water or sewer riser pipe.

~~(5)~~ (11) "License" means a written ~~license~~ permit issued by the department ~~permitting~~ authorizing a person to operate ~~and maintain a trailer parking area~~ a tourist campground or trailer court under the provisions of this sub-chapter.

(12) "Mobile home" means a trailer which is a factory assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit on its own running gear and designed to be used as a dwelling unit.

(13) "Motor home" means a trailer which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

(14) "Parcel of land" means a place or area capable of legal description and including one or more contiguous lots owned or leased by the same person or family.

~~(6) "Person" means any individual, firm, trust, partnership, public or private association or corporation.~~

(15) "Pickup camper" means a trailer designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

(16) "Plan submittal" means the information and fees required under rule 16.10.702.

(17) "Potable water" means safe for human consumption in terms of bacteriological and chemical quality.

(18) "Public" means individuals in general without restriction or selection.

(19) "Public sewage disposal system" means a sewage disposal system that serves 10 or more families or 25 or more persons at least 60 days out of the calendar year.

(20) "Public water supply system" means any installation or structure that provides water for human consumption and serves 10 or more families or 25 or more persons at least 60 days out of the calendar year.

~~(7)~~ (21) "Sanitary station" means a facility used for removing and disposing of wastes from ~~self contained~~ trailer holding tanks.

~~(8)~~ (22) "Self-contained trailer" means a trailer which can operate independently of connections to sewer, water and electric systems. It contains a water-flushed toilet and lavatory, shower and kitchen sink, either or all of which are

connected to water storage and sewage holding tanks located within the trailer.

~~(9)~~ (23) "Service building" means a structure housing shower or bath, toilet, lavatory, and such other facilities as may be required by this sub-chapter.

~~(10)~~ (24) "Sewer connection" means the connections consisting of all pipes, fittings, and appurtenances from the drain outlet of the trailer to the inlet of the corresponding sewer riser pipe of the sewage system serving the ~~trailer parking area~~ tourist campground or trailer court.

~~(11)~~ (25) "Sewer riser pipe" means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each trailer space.

~~(12)~~ (26) "Stop-and-waste valve" means any unit that permits the outlet valve to be drained through a port or drain hole provided in the valve.

(27) "Tent" means a collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors.

~~(13)~~ (28) "Trailer" means ~~any of the following:~~ a camping trailer, mobile home, motor home, pickup camper, or travel trailer.

~~(a) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, and, when factory equipped for the road, it shall have a body width not exceeding eight feet and a body length not exceeding 32 feet.~~

~~(b) "Pickup coach" means a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.~~

~~(c) "Motor home" means a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self propelled vehicle.~~

~~(d) "Camping trailer" means a canvas or folding structure mounted on wheels and designed for travel, recreation and vacation use.~~

~~(e) "Mobile home" means any vehicle or similar portable structure designed for use as a conveyance upon highways so designed or constructed as to permit occupancy for dwelling or sleeping purposes.~~

~~(14) "Trailer court" means a parcel of land in which two or more spaces are occupied or intended for occupancy by trailers for transient dwelling purposes.~~

~~(15)~~ (29) "Trailer space" means ~~a parcel of land in a trailer parking area~~ that part of a tourist campground or trailer court designated for the placement of a single trailer and the exclusive use of its occupants.

(30) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses; and, when

factory equipped for the road, it shall have a body width not exceeding 8 feet and a body length not exceeding 32 feet.

~~(16)~~ (31) "Water connection" means the connection consisting of all pipes, fittings, and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the trailer.

~~(17)~~ (32) "Water riser pipe" means that portion of the water lateral ~~supply system serving the trailer parking area~~ which extends vertically to the ground elevation and terminates at a designated point at each trailer space.

~~(18)~~ (33) "Water station" means a facility for supplying potable water to the water storage tanks of trailers ~~with potable water~~ and other potable water containers.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.702 LAYOUT PLAN REVIEW (1) Scaled layout plans and specifications of a proposed ~~house trailer park~~ tourist campground or trailer court ~~shall~~ must be prepared and submitted to the department~~,~~ and the local health authority~~,~~ ~~and the local legal zoning authority, if any,~~ for approval prior to the ~~establishing of a house trailer park~~ construction of a tourist campground or trailer court or the altering or enlarging of an existing ~~house trailer park~~ tourist campground or trailer court.

(a) Plans for the water supply and distribution system, sewage collection and disposal system, solid waste disposal method and surface drainage control measures for a tourist campground or trailer court must be prepared and submitted to the department in accordance with the sanitation in subdivisions act.

(b) Plans and specifications for any service building, cabin, cooking shelter, or other structure at a tourist campground or trailer court which is available to the public must be submitted to and approved by the building authority before the department may approve the construction or expansion of that tourist campground or trailer court.

(2) Detailed layout plans shall be drawn to scale and shall show:

~~(a) Legal description of property.~~

~~(b) Number and size of all trailer spaces and detail of each typical lot, if different.~~

~~(c) location and width of roadways and walkways.~~

~~(d) location and distances between water and sewer lines below ground and distances between water and sewer risers above ground. Include pipe diameters.~~

~~(e) Cross section of water and sewer connections and risers. Include pipe diameters.~~

~~(f) Cross section of septic tank including dimensions and lengths of absorption field, dimensions of seepage pits or dry wells, depth and width of trenches if applicable.~~

~~(g)--Results-of-soil-percolation-test-for-septic-tank disposal-if-applicable.~~

~~(h)--Cross-section-of-well-showing-depth-of-well, depth-of-casing,-casing-diameter,-casing-seal,-location-of pump-and-pressure-system,-details-of-spring-and-chlorination system-if-applicable.--If-water-is-from-a-well,-a-log-of-the well-shall-be-provided.--Such-forms-are-available-from-the department-or-well-driller.--~~

~~(i)--Water-and-sewer-line-gradients-and-pipe-material.--~~

~~(j)--Distance-between-water-and-sewerage-lines.--~~

~~(k)--Direction-of-underground-flow-of-water,-indicated by-arrow-on-face-of-plans.--~~

~~(l)--Location-of-sewer-line-vents-and-distances-between cleanouts-and-traps,-and-a-typical-cross-section-of-each.~~

~~(m)--Height-of-water-table-at-its-normal-seasonal-peak.~~

~~(n)--Detail-of-typical-electrical-service-connections.~~

~~(o)--Location-and-detail-of-refuse-storage-areas.--~~

~~(p)--Location-and-detail-of-service-building-if-requirement-not-excluded-by-regulation.~~

(a) Name and address of developer.

(b) Name and address of architect, engineer, or designer.

(c) Legal description of property.

(d) Number and size of all trailer spaces and campsites and detail of each typical trailer space or campsite.

(e) Water service lateral pipe size, material, and location on layout plan.

(f) Sewer service lateral pipe size, material, gradient, and location on layout plan.

(g) Detail of water and sewer line crossings.

(h) Cross section of water riser indicating pipe size and material.

(i) Cross section of stop-and-waste valve and drain system.

(j) Cross section of sewer riser indicating pipe size, material, and provisions for capping when not in use.

(k) Location of water and sewer riser on typical trailer space.

(l) Location and detail of watering station.

(m) Location and detail of sanitary station.

(n) Location and detail of each solid waste storage area.

(o) Location and detail of service building and any other building.

(p) Information relating to the water supply and distribution system; sewage collection, treatment, and disposal system; surface drainage; and solid waste disposal as required by ARM 16.16.104 and the appropriate review fee as required by ARM 16.16.803.

~~(3)--When,-after-review-of-the-application,-plans-and-inspection,-the-health-authority-is-satisfied-that-the-trailer park-meets-the-requirements-of-this-sub-chapter,-a-license-to-operate-shall-be-issued.~~

~~(4)--Any-person-whose-application-for-a-license-under-this-sub-chapter-has-been-denied-may-request-and-shall-be--granted-a-hearing-on-the-matter-before-the-board-under-the-procedure-provided-by-the-licensing-policy-for-trailer-courts.~~

(3) The use of existing utilities in a proposed tourist campground or trailer court may be approved only if it can be shown that the existing utilities meet or exceed current standards. Conversion of a tourist campground or trailer court from one type to another must be approved by the department and the health authority.

(4) Within 60 days after the receipt of an incomplete plan submittal the department will make any deficiencies known to the applicant.

(5) Within 60 days after the receipt of a complete plan submittal the department must take final action, unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(6) When, after review of the plans and specifications for the proposed tourist campground or trailer court, the department and health authority are satisfied that the tourist campground or trailer court meets the requirements of this sub-chapter, the sanitation in subdivisions act, and the public water supply act, approval will be given authorizing construction of the tourist campground or trailer court.

(7) Approval to construct is for a period not to exceed 2 years, after which, if construction has not begun, plans and specifications must again be submitted for re-evaluation.

(8) No campsite or trailer space in a proposed tourist campground or trailer court or proposed addition to an existing tourist campground or trailer court may be occupied until all improvements have been made as submitted in the approved plans, an inspection has been made by the health authority or department to confirm that fact, and a license has been issued authorizing the use of such space.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.703 LICENSURE (1) It ~~shall-be~~ is unlawful for any person to operate ~~any-trailer-parking-area~~ a tourist campground or trailer court ~~within-the-state-of-Montana~~ unless he holds a ~~valid~~ current license issued ~~annually~~ by the ~~health-authority~~ department and validated by the local health officer in the name of such a person for the specific tourist campground or trailer park.

(2) Licenses shall expire on December 31 of the year in which issued.

(3) A nonrefundable $20 license application fee must be submitted by all applicants. An applicant wishing to license

a new establishment shall submit his application and fee when the establishment is complete and ready for inspection.

(4) The department or the health authority shall make a pre-licensing inspection after a complete license application and fee have been received. If the tourist campground or trailer court is in compliance with this sub-chapter and the act, a license will be issued. If the establishment is not in compliance, the department shall commence proceedings to deny the license application pursuant to 50-52-207, MCA.

~~(3)~~ (5) ~~Every person holding a license~~ A licensee shall give notice in writing to the ~~health authority after having sold, transferred, given away or otherwise disposed~~ department at least 30 days prior to selling, transferring, giving away, or otherwise disposing of interest in or control of any ~~trailer park~~ tourist campground or trailer court. Such notice shall include the name and address of the person succeeding to the ownership or control of ~~such trailer park~~ the tourist campground or trailer court.

~~(4)~~ (6) Upon application in writing for issue or renewal of ~~the~~ a license and deposit of a fee of $20, the department shall issue or renew the license ~~shall be issued or renewed~~ if the ~~parking area~~ tourist campground or trailer court is in compliance with all applicable provisions of this sub-chapter.

~~(5) Annual issue of licenses can be made upon recommendation of the health authority, the local sanitarian or the local health officer.~~

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102, 50-52-201 to 50-52-203 MCA

16.10.704 INSPECTIONS ~~(1) The health authority is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with the sub-chapter.~~

(1) A licensee shall permit representatives of the department and the health authority to inspect the tourist campground or trailer court at reasonable hours for determining compliance with the requirements of the act and this sub-chapter.

(2) ~~It shall be the duty of every occupant of a trailer park to give the owner thereof or his agent or employees~~ A licensee shall arrange for access to any part of ~~such~~ the trailer ~~parking area or its premises~~ space or campsite at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this sub-chapter or with any lawful order pursuant to the provisions of this sub-chapter.

(3) Immediately following each inspection, representatives of the department or the health authority shall give the operator a copy of an inspection report which notes any deficiencies and sets a time schedule for compliance.

(a) If plans for correction are not required, the department or health authority shall determine an acceptable time schedule for correction.

(b) If plans for correction are required, at the request of the department or health authority the licensee shall submit such plans and a proposed time schedule for correction. Such time schedule and plans, if approved, shall become the basis for licensure.

(4) Modifications will not be required to be made in the water supply and distribution system or sewage collection and disposal system serving a tourist campground or trailer court licensed as of the date of adoption of this rule or approved and constructed in accordance with a prior regulation, unless upgrading is necessary due to system failure as described in 16.10.706(6) and 16.10.707(9).

(5) Violation of this sub-chapter or the act may be enjoined by the department pursuant to 50-1-103, MCA, or a criminal charge may be brought pursuant to 50-52-105, MCA.

(6) A local board of health may adopt regulations which are more stringent than this sub-chapter, pursuant to 50-2-116, MCA.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102, 50-52-103, 50-52-301 MCA

16.10.706 WATER SUPPLY (1) An ~~accessible, adequate, safe~~ and potable supply of water ~~shall~~ must be provided in each tourist campground or trailer court ~~trailer park~~. Where a ~~public supply of water~~ municipal water supply of satisfactory quantity and pressure is available, connection ~~shall~~ must be made thereto and its supply used exclusively. When a satisfactory ~~public~~ municipal water supply is not available, a private or public water supply system may be developed and used as approved by the department and health authority.

~~(2) The water supply shall be capable of supplying 50 gallons per space per day for all spaces lacking individual water connections and 175 gallons per day per space for all spaces provided with individual water connection.~~

~~(3) Every well or suction line of the water supply system shall be cased, grouted, located and constructed in such a manner that neither underground nor surface contamination will reach the water supply from any source. The following minimum distances between wells and various sources of contamination shall be required:~~

~~Contamination Sources~~	~~Well of Suction Line Distance in Feet~~
~~Building Sewer~~	~~50~~
~~Septic Tank~~	~~50~~
~~Disposal Field~~	~~100~~
~~Seepage Pit or Dry Well~~	~~100~~

~~(4) No well casing shall terminate in any pit or space extending below ground level. All well casings shall be~~

~~properly-sealed-and-shall-terminate-above-the-ground-level by-at-least-one-foot-and-by-at-least-6-inches-above-the-well house-floor.--Casings-shall-be-surrounded-by-a-concrete-floor or-collar-extending-at-least-3-feet-in-all-directions-and-shall-slope-away-from-the-casing.~~

~~(5)--All-water-storage-reservoirs-shall-be-covered,-water-tight-and-constructed-of-impervious-material.--Overflows-and vents-of-such-reservoirs-shall-be-effectively-screened.--Manholes-shall-be-constructed-with-metal-overlapping-covers-to-prevent-the-entrance-of-contaminating-material.~~

~~(6)--All-water-piping,-fixtures-and-other-equipment-shall be-constructed-and-maintained-in-accordance-with-the-Montana-State-Plumbing-Code-and/or-local-plumbing-codes-and-shall-be-of-a-type-and-in-locations-approved-by-the-health-authority.~~

~~(7)--The-water-piping-system-shall-not-be-connected-to-non-potable-or-questionable-water-supplies-and-shall-be-protected-against-the-hazards-of-backflow-or-back-siphonage.~~

~~(8)--The-system-shall-be-so-designed-and-maintained-so-as-to-provide-a-pressure-of-not-less-than-20-pounds-per-square inch-under-normal-operating-conditions-at-service-buildings-and-other-locations-requiring-potable-water-supply.---~~

~~(9)--The-figures-in-the-Guide-for-Water-Lines-on-the--following-page-are-provided-as-a-guide.--In-most-cases,-particularly-when-a-large-number-of-trailers-are-connected,-a-thorough-engineering-study-should-be-provided-by-the applicant-to-determine-actual-needs.~~

~~(a)--The-previous-pipe-line-sizes-are-based-on-having 50-psi-pressure-at-the-water-source-and-a-minimum-pressure of-20-psi-at-each-trailer.---Where-larger-areas-of-grass-are to-be-watered-in-a-trailer-court,-the-number-of-connections-for-the-line-sizes-shown-should-be-reduced-and-the-volume-of water-provided-should-be-increased-accordingly.~~

~~(b)--Where-appreciable-storage-is-provided,-the-minimum capacity-flows-may-be-reduced.~~

~~Guide-for-Water-Lines~~

~~No.-of-Trailers~~	~~Minimum-Water Line-Size~~	~~Minimum-Volume Water-Needed~~
~~1~~	~~3/4-inch~~	~~5-gpm~~
~~2~~	~~3/4-inch~~	~~10-gpm~~
~~3~~	~~1-inch~~	~~14-gpm~~
~~4~~	~~1-inch~~	~~17-gpm~~
~~5~~	~~1-1/2-inches~~	~~20-gpm~~
~~6~~	~~1-1/2-inches~~	~~23-gpm~~
~~7~~	~~1-1/2-inches~~	~~26-gpm~~
~~8~~	~~1-1/2-inches~~	~~29-gpm~~
~~9~~	~~1-1/2-inches~~	~~32-gpm~~
~~10~~	~~1-1/2-inches~~	~~35-gpm~~
~~10-12~~	~~2-inches~~	~~40-gpm~~
~~12-14~~	~~2-inches~~	~~45-gpm~~

14-16	2-inches	50-gpm
16-18	2-inches	55-gpm
18-20	2-inches	60-gpm
20-25	3-inches	73-gpm
25-30	3-inches	85-gpm
30-35	3-inches	97-gpm
35-40	3-inches	110-gpm
40-45	4-inches	122-gpm
45-50	4-inches	135-gpm
50-70	4-inches	2-gpm-additional for-each trailer
70-100	6-inches	2-gpm-additional for-each trailer

(10) (2) Each-trailer-or-mobile-home-park-accommodating trailers-with-water-storage-tanks-shall-be-provided-with one-or-more-easily-accessible-water-supply-outlets-for-filling-the-trailer-water-storage-tanks. A common watering station is required in each tourist campground or trailer court, except those in which each trailer space or campsite is provided with an individual water service connection. Such-water-supply-outlets A watering station shall consist of at least a water hydrant and the necessary appurtenances and shall must be protected against the hazards of backflow, back siphonage and hose contamination. Watering stations must be located so as to eliminate the possible use of the hose for sewage holding tank flushing.

(11) (3) If facilities for individual water service connections are provided, the following requirements shall apply:

(a) Riser pipes provided for individual water service connections shall must be so located and constructed that they will not be damaged by the parking of trailers. Protection may consist of posts, fences, or other permanent barriers.

(b) Water riser pipes shall extend at least 4 inches above ground elevation. The pipe size shall must be at least three-quarters of an inch. Each-shall-be-provided-with-double faucets.

(c) Adequate provisions shall must be made to prevent freezing of service lines, valves and riser pipes.

(d) Where water risers are provided for irrigation use, a "backflow preventer" must be installed in the water service line at or near the outlet.

(d) (e) Stop-and-waste valves and cocks may be installed in an underground service line only under the following conditions:

(i) A Stop stop-and-waste valve must be located well a minimum of 2 feet above the level of the water table and in soil providing good drainage.

(ii)--An-inspection-pipe-at-least-6-inches-in-diameter-shall-extend-from-the-stop-and-waste-valve-to-the-ground-

~~surface.--This shall be used to inspect condition of area surrounding stop-and-waste valve.--At least 6 inches of air space must be provided between stop-and-waste valve and bottom of inspection opening.~~

~~(iii)~~ (ii) ~~When stop-and-waste valves are used, there~~ There must be at least 10 feet horizontal distance between a sewer line connection and a stop-and-waste valve.

~~(iv)--Water must not be permitted to pool around stop-and-waste valve.~~

~~(e)~~ (f) Valves ~~shall~~ must be provided for the outlet of each water service connection. They shall be turned off and the outlets capped or plugged when not in use.

~~(12) Operators of courts containing 10 or more spaces served by a private water supply shall be certified in compliance with Title 37, Chapter 42, MCA.~~

(4) A water service lateral must be constructed as follows:

(a) Pipe used for a water service lateral must be copper, 160 psi-rated plastic approved for potable water supply use, or an equivalent.

(b) Inside pipe diameter must be a minimum of 3/4 inch.

(c) A water service lateral must be laid at least 10 feet horizontally from any existing or proposed sewer unless:

(i) it is laid in a separate trench or on an undisturbed earth shelf located on one side of the sewer, in either case at such an elevation that the bottom of the water service lateral is at least 12 inches above the top of the sewer.

(ii) the sewer is constructed of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe and tested for leakage in accordance with rule 16.10.707(7)(a). In such a case, a lateral may be laid without regard to vertical separation from the sewer. In order to provide for maintenance of the sewer, the water service lateral must be kept to one side of the sewer, with crossings minimized.

(d) A water service lateral crossing a sewer line must be laid to provide a minimum vertical distance of 12 inches between the bottom of the water service lateral and the top of the sewer line unless a single length of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe tested for leakage in accordance with rule 16.10.707(7)(a) is centered on the crossing, in which case the pipe may be laid without regard to vertical separation.

(5) An operator of a public water supply system serving a tourist campground or trailer court must be certified in compliance with Title 37, Chapter 42, and the rules adopted pursuant thereto.

(6) A water supply system is determined to have failed and to require replacement or repair when the water supply becomes unsafe (exceeds the maximum contaminant levels as specified in the rules of the Montana public water supply act) or inadequate (less than 20 psi measured at the extremity of the distribution line during peak usage).

(7) Extension, alteration, repair, or replacement of water distribution systems, or development of new water supply systems must be in accordance with ARM 16.20.401 through 16.20.405, adopted pursuant to the sanitation in subdivisions act.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.707 SEWAGE SYSTEM (1) An adequate and safe sewage system ~~shall~~ must be provided in ~~all trailer parking areas~~ each tourist campground or trailer court for conveying, treating and disposing of all sewage. ~~Such systems shall be designed, constructed and maintained in accordance with state and/or local plumbing codes.~~ Where a municipal sewage treatment and disposal system of adequate capacity is available, connection must be made thereto and its services used exclusively. When a municipal sewage system is not available, a private system may be developed and used as approved by the department and health authority. Such system must be designed and constructed in accordance with the rules adopted pursuant to the sanitation in subdivisions act. Where a local board of health has adopted a regulation governing individual sewage treatment and disposal systems, the more stringent requirement will apply.

(2) A sanitary station is required in each tourist campground which provides trailer space for self-contained trailers, except the following:

(a) Where each trailer space is provided with an individual sewer riser.

(b) Where a sanitary station is available for public use on a full-time basis within a reasonable distance from the tourist campground.

(c) Where installation of a sanitary station is not feasible due to lack of electricity, water under pressure, or other considerations; and where the campground is designed for use only by tent campers and use by travel trailers is not expected, the requirement for a sanitary station may be waived.

(3) A sanitary station must be provided in the ratio of one for every 100 trailer spaces lacking individual sewer risers or fraction thereof.

~~(a)~~ (4) A sanitary station~~, when required,~~ shall consist ~~be provided consisting~~ of at least a ~~trapped four inch~~ 4-inch sewer riser pipe connected to the trailer ~~parking area~~ court or tourist campground sewage system surrounded at the inlet end by a concrete apron at least 4 feet square sloped to the drain and provided with a suitable self-closing hinged cover and a water outlet with ~~the~~ approved anti-back siphoning devices connected to the ~~parking area~~ trailer court or tourist campground water supply system to permit periodic washdown of the immediate adjacent area. Signs must be placed at such locations stating the water is unsafe for drinking.

~~(b)--Each-trailer-park-accommodating-self-contained-units-shall-be-provided-with-a-sanitary-station-in-the-ratio-of-one-for-every-100-self-contained-trailers-or-fraction-thereof.~~

~~(c)--The-sanitary-stations-shall-be-screened-from-other-activities-by-visual-barriers-such-as-fences,-walls-or-natural-growth-and-shall-be-separated-from-any-trailer-space-by-a-distance-of-at-least-50-feet.~~

~~(d)--All-sewer-lines-shall-be-located-in-trenches-of-sufficient-depth-so-as-to-be-protected-from-breakage-by-traffic-or-other-movements.---They-shall-be-separated-from-the-water-supply-system-by-at-least-10-feet-below-grade-and-by-at-least-6-feet-at-finished-grade-unless-stop-and-waste-valves-are-used.---Sewers-shall-be-at-a-grade-which-will-insure-a-velocity-of-2-feet-per-second-when-flowing-full.---All-sewer-lines-shall-be-constructed-of-materials-approved-by-the-health-authority,-shall-be-adequately-vented-and-shall-have-water-tight-joints.~~

~~Guide-for-Sewer-Lines~~

~~No.-of-Trailers~~	~~Minimum-Sewer-Size~~	~~Minimum-Sewer-Grade~~
~~1---15~~	~~4-inches~~	~~1.25-percent~~
~~15---40~~	~~6-inches~~	~~0.62-percent~~
~~Above-40~~	~~8-inches~~	~~0.40-percent~~

~~(e)~~ (5) If facilities for individual sewer connections are ~~required,~~ provided, the following requirement shall apply:

~~(i)~~ (a) The sewer riser pipe shall have a ~~four-inch~~ 4-inch diameter and shall be so located on the trailer space that ~~the~~ a sewer connection to the trailer drain outlet will approximate a vertical position. It must be separated from the water riser by at least 6 feet at finished grade.

(b) Surface drainage must be diverted away from the riser.

(6) A sewer service lateral must be constructed as follows:

(a) A sewer service lateral must be water tight at all points, tested by filling with water or other equivalent test. A sewer service lateral required to be constructed of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe must be tested under pressure of at least a 10-foot head of water for a minimum of 15 minutes, or other equivalent test.

(b) Pipe size must be a minimum of 4 inches in diameter.

(c) A sewer service lateral must be sloped to maintain a 2-foot/second flow velocity (1.2% slope for 4-inch line).

(7) An operator of a public sewage disposal system serving a tourist campground or trailer court must be certified in compliance with Title 37, Chapter 42, MCA.

(8) A sewage treatment and disposal system must be deemed to have failed and require replacement or repair if any of the following conditions occur:

(a) The system refuses to accept sewage effluent at the rate of application.

(b) Sewage effluent seeps from or ponds on or around the system.

(c) Effluent from the sewage treatment and disposal system contaminates a potable water supply or state waters.

(d) The sewage system is subjected to mechanical failure, including electrical outage, collapse or breakage of a septic tank, lead line, or drainfield line.

(9) Extension, alteration, or replacement of any sewage treatment and disposal system must be in accordance with the rules of the sanitation in subdivisions act.

~~(ii)~~ (10) The sewer connection shall have a nominal inside diameter of at least 3 inches and the slope of any portion thereof ~~shall~~ must be at least ~~one-fourth~~ 1/4 inch per foot. The sewer connection shall consist of one pipe line only, without any branch fitting. ~~All joints shall~~ Each joint must be watertight.

~~(iii)~~ (11) All materials used for sewer connections ~~shall~~ must be corrosion resistant, non-absorbent and durable. The inner surface ~~shall~~ must be smooth. ~~They shall be of cast iron with leaded joints for at least 10 feet on each side of the point where sewer lines cross over or under any water line.~~

(a) An exception to the requirement of the foregoing sentence is that "flex hose" may be used for making the sewer connection only in a tourist campground and only when the connection will be made for 14 days or less.

~~(iv)~~ (12) Provisions ~~shall~~ must be made for plugging or capping the sewer riser pipe with a tamper resistant type cap when a trailer does not occupy the space. Such cap must provide an air tight seal. ~~Surface drainage shall be diverted away from the riser by a concrete collar or apron extending at least 12 inches radially from the riser. Collars should be about 4 inches thick.~~

~~(f)~~ (13) No liquid wastes from sinks , showers, or baths ~~shall~~ may be discharged onto or allowed to accumulate on the ground surface. Such waste must be discharged into the sewage treatment and disposal system serving the trailer court or tourist campground or into an alternate system approved by the department and health authority.

~~(g) Where the sewer lines of the trailer park are not connected to a public sewer, all proposed sewage disposal facilities shall be approved by the health authority prior to construction. Effluents from sewage treatment facilities shall not be discharged into any water or on the surface of any ground of the state except with prior approval of the health authority.~~

~~(i) Septic tank sizes are calculated as follows:~~

~~Septic Tank Sizes for Courts of Various Numbers of Units~~

~~No. of Trailers Served per Septic Tank~~	~~Minimum Size of Septic Tank Needed~~	~~Recommended Cleaning Frequency~~
~~1~~	~~750 gallons~~	~~Generally, when sludge accumulates to two feet in depth, but in no case should sludge~~
~~2~~	~~1,000 gallons~~	
~~3~~	~~1,250 gallons~~	
~~4~~	~~1,500 gallons~~	
~~5~~	~~1,750 gallons~~	

6	2,000 gallons	be allowed to ac-
7	2,250 gallons	cumulate closer than one foot from the bottom of the baffled outlet.

(ii) For over 7 spaces, provide at least 200 gallons additional capacity for each unit.

(iii) All septic tanks must be provided with a four inch I.D. inspection clean out port terminating at ground level. Such port shall be securely capped or plugged when not in use.

(h) Operators of courts containing 10 or more spaces served by a non municipal system shall be certified in compliance with Title 37, Chapter 42, MCA.

(i) The size of any sewage absorption field depends upon the amount of sewage effluent per day and the absorptive quality of the soil. The absorptive quality of the soil is determined by a percolation test. The following table shows rate of percolation using water and the approximate gallons of sewage which could be absorbed.

If your soil absorbs one inch of water in	Rate of Percolation each square foot of this soil will absorb
0 minutes	10.0 gallons per day
1 minute or less	5.0 gallons per day
2 minutes	3.5 gallons per day
3 minutes	2.9 gallons per day
4 minutes	2.5 gallons per day
5 minutes	2.2 gallons per day
6 minutes	2.0 gallons per day
7 minutes	1.9 gallons per day
8 minutes	1.8 gallons per day
9 minutes	1.7 gallons per day
10 minutes	1.6 gallons per day
15 minutes	1.3 gallons per day
30 minutes	0.9 gallons per day
45 minutes	0.8 gallons per day
60 minutes	0.6 gallons per day

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.710 REFUSE SOLID WASTE--STORAGE AND DISPOSAL

(1) The storage, collection and disposal of refuse solid waste in the tourist campground or trailer court trailer park shall must be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

(2) All refuse solid waste shall must be stored in galvanized flytight, watertight, rodent-proof containers or in other suitable containers with secured lids which shall must be located not more than 150 feet from any trailer space or campsite. Containers shall must be provided in sufficient

number and capacity to properly store all ~~refuse~~ solid waste between collections.

(3) ~~Refuse collection stands shall~~ A solid waste collection stand must be provided for ~~all refuse containers~~ each solid waste container. ~~Such container stands shall~~ A container stand must be designed so as to prevent ~~containers from being tipped~~ tippage, to minimize spillage and container deterioration and facilitate cleaning ~~around and under them~~.

(4) All ~~refuse~~ solid waste containing garbage ~~shall~~ must be collected at least ~~twice~~ weekly. Where suitable collection service is not available from municipal or private agencies, the owner or operator of the ~~trailer park~~ tourist campground or trailer court shall provide this service. All ~~refuse shall~~ solid waste must be collected and transported in a covered ~~vehicles~~ vehicle or covered containers in accordance with the solid waste management act.

~~(5) Refuse incinerators shall be constructed in accordance with engineering plans and specifications which shall be reviewed and approved by the health authority.~~

~~(6) Incinerators shall be operated only when attended by some person specifically authorized by the owner or operator of the trailer park.~~

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.711 ~~VERMIN CONTROL~~ NOXIOUS PLANT AND ANIMAL CONTROL

(1) ~~Grounds~~ The grounds, buildings and structures of a tourist campground or trailer court ~~shall~~ must be maintained free of harborage for insects, rodents, and other vermin ~~insect and rodent harborage and infestation~~. Extermination methods and other measures to control insects and rodents shall conform with the requirements of the health authority.

(2) ~~Parking areas shall~~ All areas must be maintained free of accumulations of debris or standing water which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(3) ~~Storage areas shall~~ Where potential for rodent infestation exists, storage areas must be maintained so as to prevent rodent harborage; lumber, pipe and other building materials ~~shall~~ must be stored neatly at least one foot above the ground.

(4) Where the potential for insect and rodent infestation exists, ~~all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.~~ any skirting of trailers must be of a type and construction which will not provide harborage. Where trailers are skirted, an access opening must be provided near service connections. ~~(5)~~ The growth of brush, weeds and grass shall be controlled to prevent harborage of ~~ticks, chiggers and other~~ noxious insects and other vermin. ~~Parking areas shall~~ Tourist campgrounds and trailer courts must be so

maintained as to prevent the growth of ~~ragweed, poison ivy, poison oak, poison sumac and other~~ noxious weeds considered detrimental to health. ~~Open areas shall be maintained free of heavy undergrowth of any description.~~
AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.712 FUEL SUPPLY AND STORAGE (1) ~~liquefied petroleum gas shall be stored in accordance to the N.B.F.U. requirement #58 Division II.~~ The department hereby adopts and incorporates by reference the provisions of ARM 23.7.111, Uniform Fire Code, which sets forth requirements for storage of liquefied petroleum gas. A copy of the rule is available from the Food and Consumer Safety Bureau of the Department of Health and Environmental Sciences. A copy of the Uniform Fire Code and appendices which ARM 23.7.111 in turn adopts by reference may be obtained from either the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, 90601, or the Fire Marshal Bureau, Department of Justice, 1409 Helena Avenue, Helena, MT, 59620.

(2) All fuel oil storage tanks and cylinders ~~shall~~ must be securely fastened in place and ~~shall~~ must not be located inside or beneath any trailer or less than 5 feet from any trailer exit. Storage tanks located in areas subject to vehicular traffic ~~shall~~ must be protected against physical damage.
AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.713 FIRE SAFETY (1) ~~The trailer parking areas shall be subject to~~ Tourist campgrounds and trailer courts must comply with the rules and regulations of the state ~~and/or local~~ fire prevention authority.

(a) ~~Trailer parking areas shall~~ Tourist campgrounds and trailer courts must be kept free of litter, rubbish and other burnable ~~materials~~ material.

~~(b) Fire fighting devices of a type approved by the state or local fire prevention authority shall be kept at all locations designated by such fire prevention authority and shall be maintained in good operating condition.~~

~~(c) When water will be used for fire fighting purposes consideration should be given to larger water mains than specified in ARM 16.10.706(8) and (9).~~

~~(d) Fires shall be made only in stoves, incinerators and other equipment intended for such purposes.~~

(2) A trailer space must be large enough so that, when occupied by the largest trailer and accessory structures to be allowed, clearance from the trailer to other structures is maintained as follows:

(a) A trailer must not be located closer than 10 feet from any other trailer or from any permanent building within or adjacent to the tourist campground or trailer court.

(i) Any attached, enclosed room addition or porch is to be considered part of the trailer.

(ii) Any attached, unenclosed accessory structure such as an awning, carport, etc., of noncombustible construction must not be located closer than 3 feet from a trailer or building on an adjacent lot. Unenclosed means that the side opposite the mobile home and at least one other side must be maintained at least 50 percent open at all times.

(iii) An unattached storage structure must not be located closer than 3 feet from a trailer or building.

(b) An unoccupied trailer must meet the following clearance standards in regard to other structures:

(i) The requirements of subsection (2)(a) above shall regulate the placement of an unoccupied trailer adjacent to an occupied trailer.

(ii) The requirements of subsection (2)(a) above do not apply to placement of an unoccupied trailer adjacent to another unoccupied trailer (i.e., common storage areas for travel trailers).

(3) A campsite must be clearly defined, have a minimum of 400 square feet exclusive of vehicle parking area, and be separated from any adjoining campsite by at least 10 feet.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.714 OPERATOR REQUIREMENTS (1) The person to whom a license is issued at all times shall operate the ~~trailer parking area~~ tourist campground or trailer court in compliance with this sub-chapter and shall provide adequate supervision to maintain the ~~trailer parking area~~ tourist campground or trailer court, its facilities, and equipment in good repair and in a clean and sanitary condition ~~at all times. If any requirement contained in these rules is in conflict with any local ordinance, the more stringent requirement shall prevail.~~

(2) The licensee of a trailer court shall have a manager on duty on the premises to maintain the trailer court and its facilities in accordance with this rule at all times.

(3) The licensee of a tourist campground shall have a manager who, if not resident at the campground, shall visit the campground as often as necessary to maintain the campground in accordance with this sub-chapter at all times.

(4) Signs must be placed in conspicuous places indicating restriction placed on the types of trailers permitted in a tourist campground, based on the type and amount of facilities provided.

(5) Each campsite and trailer space in a tourist campground must be clearly marked with an identification number or other symbol.

(6) Addresses must be clearly marked on each trailer in a trailer court.

~~(2)~~ (7) Every owner, operator, attendant or other person operating a ~~trailer-parking-area~~ tourist campground shall notify the department or ~~local~~ health authority immediately of any suspected communicable or contagious disease within the ~~trailer park area~~ tourist campground. ~~In the case of disease diagnosed by a physician as quarantinable, the departure of a trailer or its occupants or the removal therefrom of clothing or other articles which have been exposed to infection without approval of the health authority is prohibited.~~

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.715 GUEST REGISTRATION (1) ~~Every owner or operator of a trailer parking area shall maintain a register containing a record of all trailers and occupants. Such register shall be available to the health authority inspecting the trailer parking area and shall be preserved for 6 months. Such register shall contain:~~ The licensee of a tourist campground shall maintain a register that must be preserved for at least 6 months, be made available to the department and health authority, and record:

(a) The ~~names~~ name and permanent address of ~~all trailer occupants~~ each trailer space and campsite occupant.

(b) The make, ~~type,~~ model and license number of ~~the~~ each trailer and tow vehicle.

(c) The ~~dates~~ date of arrival and departure ~~of a trailer or its occupants~~ for each trailer and vehicle and its occupants.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

16.10.716 ANIMALS RUNNING AT LARGE (1) ~~No owner or person in charge of a dog, cat or other pet animal shall permit it to run at large or to commit any nuisance within the limits of any trailer parking area.~~ The licensee of a tourist campground or trailer court shall not allow a person in charge of a dog, cat, or other pet animal to permit it to run at large or to commit any nuisance within the limits of any tourist campground or trailer court. Any pet animal must be limited to the area of the tenant's lot, unless the animal is leashed. The tourist campground or trailer court licensee or manager is responsible for the containment of any pet animal and any nuisance caused by a pet animal.

AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

4. The Department is proposing these rule amendments for the following reasons:

(a) 16.10.701: to eliminate non-health related requirements and to coordinate the rule with those adopted under the Sanitation in Subdivisions Act and the Public Water Supply Act.

(b) 16.10.702: same as (a) above.

(c) 16.10.703: to more clearly establish a license fee and to provide for a pre-licensing inspection requirement as an additional public health protection.

(d) 16.10.704: to expand the effectiveness of inspections by providing for inspection reports and correction plans, while excepting pre-existing and previously complying facilities from the need to comply with more restrictive amendments to the rule.

(e) 16.10.706: same as (a) above.

(f) 16.10.707: same as (a) above.

(g) 16.10.710: to make editing and substantive changes consistent with the Solid Waste Management Act and its rules, and to eliminate the references to incinerators, since they are already governed by air quality rule 16.8.1406.

(h) 16.10.711: to make changes in style and language for purpose of clarification.

(i) 16.10.712: same as (h) above.

(j) 16.10.713: to clarify language and to transfer fire safety spacing requirements for trailers from rule 16.10.705, proposed subsequently in this notice to be repealed, while conforming to those requirements to nationally accepted fire standards, which are less stringent.

(k) 16.10.714: in order to assist enforcement, especially in view of the proposals in these rules to relax requirements for sanitary facilities, to require a campground to be clearly marked by signs indicating restrictions on the type of trailers that can use it, plus to clarify and ensure manager duties and accessibility.

(l) 16.10.715: to do minor editing and clarify that the rule applies only to tourist campgrounds.

(m) 16.10.716: to place the duty of animal control upon the license holder of a tourist campground or trailer court.

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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than January 14, 1982.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The statutory authority and implementing sections are shown at the end of each rule.

In the matter of the adoption of a rule setting requirements for service facilities at tourist campgrounds or trailer courts	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE (Service Buildings and Other Service Facilities)

To: All Interested Persons

1. On January 11, 1982, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule which sets revised requirements for tourist campground or trailer court service buildings and other service facilities.

2. The proposed rule will replace rule 16.10.708 found at pages 16-441 and 16-442 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I SERVICE BUILDINGS AND OTHER SERVICE FACILITIES A central service building containing the necessary toilet and other plumbing fixtures specified shall be provided in each tourist campground as follows:

(1) Toilets are required at each tourist campground which provides campsites or trailer spaces for dependent trailers.

(2) Toilets are required in each tourist campground providing parking space for independent trailers only, in the ratio of one toilet for each sex for every 100 spaces or fraction thereof.

(3) A lavatory and janitorial sink is required in any service building provided with running water.

(4) A service building, where required, must be conveniently located within a radius of 300 feet from all trailer spaces or campsites to be served.

(5) Toilets and sinks, where required, shall be provided in accordance with Table I below.

(a) When a tourist campground requiring a service building is operated in connection with a resort or other business establishment such as rental cabins or a dude ranch, the number of sanitary facilities for such a business establishment must be in excess of those required by the table for trailer spaces and must be based on the total number of persons using such facilities, figured at 3 persons per trailer space or campsite.

(b) Where only toilets are required, privies will be considered only if water-carried sewage disposal is not feasible.

TABLE I

No. of Dependent Parking Spaces	Toilets		Urinals	Lavatories		Other Fixtures
	Men	Women	Men	Men	Women	
1 - 15	1	1	1	1	1	At least
16 - 30	1	2	1	2	2	one janitor
31 - 45	2	2	1	3	3	sink per
46 - 60	2	3	2	3	3	service
61 - 80	3	4	2	4	4	building
81 - 100	3	4	2	4	4	

(6) A service building must be maintained as follows:

(a) Each sink, toilet, and other equipment must be kept in a clean and sanitary condition and in good repair. Each must be cleaned and sanitized at least daily, and more frequently if necessary to maintain a high standard of cleanliness.

(b) Floors must be swept and mopped at least twice weekly and more frequently if necessary.

(c) Each wall and any other exposed surface such as a storage shelf or window must be cleaned at least once weekly.

(d) Toilet tissue must be provided and conveniently located in each toilet room.

(7) Each cabin, cooking shelter and other building must be maintained as follows:

(a) Each cooking or shelter house for common use must be cleaned after each day's use during the operating season.

(i) Cooking, eating, and drinking utensils, if provided, must be in good repair and must be washed and sanitized by tourist campground employees after usage by campers.

(b) Any cabin, tent, or other structure provided by the management must be thoroughly cleaned after being occupied.

(i) Each mattress, when provided, must be covered with a washable cover and must be kept in clean and sanitary condition.

(ii) Bedding, when provided, must be clean, sanitary, and in good repair.

4. The Department is proposing this rule in order to clarify that a central service building was necessary only for a tourist campground rather than a trailer court, and to eliminate non-public health related requirements and those adequately covered in other rules.

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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, no later than January 14, 1982.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the department to adopt the rule is based on section 50-52-102, MCA, and the rule implements section 50-52-102, MCA.

In the matter of the repeal of rules 16.10.705, environmental requirements; 16.10.708, toilet and laundry facilities; and 16.10.709, outdoor burning.	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES 16.10.705, 16.10.708, and 16.10.709 (Trailer Courts)

To: All Interested Persons

1. On January 11, 1982, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of rules 16.10.705, 16.10.708, and 16.10.709.

2. The rules proposed to be repealed can be found on pages 16-434, 16-441, and 16-442 of the Administrative Rules of Montana.

3. Rule 16.10.708 is proposed to be repealed because it was unclear, and found to contain requirements unrelated to public health or covered in other rules. Therefore, it is to be replaced entirely by the new rule proposed for adoption in this issue of the Montana Administrative Register (RULE I, SERVICE BUILDINGS AND OTHER SERVICE FACILITIES) Rule 16.10.705 was determined to be unnecessary to protect public health, and rule 16.10.709 was unneeded due to the existence of 16.8.1405, open burning.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than January 14, 1982.

5. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

6. The authority of the Department to repeal the rules is based on section 50-52-102, MCA, and the rules implemented section 50-52-102, MCA.

JOHN J. BRYNAN, M.D., Director

Certified to the Secretary of State December 7, 1981

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

In the Matter of the Amendment of a Rule Adopting the Attorney General's Model Rules)	NOTICE OF PROPOSED AMENDMENT OF ARM 36.2.101 Model Procedural Rules

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On January 28, 1982, the Department of Natural Resources and Conservation proposes to amend ARM 36.2.101 Model Procedural Rules.

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

36.2.101 MODEL PROCEDURAL RULES. The department of natural resources and conservation herein adopts and incorporates ~~the attorney general's model procedural rules and all subsequent amendments, by reference to such rule~~ by reference ARM 1.3.101 through ARM 1.3.234 which set forth the attorney general's model rules. A copy of the model rules may be obtained from the Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59620.

3. The rule is proposed to be amended to meet the requirements of 2-4-307, MCA, of ARM 1.2.211, and to adopt the Attorney General's Model Procedural Rules as amended by the Attorney General at page 1195 of the Montana Administrative Register, 1981, Issue No. 19, effective October 15, 1981. The model procedural rules provide rules of practice, setting forth the nature and requirements of formal and informal procedures available.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert N. Lane, 32 South Ewing, Helena, Montana 59620, no later than January 15, 1982.

6. The authority of the Department to make the proposed amendment is based on Sections 2-4-201 MCA, and implements Sections 2-4-201 MCA.

Dennis Hemmer
Deputy Director
Department of Natural
Resources and Conservation

Leo Berry by DH
Leo Berry
Director
Department of Natural
Resources and Conservation

Certified to the Secretary of State December 7, 1981.

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

In the matter of the amendment of ARM 36.12.102 and ARM 36.12.103 pertaining to revised forms and increased application fees for beneficial water use permits	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF ARM 36.12.102 FORMS AND ARM 36.12.103 APPLICATION FEES

TO: All Interested Persons

1. On January 26, 1982, at 9:00 a.m. a public hearing will be held in the Auditorium of the Library Building, No. 148, at Eastern Montana College, 1500 North 30th, Billings, Montana, and on January 28, 1982, at 9:00 a.m. a public hearing will be held in the Auditorium of the Montana Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of ARM 36.12.102 and ARM 36.12.103.

2. The proposed amendments are to present rules ARM 36.12.102 and ARM 36.12.103.

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

36.12.102 FORMS The following necessary forms for implementation of the act and these rules are available from the ~~water resources division of the~~ department of natural resources and conservation, 32 South Ewing, Helena, Montana, ~~and are as follows:~~ The department may revise as necessary, the following forms to improve the administration of these rules and applicable water laws:

(1) Form No. 600 "Application for Beneficial Water Use Permit"
(2) Form No. 601 "Permit to Appropriate Water"
(3) Form No. 602 "Notice of Completion of Groundwater Development (for groundwater developments with a maximum use less than 100 gpm)"
(4) Form No. 603 "Well Log Report"
(5) Form No. 604 "Certificate of Water Right"
~~(6) Form No. 605 "Declaration of Existing Water Right"~~
(6) Form No. 605 "Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet)"
(7) Form No. 606 "Application for Change of Appropriation Water Right"
(8) Form No. 607 "Application for Extension of Time"
(9) Form No. 608 "Notification of Transfer of Appropriation Water Right"
(10) Form No. 609 "Application to Sever or Sell Appropriation Water Right"
~~(11) Form No. 610 "Application for Reservation of Water"~~
(12)(11) Form No. 611 "Objection to Application
(13)(12) Form No. 612 "Statement of Opinion"
(14)(13) Form No. 613 "Fee Schedule for the Appropriation of Water in Montana"

(15)(14) Form No. 614 "Notification of Temporary Emergency Appropriation" "Statement of Conditional Agreement"

(16) Form No. 615 "General Water Conversion Table"

(17)(15) Form No. 616 "Notice of Action on Application for Extension of Time"

(18)(16) Form No. 617 "Completion Report of Water Development" "Notice of Completion of Permitted Water Development"

(17) Form No. 618 "Notice of Completion of Change of Appropriation Water Right"

(19)(18) Form No. 619 "Cancellation of Recording of Certificate of Water Right"

(20)(19) Form No. 620 "Authorization to Change Appropriation Water Right"

(21)(20) Form No. 621 "Affidavit of Service (Notification of Hearing) for Notice of Hearing"

(22)(21) Form No. 622 "Affidavit of Service (Notification of Application) for Notice of Application"

(22) Form No. 624 "Revocation of Permit to Appropriate Water"

(23) Form No. 625 "Acknowledgement of Water Right Transfer"

(24) Form No. 630 "Petition to the Board of Natural Resources and Conservation for Controlled Groundwater Area"

AUTH: 85-2-113 IMP: 85-2-113

36.12.103 APPLICATION AND SPECIAL FEES (1) There shall be a fee charge based on the following rate schedule to be paid to the department when filing an Application for Beneficial Water User Permit (Form No. 600):

0 - less than 5	acre-feet per year . . . . . $ 5
5 - less than 25	acre-feet per year 10
25 - less than 50	acre-feet per year 20
50 - less than 100	acre-feet per year 30
100 - less than 250	acre-feet per year 40
250 - less than 500	acre-feet per year 50
500 - less than 1,000	acre-feet per year 60
1,000 - less than 50,000	acre-feet per year . . . . . 60 for the first 1,000 acre-feet per year plus $10 for each additional 1,000 acre-feet per year or portion thereof over 1,111
50,000 or more	acre-feet per year . . . . 550 for the first 50,000 acre-feet per year plus $5 for each additional 1,000 acre-feet per year or portion thereof over 50,000

~~(2) There shall be a flat rate fee of $5 for filing a Notice of Completion of Groundwater Development (Yielding less than 100 gallons per minute and outside the boudaries of a controlled groundwater area) (Form No. 602).~~

~~(3) There shall be a flat rate fee of $100 for the filing of an Application for Reservation of Water (Form No. 610). The applicant for a reservation of water shall also pay the department's costs of giving notice, holding the hearing, conducting investigations, and making records, as required by the Act.~~

~~(4) There shall be a flat rate fee of $15 for filing the following forms:~~

~~(a) Form No. 606, Application for Change of Appropriation Water Right.~~

~~(b) Form No. 609, Application to Sever or Sell Appropriation Water Right.~~

(1) A fee, if required, shall be paid at the time the application is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper application fee with an application shall result in a determination that the application is not in good faith and does not show a bona fide intent to appropriate water for a beneficial use. A fee paid on an application is a one-time filing and processing fee paid at the time of making the application, and the fee will not be returned once the application has been filed with the department, except as noted below. If an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the correct form for his purpose and pay the difference due or be entitled to a refund if overpayment is made. However, in this latter instance, no exchanges of fees from one form to another or a refund, if otherwise justified, will be made in any case once the newspaper publication of the application has been initiated. The fees cover direct costs for newspaper publication, individual notices, county recording fees, hearing costs, computer processing, and other miscellaneous direct costs connected with the permit process.

(a) For an Application for Beneficial Water Use Permit, Form No. 600, there shall be a fee charge based on the following rate schedule:

0 - less than 25	acre-feet per year	$ 50
25 - less than 100	acre-feet per year	100
100 - less than 500	acre-feet per year	150
500 - less than 1,000	acre-feet per year	200
1,000 or more	acre-feet per year	250

(b) For an Application for Beneficial Water Use Permit, Form No. 600, there shall be a fee charge based on the following rate schedule when filing an application for non-consumptive hydropower generation or fish propagation uses:

0 - less than 1,000	acre-feet per year . . .	$ 50
1,000 - less than 10,000	acre-feet per year . . .	100
10,000 or more	acre-feet per year . . .	200

(c) For any request for an Interim Permit to drill and test only, there shall be an additional fee of $10.

(d) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use less than 100 gpm), Form No. 602, there shall be a flat rate fee of $10.

(e) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (Maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a flat rate fee of $10.

(f) For an Application for Change of Appropriation Water Right, Form No. 606, there shall be a flat rate fee of $50, except:

(i) For any change application for a place of diversion change only there shall be a flat rate fee of $10.
(ii) For any change application concerning a replacement well in the same source for domestic or stockwatering purposes, there shall be a fee of $10.

(g) For a Notice of Transfer of Appropriation Water Right, Form No. 608, there shall be a flat rate fee of $5.

(h) For an Application to Sever or Sell Appropriation Water Right, Form No. 609, there shall be a flat rate fee of $100.

(i) For an Objection to Application, Form No. 611, there shall be a flat rate fee of $2.

(j) For a Petition to the Board of Natural Resources and Conservation for Controlled Groundwater Area, Form No. 630, there shall be a fee of $100 for filing this petition form, plus the petitioner shall also pay reasonable costs of giving notice, holding the hearing, conducting investigations, and making records pursuant to Sections 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

~~(5)~~(2) There shall be no fees charged for filing the following forms:

(a) Form No. 603, Well Log Report.

~~(b) Form No. 605, Declaration of Existing Water Right.~~

~~(c)~~(b) Form No. 607, Application for Extension of Time.

~~(d) Form No. 608, Notification of Transfer of Appropriation Water Right.~~

~~(e) Form No. 611, Objection to Application.~~

~~(f)~~(c) Form No. 614, ~~Notification of Temporary Emergency Appropriation~~ Statement of Conditional Agreement.

~~(g)~~(d) Form No. 617, ~~Completion Report of Water Development~~ Notice of Completion of Permitted Water Development.

(e) Form No. 618, Notice of Completion of Change of Appropriation Water Right.

~~(6)~~ (3) ~~Special Fees~~ The following special fees must be paid for the described public service:

(a) For microfilm, reader-printer copies . . . ~~$0.25~~ $0.50 per sheet

(b) For photostatic copy, letter and legal size . . . ~~$0.10~~ $0.25 per sheet

~~legal size . . . $0.15 per sheet~~

~~(c) Reproduction of maps . . . $0.25 per sq. ft.~~

(c) For computer services requested . . . reasonable costs

~~(d) Minimum blueprint charge (Applies only when made outside the office) . . . $1.00~~

(d) For making a blueprint of any tracing . . . $1.00 per sheet

(e) For making of hearing transcript . . . . . reasonable costs not to exceed $1.00 per page

AUTH: 85-2-113 IMP: 85-2-113

4. The Board is proposing to amend ARM 36.12.102 to incorporate new forms used by the Department of Natural Resources and Conservation in administrating Title 85, Chapter 2, which pertains to the appropriation of water for beneficial use. The proposed new forms will reflect statutory changes and changes based on practical experience gained through administration. The Board proposes to amend ARM 36.12.103 by increased fees and service charges to cover rising direct administrative costs. The fees and service charges, as proposed, will cover only a fraction of the Department's direct costs involved in the processing of applications and provision of services. The direct costs for which application fees are assessed include newspaper publication, individual notices, county recording fees, hearing costs, computer processing, and other miscellaneous direct costs connected with the permit process.

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 Ronald J. Guse, Administrative Officer, 32 South Ewing, Helena, Montana 59620, no later than February 5, 1982.

6. The authority of the Department to make the proposed amendments is based on Section 85-2-113, MCA, and implements Section 85-2-113, MCA for both rules.

Leo Berry, Director, Department of Natural Resources & Conservation

Certified to the Secretary of State Dec. 7, 1981

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

IN THE MATTER of Proposed Amend-ment of Rule 38.2.1209 Regarding the Number of Copies of Pleadings and Documents to be filed with the Commisson.	NOTICE OF PROPOSED AMENDMENT OF RULE 38.2.1209 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 18, 1982, the Department of Public Service Regulation proposes to amend Rule 38.2.1209 regarding number of copies of pleadings and documents to be filed with the Commission.

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

38.2.1209 COPIES (1) The filing party shall provide the Commission with an original plus ~~six~~ ten conformed copies of all pleadings and documents. Each such filing shall include a certificate that a copy of all filed material has been mailed to each party of record. Additional copies may be requested by the staff.

3. This rule is being amended in order to provide adequate copies for the Commissioners, staff and files.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Eileen Shore, 1227 11th Avenue, Helena, Montana 59620, no later than January 18, 1982.

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 Eileen Shore, 1227 11th Avenue, Helena, Montana 59620, no later than January 18, 1982.

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.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

8. The authority for the Commission to make this rule is based on Section 69-2-101, MCA and the rule implements 69-2-101, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE December 7, 1981.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE PETITION FOR AMENDMENT of Rule 42.22.1117 relating to deductions allowed in computing the net proceeds of mines tax.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 42.22.1117 relating to the deductions allowed in computing the net proceeds of mines tax.

TO: All Interested Persons:

1. On January 14, 1982, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building in Helena, Montana, to consider the Petition of Pfizer, Inc., requesting the Department to amend its rule concerning deductions allowed in computing the net proceeds of mines tax.

2. The proposed amendment replaces present rule 42.22.1117 found in the Administrative Rules of Montana. The proposed amendment details the extent of marketing and transportations costs that are deductible in computing net proceeds for purposes of the net proceeds of mines tax.

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

42.22.1117 MARKETING, ADMINISTRATIVE, AND OTHER OPERATIONAL COSTS (1) All monies expended for supplies.

~~(2) If an operator values the mineral prior to the actual sale, deductions for marketing charges will not be allowed. Market costs must be actual dollars spent for marketing the specific product of the specific mine, not an allocated amount of corporate or headquarters expenses for marketing, etc. No costs will be allowed under this item if the product is valued prior to conversion into money.~~

(2) All monies actually expended for transporting the ores or mineral products to the place of sale and for marketing the product and the conversion of the same into money. In the case of ores or concentrates sold or transported in a crude or unfinished condition from a Montana mine, market costs must reflect the actual marketing expenses including brokers' commissions. In the case of mineral products manufactured in Montana from ores or concentrates produced in this state, the ores or concentrates may be valued at the end of the mining process and prior to further manufacturing; and in that event the deduction for transporting the mineral products to market and the cost of marketing the product and conversions into money will be determined by allocating an amount of the transportation cost to the place of sale, based on the actual cost of transporting a crude product to the same point, and an amount representing the actual marketing expenses, including any handling and storage charges and sales costs including brokers commissions. No deduction

will be allowed for those general overhead, administrative or headquarters expenses which cannot be shown to be directly related to transportation, handling and sales costs incurred in marketing the product and converting it into money.
AUTH: 15-1-201; IMP. 15-23-503.

4. The Petitioner seeks to have the rule amended based upon decisions of the District Court of Madison County stating that the Petitioner is entitled to deductions for marketing and transportation. A copy of the petition is on file with the Legal Bureau of the Department of Revenue and may be viewed during regular office hours.

5. Interested parties may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than January 14, 1982, to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. Roy Andes of the Agency Legal Services, Office of the Attorney General, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendment is based on §15-1-201(1), MCA. The rule implements §15-23-503, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 12/7/81

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rules 42.21.101, 42.21.102, 42.21.104, 42.21.106, 42.21.107, 42.21.123, 42.21.131, and 42.21.151 relating to the assessment of personal property.	NOTICE OF PROPOSED AMENDMENT OF RULES 42.21.101, 42.21.102, 42.21.104, 42.21.106, 42.21.107, 42.21.123, 42.21.131, and 42.21.151 relating to the assessment of personal property. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January ~~18~~, 1982, the Department of Revenue proposes to amend rules 42.21.101, 42.21.102, 42.21.104, 42.21.106, 42.21.107, 42.21.123, 42.21.131, and 42.21.151.

2. The rules proposed for amendment are found in the Administrative Rules of Montana, Title 42, Chapter 21 at pages 42-2105 through 42-2141.

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~~ average wholesale 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~~ computed from the "Aircraft Price Digest". The average wholesale value shall be determined by adding the "Average Equipped Inventory" to the "Average Equipped Marketable" value for each model as contained in the "Aircraft Price Digest" and dividing the sum by two. The Winter Edition applicable to the year of assessment of the "Aircraft Price Digest", Aircraft Appraisal Association of America, Inc., Will Rogers Airport, Box 59977, Oklahoma City, Oklahoma 73159, will be used. This ~~Bluebook~~ book may be reviewed in the department or purchased from the publisher.

(2) The department shall add or delete equipment or high hours according to the instructions set forth in the ~~editor's note to the Bluebook~~ "Aircraft Price Digest".

(3) This rule is effective for tax years beginning after December 31, ~~1980~~ 1981.

AUTH: 15-1-201; IMP, 15-6-138.

42.21.102 BOATS AND MOTORS (1) The average market value of outboard boats shall be the ~~suggested retail price~~ estimated current value less repairs - high of such property as listed 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~~ P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department

or purchased from the publisher.

(2) The average market value of outboard motors shall be the ~~suggested retail price~~ estimated current value less repairs-high of such property as shown 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~~ P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(3) The average market value of inboard/outboard boats shall be the ~~suggested retail price~~ estimated current value less repairs - high 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~~ P. O. Box 12901, Overland Park, Kansas 66212. 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~~ estimated current value less repairs - high 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~~ P. O. Box 12901, Overland Park, Kansas 66212. 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 the average market value will be determined using the chart in subsection (6).~~ The average market value of inboard boats shall be the estimated current value less repairs - high of such property as listed in the "Official Inboard Boat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O.Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the Department or purchased from the publisher.

(6) The average market value of pontoon and houseboats shall be the estimated current value less repairs - high of such property as listed in the "Official Pontoon and Houseboat Trade-In Guide Buebook", of the current year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

~~(6)~~ (7) If the above-named publications do not value these properties, then ~~The~~ the following chart will be used to determine the average market value of all watercraft and ~~boats~~ boat motors that cannot be valued under subsections (1) through ~~(4)~~ (6) ~~(all entries are in dollars)~~:

VALUE LAST YR. IN GUIDE	VALUE IN SUCCEEDING YEARS 1ST YEAR	2ND YEAR	3RD YEAR	4TH YEAR	5TH YEAR	6TH YEAR	7TH YEAR	8TH YEAR	9TH YEAR	10TH YEAR AND LATER
100	75	75	75	75	75	75	75	75	75	75
125	95	75	75	75	75	75	75	75	75	75
150	115	85	75	75	75	75	75	75	75	75
175	130	100	75	75	75	75	75	75	75	75
200	150	110	85	75	75	75	75	75	75	75
225	170	125	95	75	75	75	75	75	75	75
250	190	140	105	80	75	75	75	75	75	75
275	205	155	115	90	75	75	75	75	75	75
300	225	170	125	95	75	75	75	75	75	75
325	245	180	135	105	80	75	75	75	75	75
350	265	195	150	110	85	75	75	75	75	75
375	280	210	160	120	90	75	75	75	75	75
400	300	225	170	130	95	75	75	75	75	75
425	320	240	180	135	95	75	75	75	75	75
450	340	250	190	145	110	80	75	75	75	75
475	355	265	200	150	115	85	75	75	75	75
500	375	280	210	160	120	90	75	75	75	75
525	395	295	220	170	125	95	75	75	75	75
550	415	310	230	175	130	100	75	75	75	75
575	430	320	240	185	140	105	80	75	75	75
600	450	335	250	190	145	110	85	75	75	75
625	470	350	260	200	150	115	90	75	75	75
650	490	365	275	210	155	115	90	75	75	75
675	505	380	285	215	160	120	95	75	75	75
700	525	390	295	225	170	125	100	75	75	75
725	545	405	305	230	175	130	100	80	75	75
750	560	420	315	240	180	135	105	85	75	75
775	580	435	325	250	185	140	110	85	75	75
800	600	450	335	255	190	145	110	90	75	75
825	620	460	345	265	200	150	115	90	75	75
850	640	475	355	270	205	155	120	95	75	75
875	655	490	370	280	210	160	125	95	75	75
900	675	505	380	290	215	160	125	100	75	75
925	695	520	390	295	220	165	130	100	75	75
950	715	530	400	305	230	170	135	105	80	75
975	730	545	410	310	235	175	135	105	80	75
1000	750	560	420	320	240	180	140	110	85	75

To determine the average market value, apply the following percentages to the purchase price:

Year of Purchase	Percentage
1982	72%

1981	64%
1980	56%
1979	52%
1978	48%
1977	40%
1976	36%
1975	30%
1974	24%
1973	20%
1972	16%

(8) These percentages approximate the estimated current value less repairs - high of all watercraft and boat motors.

~~(7)~~ (9) This rule is effective for tax years beginning after December 31, ~~1978~~ 1981.

(10) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.

AUTH: 15-1-201; IMP, 15-6-138.

42.21.104 MOTORCYCLES (1) The average market value for motorcycles shall be the ~~suggested retail price~~ estimated current value less repairs - high of such property as shown in the "Official Motorcycle and Mini-Bike Trade-In Guide", of the year of assessment, Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 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 ~~the average market value will be determined using the chart in subsection (3).~~

~~(3)~~ ~~The~~ the following chart will be used to determine the average market value of motorcyles ~~that cannot be valued under subsection (1) (all entries are in dollars)~~. To determine the average market value, apply the following percentages to the purchase price:

~~VALUE LAST YR. IN GUIDE~~	~~VALUE IN 1ST YEAR~~	~~2ND YEAR~~	~~3RD YEAR~~	~~4TH YEAR~~	~~5TH YEAR~~	~~6TH YEAR~~	~~7TH YEAR~~	~~8TH YEAR~~	~~9TH YEAR~~	~~10TH YEAR AND LATER~~
~~100~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~125~~	~~95~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~150~~	~~115~~	~~85~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~175~~	~~130~~	~~100~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~200~~	~~150~~	~~110~~	~~85~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~225~~	~~170~~	~~125~~	~~95~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~250~~	~~190~~	~~140~~	~~105~~	~~80~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~

~~275~~	~~205~~	~~155~~	~~115~~	~~90~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~300~~	~~225~~	~~170~~	~~125~~	~~95~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~325~~	~~245~~	~~180~~	~~135~~	~~105~~	~~80~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~350~~	~~265~~	~~195~~	~~150~~	~~110~~	~~85~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~375~~	~~280~~	~~210~~	~~160~~	~~120~~	~~90~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~400~~	~~300~~	~~225~~	~~170~~	~~130~~	~~95~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~425~~	~~320~~	~~240~~	~~180~~	~~135~~	~~95~~	~~75~~	~~75~~	~~75~~	~~75~~	~~75~~
~~450~~	~~340~~	~~250~~	~~190~~	~~145~~	~~110~~	~~80~~	~~75~~	~~75~~	~~75~~	~~75~~
~~475~~	~~355~~	~~265~~	~~200~~	~~150~~	~~115~~	~~85~~	~~75~~	~~75~~	~~75~~	~~75~~
~~500~~	~~375~~	~~280~~	~~210~~	~~160~~	~~120~~	~~90~~	~~75~~	~~75~~	~~75~~	~~75~~
~~525~~	~~395~~	~~295~~	~~220~~	~~170~~	~~125~~	~~95~~	~~75~~	~~75~~	~~75~~	~~75~~
~~550~~	~~415~~	~~310~~	~~230~~	~~175~~	~~130~~	~~100~~	~~75~~	~~75~~	~~75~~	~~75~~
~~575~~	~~430~~	~~320~~	~~240~~	~~185~~	~~140~~	~~105~~	~~80~~	~~75~~	~~75~~	~~75~~
~~600~~	~~450~~	~~335~~	~~250~~	~~190~~	~~145~~	~~110~~	~~85~~	~~75~~	~~75~~	~~75~~
~~625~~	~~470~~	~~350~~	~~260~~	~~200~~	~~150~~	~~115~~	~~90~~	~~75~~	~~75~~	~~75~~
~~650~~	~~490~~	~~365~~	~~275~~	~~210~~	~~155~~	~~115~~	~~90~~	~~75~~	~~75~~	~~75~~
~~675~~	~~505~~	~~380~~	~~285~~	~~215~~	~~160~~	~~120~~	~~95~~	~~75~~	~~75~~	~~75~~
~~700~~	~~525~~	~~390~~	~~295~~	~~225~~	~~170~~	~~125~~	~~100~~	~~75~~	~~75~~	~~75~~
~~725~~	~~545~~	~~405~~	~~305~~	~~230~~	~~175~~	~~130~~	~~100~~	~~80~~	~~75~~	~~75~~
~~750~~	~~560~~	~~420~~	~~315~~	~~240~~	~~180~~	~~135~~	~~105~~	~~85~~	~~75~~	~~75~~
~~775~~	~~580~~	~~435~~	~~325~~	~~250~~	~~185~~	~~140~~	~~110~~	~~85~~	~~75~~	~~75~~
~~800~~	~~600~~	~~450~~	~~335~~	~~255~~	~~190~~	~~145~~	~~110~~	~~90~~	~~75~~	~~75~~
~~825~~	~~620~~	~~460~~	~~345~~	~~265~~	~~200~~	~~150~~	~~115~~	~~90~~	~~75~~	~~75~~
~~850~~	~~640~~	~~475~~	~~355~~	~~270~~	~~205~~	~~155~~	~~120~~	~~95~~	~~75~~	~~75~~
~~875~~	~~655~~	~~490~~	~~370~~	~~280~~	~~210~~	~~160~~	~~125~~	~~95~~	~~75~~	~~75~~
~~900~~	~~675~~	~~505~~	~~380~~	~~290~~	~~215~~	~~160~~	~~125~~	~~100~~	~~75~~	~~75~~
~~925~~	~~695~~	~~520~~	~~390~~	~~295~~	~~220~~	~~165~~	~~130~~	~~100~~	~~75~~	~~75~~
~~950~~	~~715~~	~~530~~	~~400~~	~~305~~	~~230~~	~~170~~	~~135~~	~~105~~	~~80~~	~~75~~
~~975~~	~~730~~	~~545~~	~~410~~	~~310~~	~~235~~	~~175~~	~~135~~	~~105~~	~~80~~	~~75~~
~~1000~~	~~750~~	~~560~~	~~420~~	~~320~~	~~240~~	~~180~~	~~140~~	~~110~~	~~85~~	~~75~~

Year of Purchase	Percentage
1982	72%
1981	64%
1980	56%
1979	52%
1978	48%
1977	40%
1976	36%
1975	30%
1974	24%
1973	20%
1972	16%

(3) These percentages approximate the estimated current value less repairs - high for motorcycles.

(4) This rule is effective for tax years beginning after December 31, ~~1978~~ 1981.

(5) Depreciation and valuation tables will not be included

in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.
AUTH: 15-1-201, IMP, 15-6-138.

42.21.106 ~~LARGE~~ TRUCKS AND COMMERCIAL TRAILERS (1) Market value for trucks rated over 3/4 ton is 80% of the average ~~market~~ retail value for ~~large~~ the 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 National Market Report, Inc., 900 South Wabash Avenue, Chicago, Illinois 60600.

(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 depreciation schedule is used~~ To determine the average market value ~~of~~ for ~~large trucks~~ those models not included in the "Truck Bluebook" and for commercial trailers apply the following percentages to the Purchased New or Purchased Used price: ~~that cannot be valued under subsection (1) and of commercial trailers.~~

Purchased New		Purchased Used	
Model Year Purchased New	% Good Wholesale ~~Depreciation~~	Year Purchased Used	% Good Wholesale ~~Depreciation~~
1982	64%	1982	71%
1981	~~80~~ 60%	1981	~~89~~ 63%
1980	~~75~~ 54%	1980	~~79~~ 56%
1979	~~67~~ 47%	1979	~~70~~ 50%
1978	~~59~~ 42%	1978	~~63~~ 45%
1977	~~53~~ 38%	1977	~~56~~ 40%
1976	~~47~~ 34%	1976	~~50~~ 35%
1975	~~42~~ 30%	1975	~~44~~ 31%
1974	~~37~~ 26%	1974	~~39~~ 28%
1973	~~33~~ 24%	1973	~~35~~ 25%
1972	~~30~~ 21%	1972	~~31~~ 22%
1971	~~26~~ 18%	1971	~~28~~ 20%
1970	~~23~~ 17%	1970	~~25~~ 18%
1969	~~21~~ 15%	1969	~~22~~ 16%
1968	~~19~~ 13%	1968	~~20~~ 14%
1967	~~16~~ 12%	1967	~~18~~ 12%
~~1966~~ and before	~~15%~~	~~1966~~ and before	~~15%~~

(4) The ~~schedule~~ valuation tables referred to in subsections (2) and (3) also ~~applies~~ apply 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, ~~1980~~ 1981.

(6) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.

AUTH: 15-1-201; IMP, 15-6-139 and 15-6-140.

42.21.107 ~~TRAILERS AND CAMPERS~~ BOAT, SNOWMOBILE, UTILITY AND OTHER LIGHT TRAILERS. (1) The ~~minimum assessed~~ high - estimated current value less repairs ~~of~~ for boat trailers, ~~shall be the coded or suggested retail value of such property~~ as shown in the "Official Boat Trailer Trade-In Guide Blue Book," ~~January~~ current edition, for the year of assessment, shall be the market value. This guide may be reviewed in the department or purchased from the publisher: ABOS Marine Publications Division, Intertec Publishing Corp., P. O. Box 12901, ~~1014 Wyandotte, Kansas City, Mo. 64105~~ Overland Park, Kansas 66212.

(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~~ If the above-named publication cannot be used to value a boat trailer, then the average market value will be determined by using the valuation table provided in subsection (3). The market value for utility and other light trailers will also be determined using the valuation table provided in subsection (3).

(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~~ To determine the average market values for these trailers, apply the following percentages to the purchase cost:

New	1981	1980	1979	1978	1977	1976	1975	1974	1973	1972
72%	64%	56%	52%	48%	40%	36%	30%	24%	20%	16%

(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~~ These percentages appro-

ximate the high estimated current value less repairs for boat, snowmobile, utility and other light trailers.

(5) This rule is effective for tax years beginning after December 31, 1981.

(6) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.

AUTH: 15-1-201; IMP, 15-6-138 and 15-6-139.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) ~~Average market~~ The as-is value of farm machinery, as shown in the "Official Guide Tractors and Farm Equipment", Spring Edition for the year of the assessment, shall be the ~~average resale price of~~ market value for ~~such~~ this 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: National Farm and Power Services, Inc., 10877 Watson Road, St. Louis, Missouri 63127.

(2)(a) 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)~~ (2)(b).

~~(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~~ Marshall and Swift Valuation Service.

(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):

Year	% Good As Is ~~Percentage Depreciation~~		Trend Factor		% Good As Is ~~Percentage~~ Trended ~~Depreciation~~	
1981		66%		1.000		66%
1980	~~83~~	58%	~~1.000~~	1.103	~~83~~	64%
1979	~~72~~	50%	~~1.048~~	1.214	~~75~~	61%
1978	~~63~~	43%	~~1.160~~	1.326	~~73~~	57%
1977	~~54~~	36%	~~1.255~~	1.427	~~68~~	51%
1976	~~45~~	30%	~~1.341~~	1.502	~~60~~	45%
1975	~~37~~	26%	~~1.436~~	1.596	~~53~~	41%
1974	~~33~~	23%	~~1.503~~	1.780	~~50~~	41%
1973	~~29~~	21%	~~1.840~~	2.061	~~53~~	43%
1972	~~26~~	18%	~~1.929~~	2.136	~~50~~	38%
1971	~~23~~	16%	~~2.000~~	2.207	~~46~~	35%
1970	~~20~~	14%	~~2.084~~	2.338	~~42~~	34%
1969	~~18~~	13%	~~2.229~~	2.488	~~40~~	32%
1968	~~16~~	11%	~~2.342~~	2.596	~~37~~	29%
1967	~~14~~	10%	~~2.442~~	2.698	~~34~~	27%
~~1966~~ or older		~~12%~~		~~2.528~~		~~30%~~

(3) This rule is effective for tax years beginning after December 31, ~~1980~~ 1981.

(4) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.

AUTH: 15-1-201; IMP, 15-6-138.

42.21.131 HEAVY EQUIPMENT (1)(a) The ~~market~~ wholesale value of heavy equipment including coal and ore haulers, ~~is the average resale value of such property~~ as shown in the current volumes of the "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~~ shall be the market value for this property. This guide may be reviewed in the Department or purchased from the publisher: Equipment Guide Book Company; ~~3980 Fabian Way~~ 2800 West Bayshore Road, 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)~~ the average market value will be determined by the following valuation tables. These tables reflect the approximate wholesale values and will be used for the 1982 tax year.

~~(2)(a) For the calendar year commencing January 1, 1981, the following schedule is used for heavy equipment:~~

TABLE I

Coal and Ore Haulers, 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, Draglines.

Year of Purchase	% Good Wholesale ~~Percentage Depreciation~~		Trend Factor		% Good Wholesale ~~Percentage~~ Trended ~~Depreciation~~	
1982		----		-----		65%
1981	----	62%	----	1.000	~~100~~	62%
1980	~~96~~	54%	~~1.000~~	1.115	~~96~~	60%
1979	~~84~~	48%	~~1.051~~	1.231	~~88~~	59%
1978	~~74~~	43%	~~1.161~~	1.349	~~86~~	58%
1977	~~67~~	38%	~~1.261~~	1.454	~~84~~	55%
1976	~~59~~	34%	~~1.356~~	1.534	~~80~~	52%
1975	~~53~~	30%	~~1.444~~	1.635	~~77~~	49%
1974	~~47~~	26%	~~1.545~~	1.893	~~73~~	49%
1973	~~40~~	24%	~~1.935~~	2.194	~~77~~	53%
1972	~~37~~	21%	~~2.037~~	2.271	~~75~~	48%
1971	~~33~~	19%	~~2.108~~	2.351	~~70~~	45%

1970	~~29~~	17%	~~2.187~~	2.492	~~63~~	42%
1969	~~26~~	15%	~~2.344~~	2.640	~~61~~	40%
1968	~~23~~	14%	~~2.458~~	2.773	~~57~~	39%
1967	~~22~~	12%	~~2.595~~	2.907	~~57~~	35%
1966	~~19~~	11%	~~2.684~~	3.010	~~51~~	33%
1965	~~17~~	10%	~~2.789~~	3.107	~~47~~	31%
1964	~~16~~	9%	~~2.862~~	3.174	~~46~~	29%
1963	~~14~~	8%	~~2.911~~	3.240	~~41~~	26%
1962	~~12~~	8%	~~2.984~~	3.293	~~36~~	26%
~~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	% Good Wholesale ~~Percentage Depreciation~~	Trend Factor	% Good Wholesale ~~Percentage~~ Trended ~~Depreciation~~
1982	----	-----	65%
1981	~~----~~ 50%	~~-----~~ 1.000	~~100~~ 50%
1980	~~78~~ 44%	~~1.000~~ 1.115	~~78~~ 49%
1979	~~68~~ 39%	~~1.051~~ 1.231	~~71~~ 48%
1978	~~60~~ 33%	~~1.161~~ 1.349	~~70~~ 45%
1977	~~51~~ 30%	~~1.261~~ 1.454	~~64~~ 44%
1976	~~47~~ 26%	~~1.356~~ 1.534	~~64~~ 40%
1975	~~40~~ 23%	~~1.444~~ 1.635	~~58~~ 38%
1974	~~36~~ 20%	~~1.545~~ 1.893	~~56~~ 38%
1973	~~31~~ 17%	~~1.935~~ 2.194	~~60~~ 37%
1972	~~26~~ 16%	~~2.037~~ 2.271	~~53~~ 36%
1971	~~25~~ 15%	~~2.108~~ 2.351	~~53~~ 35%
1970	~~23~~ 14%	~~2.187~~ 2.492	~~50~~ 35%
1969	~~22~~ 13%	~~2.344~~ 2.640	~~52~~ 34%
1968	~~20~~ 12%	~~2.458~~ 2.773	~~49~~ 33%
1967	~~19~~ 11%	~~2.595~~ 2.907	~~49~~ 32%
1966	.~~17~~ 10%	~~2.684~~ 3.010	~~46~~ 30%
1965	~~16~~ 10%	~~2.789~~ 3.107	~~45~~ 31%
1964	~~16~~ 9%	~~2.862~~ 3.174	~~46~~ 29%
1963	~~14~~ 8%	~~2.911~~ 3.240	~~41~~ 26%
1962	~~12~~ 7%	~~2.984~~ 3.293	~~36~~ 23%
~~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	% Good Wholesale ~~Percentage Depreciation~~		Trend Factor	% Good Wholesale ~~Percentage~~ Trended ~~Depreciation~~
1982	----		-----	65%
1981	---- 48%	-----	1.000	~~100~~ 48%
1980	~~74~~ 42%	~~1.000~~	1.115	~~74~~ 47%
1979	~~65~~ 37%	~~1.051~~	1.231	~~68~~ 46%
1978	~~57~~ 32%	~~1.161~~	1.349	~~66~~ 43%
1977	~~50~~ 28%	~~1.261~~	1.454	~~63~~ 41%
1976	~~43~~ 25%	~~1.356~~	1.534	~~58~~ 38%
1975	~~39~~ 22%	~~1.444~~	1.635	~~56~~ 36%
1974	~~34~~ 19%	~~1.545~~	1.893	~~53~~ 36%
1973	~~29~~ 17%	~~1.935~~	2.194	~~56~~ 37%
1972	~~26~~ 14%	~~2.037~~	2.271	~~53~~ 32%
1971	~~22~~ 10%	~~2.108~~	2.351	~~46~~ 24%
1970	~~16~~ 9%	~~2.187~~	2.492	~~35~~ 22%
1969	~~14~~ 8%	~~2.344~~	2.640	~~33~~ 21%
1968	~~12~~ 7%	~~2.458~~	2.773	~~29~~ 19%
1967	~~11~~ 6%	~~2.595~~	2.907	~~29~~ 17%
1966	~~9~~ 5%	~~2.684~~	3.010	~~24~~ 15%
1965	~~8~~ 5%	~~2.789~~	3.107	~~22~~ 16%
1964	~~8~~ 4%	~~2.862~~	3.174	~~23~~ 13%
1963	~~6~~ 4%	~~2.911~~	3.240	~~17~~ 13%
1962	~~6~~ 3%	2.984	3.293	18 10%
~~1961~~ and older	~~5%~~		~~2.991~~	~~15%~~

~~(b)~~ (2) In addition to using the values from the guidebooks or the schedule in subsection ~~(2)~~ (1)(a), the department multiplies ~~the guidebook value or the percentage trended depreciation in Tables I, II, and III~~ those values by a factor based on equipment use. ~~The multiplier~~ This adjustment is determined from the following table:

ANNUAL HOURS OF USE (T)			MULTIPLIER
0	T	2,920	1.
2,920	T	3,650	.87
3,650	T		.~~667~~784

(3) ~~The tables in subsection (2) 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.~~ This rule is effective for tax years beginning after December 31, 1981.

(4) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.

AUTH: 15-1-201; IMP, 15-6-135, 15-6-138, and 15-6-140.

42.21.151 TELEVISION CABLE SYSTEMS (1) The average market value of television cable systems is $2,000 per mile of co-axial cable (transmission line)~~, $565 per mile of telplex cable (or equivalent),~~ and $25 per service drop.

(2) The average market value for the dishes and towers will be determined using the following valuation tables. These tables were derived from the Marshall and Swift Publication Company, 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026.

TABLE 1: 5 YEARS "DISHES"

AGE	% GOOD	TREND FACTOR	% TRENDED DEPRECIATION
1 Year Old	85%	1.000	85%
2 Years Old	69%	1.106	76%
3 Years Old	52%	1.214	63%
4 Years Old	34%	1.348	46%
5 Years Old and Older	20%	1.443	29%

TABLE 2: 10 YEARS "TOWERS"

AGE	% GOOD	TREND FACTOR	% TRENDED DEPRECIATION
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.106	92%
3 Years Old	76%	1.214	92%
4 Years Old	67%	1.348	90%
5 Years Old	58%	1.443	83%
6 Years Old	49%	1.535	75%
7 Years Old	39%	1.635	63%
8 Years Old	30%	1.744	52%
9 Years Old	24%	2.127	51%
10 Years Old and Older	20%	2.197	43%

(3) The dishes are circular shaped pieces of equipment used to receive the television signal. The towers are structures (usually metal) used to support any receiving equipment.

~~(2)~~ (4) This rule ~~would~~ will be effective for tax years beginning after December 31, ~~1978~~ 1981.

AUTH: 15-1-201; IMP, 15-6-140.

4. Except the amendments to 42.21.151, the amendments to

the other rules are required by Chapter 578, Laws of 1981, which requires that, "the market value of all motor trucks; agricultural tools, implements, and machinery; and all vehicles of all kinds; including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals on the value of the vehicle before reconditioning and profit margin. The Department of Revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists".

The changes made by the amendments to rules 42.21.101, 42.21.102, 42.21.104, 42.21.106, 42.21.107, 42.21.123, 42.21.132 and 42.21.151 apply to tax years beginning after December 31, 1981.

That portion of 42.21.151 dealing with telplex cable is amended from the rule as the result of information gathered from Cable T.V. Association indicating that type of cable is no longer used. Subsection (2) of the rule was added to the rule to conform to existing practices. Also this type of property is becoming more common in the State.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing no later than January 14, 1982, to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

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 that request along with any written comments he has to R. Bruce McGinnis at the address given in Paragraph 5 above no later than January 14, 1982.

7. If the Department receives a request for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight Committee of the Legislature, from a governmental subdivision or agency or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 25 persons.

8. The authority of the Department to make these amendments is given by §§15-1-201 and 15-8-111, MCA. These rules implement

various sections as indicated beneath each rule.

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 1-7-82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL OF RULES 42.21.103 and 42.21.105 relating to the assessment of snowmobiles and automobiles and light trucks.	NOTICE OF PROPOSED REPEAL OF RULES 42.21.103 and 42.21.105 relating to the assessment of snowmobiles and automobiles and light trucks. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 18, 1982, the Department of Revenue proposes to repeal rules 42.21.103 and 42.21.105, ARM, relating to the assessment of snowmobiles, automobiles and light trucks.

2. The rules proposed to be repealed can be found on pages 42-2107, 42-2108, and 42-2109 of the Administrative Rules of Montana.

3. Rule 42.21.103 relating to the assessment of snowmobiles is no longer necessary due to the legislative action of placing a fee on this property in lieu of taxation. Section 4, Chapter 712, Laws of 1979. In 1981, the Legislature also provided a fee in lieu of taxation for automobiles and light trucks. Chapter 614, Laws of 1981. Trucks rated between 3/4 ton and 1 ton will be valued from Rule 42.21.106. This rule is being amended pursuant to MAR Notice No. 42-2-179, found in this issue of the MAR.

4. Interested parties may submit their data, views, or arguments concerning the repeal of these rules in writing no later than January 14, 1982, to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

5. If a person who is directly affected by the proposed repeals 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 that request along with any written comments he has to R. Bruce McGinnis at the address given in Paragraph 5 above no later than January 14, 1982.

6. If the Department receives request for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight Committee of the Legislature, from a governmental subdivision or agency or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the

Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 25 persons.

7. The authority of the Department to repeal these rules is based upon 15-1-201, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 12-7-81

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF RULES IMPLEMENTING Chapters 330 and 613, Laws of 1981, relating to the taxation of livestock and of business inventory.	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF RULES IMPLEMENTING Chapters 330 and 613, Laws of 1981, relating to the taxation of livestock and of business inventory.

TO: All Interested Persons:

1. On January 15, 1982, at 9:30 a.m., a public hearing will be held in the First Floor Conference Room, Mitchell Building, Helena, Montana, to consider the adoption of rules implementing Chapters 330 and 613, Laws of 1981, relating to the taxation of livestock and business inventory.

2. The proposed rules do not replace or modify any rules presently found in the Administrative Rules of Montana.

3. The rules as proposed for adoption provide as follows:

RULE I. BUSINESS INVENTORY TAX CREDIT (1) There is allowed a refundable credit equal to the amount of business inventory property tax paid. This credit is available to individuals for property taxes paid during tax years beginning after December 31, 1980, and before January 1, 1983. The credit for property taxes paid by partnerships and small business corporations electing under the provisions of 15-31-202, MCA, will pass through to the partners and shareholders in the same ratio as their interest in the partnership or small business corporation.

(2) For taxpayers who utilize a tax year for income tax purposes ending on a date other than December 31 and who would not be able to utilize the credit for 2 taxable years because of the provisions of subsection (1) and the timing of the payment of business inventory tax, the department will permit those taxpayers to take a credit for business inventory property tax paid during calendar year 1981, against tax liability for the income tax year beginning in calendar 1981 and a credit for business inventory property tax paid during calendar year 1982, against tax liability for the income tax year beginning in calendar year 1982, provided the amounts paid for business inventory property tax in 1981 and 1982 have not been used as a deduction for any tax years. In no case may a taxpayer take a credit for more than 2 tax years.

(3) The business inventory tax paid will be allowed either as a deduction in computing taxable income or as a credit to be offset against the individual tax liability. The use of both is not permissible. If a partnership or a small business corpora-

tion uses the business inventory property tax as a deduction in computing partnership or corporate income, the credit is not allowed to the partners or shareholders, respectively. The deduction or credit is allowable only for the business inventory property tax paid during the year. Business inventories will not be subject to property taxes for years beginning after December 31, 1982, so this deduction or credit will be temporary.

(4) Taxpayers claiming the credit must include a copy of the tax receipt from their county treasurer specifying the amount of business inventory tax paid and the date paid.

AUTH: 15-30-305; IMP. Section 7, Chapter 613, Laws of 1981.

RULE II. BUSINESS INVENTORY TAX (1) There is allowed a refundable credit equal to the amount of business inventory tax paid. This credit may be claimed by corporations during the tax years beginning after December 31, 1980, and before January 1, 1983. The credit attributable to small business corporations will flow through to the shareholders and may be claimed on the individual income tax return in accordance with Rule I.

(2) For taxpayers who utilize a tax year for corporate license tax purposes ending on a date other than December 31 and who would not be able to utilize the credit for 2 taxable years because of the provisions of subsection (1) and the timing of the payment of business inventory tax, the department will permit those taxpayers to take a credit for business inventory property tax paid during calendar year 1981, against tax liability for the corporate license tax year beginning in calendar 1981 and a credit for business inventory property tax paid during calendar year 1982, against tax liability for the income corporate license tax year beginning in calendar year 1982, provided the amounts paid for business inventory property tax in 1981 and 1982 have not been used as a deduction for any tax years. In no case may a taxpayer take a credit for more than 2 tax years.

(3) The business inventory tax paid will be allowed either as a deduction in computing taxable income or as a credit to offset against the tax liability. The use of both is not permissible. The deduction or credit is allowable only on the year in which the business inventory tax was paid. Business inventories will not be taxed for years beginning after December 31, 1982, so this deduction or credit will be temporary.

(4) Taxpayers claiming the credit must include a copy of their receipt from the county treasurer specifying the amount of the business inventory tax and the date paid.

AUTH: 15-31-501; IMP. Section 7, Chapter 501, Laws of 1981.

RULE III. TREATMENT OF AGRICULTURAL PRODUCTS Unprocessed agricultural products, including livestock, poultry, and the unprocessed products of both, not exempted from property taxation pursuant to 15-6-201 or 15-6-207, MCA, are considered to be classified in Class 6 property for purposes of property taxa-

tion. These agricultural products are not considered to be business inventory.
AUTH: 15-1-201; IMP. 15-6-136.

4. The 47th Legislature enacted Chapters 330 and 613, Laws of 1981. Chapter 330 transferred livestock, poultry, and the unprocessed products of both from Class 7 to Class 6 for property tax purposes. The net effect was to give this property a 4% conversion factor rather than an 8% factor in converting market value to taxable value. This law standing alone presents no difficulty. However, later in the Session, Chapter 613 was enacted.

Chapter 613 eliminates the property tax on business inventory as of January 1, 1983. For tax years beginning after December 31, 1980, and before January 1, 1983, the property tax on business inventory continues to exist but the taxpayer is given a refundable credit against individual income tax or corporate license or income tax, as appropriate. Presently, business inventory is classified as Class 6 property in 15-6-136, MCA. Consequently, Chapter 613 amended 15-6-136, MCA. Because livestock was being put in Class 6 by Chapter 330, it was considered necessary by the Legislature to insert a coordination section in Chapter 613. Because of the language employed in Chapter 613 to amend 15-6-136, MCA, vis-a-vis the language employed in Chapter 330, it is not clear from the text what the treatment of livestock is to be for tax year 1982 for property tax purposes. Thus Rule III above is proposed to make clear that unless specifically exempted from taxation, livestock is considered as Class 6 property.

In enacting Chapter 613, it was the intent of the Legislature to eliminate the business inventory property tax commencing January 1, 1983, and in the interim to provide a refundable tax credit on income taxes. Section 7 of Chapter 613 was the vehicle that provided the credit. Subsection (4) of Section 7 was intended to make clear that the credit could only be taken if the business inventory tax was not taken as a deduction in computing taxable income for income tax purposes. Unfortunately, the internal references in subsection (4) are incomplete or incorrect. Also, the language of Section 7 provides a credit to the taxpayer who makes the property tax payment. However, in the case of small business corporations or partnerships, the property tax-paying entity (corporation or partnership) differs from the income tax-paying entity (shareholder or partner).

The need for clarifying provisions of Chapter 613, Laws of 1981, was discussed in November, 1981, with the Legislature's Revenue Oversight Committee. The committee requested that the department draft proposed rules clarifying these provisions, and the committee proposed to conduct a poll of the Legislature to determine the consistency of these draft rules with legislative intent. Subsections (1), (2) and (3) of Rule I and II and Rule III are proposed to clarify Chapter 613, Laws of 1981. The committee's poll of the Legislature will occur during the period

of public comment.

In order to provide documentation for the Department to verify credit claims, subsection (4) is found in Rules I and II.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted no later than January 14, 1981, to:

Laurence Weinberg
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. Roy Andes has been designated to preside over and conduct the hearing.

7. The authority of the Department to adopt Rule I is given by 15-30-305, MCA, Rule II by 15-31-501, MCA, and Rule III by 15-1-201, MCA. The rules implement Chapters 330 and 613, Laws of 1981.

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 12-7-81

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED REVISION OF RULES relating to Montana Corporate License and Income Tax, found in ARM Title 42, Chapters 23, 24 and 26.	NOTICE OF PROPOSED REVISION OF RULES relating to Montana Corporate License and Income Tax, found in ARM Title 42, Chapters 23, 24 and 26. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 18, 1982, the Department of Revenue proposes to revise the rules relating to Montana corporate license and income tax. Specifically, the Department proposes to amend rules 42.23.103, 42.23.105, 42.23.201, 42.23.203, 42.23.302, 42.23.312, 42.23.313, 42.23.403, 42.23.404, 42.23.413, 42.23.414, 42.23.602, 42.23.603, 42.23.604, 42.24.101, 42.24.106, 42.24.201, 42.26.101 and 42.26.244; adopt eight new rules; and repeal rules 42.23.202 and 42.23.402.

2. The rules proposed for revision are found on pages 42-2305 through 42-2633. The new rules do not replace any rules presently found in the Administrative Rules of Montana.

3. The rules proposed for amendment provide as follows:

42.23.103 EXEMPTIONS (1) A corporation is not exempt from this tax merely because it is not organized and operated for profit. A corporation seeking the benefits of exemption must prove strict compliance with all statutory conditions authorizing ~~and~~ the classification claimed.

(2) In order to establish its exemption and thus be relieved of the duty of filing returns and paying the tax, each organization claiming exemption must file with the department of revenue an affidavit showing the character of the organization, the purpose for which it was organized, its actual activities, the sources and the disposition of its income, and whether or not any of its income may inure to the benefit of any private shareholder or ~~individual~~ individual. A copy of the articles of incorporation, a copy of the by-laws, and copies of the latest financial statements showing the assets, liabilities, receipts, and disbursements must be submitted with the affidavit. In addition, if the internal revenue service has granted the organization exemption from the federal income tax, a certified copy of the exemption certificate or letter shall also be filed.
AUTH: 15-31-501; IMP, 15-31-101 and 15-31-102.

42.23.105 DISCLOSURE OF INFORMATION (1) Corporation license tax returns on file with the department constitute public records but are open to inspection only upon the written and spe-

cific order of the governor. In the absence of such an order, neither a private individual nor a representative of another state department is entitled to inspect, to make, or to receive copies of any return on file with the department nor may the department disclose any information in its files relating to a particular taxpayer's return. When the governor issues an order permitting the inspection of a return or returns, the inspection must take place in the offices of the department and the returns shall at all times remain in the custody of the department.

(2) Upon the presentation of satisfactory evidence of authorization, an ~~office~~ officer or employee of a corporation or its attorney in fact may examine such corporation's returns and may secure copies thereof. The law expressly permits the commissioner of internal revenue or the proper officers of any state imposing a tax on or according to net income to inspect returns or to secure copies of returns or matter contained in any statement, affidavit, or certificate filed in connection with any return or any information disclosed by a report of investigation relating to the reported income, deductions, or tax liability of any corporation filing a return. However, such permission is granted subject to the condition that the statutes of the United States or the states grant substantially similar privileges to the proper officer of Montana charged with administration of the corporation license tax.

AUTH: 15-31-501; IMP, 15-31-507.

42.23.201 ACCOUNTING PERIODS (1) The annual accounting period will be the calendar year unless the taxpayer elects to report on the basis of a fiscal year ending the last day of any month other than December. ~~Once the accounting period is established, it must be used in computing net income and making returns for all subsequent years, unless the department consents to a change.~~ The accounting period for purposes of the Montana corporation license tax will be the same as that used for federal income tax purposes.

AUTH: 15-31-501; IMP, 15-31-112.

42.23.203 CHANGE OF ACCOUNTING PERIOD (1) If a taxpayer desires to change its accounting period, it must ~~direct a request to the department not less than 30 days prior to the date its return would be due under the old period. If the internal revenue service has consented to such a change, a certified copy~~ provide a copy of the ~~commissioner's~~ letter from the Commissioner of Internal Revenue granting ~~the change should accompany the request to the department~~ permission to change with the first tax return filed using the new year end.

~~(2) An application for a change in accounting period will be approved if the taxpayer establishes valid business reasons for making the change. However, the application will not be approved if the primary purpose is to effect a tax savings.~~

AUTH: 15-31-501; IMP, 15-31-112.

42.23.302 EXTENSION OF FILING TIME (1) If a corporation cannot file its return within the prescribed time, the law provides for an automatic extension ~~to the 15th day of the 3rd~~ of from 1 to 6 months following the statutory due date. The application for an automatic extension is to be made on such forms as the department may prescribe. Payment of the tax, plus accrued interest, must accompany the filed return. If the tax payment does not accompany the return, the tax is considered delinquent, and the taxpayer is subject to the imposition of a penalty.

(2) The department may grant additional time for filing a return whenever in its judgment good cause exists.

AUTH: 15-31-501; IMP, 15-31-111.

42.23.312 FILING REQUIREMENTS FOR INACTIVE CORPORATIONS (1) Foreign corporations which have qualified to do business in Montana and all domestic corporations are required to file annual returns even though not engaged in business in Montana during the reporting period. In such cases the return must bear the name and address of the corporation, a statement on the face of the return to the effect that the corporation was not engaged in business in Montana during the reporting period~~, and proper execution of the affidavit~~. No tax is assessable against a corporation which was not engaged in business during the reporting period.

(2) A dormant corporation can obtain relief from the filing requirement by executing and filing an affidavit provided by the department for this purpose.

AUTH: 15-31-501; IMP, 15-31-101 and 15-31-111.

42.23.313 FILING REQUIREMENTS UPON DISSOLUTION, WITHDRAWAL, OR CESSATION OF BUSINESS When a domestic corporation seeks to dissolve or when a foreign corporation seeks to withdraw or ceases business in Montana, the following requirements must be met for the purpose of corporation license tax clearance:

(1) A return clearly marked "Final Return" must be filed for the short period commencing with the closing date of the last period for which a return was filed and extending to the date of dissolution, withdrawal, or cessation of business in this state.

(2) A schedule must be attached to the final return showing the disposition made of the corporate assets. If the corporation sold its assets, any gain or loss from the disposition thereof must be included in the determination of net income, unless~~:~~

(a) the liquidation of the corporation comes within the purview of Section 337, Internal Revenue Code of 1954~~;~~ and

(b) the corporation is not required to report gain pursuant to 15-31-113(1)(a)(i).

(3) Payment must be made of the tax for the final period and all other corporation license tax for which the corporation

may then be liable.
AUTH: 15-31-501; IMP, 15-31-143.

42.23.403 TREATMENT OF OTHER TAXES PAID (1) Taxes paid within the year, with the exception of the following taxes specifically excluded as deductions by statute:

(a) Montana corporation license tax;

(b) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(c) taxes on or according to or measured by net income or profits, imposed by authority of the government of the United States.

(d) taxes imposed by any other state or country upon or measured by net income or profits.

(2) With the exception of the contractor's gross receipts tax, and the business inventory property tax, taxes may be claimed only as deductions in determining net income and cannot be converted into a credit against the corporation license tax. See ARM 42.23.501 for details concerning the credit allowed with respect to the contractor's gross receipts tax. Payments for business inventory property tax may be taken as a deduction or a credit, but not both, as provided in [Rule II of MAR Notice No. 42-2-181, found in this MAR].
AUTH: 15-31-501; IMP, 15-31-113 and 15-31-114.

42.23.404 DEPRECIATION AND OBSOLESCENCE (1) A reasonable allowance for the exhaustion, wear and tear, and obsolescence of property arising out of its use or employment in the trade or business is allowed as a depreciation deduction. ~~The term "reasonable allowance", as used in the preceding sentence, includes the 20% additional first-year depreciation allowance provided for in Section 179 of the Internal Revenue Code.~~

(2) The basis upon which depreciation is to be computed shall be the adjusted basis for determining gain on a sale or other disposition as provided in ARM 42.23.212. However, no asset shall be depreciated below its reasonable salvage value. In computing the allowance for depreciation, use of the rates and methods prescribed or permitted to be used for federal income tax purposes will be considered correct in the absence of evidence that the use of such rates or methods do not result in a reasonable allowance in a particular case.
AUTH: 15-31-501; IMP. 15-31-114.

42.23.413 CARRY OVERS OF NET OPERATING LOSSES (1) A net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding period, then to the first preceding period, and then forward to the next five succeeding taxable periods in the order of their occurrence (or the next seven succeeding periods if the loss is sustained in a tax period ending after December 31, 1975). However, since the net

operating loss deduction is allowed only for taxable periods beginning on and after January 1, 1971, a net operating loss sustained for the year 1971 cannot be carried back but must be carried forward to 1972 and subsequent taxable years. By the same token, a 1972 net operating loss must be carried back to 1971 and then forward to 1973 and subsequent years.

(2)(a) When a net operating loss exceeds the net income of the year to which it is carried, the net income for such year must be adjusted by making the following modifications to determine the unused portion of the net operating loss to be carried forward:

(i) No deduction is allowed for any net operating loss carryover or carryback from another year.

(ii) Any excess of percentage depletion over cost depletion must be eliminated.

(b) The taxable income as modified by these adjustments shall not be considered to be less than zero. The amount of the net operating loss which may be carried forward is the excess of the loss over the modified net income.

AUTH: 15-31-501; IMP, 15-31-114.

42.23.414 FILINGS IN CONNECTION WITH NET OPERATING LOSSES (1) Every corporation claiming a net operating loss deduction for any taxable period must file with its return for such period a schedule showing in detail the computation of the net operating loss deduction claimed.

(2) If a corporation has a net operating loss which when carried back to a prior taxable period results in an overpayment of tax for such taxable period, a refund may be obtained by filing an amended return for that period claiming the net accordingly. Interest does not accrue on overpayments of tax resulting from a net operating loss carryback or carryover. Claims for refund of tax resulting from a net operating loss carryback must be filed within 5 years from the due date of the return for the year to which the loss is carried or within 1 year from the date of the overpayment, whichever period expires later.

(3) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of 15-31-114, MCA, and the rules promulgated thereunder that are effective for the taxable year for which the return claiming the net operating loss carryover is filed.

AUTH: 15-31-501; IMP, 15-31-114.

42.23.602 OVERDUE TAXES (1) If the tax or any part thereof is not paid by its statutory due date, whether by reason of extension granted or otherwise, interest accrues on the amount unpaid from the said due date to the date of payment.

(2) Effective with taxable years ending on and after June

30, 1963, but before December 31, 1968, interest accrues at the rate of 6% per annum until May 15, 1981. Effective with taxable years ending on and after December 31, 1968, interest accrues at the rate of 9% per annum until May 15, 1981. For any tax due outstanding after May 15, 1981, interest accrues at a rate of 12% per annum.
AUTH: 15-31-501; IMP, 15-31-501.

42.23.603 JEOPARDY ASSESSMENTS (1) ~~This~~ Section 15-31-522, MCA, shall be applicable to those situations where the department finds that a taxpayer designs quickly to depart from the state or the United States, to remove its property therefrom, to cancel itself or its property therein, or to do any act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax due under ~~[this act]~~ Title 15, chapter 31, MCA.
AUTH: 15-31-501; IMP, 15-31-522.

42.23.604 INTEREST ON DEFICIENCIES (1) Interest accrues on an assessed deficiency in tax from the statutory due date of the tax to the date the deficiency is paid. Thus, in the case of a deficiency assessed with respect to the taxable year ~~1968~~ 1980, interest will accrue from May 15, ~~1969~~ 1981, (regardless of whether or not an extension was granted for filing the ~~1968~~ 1980 return) to the date the deficiency is paid.

(2) Effective with taxable years ending on and after June 30, 1963, but before December 31, 1968, interest accrues at the rate of 6% per annum until May 15, 1981. Effective with taxable years ending on and after December 31, 1968, interest accrues at the rate of 9% per annum until May 15, 1981. Effective May 15, 1981, interest accrues at a rate of 12% per annum on any outstanding assessment.
AUTH: 15-31-501; IMP, 15-31-503.

42.24.101 DEFINITIONS (1) Small business corporation, as defined in 15-31-201, MCA, means a corporation doing business in Montana which does not have:

(a) more than 10 shareholders except as provided in 15-31-206(2), MCA, or more than 15 shareholders after having elected small business status for 5 years;

(b) as a shareholder a person (other than an estate) who is not an individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

(2) Electing small business corporation means, with respect to any taxable year, a small business corporation which has made the election under 15-31-202, MCA, and such election is in effect for the taxable year in question. A corporation is not an electing small business corporation as to a particular taxable year if it was ineligible to make the election or if a termination is effective as to such taxable year.

AUTH: 15-31-501; IMP, 15-31-201 and 15-31-202.

42.24.106 CONSENT OF NEW SHAREHOLDERS (1) The election shall terminate if any person who was not a shareholder on the first day of the first taxable year for which the election is effective or on the day on which the election is made (if such day is later than the first day of the taxable year) becomes a shareholder and ~~does not file a statement of consent to the election within the time prescribed in 15-31-202(5), MCA~~ files a written statement with the department stating the shareholder's refusal to consent to the election.

(2) Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder and for all succeeding years. In the event of a termination under this section, the corporation shall notify the department within 30 days from the date the termination occurred. AUTH: 15-31-501; IMP, 15-31-202.

42.24.201 TREATMENT OF INTEREST AND DIVIDENDS (1) In the case of mutual savings banks, cooperative banks, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan association under federal or state law, amounts paid to or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts ~~as~~ are deductible provided, such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.
AUTH: 15-31-501; IMP, 15-31-114.

42.26.101 ALTERNATIVE TAX (1) Effective with taxable periods beginning on and after January 1, 1971, a corporation deriving income from sources both within and without Montana and whose only activities in Montana consist of making sales and do not include owning or renting real or tangible personal property and whose dollar volume of gross sales made in Montana during the taxable period do not ~~exceed~~ exceed $100,000, may elect to pay a tax of ½% on the gross ~~volume of~~ receipts from sales made in Montana during the tax-able period. Such tax is in lieu of the tax based upon net income.

(2) The election to pay the alternative tax is made by filing a return on Form CLT-4, reporting the dollar amount of Montana gross sales, and paying a tax determined on the basis of ½% of the amount of such sales. The gross ~~volume of~~ receipts from sales made in Montana must be determined according to the provisions of ARM 42.26.255 and 42.26.257. A statement must be attached to the return to the effect that the corporation's only activities in Montana consist of making sales and do not include owning or renting real property or tangible personal property.
AUTH: 15-31-501; IMP, 15-31-122.

42.26.244 NUMERATOR OF PAYROLL FACTOR (1) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in 15-31-309, MCA, to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state, except for compensation excluded under ARM 42.26.241. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(2) Compensation is paid in this state if any one of the following tests~~, applied consecutively, are~~ is met:

(a) The employee's service is performed entirely within the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(i) if the employee's base of operations is in this state;

(ii) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(iii) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(3) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons, to replenish stock or other materials, repair equipment, or to perform any other function necessary to exercise his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

AUTH: 15-1-201, 15-31-313, and 15-31-501; IMP, 15-1-601.

The rules proposed for adoption provide as follows:

RULE I TREATMENT OF GAINS FROM CERTAIN LIQUIDATION Gains resulting from a liquidation pursuant to IRC §§331 through 337 are taxable to the liquidating corporation to the extent these gains are attributable to corporate or individual shareholders not subject to tax. In the event the liquidating corporation has some shareholders subject to tax in Montana and some who are not, the portion of the gain on liquidation taxable to the liquidating corporation will be determined based on the ratio common stock owned by nontaxable shareholders bears to total common stock issued and outstanding. This applies to all tax years beginning after December 31, 1980.
AUTH: 15-31-501; IMP: 15-31-113.

RULE II INVESTMENT CREDIT (1) An investment tax credit is allowed to qualifying corporations for certain investments made after January 1, 1977. The amount of the credit allowed for tax years ending on or before December 31, 1981, is 20% of the credit determined under IRC §46(a)(2) for those investments eligible for a Montana tax credit. For tax years beginning after December 31, 1980, the amount of the credit allowed is 30% of the credit determined under IRC §46(a)(2) for those investments eligible for a Montana tax credit. The earliest year to which an unused credit can be carried back is the tax year ended December 31, 1977.

(2) The investment credit is subject to recapture tax as provided for in IRC §47. Recapture tax is payable for the tax year during which qualified property is taken out of service. Before computing recapture tax, any available carryovers and carrybacks may be applied to the tax year in which the qualified property was put in service. Then any remaining tax liability is payable as recapture tax in the current year. Investment credit available in the current year may not be used to offset recapture tax.

(3) Current year investment credit and carry forwards of prior year investment credit may be claimed by filing federal Form 3468 and a list of shareholders and the percentage of stock owned by each along with the corporation license tax return. Carrybacks of investment credit may be claimed by filing amended returns.
AUTH: 15-31-501; IMP: 15-31-123.

RULE III. PENALTY ON DEFICIENCY ASSESSMENTS (1) Whenever a deficiency assessment is made by the department pursuant to 15-31-503, MCA, and tax becomes final as provided in 15-31-503(2), MCA, the payment for the deficiency is due within the statutory 10-day period. If the payment is not made by the end of this 10-day period, the taxpayer is subject to imposition of a 10% penalty as provided in 15-31-502, MCA.
AUTH: 15-31-501; IMP: 15-31-502 and 15-31-503.

RULE IV. SPECIAL RULES FOR RAILROADS. The following spe-

cial rules are established in respect to railroads:

(1) Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under ARM 42.26.206. Nonbusiness income is directly allocable to specific states pursuant to the provisions of 15-31-304, MCA. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this regulation. The sum of (a) the items of nonbusiness income directly allocated to this state, plus (b) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) For definitions, rules and examples for definitions, rules and examples for determining business and nonbusiness income, see ARM 42.26.206.

(3) The property factor shall be determined in accordance with ARM 42.26.231 through 42.26.237, inclusive; the payroll factor in accordance with ARM 42.26.241 through 42.26.244; and the sales factor in accordance with ARM 42.26.251 through 42.26.257, inclusive, except as modified in this regulation.
AUTH: 15-1-201, 15-31-313, and 15-31-501; IMP: 15-1-601 and Title 15, chapter 31, part 3.

RULE V. THE PROPERTY FACTOR. (1) Owned property shall be valued at its original cost and property rented from others shall be valued at 8 times the net annual rental rate in accordance with ARM 42.26.231 and 42.26.236. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(2) The following definitions are applicable to the numerator and denominator of the property factor:

(a) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (See ARM 42.26.235.)

(b) "Rent" does not include the per diem and mileage

charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(c) The "value" of owned real and tangible personal property shall mean its original cost. (See ARM 42.26.235.)

(d) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department of revenue may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property. (See ARM 42.26.237.)

(e) The "value" of rented real and tangible personal property means the product of 8 times the net annual rental rate. (See ARM 42.26.236.)

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(h) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of 1 mile under its own power.

(i) A "car-mile" is a movement of a unit of car equipment a distance of 1 mile.

AUTH: 15-1-201, 15-31-313, and 15-31-501; IMP: 15-1-601 and Title 15, chapter 31, part 3.

RULE VI THE DENOMINATOR AND NUMERATOR OF THE PROPERTY FACTOR (1) The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in accordance with ARM 42.26.234. Mobile or movable prperty such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

AUTH: 15-1-201, 15-31-313, and 15-31-501; IMP: 15-1-601 and Title 15, chapter 31, part 3.

RULE VII THE PAYROLL FACTOR (1) The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business

income. (See ARM 42.26.243.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in ARM 42.26.244. With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.
AUTH: 15-1-201, 15-31-313, and 15-31-501; IMP: 15-1-601 and Title 15, chapter 31, part 3.

RULE VIII. THE SALES (REVENUE) FACTOR (1) All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See ARM 42.26.251.) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with ARM 42.26.254.

(2) The total revenue of the taxpayer in this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(a) all receipts from shipments which both originate and terminate within this state; and

(b) that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.

(3) The numerator of the sales (revenue) factor shall include:

(a) all receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and

(b) that portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.
AUTH: 15-1-201, 15-31-313, and 15-31-501; IMP: 15-1-601 and Title 15, Chapter 31, part 3.

The following rules are proposed for repeal:

42.23.202

AUTH: 15-31-501; IMP: 15-31-112, p. 42-2311.

42.23.402

AUTH: 15-31-501, IMP: 15-31-114, p. 42-2331.

4. The bulk of the changes made by the revision are in response to legislative changes. A rule-by-rule analysis follows:

Amendments:

42.23.103: In subsection (1), "and" is changed to "the" for grammatical purposes, and in subsection (2), a misspelling of "individual" is corrected.

42.23.105: In subsection (2), "office" is changed to "officer" to correct a use of the wrong noun.

42.23.201: A final sentence is added to the rule to clarify the relationship of the Montana corporation tax year to the federal tax year.

42.23.203: This rule is revised to indicate that a corporation will be allowed to change its tax year upon approval of the change by the Internal Revenue Service. Subsection (2) is deleted as unnecessary.

42.23.302: The language describing the extension is rewritten to comply with statutory language. The added language at the end of subsection (1) is intended to make clear that payment, with interest, must accompany the filing of the return.

42.23.312: A reference to an "affidavit" is deleted as no longer necessary.

42.23.313: Chapter 483, Laws of 1981, revised the treatment of certain liquidations under §§331 through 337 of the Internal Revenue Code, requiring gain to be reported by the liquidating corporation in certain circumstances. The rule is amended to reflect this statutory change.

42.23.403: Subsection (1)(d) is added to incorporate the provisions of 15-31-114(5)(a)(iv), MCA. Subsection (2) is amended to reflect the treatment of business inventory property tax as provided by Chapter 613, Laws of 1981.

42.23.404: The last sentence of subsection (1) is deleted as unnecessary.

42.23.413: The language added in subsection (1) reflects amendments made to 15-31-114(2)(b)(i) by the 1977 Legislature that had not been incorporated into the rule.

42.23.414: Subsection (3) is added to reflect the provisions of 15-31-114(2)(b)(ii)(C), MCA.

42.23.602: The rule pertaining to interest on overdue tax is rewritten to reflect changes made by Chapter 182, Laws of 1981, which revised the interest rate.

42.23.603: The amendments to this rule correct certain internal references.

42.23.604: References to 1968 and 1969 are changed to 1980

and 1981, but no change in meaning occurs. In subsection (2), the language is revised to reflect changes made by Chapter 182, Laws of 1981, which revised the interest rate on overdue taxes.

42.24.101: Subsection (1)(a) is rewritten to reflect the provisions of 15-30-201(1) and 15-30-206, MCA, relating to the number of permissible stockholders in a small business corporation.

42.24.106: Subsection (1) is rewritten to reflect the provisions of 15-31-202(5)(a)(i), MCA, that provides for affirmative refusal to accept a small business election. At present the rule requires affirmative consent.

42.24.201: "As" is changed to "are" to correct a grammatical error.

42.26.101: In subsection (1), "excess" is changed to "exceed" for grammatical purposes. References to "volume of sales" are changed to "receipts from sales" to use a better and more proper terminology.

42.26.244: The redundant phrase "applied consecutively" is deleted in subsection (2).

Adoptions:

Rule I. Chapter 483, Laws of 1981, provided for the adjustment of corporate income due to liquidations pursuant to §§331 through 337 of the Internal Revenue Code under certain circumstances. The rule provides the mechanism for computing the adjustment.

Rule II: This rule clarifies the treatment of investment credit and reflects changes in the investment credit by Chapter 520, Laws of 1981.

Rule III: This rule clarifies the treatment of and the timing of the imposition of penalty for deficiency assessments.

Rule IV through Rule VIII: These rules reflect the text of rules adopted by the Multistate Tax Commission for the treatment of railroads. Montana is a signatory state to the Multistate Tax Compact.

Repeals:

42.23.202: Because of amendments to rules 42.23.201 and 42.23.203 (found above), rule 42.23.202 is not necessary and hence is proposed for repeal.

42.23.402: Chapter 634, Laws of 1979, eliminated the exemption for interest income derived from state and local obligations. Rule 42.23.402 provides for such an exemption and consequently needs to be repealed. The Department has afforded interest on federal obligatons, the same treatment as interest on state obligations. Thus, elimination of the exempt status with respect to state obligations resulted in the loss of that status for the federal obligations.

5. Interested parties may submit their data, views, or arguments concerning the proposed revision in writing no later than January 14, 1982, to:

Laurence Weinberg
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed revision 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 that request along with any written comments he has to Laurence Weinberg, at the address given in Paragraph 5 above no later than January 14, 1982.

7. If the Department receives request for a public hearing on the proposed revision from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight Committee of the Legislature, from a governmental subdivision or agency or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 25 persons.

8. The authority of the Department to make the proposed revision is given by §§15-1-201, 15-31-313, and 15-31-501, MCA. The implementing sections are listed under the proposed amendments and adoptions.

Ellen Feaver
by John McClerk
ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 12-7-81

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Revision of Rules relating to Withholding for purposes of Montana individual income tax, found in Title 42, Chapter 17, ARM.	NOTICE OF PUBLIC HEARING ON PROPOSED REVISION OF RULES relating to withholding for purposes of Montana individual income tax, found in Title 42, Chapter 17, ARM.

TO: All Interested Persons:

1. On January 15, 1982, at 1:30 p.m., a public hearing will be held in the First Floor Conference Room, Mitchell Building, Helena, Montana, to consider the revision of rules relating to withholding for purposes of Montana individual income tax, found in Title 42, Chapter 17, ARM.

2. The rules proposed to be revised by amendment or repeal can be found at pages 42-1705 through 42-1741 of the Administrative Rules of Montana. The Department proposes to amend Rules 42.17.101, 42.17.103, 42.17.111, 42.17.112, 42.17.113, 42.17.114, 42.17.116, 42.17.117, 42.17.118, 42.17.131, 42.17.133, 42.17.201 and 42.17.301; adopt three new rules; and repeal Rules 42.17.202 and 42.17.211 through 42.17.217.

3. The rules as proposed for amendment provide as follows:

42.17.101 EMPLOYEE DEFINED (1) The term "employee" means any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance. The power to control, rather than the actual exercise of control, is the important factor. Designation of an individual as, or determination by an appropriate authority that an individual is, an employee for purposes of industrial accident insurance, unemployment compensation, federal social security, or federal withholding tax will establish that person as an employee unless facts can be shown to the contrary.

(2) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, other supervisory personnel, and corporate officers are employees. However, persons who are in business for themselves are not employees.

AUTH: 15-30-305; IMP, 15-30-201(2).

42.17.103 WAGES (1) The term "wages" means all renumeration (other than fees paid to a public official) for services performed by an employee for an employer, including the fair value of all remuneration paid in any medium or form other than money. Thus, salaries, wages, bonuses, fees, commissions, and other payments are wages subject to withholding if paid as

compensation for services rendered by an employee for his employer.

(2) The name by which compensation is designated is immaterial.

(3) Employee contributions to qualifying annuity contracts under IRC §403(b) or individual retirement accounts are exempt from withholding to the extent that the contributions are not includable in the employee's adjusted gross income for federal income tax purposes. Distributions from such contributions to the employee must be reported to the department as provided in ARM 42.15.311.

AUTH: 15-30-305; IMP, 15-30-201(4).

42.17.111 WHO MUST WITHHOLD AND WHO IS SUBJECT TO WITHHOLDING-- ~~EXCEPTIONS~~ (1) Every employer residing in Montana and every nonresident employer ~~engaged in~~ transacting business in Montana is required to withhold Montana income tax from wages paid to an employee for services rendered within Montana and for services rendered outside Montana by an employee who is a resident of Montana.

(2) Wages paid to nonresidents or nonresident aliens rendering services within Montana are subject to withholding in all cases unless the compensation is specifically exempted under Montana law.

(3) Compensation which may be excludable from adjusted gross income under a United States tax treaty remains subject to Montana withholding as the determination whether a nonresident alien qualifies for tax treaty exclusion cannot be made until the individual's Montana income tax return is filed.

(4) Temporary employment or employment of short duration within Montana of residents or nonresidents does not relieve the employer of the obligation to withhold on such wages.

(5) Public Law 91-569 exempts from state income tax withholding the compensation of certain railroad, trucking, and air and water carrier employees who earn less than 50% of their compensation in Montana, unless they are Montana residents who did not earn 50% or more of their compensation in any one state during the preceding calendar year. The exemption from withholding applies only to those interstate carrier employees actually involved in transportation activities in more than one state. Even though withholding may not be required, wage information returns must be filed for those employees who are Montana residents. Moreover, the exemption from withholding of state income tax does not relieve the employee from liability for the Montana income tax.

(6) Wages paid to a member of an Indian tribe are subject to withholding unless all of the following conditions are met:

(a) the employee is an enrolled member of a recognized Indian tribe;

(b) a certificate of enrollment is filed by the employee with the employer;

(c) the employee resides on an Indian reservation; and

(d) the wage is compensation for services performed within the boundaries of an Indian reservation.

(7) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a certification of North Dakota residency (Form NR-2) in accordance with [Rule II].

AUTH: 15-30-305; IMP: 15-30-202.

42.17.112 EMPLOYER WITHHOLDING REGISTRATION (1) Every employer required to withhold income tax must file an application for an account number on Form ER-1. A new employer who has acquired the business of another employer must not use his predecessor's account number. Application for an account number is to be made to the Department of Revenue, Helena, Montana. No registration is considered complete unless the federal employer identification number appears on the application. Not being registered does not relieve an employer from withholding and reporting requirements.

AUTH: 15-30-305; IMP, 15-30-209.

42.17.113 QUARTERLY REPORTS AND PAYMENTS (1) Every employer is required to make, for each calendar quarter, a report to the Department of Revenue, Helena, Montana, of the ~~tax~~ amounts withheld from employee's wages during the quarter and to pay therewith the amount ~~of such tax~~ withheld. The reports will cover the quarterly periods ending March 31, June 30, September 30, and December 31 and must be filed not later than the last day of the month following the close of the quarter. The form to be used in making the quarterly report is MW-5. If no tax was withheld, the report should so state. It is not necessary to furnish a list of employees with the quarterly report. No extension of time for remittance of withheld wage amounts can be granted by the department.

(2) A registered employer must submit a report for each reporting period unless withholdings are not expected to exceed $10 for any period during the year.

(3) Failure to pay withheld amounts within the time provided and the use thereof by the employer in forwarding his own business are considered to be an illegal conversion of trust money. The employer may not regard withheld wages as being equivalent to his own personal income tax indebtedness. Penalties provided in 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages.

~~(2)~~ (4) ~~However,~~ The department may require immediate return of any tax it has reason to believe is in jeopardy, as provided by 15-30-312, MCA.

AUTH: 15-30-305; IMP, 15-30-204.

42.17.114 ANNUAL RECONCILIATION STATEMENT (1) On or

before February 15 of each year, the employer must file with the Department of Revenue, Helena, Montana, an annual reconciliation on Form MW-10. This form shows the total tax withheld from employee during the preceding year and must agree with the totals shown on the quarterly reports. Form MW-10 must be accompanied by the original copies of ~~the~~ each employees' earnings statements~~, Form MW-1, or an approved substitute form~~ on federal form W-2.

(2) Magnetic tape reporting of employee earnings may be allowed if in conformity with department specifications and Federal Publication TIB-4a.

(3) Computer generated W-2 equivalents in printout form may be allowed by the department in lieu of W-2's or magnetic tape.

(4) Application to provide magnetic tape or printout reports must be made, and department approval given, before such reportings are made.

AUTY: 15-30-305; IMP, 15-30-207.

42.17.116 EMPLOYEE'S WITHHOLDING STATEMENT (1) Employee's Earning Statements, ~~Form MW-1~~ Federal Form W-2, must be prepared for each employee, regardless of whether or not tax was actually withheld from his wages. ~~The statement must be prepared in not less than three copies.~~ ~~The~~ An original copy must be filed with the employer's annual reconciliation statement, and two copies must be furnished to the employee not later than February 15 of each year. Montana does not provide substitute earning statement forms or allow earning statements which do not conform to federal Form W-2 requirements.

~~(2) Federal Form W-2 (optional) may be used in lieu of Montana Form MW-1.~~

AUTH: 15-30-305; IMP, 15-30-206.

42.17.117 INTEREST (1) If an employer fails to pay to the state of Montana the ~~tax~~ amounts required to be deducted and withheld from employees' wages within the time provided by law, interest will accrue on the unpaid balance ~~at the rate of 9% per annum~~ as provided by statute.

AUTH: 15-30-305; IMP: 15-30-209.

42.17.118 FORMS TO FILE AFTER TERMINATION OF WAGE PAYMENTS The following statements must be filed with the Department of Revenue, Helena, Montana, within 30 days after the termination of wage payments:

(1) Form MW-5, the quarterly report for the final quarter in which wage payments were made;

(2) Form MW-10, the annual reconciliation of tax withheld during the year to the date of termination of wage payments;

(3) Form ~~MW-1 (or approved substitute)~~ W-2, reporting individual employee's wages and tax withheld during the year to the date of termination of wage payments.

AUTH: 15-30-305; IMP, 15-30-209.

42.17.131 WITHHOLDING EXEMPTIONS (1) The employee's exemptions for purposes of determining the amount of tax to be withheld are deemed, unless the department has determined otherwise, to be the same as or less than those claimed ~~in the~~ on line 1 of the withholding exemption certificate Form W-4 furnished by the employee to his employer for federal withholding tax purposes. Accordingly, the department of revenue does not provide forms for this purpose.

(2) "Exempt" status claimed for federal purposes does not exempt an employee's wages from withholding requirements for Montana purposes.

(3) If an employee fails or refuses to provide his allowable number of exemptions on line 1 of Form W-4, the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to line 1 of Form W-4 for federal purposes, including federal redeterminations of allowable exemptions, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a fixed number by the department under subsection (5) below.

(5) An employer is required to provide a copy of any withholding exemption certificate (W-4) to the Department of Revenue, Helena, Montana, on which an employee has claimed 9 or more withholding exemptions. Each such certificate is to be provided at the same time and in the same manner as such certificate is required to be provided to the Internal Revenue Service under 26 CFR §37.3402-1. If, upon review of any such certificates, the department determines that the certificate is defective, it may require in writing that the employer disregard the exemptions claimed and advise the employer of a maximum number of exemption allowances permitted the employee for state purposes. The filing of a new certificate by an employee whose exemption allowances have been set at a fixed maximum number by the department shall be disregarded by the employer unless a number equal to or less than the set maximum is claimed or written notice by the department is given authorizing a different maximum.

AUTH: 15-30-305; IMP. 15-30-202.

42.17.133 TREATMENT OF SUPPLEMENTAL WAGES (1) If supplemental wages, such as bonuses, commissions, or overtime pay, are paid at the same time as regular wages, the tax to be withheld should be determined as if the total of the supplemental and the regular wages were a single wage payment for the regular payroll period.

(2) If the supplemental wages are paid at a different time, the employer may determine the tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding

payroll period within the same calendar year.

(3) In lieu of the above, the employer may withhold on supplemental wages at the rate of 4%.

AUTH: 15-30-305; IMP, 15-30-201(4).

42.17.201 NONRESIDENT DEFINED (1) The term "nonresident" as used in ~~this sub chapter~~ 15-30-228, means any individual, estate, trust, partnership, or other organization, excluding corporations, not a resident of Montana.

AUTH: 15-30-305; IMP, 15-30-105 and 15-30-228.

42.17.301 COMPUTATION OF ESTIMATED TAX (1) ~~The law does not specify any particular method for estimating tax liability. All that is required is that the estimate be reasonable. The estimated tax shall be the excess of the total estimated tax liability as computed under 15-30-103, MCA, over the amount of tax estimated to be withheld by the employer if the taxpayer is an employee.~~

~~(2)~~ Husband and wife may either file separate or joint declarations of estimated tax. If husband and wife file a joint declaration, they may, nevertheless, file separate returns for the taxable year.

(2) The social security numbers of the taxpayer(s) must accompany each estimate payment.

AUTH: 15-30-305; IMP, 15-30-241.

The rules as proposd for adoption provide as follows:

Rule I EMPLOYER'S FAILURE TO WITHHOLD (1) If an employer fails to deduct and withhold as required under 15-30-202, MCA, and thereafter, the income tax against which the withholdings may be credited is paid, the amount required to be deducted and withheld shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties, interest, or additions to the tax applicable in respect of such failure to deduct and withhold. The employer will not be relieved under this provision from his liability for payment of the amounts required to be withheld unless he can show that the income tax against which the required withholdings may be credited has been paid.

(2) In the case of corporations, individual liability for amounts required to be deducted may be asserted gainst the officers or employees responsible for the failure to withhold and pay over required deductions from wages.

AUTH: 15-30-305; IMP. 15-30-203.

Rule II RECIPROCAL AGREEMENT - NORTH DAKOTA. An employer is not required to deduct Montana withholding on wages earned by residents of North Dakota under the provisions of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota. Relief from withholding is subject to the

following provisions:

(1) A North Dakota resident performing services in Montana for compensation must annually provide a certificate of North Dakota residency (Form NR-2) to his employer before the employer may discontinue withholding on compensation earned in Montana. The certificate is valid only from the date filed to December 31 of the year in which filed. The certificate is rendered invalid if the employee changes his residence to any state other than North Dakota.

(2) Withholding from a North Dakota resident's compensation earned in Montana must be treated as if earned in North Dakota. If North Dakota requires withholding from the compensation, the North Dakota withholdings must be deducted from the compensation.

(3) A copy of the employee's NR-2 must be submitted by the employer to the Department of Revenue, Helena, Montana, during or with the quarterly report for the quarter in which the NR-2 was provided the employer.

(4) If the department determines that an employee's certificate is false or unsubstantiated, it may require an employer to disregard any claim to North Dakota residency and resume withholding on compensation earned in Montana.

AUTH: 15-30-305; IMP: 15-30-202 and 15-30-306.

RULE III FALSE STATEMENTS BY EMPLOYEES - RECOMPUTATION OF WITHHOLDING. (1) Where the department determines that an employee has provided a false withholding certificate or falsified certificate of North Dakota residency, it may require the employer to deduct and withhold from the employee's current wages a recomputed amount of withholding for the current year wages of the employee based on the proper amount of withholding which would have been taken had the false filing not been made. If the employee has terminated employment and has been paid all wages earned prior to notification of required recomputation, the employer shall not be held liable for the uncollected withholding.

(2) If an employer has knowledge that a falsified certificate has been provided by the employee and fails to notify the department as required, the employer may be held liable for withholding not collected.

AUTH: 15-30-305; IMP: 15-30-202 and 15-30-209.

The rules proposed for repeal are as follows:

Pages 42-1731 - 42-1736 ARM

42.17.202
42.17.211
42.17.212
42.17.213
42.17.214
42.17.215
42.17.216

42.17.217

AUTH: 15-30-305, MCA

4. The revision is being made to clarify the withholding rules and to implement changes made by the 47th Legislature. A rule by rule analysis follows:

Amendments:

42.17.101: The added language in subsection (1) is intended to make clear that a determination of employee status by an agency, such as a court or a division of the Montana department of labor and industry, will be binding in the absence of facts to the contrary.

42.17.103: Subsection (3) is added to clarify the treatment of certain tax deferred employee contributions. These contributions are taxable at receipt not at deferral, thus there should not need to be withholding on these amounts at the time of deferral.

42.17.111: This rule is extensively amended to clarify the treatment of nonresidents, Indians, and residents of North Dakota and the treatment of temporary or short term employment for withholding purposes. Tax treaty income is subjected to withholding in order to protect the state from possible loss because exempt status under a tax treaty cannot be determined until the end of the year. North Dakota residents are exempt from Montana tax under the North Dakota-Montana Reciprocal Agreement, and subsection (4) implements this status for withholding purposes. Subsection (3) implements various court decisions on the taxation of Indians.

42.17.112: The rule is amended to specify the particular form that is used to apply for a Montana employer withholding account number and requires that the federal employer identification number be included on the application. The last sentence makes clear that failure to register does not relieve an employer of the withholding obligation.

42.17.113: In addition to some changes for clarity, subsection (2) is added to require filing for all quarters. While this will impose some additional requirements on some seasonal and temporary employers, the Department believes that this reporting requirement will eliminate apparent delinquencies and will in the long run be a more efficient and economic approach for both employers and the Department. Subsection (3) is added to clarify the "trust" status of withheld money and the consequences of the employer violating its trustee status.

42.17.114: In subsection (1), a reference to a form no longer in use is deleted. The rule is also amended to provided for alternative methods of reporting W-2 information to take into account new business methods.

42.17.116: A reference to forms no longer in use is deleted, and the reporting requirements are clarified.

42.17.117: The rule is rewritten for clarity.

42.17.118: A reference to a form no longer in use is deleted.

42.17.131: The amendments to this rule are intended to clarify the use of the federal W-4 form for Montana withholding purposes and to address abuses of the withholding system by employees who are claiming more exemptions than they are entitled to.

42.17.133: The Department has provided a simple way to compute withholding on lump-sum payments. This should be of convenience to some employers and employees.

42.17.201: The rule is rewritten because the subchapter referred to is being repealed almost in total because of Chapter 570, Laws of 1981.

42.17.301: Language that merely paraphrases the statute is deleted in subsection (1). The requirement of providing social security numbers is established so that the Department may properly credit payments.

New Rules:

Rule I. This rule serves to clarify and spell out the liability of employers for failure to withhold on employees. If the employee pays the tax, the burden is placed on the employer to demonstrate this fact in order to be relieved of liability for the withholding. Payment of the tax by the employee, while relieving the employer from liability for the withholding amount, does not relieve the employer from penalty and interest for failure to withhold. Subsection (2) specifies that liability for failure to withhold may under certain circumstances attach to corporate personnel.

Rule II. This rule implements the provisions of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota.

Rule III. This rule formalizes the procedure developed by the department for the treatment of withholding when the Department determines that an employee has filed false or fraudulent claims as to number of exemptions or North Dakota residency status. The procedure enables the State to recover withholding that would have been collected had the correct information been supplied by the employee.

Repeals:

42.17.202 and 42.17.211 through 42.17.217: Chapter 570, Laws of 1981, repealed Sections 15-30-221 through 15-30-227, MCA. The rules implemented those sections, and consequently it is necessary to repeal the rules.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted no later than January 14, 1981, to:

Laurence Weinberg
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. Roy Andes has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments, adoptions, and repeals is based on Section 15-30-305, MCA. The implementing sections are listed below each amendment or adoption.

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 12-7-81

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE REVISION OF RULES relating to the Assessment of Furniture and Fixtures used in Commercial Establishments Found in Title 42, Chapter 21, ARM.	NOTICE OF HEARING IN THE REVISION OF RULES relating to the Assessment of Furniture and Fixtures used in Commercial Establishments Found in Title 42, Chapter 21, ARM.

TO: All Interested Persons:

1. On January 6, 1982, at 9:00 a.m., a public hearing will be held in the First Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the repeal of the existing rule 42.21.134, ARM, and adoption of 4 new rules for the valuation of furniture and fixtures used in commercial establishments. The repealed rule is located on pages 42-2130 through 42-2133 of the Administrative Rules of Montana.

2. The proposed revision repeals existing rule 42.21.134, ARM, and adopts in its place 4 new rules. The new rules better define the categories of this property and set out trend factors specifically based upon data pertaining to the particular category of property. The proposed new rules provide as follows:

RULE I. VALUATION OF FURNITURE AND FIXTURES (1) The market value of furniture and fixtures is determined by multiplying an indexed depreciation factor times the original cost of the property. The Department has established 6 specific categories and 1 general category to determine specific trend factors for this type of property. Each specific category uses data particular to the type of property in the category. The indexed depreciation factor is the product of the trend factor (based on age and category of property) times the depreciation factor from the appropriate table.

(2) This rule is effective for tax years beginning after December 31, 1981.

AUTH: 15-1-201(1); IMP: 15-6-139.

RULE II. DEPRECIATION TABLES Depreciation schedules of 3, 5 and 10 years have been established for each category of property. The number of years corresponded to the useful life of the property taking into account physical use and functional and economic obsolescence. The depreciation tables reflect the remaining life of the property over the term of years assigned with a 20% residual. The 5:10 year depreciation tables "Percent Good" numbers were extracted from the Marshall and Swift Publication, "Fixtures and Equipment Table", §97, p.4. The 3-year table was

derived from consultation with industry representatives. "Remaining Life" is a form of depreciation. The tables are appropriate because the 3, 5 and 10 year periods were incorporated through rule hearings.
AUTH: 15-1-201(1); IMP: 15-6-139.

RULE III. CATEGORIES (1) The specific categories of property for determination of trend factors and depreciation are contained in subsections (2)-(8). The listing of property in the several categories is for purpose of illustration of type of property in that group and is not meant to be exhaustive.

(2) Category 1 consists of computer systems and data processing equipment. The index used will be the "Producer Price Index for the 1972 Standard Industrial Classification Manual", Code #3674, "Semiconductors and Related Devices", published by the United States Department of Labor, Bureau of Labor Statistics. A 3-year depreciation table will be used.

(3) Category 2 consists of calculating and accounting machines, cash registers, typewriters, safes, vending machines, addressing machines, time recording machines, check endorsing machines, postage machines, and other office and store machines. The index used will be the "Producer Price Index for Commodity Grouping, No. 1193, "Office and Store Machines and Equipment", published by the United States Department of Labor, Burau of Labor Statistics. A 5-year depreciation table will be used.

(4) Category 3 consists of citizens band radios, mobile telephones, PBX type systems, and radio and television broadcasting and transmitting equipment. The index used will be the "Producer Price Index for Commodity Grouping, No. 1178, "Electronic Components and Accessories", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(5) Category 4 consists of specialized medical and dental equipment. The index used will be the "Producer Price Index for Commodity", No. 11790533.18, "Medical X-Ray Unit", published by the United States Department of Labor, Burau of Labor Statistics. A 5-year depreciation table will be used.

(6) Category 5 consists of hotel and motel furniture and fixtures. The index used will be the "Producer Price Index for Commodity Grouping", No. 12, "Furniture and Household Durables", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(7) Category 6 consists of repair shop tools. The index used will be the "Producer Price Index for Commodity Grouping", No. 113, "Metalworking Machinery and Equipment", published by the United States Department of Labor, Bureau of Labor Statistics. A 10-year depreciation table will be used.

(8) Category 7 consists of all other commercial furniture and fixtures. The index used will be the "Producer Price Index for Commodity Grouping", No. 122, "Commercial Furniture", published by the United States Department of Labor, Bureau of

Labor Statistics. A 10-year depreciation table will be used. AUTH: 15-1-201(1); IMP: 15-6-139.

RULE IV. PREPARATION OF TREND FACTOR SCHEDULES (1) On or before January 1 of every year, the Department of Revenue shall prepare schedules of trend factors for each of the groups of equipment specified in subsections (2) through (8) of Rule III.

(2) The data used to compute the trend factors are the monthly values of the "Producer Price Indexes" (PPI) specified in subsections (2) through (8) of Rule III. The values shall be taken from the most recent publications received by the Montana State Library as of November 30.

(3) In order to compute the trend factors to be used in year Y for a given equipment group, it is first necessary to calculate average annual values of the appropriate PPI for as many years as are in the useful life attributed to the group. Average annual values of the PPI for year Y are calculated by adding together the 12 values of the PPI listed for the months July of year Y-2 through June of the year Y-1 and dividing the sum by 12. Note that the most recent average annual PPI is based on a period which ends approximately 6 months before the actual computation is made. For example, in calculating trend factors for 1982, the most recent average annual PPI involved will be based on PPI's for the months of July, 1980 through June, 1981.

(4) The trend factors for a specific equipment group are quotients whose numerators are the most recent average annual PPI for the group and whose denominators are, in succession, the most recent average annual PPI, the average annual PPI for the period immediately preceding the most recent one, and so on, until a number of factors equal to the number of years of useful life have been calculated. In general, the trend factor to be applied to equipment in the group which is X years old (where X is less than or equal to the useful life of the equipment) is the quotient of the most recent average annual PPI and the average annual PPI for the (S-1)st period preceding the most recent one. The trend factor to be applied to equipment in the group which is older than the specified useful life L for the group is the quotient of the most recent average annual PPI for the group and the average annual PPI for the (L-1)st period preceding the most recent one. The following example is presented in order to make the mechanics of the calculation clear. Suppose that the trend factors to be used in year Y for an equipment group which has a 5-year useful life are to be calculated. The calculation is to be based on the following hypothetical PPI data for the group:

Suppose that the trend factors to be used in year Y for an equipment group which has a 5-year useful life are to be calculated. The calculation is to be based on the following hypothetical PPI data for the group:

	MONTH											
Year	J	F	M	A	M	J	J	A	S	O	N	D
Y-1	43.8	44.2	44.7	45.3	45.5	46.0	N/A	N/A	N/A	N/A	N/A	N/A
Y-2	39.6	39.9	40.4	40.7	41.1	41.3	41.6	41.9	42.2	42.5	43.1	43.4
Y-3	36.1	36.4	36.7	37.1	37.2	37.4	37.8	38.1	38.3	38.6	38.9	39.2
Y-4	30.9	31.4	31.8	32.7	33.1	33.3	33.8	34.2	34.6	35.0	35.2	35.6
Y-5	25.3	26.0	26.4	26.9	27.6	28.0	28.5	28.7	29.2	29.5	30.1	30.5
Y-6	N/A	N/A	N/A	N/A	N/A	N/A	23.6	24.0	24.5	24.7	24.9	25.2

The Average Annual PPI's are:

$$\frac{41.6+41.9+42.2+42.5+43.1+43.4+43.8+44.2+44.7+45.3+45.5+46.0}{12} = 43.7$$

$$\frac{37.8+38.1+38.3+38.6+38.9+39.2+39.6+39.9+40.4+40.7+41.1+41.3}{12} = 39.5$$

$$\frac{33.8+34.2+34.6+35.0+35.2+35.6+36.1+36.4+36.7+37.1+37.2+37.4}{12} = 35.8$$

$$\frac{28.5+28.7+29.2+29.5+30.1+30.5+30.9+31.4+31.8+32.7+33.1+33.3}{12} = 30.8$$

$$\frac{23.6+24.0+24.5+24.7+24.9+25.2+25.3+26.0+26.4+26.9+27.6+28.0}{12} = 25.6$$

The trend factors for the equipment group are:

Age of Equip. In Years	Trend Factor
1	43.7/43.7 = 1.00
2	43.7/39.5 = 1.11
3	43.7/35.8 = 1.22
4	43.7/30.8 = 1.42
5 and older	43.7/25.6 = 1.71

AUTH: 15-1-201(1); IMP: 15-6-139.

3. This revision is being made to more accurately reflect market value for the properties in the various categories.

4. Interested parties may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing no later than January 14, 1982, to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

5. J. Daniel Hoven, Agency Legal Services, Office of the Attorney General of Montana, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make this proposed revision is based on §15-1-201, MCA, and the rule implements §15-6-139, MCA.

Ellen Feaver
by [illegible]
ELLEN FEAVER, Director

Certified to the Secretary of State 12-7-81

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 1.2.210 pertaining to adoption of a later amendment to a federal agency rule	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 16, 1982, the office of the Secretary of State proposes to amend Rule 1.2.210, pertaining to the format for adoption of a later amendment to a federal agency rule.

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

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE (1) remains the same

~~(2)~~ redesignated (a) remains the same

~~(3)~~ redesignated (2) remains the same

~~(4)~~ redesignated (3) Only a notice of incorporation by reference of later amendments of a federal regulation, as specified in 2-4-307(5), MCA, is published in the Montana Administrative Register. ~~The attorney general's model rule for a substantive rule with no publication hearing contemplated is used for the notice format. The format for the incorporation by reference is as shown in paragraph (1) above.~~ The following form shall be utilized for an adoption of a later amendment to a federal regulation.

(a) The (agency) hereby gives notice of the adoption and incorporation by reference of a later amendment to (citation to federal agency rule). (Citation to federal agency rule) is presently incorporated by reference in (rule number, catchphrase). The amendment sets forth (substance of the amendment). The effective date for the adoption of the later amendment is (effective date). A copy of the (citation to federal agency amendment) may be obtained from the (agency name and address).

(4) No further notice of adoption or replacement page is required when adopting a later amendment to a federal agency rule. However, to help the user to determine the date of the latest incorporation by reference, it is suggested that the agency furnish a replacement page to the Administrative Rules of Montana. An amendment notation in the history of a rule would lead the user back to the page where the notice is published in the Montana Administrative Register.

(5) When an agency originally submits a proposed adoption by reference notice, the director or head of the department must submit a cover letter, addressed to the secretary of state, indicating their intention to adopt an agency rule by incorporation by reference. This letter is not required for an adoption of a later amendment to a federal agency rule.

(6) Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

3. The amendment of the rule is proposed to provide agencies with a format for an adoption of a later amendment to a federal agency rule.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Robert P. McCue, Office of the Secretary of State, Montana State Capitol, Helena, Montana, 59620, no later than January 14, 1982.

5. The authority of the agency to make the proposed amendment is based on section 2-4-306, MCA, and the rule implements section 2-4-307, MCA.

Dated this 7th day of December, 1981.

JIM WALTERMIRE
Secretary of State

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the food stamp program, Rule 46.11.101	)))))))	NOTICE OF ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULE 46.11.101, FOOD STAMP PROGRAM. NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice of the adoption and incorporation by reference of later amendments to 7 CFR 271, 272, 273, and 274 published in 46 Fed. Reg. 44712, Friday, September 4, 1981. 7 CFR 271, 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. The amendments set forth changes made in the definition of a household, which households are eligible for food stamps, what benefits a household will receive when it first applies and in subsequent months, when USDA will update the income eligibility standards, benefit levels and allowable deduction amounts to account for changes in the cost-of-living, and other parts of the program. Taken together, these changes will restrict eligibility and reduce the program's cost. This rule also implements a minor provision to the dependent care and medical deductions of the 1980 food stamp amendments. A copy of 7 CFR Parts 271, 272, 273, and 274 published in 46 Fed. Reg. 44712, Friday, September 4, 1981 may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is January 28, 1982.

3. On September 4, 1981, the United States Department of Agriculture adopted interim regulations (46 Fed. Reg. 44712, Friday, September 4, 1981) implementing changes in the current Food Stamp Program in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. Law 97-35). The Department had to implement these changes by October 1, 1981 because State law mandates that the Department administer federal funds in conformity with federal law. The Department as an agent of the federal government cannot administer the federal Food Stamp Program unless it is in compliance with federal law. See Sections 53-2-201, 53-2-206, and 53-2-306 MCA. In order to remain in compliance with state and federal law, the department on October 1, 1981, amended Rule 46.11.101 as an emergency rule. This notice of incorporation will give a permanent effect to the later amendment to an existing incorporation by reference.

4. The authority of the Department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-306, MCA.

5. No hearing will be held unless requested under 2-4-315, MCA, by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 3 . 1981.

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

In the matter of the adoption of rules and the amendment of Rule 46.5.501 pertaining to foster care reviews, the review committee, review procedures and defining department	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES AND THE AMENDMENT OF RULE 46.5.501 PERTAINING TO FOSTER CARE REVIEWS, REVIEW COMMITTEES, AND DEFINING DEPARTMENT

TO: All Interested Persons

1. On January 8, 1982, at 9:00 a.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of rules and the amendment of Rule 46.5.501, pertaining to foster care reviews, the review committee, review procedures, and defining department.

2. Rule 46.5.501 proposed to be amended provides as follows:

46.5.501 PROCEDURE FOR OBTAINING SERVICES (1) Any parent, child, court, concerned individual or agency may request substitute care placement on a form obtainable at the department's local office.

(a) "Department" means the department of social and rehabilitation services for purposes of this subchapter.

(2) When a child is found to be abandoned or in imminent danger, a social worker or law enforcement officer may make an immediate placement. However, a parental agreement for placement must be obtained or a petition for custody filed within 48 hours, excluding weekends.

3. The authority of the agency to amend the rule is based on Section 41-3-208, MCA and the rule implements Section 41-3-301, MCA.

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

RULE I FOSTER CARE REVIEW COMMITTEE (1) The committee will conduct a review of any child placed in a licensed family foster home, a child care agency, group home or treatment facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child.

(2) One committee shall be appointed in each judicial district in the state by the youth court judge in consultation with the field services bureau chief or his designee of the community services division of the department.

(3) The committee shall be composed of not less than four nor more than seven members including:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of the children in foster care placements not employed by the youth court or department;

(d) a representative of a local school district.

(4) Three of the four required committee members must be in attendance to constitute an official review.

(a) A chairperson shall be selected by the committee prior to each meeting.

(5) There shall be a foster care committee review once every six months on each child who has been in foster care for a period of more than 6 months.

(a) The committee shall meet no less than annually for foster care reviews.

5. The authority of the agency to adopt the rule is based on Section 41-5-807, MCA, C. 297, L. 1981 and the rule implements Section 41-5-807, MCA, C. 297. L. 1981.

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

RULE II SUBJECT OF FOSTER CARE REVIEWS (1) Foster care reviews must specifically consider the following:

(a) Are the child, parents, foster parents receiving appropriate services designed to get the child home?

(b) Have reasonable efforts been made by the placing agency to return the child to his or her home?

(c) Can the child return home? If not, why not? What efforts must be made by the parents and agency before the child can return home?

(d) In the interim, is this placement the least restrictive (most family-like) available and as close as possible to the parents' home so as to facilitate visitation?

(e) Does the child's treatment plan need to be modified?

(f) By what date may it be expected that the child will return home, be placed for adoption or other alternative permanent placement situation (i.e., permanent foster care or guardianship)?

(g) To what extent have the parents visited the child and any reason why visitation has not happened?

(2) The committee shall be provided with written information by the placing agency necessary to answer all questions found in subsection (1) of this rule ten days prior to their meeting date. This written information shall include:

(a) current social information;

(b) placement history;

(c) treatment plan;

(d) description of activities and observations of worker;
(e) court orders;
(f) available psychological and psychiatric information regarding the child/family;
(g) placement worker's recommendation for continued placement or return to the family.

7. The authority of the agency to adopt the rule is based on Section 41-5-807, MCA, C. 297, L. 1981 and the rule implements Section 41-5-807, MCA, C. 297, L. 1981.

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

RULE III REPORTS OF FOSTER CARE REVIEW COMMITTEE
(1) The committee, after reviewing the information provided, shall submit a written report to the judge, the department and placing agency summarizing their findings and recommendations within 30 days of the review date. The report shall include:
(a) answers to questions in Rule II;
(b) recommendations and reasons as to continuation or discontinuation of foster care;
(c) treatment needs of child.
(2) The following people may participate in foster care review meetings:
(a) committee members;
(b) placing agency workers and/or supervisor;
(c) foster parents, parents and child/youth (if appropriate) may attend if they wish;
(d) child's guardian ad litem.
(3) Confidentiality of foster care review.
(a) All members of the committee and all persons present at committee meetings shall be informed of the confidentiality of any information discussed at the meeting. Members and persons present are required to keep all information about the subject individuals confidential.
(b) All reports or written records of the committee shall be kept confidential (except as provided elsewhere in this rule).

9. The authority of the agency to adopt the rule is based on Section 41-5-807, MCA, C. 297, L. 1981 and the rule implements Section 41-5-807, MCA, C. 297, L. 1981.

10. These new rules are proposed to be adopted because of the passage of SB 208 (C. 297, L. 1981) by the 47th Legislature. That legislation provides for periodic reviews of the foster care status of children by a committee appointed by the youth court judge in each judicial district. The department

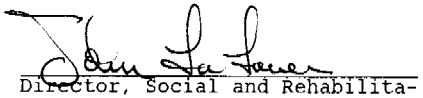
was authorized to set guidelines for the committee and enact rules to implement the purpose of the legislation.

Rule I lays out the composition of the committee and when it must meet whereas Rule II governs the information to be provided to the committee and the issues the committee must discuss. Rule III provides for the reporting to the court by the committee and confidentiality in conformity with department policy and law.

Rule 46.5.501 is proposed to be amended to include a definition of department as the Department of Social and Rehabilitation Services for purposes of this subchapter. Although the word department is used throughout the subchapter, it has previously not been defined for purposes of this subchapter.

11. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than January 18, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 2, 1981

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

In the matter of the amendment of Rule 46.12.102 pertaining to medical assistance, definitions	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.102 PERTAINING TO MEDICAL ASSISTANCE

To: All Interested Persons

1. On January 6, 1982, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.102 pertaining to medical assistance, definitions.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS (1) Department means the Montana department of social and rehabilitation services.

(2) Medically necessary service means a service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in a patient which:

(a) endanger life, or
(b) cause suffering or pain, or
(c) result in illness or infirmity, or
(d) threaten to cause or aggravate a handicap, or
(e) cause physical deformity or malfunction and, there is no other equally effective, more conservative, or substantially less costly course of treatment more suitable for the recipient requesting the service or, when appropriate, no treatment at all.

(i) Services which are considered by the medical profession as experimental or which are generally regarded by the medical profession as unacceptable treatment will not be considered medically necessary for the purpose of the medical assistance program.

(3) Montana medicaid program means the Montana medical assistance program authorized by sections 53-6-101 through 53-6-144, 53-6-201 and 53-6-202 et seq. MCA and 42 USC 1396 et seq.

(4) Provider means a natural person, firm, corporation, association or institution which is providing and has been approved to provide medical assistance to a recipient pursuant to the state medical assistance program.

(5) Third party means an individual, institution, corporation, or a public or private agency which may be or is liable to pay all or part of the medical cost of injury,

disease, or disability of an applicant for or a recipient of services provided by the Montana medicaid program.

(6) Upper limits of reimbursement for noninstitutional services are:

(a) the provider's actual charge (the amount submitted on the claim to medicaid);

(b) the medicaid median charge as determined from medicaid claims submitted during all of the calendar year preceding the state fiscal year in which the determination is made; however, if the individual can supply the department with convincing evidence that the department's determination of median charge does not reasonably represent the individual provider's median charge, the department may conduct an analysis that documents a more appropriate figure;

(c) the amount allowable for the same service under medicare and the prevailing charge under part B, medicare;

(d) the 75th percentile of the range of weighted medicaid median charges for that particular covered service. This percentile is set by the department during the calendar year preceding the state fiscal year in which the determination is made.

(7) Valid and proper claim means a claim which has been signed and submitted on a department approved billing form with all the requested information supplied, and for which no further written information or substantiation is required for payment.

(8) Designated review organization means either the department or other entity, contracting ~~an organized group or an individual who has contracted~~ with the department or ~~is~~ designated by law to determine ~~whether services are medically necessary.~~ the medical necessity of medical services rendered to recipients of public assistance.

(9) Affiliates means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

(10) Provider agreement means an agreement that continues for a specific period of time not to exceed twelve months and which must be renewed in order for the provider to continue to participate in the medicaid program.

(11) Fiscal agent means an organization which processes and pays provider claims on behalf of the department.

(12) Suspension of payments means the withholding of all payments due a provider pending the resolution of the matter in dispute between the provider and the department.

(13) Suspension of participation means an exclusion from participation in the medicaid program for a specified period of time.

(14) Termination from participation means an exclusion from participation in the medicaid program.

(15) Withholding of payments means a reduction or adjustment of the amounts paid to a provider on pending and

subsequently submitted bills for purposes of offsetting overpayments previously made to the provider.

(16) Grounds for sanctions are fraudulent, abusive, or improper activities engaged in by providers of medical assistance services.

(17) Intern means a medical practitioner involved in a period of on-the-job training as part of a larger educational program.

(18) Resident means a medical practitioner involved in a prolonged period of on-the-job training which may either be part of a formal educational program or be undertaken separately after completion of a formal program, sometimes in fulfillment of a requirement for credentialing.

(19) License means permission granted to an individual or organization by competent authority to engage in a practice, occupation or activity which would otherwise be unlawful. It is granted in the state where the practice, occupation or activity is carried out.

(20) Certification means the process by which a governmental or non-governmental agency or association evaluates and recognizes an individual, institution or educational program as meeting predetermined standards.

(21) Outpatient drugs means drugs which are obtained outside of a hospital.

(22) Maximum allowable cost (MAC) is the upper limit the department will pay for drugs in accordance with 42 CFR 447.331 which is a federal regulation dealing with limits of payment. The department hereby adopts and incorporates 42 CFR 447.331 by reference. A copy of the above-cited regulation may be obtained from the department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana, 59601.

(23) Estimated acquisition cost is the cost for drugs for which no MAC price has been determined. The estimated acquisition cost is established and adjusted monthly by the department upon notification of drug prices by pharmacies or legitimate pharmacy supplies.

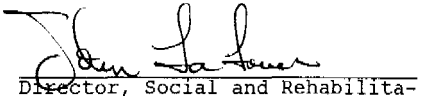
(24) In the medically needy program, family size means the number of eligible individuals and responsible relatives living in the same household unit. Ineligible persons living in the same household who are not responsible relatives are not counted when determining family size.

3. The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101, 53-6-131 and 53-6-141, MCA.

4. This amendment proposes a technical language change that allows the department a wider range of options so that the most efficient and effective system for review of medical necessity for services to recipients can be utilized by the department.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 14, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 2, 1981.

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

In the matter of the adoption of rules, the amendment of Rules 46.10.108, 46.10.205, 46.10.207, 46.10.301, 46.10.303, 46.10.308, 46.10.310, 46.10.312, 46.10.319, 46.10.401, 46.10.402, 46.10.403, 46.10.404, 46.10.406, 46.10.505, 46.10.506, 46.10.508, 46.10.510, 46.10.511, 46.10.512, 46.10.513, 46.10.514, and the repeal of Rules 46.10.209, 46.10.304, 46.10.507, 46.10.509, and 46.10.515 pertaining to the Aid to Families with Dependent Children (AFDC) Program	) NOTICE OF PUBLIC HEARING) ON THE PROPOSED ADOPTION OF) RULES, THE AMENDMENT OF) RULES 46.10.108, 46.10.205,) 46.10.207, 46.10.301,) 46.10.303, 46.10.308,) 46.10.310, 46.10.312,) 46.10.319, 46.10.401,) 46.10.402, 46.10.403,) 46.10.404, 46.10.406,) 46.10.505, 46.10.506,) 46.10.508, 46.10.510,) 46.10.511, 46.10.512,) 46.10.513, 46.10.514) AND THE REPEAL OF RULES) 46.10.209, 46.10.304,) 46.10.507, 46.10.509, AND) 46.10.515 PERTAINING TO) THE AID TO FAMILIES WITH) DEPENDENT CHILDREN (AFDC)) PROGRAM

TO: All Interested Persons

1. On January 12, 1982, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the adoption of rules, the amendment of Rules 46.10.108, 46.10.205, 46.10.207, 46.10.301, 46.10.303, 46.10.308, 46.10.310, 46.10.312, 46.10.319, 46.10.401, 46.10.402, 46.10.403, 46.10.404, 46.10.406, 46.10.505, 46.10.506, 46.10.508, 46.10.510, 46.10.511, 46.10.512, 46.10.513, 46.10.514, and the repeal of Rules 46.10.209, 46.10.304, 46.10.507, 46.10.509, and 46.10.515 pertaining to the Aid to Families with Dependent Children (AFDC) Program.

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

RULE I (46.10.320) DENIAL OF BENEFITS TO STRIKERS

(1) Participation in a strike does not constitute good cause to leave, or to refuse to seek or accept, employment.

(2) AFDC benefits will be denied to any family for any month in which any caretaker relative with whom the dependent child is living is, on the last day of the month, participating in a strike.

(3) No individual's needs will be included in determining the amount of benefit payable for any month to a family if, on the last day of such month, the individual is participating in a strike.

(4) A strike is defined as a temporary concerted stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. Also included in this definition is a work stoppage by reason of the expiration of a collective bargaining agreement.

3. The authority of the department to adopt the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

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

RULE II (46.10.321) NEEDY PREGNANT WOMAN (1) Assistance is provided to an otherwise eligible pregnant woman with no other children receiving assistance when the fact of pregnancy has been verified by a physician.

(a) AFDC payments will begin no earlier than the third month prior to the month in which the child is expected to be born.

(b) Medicaid coverage will begin with the month in which pregnancy is verified only if, except for (a), the pregnant woman would have received an AFDC payment.

5. The authority of the department to adopt the rule is based on Section 53-4-212, MCA and the rule implements Sections 53-4-211 and 53-4-231, MCA as amended by House Bill 5 of the 1st Special Session of the 47th Legislature

6. Rule 46.10.108 proposed to be amended provides as follows:

46.10.108 OVERPAYMENTS AND UNDERPAYMENTS (1) When it is discovered that an administrative error resulted in an underpayment of an assistance grant, it may be corrected by increasing the grant for the following month to cover the underpayment. ~~Corrective payments are limited to a 12-month period preceding the month in which the underpayment was discovered.~~

(a) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the following month.

(b) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

(2) Current payments of assistance will ~~not~~ be reduced because of prior overpayment unless the recipient agrees to a repayment schedule which allows full recovery sooner than recovery through reductions in grant amounts. Recovery through reductions in grant amounts will be done in a manner that insures the recipient will have a monthly cash amount (sum of available earned income and reduced grant amount) to meet his assistance unit's needs of no less than 90% of the benefit

standard for his assistance unit size. ~~has income or resources currently available in the amount by which the agency proposes to reduce payments. Where evidence clearly establishes that a recipient willfully withheld information concerning his income, resources or other circumstances, the state may recoup prior overpayments from current assistance grants irrespective of current income or resources.~~

~~(a) willful withholding of information includes:~~

~~(i) willful misstatements (either oral or written) made in response to oral or written questions from the agency;~~

~~(ii) willful failure by the recipient to report changes in income and resources; and~~

~~(iii) willful failure by the recipient to report receipt of a payment which he knows or should know represents an erroneous overpayment.~~

~~(b)~~ (3) Cases where the recipient willfully withheld information causing overpayment are to be referred to the program integrity bureau for the determination of the possibility of fraud.

(a) Willful withholding of information includes:

(i) willful misstatements (either oral or written) made in response to oral or written questions from the agency;

(ii) willful failure by the recipient to report changes in income and resources; and

(iii) willful failure by the recipient to report receipt of a grant amount which he knows or should know represents an erroneous overpayment of grant amount.

~~(c)~~ (b) In cases where the overpayment resulted from the willful misstatements or withholding of information on the part of the recipient, the amount to be recovered will be 125% of the amount of the overpayment.

~~(3) Recoupment of overpayments not occasioned by willful withholding of information is limited to the 12 months preceding the month in which the overpayment is discovered.~~

~~(4) When recoupment is made from current assistance payments, the proportion deducted from the grant is limited on a case-by-case so as not to cause undue hardship on recipients.~~

~~(5)~~ (c) Any recoupment of overpayments due from withholding of information may be made from available income and resources, including disregarded, set-aside or reserved items, or from current assistance payments or from both.

~~(6) Recipients are not to be held responsible for agency generated errors if such recoupment would result in an undue hardship to the recipient.~~

~~(7)~~ (4) The department will notify recipients ~~at least~~ every ~~six~~ months of their responsibility for reporting their income as defined in ~~sub-chapter~~ ARM 46.10.505 and resources as defined in ARM ~~46.10.410 (2)(3) and (4).~~ 46.10.406.

(a) Recipients must report all available income and resources (including disregarded, set-aside, or reserved items),

as well as current assistance payments.

(b) The department shall furnish a form on which recipients must acknowledge every ~~six~~ months that the reporting obligations have been brought to their attention and such obligations are understood by them.

7. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-211 and 53-4-231, MCA.

8. Rule 46.10.205 proposed to be amended provides as follows:

46.10.205 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for aid to dependent children assistance are:

(a) Application is filed by relative or guardian with whom the child is living at the county welfare office in the county where the child resides. The completed application is submitted to the county welfare board for determination and disposition. The client is notified of the reasons for approval or disapproval of this application. The assistance payment is mailed directly to the responsible payee.

(b) Eligibility requirements which must be verified and documented in all AFDC cases are:

(i) need and income;

(ii) property and property transfer;

(iii) age;

(iv) employment and work registration;

(v) the child's deprivation of parental support; and

(vi) social security number or proof of application for social security number~~; and~~.

~~(vii) relative responsibility.~~

9. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

10. Rule 46.10.207 proposed to be amended provides as follows:

46.10.207 NOTICE OF ADVERSE ACTION (1) Each person who receives assistance must be notified ten days in advance of any action that reduces, terminates or suspends this grant. Notification must be in writing and contain information about the amount of decrease or closure, the reason for the action, and must advise the client of the date on which the action will take effect. Where the notice is mailed, the date of mailing shall be the first day of the notice period. The notice must inform the client of his right to a fair hearing and his right to contact the department prior to the effective

date of the action to discuss any disagreement or misunderstanding. The agency may dispense with the ten-day notice but shall send prior notice not later than the date of action when:

(a) the state or county office has factual information confirming the death of a recipient;

(b) the state or county office receives a clear written statement signed by the recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance and has indicated in writing that he understands that this must be the consequence of supplying this information;

(c) the recipient has been admitted or committed to an institution, and further payment to that individual does not qualify for federal financial participation under the state plan;

(d) the recipient's whereabouts are unknown and the state or county office mail directed to him has been returned by the post office indicating that no known forwarding address is available; the recipient's assistance check must, however, be made available to him if his whereabouts become known during the payment period covered by the returned check;

(e) a recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(f) the only change is that of payee or category and no person has been eliminated from the payment;

(g) the recipient has been placed in skilled nursing care, intermediate care or other long-term care situation or a change in the level of care is specified by the division;

(h) a child receiving aid to dependent children is removed from a home as a result of judicial determination or voluntarily placed in foster care by his legal guardian; ~~or~~

(i) a special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance would automatically terminate at the end of the specified period~~.~~;

(j) a monthly report is received from a recipient that contains information that is used to reduce or terminate assistance; or

(k) a monthly report was not received from a recipient by the 8th of the month or was incomplete when it was received, and assistance is reduced or terminated on this basis.

(2) A recipient shall be notified of a grant change five days before the effective date of the action where the agency obtains facts indicating that a probable fraud had taken place and a referral of the fraud will be made to the program integrity bureau.

(3) Recipients are to be informed at the time of application and reminded at the time of redetermination to report

to the county welfare department within ten days any changes in employment, income, resources, and/or any other changes in economic circumstances. Living or marital circumstances are considered to affect income and any changes in these or the individual's general economic situation are to be reported to the county welfare office.

11. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

12. Rule 46.10.301 proposed to be amended provides as follows:

46.10.301 AGE (1) A dependent child must be under the age of 18 or age 18 if he is a full-time student in a secondary school and if he may reasonably be expected to obtain a secondary school diploma or its equivalent in or before the month of his 19th birthday. ~~between the ages of 18 and 21 years regularly attending school, college, university, or vocational or technical training.~~

(2) There is no age requirement for the caretaker relative in an AFDC payment.

~~(3) The needs of an unborn child must be included in the AFDC payment, if other eligibility factors are met.~~

13. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

14. Rule 46.10.303 proposed to be amended provides as follows:

46.10.303 AFDC DEPRIVATION REQUIREMENTS (1) A dependent child must be deprived of the support of a parent or both parents due to:

(a) death;
(b) separation or divorce;
(c) desertion;
(d) parents not married to each other;
(e) institutionalization;
(f) military service of one parent;
(g) physical or mental incapacity;
~~(h) unemployed parent.~~

(2) Continued absence of a parent from the home, when the nature of the absence causes a disruption of family ties, constitutes the basic reason for deprivation of parental support in (a) through (f) above.

(3) Physical or mental incapacity of a parent, or unemployment of a parent constitutes deprivation though family ties are not destroyed.

15. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

16. Rule 46.10.308 proposed to be amended provides as follows:

46.10.308 WORK REGISTRATION REQUIREMENTS (WIN) (1) All persons applying for and receiving AFDC must make every reasonable effort to seek gainful employment, including registration for employment with the Montana employment security division. Exceptions to the above-noted requirements will be:

(a) ~~mothers or members of household who have responsibility for the care of any child under six years of age or of an incapacitated adult or child;~~ A parent or other caretaker relative of a child under age 6, an incapacitated child, or an incapacitated adult who personally provides full-time care of that child or adult with only very brief and infrequent absences from that child or adult;

(b) children, age ~~16-21,~~ through 18 who are attending regularly, ~~enrolled full time,~~ as defined by the institutional program in which they are enrolled, an elementary, secondary, or secondary level vocational school ~~in any school or training program~~ recognized by federal, state or local government agencies;

(c) children who are 18 attending secondary school full-time with expectation for a diploma or its equivalent in or before the month of their 19th birthday;

~~(c)~~ (d) persons who are aged 65 or over;

~~(d)~~ (e) persons physically or mentally incapable of engaging in gainful employment as verified by medical or psychological reports;

~~(e)~~ (f) children under the age of 16; or

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

(h) persons who are working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days.

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

(a) report for an appraisal interview conducted by WIN staff and to participate effectively in the program as determined by WIN staff; and

(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.

(3) A person may contest a determination of nonexempt status through the fair hearing process.

(4) 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.

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

17. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

18. Rule 46.10.310 proposed to be amended provides as follows:

46.10.310 FAILURE TO COMPLY (WIN) (1) If a nonexempt applicant or participant fails to comply with the work requirement without good cause, ~~he will be determined ineligible for assistance until he complies with the requirement.~~ the following sanctions shall apply:

(a) For the first such occurrence the individual shall, after a 30 day conciliation period, be deregistered for three payment months.

(b) For the second and subsequent occurrences, the individual shall, after a 30 day conciliation period, be deregistered for six payment months.

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

(a) If the 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 these circumstances, the caretaker relative may not be the protective payee.

(i) When protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, the greater part of the payment will be made to the vendors.

(ii) Termination of protective or vendor payments shall occur when ~~a person who refused training or employment without good cause accepts or agrees to accept training or employment.~~ the applicable sanction period has ended.

(b) If the individual is one of several dependent children in the family, assistance for this child will be denied and his needs will not be taken into account in determining the family's need for assistance.

~~(i) The specified sanctions shall not be applied during the period of 60 days in which an individual is being provided counseling and other services for the purpose of persuading him to accept appropriate training, except that financial assistance paid in behalf of the individual and his family will be provided in the form of protective or vendor payments.~~

~~(ii) If an individual registered on a voluntary basis discontinues participation in the WIN program, he and his family are not subject to the sanctions.~~

(c) If the individual is the only dependent child in the family, assistance for the family will be denied.

(3) If an individual registered on a voluntary basis discontinues participation in the WIN program, without good cause, he will be deregistered from WIN for a period of three or six payment months depending on whether this was the first or a subsequent deregistration. The individual's AFDC grant shall not be affected.

~~(3)~~ (4) If a mandatory participant refuses to accept child care that is suitable to the child's needs and meets the required standards, this is tantamount to refusing to participate in the WIN program and the individual becomes subject to the sanctions.

19. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

20. Rule 46.10.312 proposed to be amended provides as follows:

46.10.312 REAPPLICATION AFTER REFUSAL TO PARTICIPATE IN WIN (1) WIN nonexempt individuals who have been terminated for refusal to participate in WIN without good cause may reapply for AFDC after a the sanction period~~, as determined by the WIN team,~~ has elapsed. ~~The sanction period shall be based on the period the individual actually failed or refused to participate in WIN without good cause.~~

(2) Reacceptance into the WIN program may be denied by the WIN team where the termination action was a result of the individual's disruptive behavior or of criminal or other activities which presented a hazard to county welfare office staff or WIN/Employment Service staff or others.

21. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

22. Rule 46.10.319 proposed to be amended provides as follows:

46.10.319 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DEPENDENT CHILDREN, PROCEDURES FOLLOWED IN DETERMINING ELIGIBILITY (1) The person makes application at the county welfare department where he lives.

(2) Eligibility requirements for emergency assistance must be verified and documented.

(3) To receive emergency assistance the child must be:

(a) living with, or within six months prior to the application did live with, a specified relative in a place of residence maintained by the relative;

(b) without resources immediately available to meet his needs;

(c) less than 19 ~~21~~ years old and, if between the ages of 16 and 19 ~~21~~ years and not attending school must agree to accept training or employment.

(4) A child is not eligible for emergency assistance if his caretaker relative refuses without good cause to accept employment or training for employment. Participation in a strike is not good cause for refusing to accept employment or training for employment. Nothing in this section shall be interpreted to require any person enrolled in and attending school regularly to accept employment or training as a condition of receiving emergency assistance.

(5) Emergency assistance may be used in addition to but not as a substitute for categorical assistance or general assistance. Emergency assistance may be extended to those aid to dependent children families on a supplementary basis who have specified needs arising from an emergency situation.

(6) The completed application is submitted to the county welfare board who shall notify the person of approval or reasons for disapproval of his application.

(7) The assistance payment is mailed directly to the client except in protective payee or vendor payments.

(8) There are no residency requirements for emergency assistance.

23. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

24. Rule 46.10.401 proposed to be amended provides as follows:

46.10.401 A CONDITION OF NEED MUST EXIST (1) Need exists when a person does not have resources or income sufficient to provide a reasonable subsistence according to prevailing assistance standards determined by the department. With respect to income, ~~T~~the procedure followed by the department to determine whether a need exists is to identify all sources of income, evaluate each, and relate the gross and net amounts of income to the prevailing assistance standards. Certain exclusions and disregards and exceptions regarding treatment of income are found in this chapter.

25. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

26. Rule 46.10.402 proposed to be amended provides as follows:

46.10.402 STANDARDS OF ASSISTANCE AND ASSISTANCE UNIT

(1) Standards of assistance are used to determine when need exists with respect to income for any person who applies for or receives assistance. Three sets of assistance standards are used. The gross monthly income standard sets the level of gross monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to be or continue to be income eligible for AFDC. The net monthly income standard sets the level of net monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to be or continue to be income eligible for AFDC. The net monthly income standards represents the requirements that the ~~of~~ individual or group of individuals needs for basic subsistence (food, clothing, shelter, and other essentials). The benefit standard sets the level of net monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to receive or continue to receive an AFDC grant. However, if the grant amount is for less than ten dollars ($10), no payment check will be issued. The benefit standard represents the amount of money an individual or group of individuals receives for basic subsistence other than food (clothing, shelter, and other essentials). Assistance standards are implemented uniformly throughout the state, and are applied to applicants and recipients on the basis of assistance units.

(2) An assistance unit is composed of an individual, or the persons whose needs are met by the grant amount, ~~in the assistanee budget,~~ who form a family group, all of whom meet the requirements for AFDC. A separate grant amount ~~budget~~ shall be computed for each assistance unit regardless of the number of units in a household. Each assistance unit is entitled to a grant amount based on the full ~~basie requirements of~~ benefit standard for an assistance unit of its size even if other assistance units live in the same household.

27. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

28. Rule 46.10.403 proposed to be amended provides as follows:

46.10.403 TABLES OF ASSISTANCE STANDARDS ~~(1) The table of assistanee standards contains the requirements of individuals or families aeeording to the number of persons, the type of living arrangement, and whether shelter is or is not included.~~

~~(a) Basic Requirements - Adults included in the assistance unit.~~

(1) The tables of assistance standards contain the income and grant limits for assistance units according to the number of persons, the type of living arrangement, and whether shelter is or is not included.

(2) Monthly income as defined in ARM 46.10.505 is tested against the gross monthly income standard and, after specified exclusions and disregards, the net monthly income standard. These tests are applied using income reasonably expected to exist in the benefit month; however, if income is reported or discovered after the month of receipt, this income must be accounted for by applying the gross monthly income test retroactively in the second month after receipt. Monthly income is to be compared to the full standard for the size assistance unit even though the grant may only cover part of the month. If this monthly income exceeds the standard, the assistance unit is not eligible for any part of the benefit month. The assistance unit may be further ineligible as provided in ARM 46.10.403(3).

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 354	$ 128
2	468	206
3	556	280
4	712	364
5	840	432
6	946	486
7	1,046	536
8	1,148	588
9	1,248	640
10	1,348	692
11	1,448	744
12	1,548	796
13	1,648	848
14	1,748	900
15	1,848	952
16	1,948	1,004

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	Amount Per Month
1	$ 106
2	172
3	254
4	336
5	418
6	504
7	590
8	676
9	762
10	848
11	934
12	1,020
13	1,106
14	1,192
15	1,278
16	1,364

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 236	$ 85
2	311	137
3	370	186
4	473	242
5	559	287
6	629	323
7	696	356
8	764	391
9	830	426
10	897	461
11	964	496
12	1,031	531
13	1,098	566
14	1,165	601
15	1,232	636
16	1,299	671

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	Amount Per Month
1	$ 70
2	114
3	169
4	223
5	279
6	335
7	392
8	449
9	506
10	563
11	620
12	677
13	734
14	791
15	848
16	905

(3) When net monthly income exceeds the net monthly income standard the assistance unit is ineligible for the number of months equal to the amount of the net monthly income divided by the net monthly income standard. The remainder which results from this computation will be treated as if it were income received and available in the first month following the period of ineligibility.

(a) If net monthly income in excess of the net monthly income standard is discovered after the month of receipt, the ineligibility period may begin with the month of discovery provided that the recipient has a history of consistent cooperation in reporting monthly income. If the recipient has not been consistent in reporting income, the period of ineli-

gibility begins with the month that the excess income is received and a recovery of overpayment will be initiated.

(b) If net monthly income in excess of the net monthly income standard is caused by a regular and periodic extra paycheck from a recurring income source, assistance will be suspended rather than terminated when ineligibility would be for only one benefit month.

(4) An assistance unit receives the full amount of the benefit standard less net monthly income which is prorated if eligibility is for less than a full month. From this amount recoveries will be taken for prior overpayments.

(a) Benefit standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

~~BUDGET TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	~~$177~~ 195	~~$ 5.90~~ 6.50	~~$ 64~~ 70	$ 2.13 2.33
2	~~234~~ 257	~~7.80~~ 8.57	~~103~~ 113	~~3.43~~ 3.77
3	~~278~~ 306	~~9.27~~ 10.20	~~140~~ 154	~~4.67~~ 5.13
4	~~356~~ 392	~~11.87~~ 13.07	~~182~~ 200	~~6.07~~ 6.67
5	~~420~~ 462	~~14.00~~ 15.40	~~216~~ 238	~~7.20~~ 7.93
6	~~473~~ 520	~~15.77~~ 17.33	~~243~~ 267	~~8.10~~ 8.90
7	~~523~~ 575	~~17.43~~ 19.17	~~268~~ 295	~~8.93~~ 9.83
8	~~574~~ 631	~~19.13~~ 21.03	~~294~~ 323	~~9.80~~ 10.77
9	~~624~~ 686	~~20.80~~ 22.87	~~320~~ 352	~~10.67~~ 11.73
10	~~674~~ 741	~~22.47~~ 24.70	~~346~~ 381	~~11.53~~ 12.70
11	~~724~~ 796	~~24.13~~ 26.53	~~372~~ 410	~~12.40~~ 13.67
12	~~774~~ 851	~~25.80~~ 28.37	~~398~~ 439	~~13.27~~ 14.63
13	~~824~~ 906	~~27.47~~ 30.20	~~424~~ 468	~~14.13~~ 15.60
14	~~874~~ 961	~~29.13~~ 32.03	~~450~~ 497	~~15.00~~ 16.57
15	~~924~~ 1016	~~30.80~~ 33.87	~~476~~ 526	~~15.87~~ 17.53
16	~~974~~ 1071	~~32.47~~ 35.70	~~502~~ 555	~~16.73~~ 18.50

~~(b) Basic Requirements - No adults included in the assistance unit.~~

(b) Benefit standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

~~BUDGET TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

BENEFIT STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	Grant Amount Per Month		Grant Amount Per Day	
1	$ 53		$ 1.77	
2	~~86~~	95	~~2.87~~	3.17
3	~~127~~	140	~~4.23~~	4.67
4	~~168~~	185	~~5.60~~	6.17
5	~~209~~	230	~~6.97~~	7.67
6	~~252~~	277	~~8.40~~	9.23
7	~~295~~	324	~~9.83~~	10.80
8	~~338~~	371	~~11.27~~	12.37
9	~~381~~	418	~~12.70~~	13.93
10	~~424~~	465	~~14.13~~	15.50
11	~~467~~	512	~~15.57~~	17.07
12	~~510~~	559	~~17.00~~	18.63
13	~~553~~	606	~~18.43~~	20.20
14	~~596~~	653	~~19.87~~	21.77
15	~~639~~	700	~~21.30~~	23.33
16	~~682~~	747	~~22.73~~	24.90

~~The per-day column in both tables is to be used to compute basic requirements for part of a month. Example - A household of four with shelter obligation eligible for 10 days in a month = $11.87 x 10 = $118.70 or $119.00. The total is rounded up to the nearest dollar beginning with 25¢ and over.~~

29. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

30. Rule 46.10.404 proposed to be amended provides as follows:

46.10.404 SPECIAL NEEDS, TITLE IV-A DAY CARE FOR RECIPIENTS ~~WORKING,~~ IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Unless otherwise provided~~,~~, in addition to the basic AFDC grant, day care payment will be provided for chil-

dren of recipients who are ~~working,~~ attending employment-related training, or in need of protective services. AFDC recipients who attend WIN training shall be referred for WIN-related day care. AFDC recipients who are employed shall have their day care expenses deducted from earned income when testing net monthly income and when determining grant amount as provided in ARM 46.10.512. ~~be referred to Title IV-A for payment of day care services. Special Needs IV-A Day Care is available for AFDC children who require child protective services day care.~~

(1) Limitations to Title IV-A ~~special needs~~ day care:

(a) Title IV-A day care payments are made for children of parents who are AFDC recipients ~~working or~~ in training on a full- or part-time basis. Training includes ~~is~~, but is not limited to: vocational-technical schools, business colleges, junior colleges, universities ~~university students~~, or special classes which may be classified as "employment-related training." Students who are working to support their education are included under this rule.

(b) Title IV-A day ~~Day~~ care needs will be taken into consideration for eligibility determination of an applicant. If an applicant requires Title IV-A ~~special need~~ day care, this need will be considered in addition to the AFDC grant amount to determine eligibility.

(c) Title IV-A day ~~Day~~ care payment ~~shall be added to the AFDC grant amount. Payment~~ may be made directly to the recipient or through a vendor or two-party payment. The recipient must volunteer in writing to have the day care payment made through a vendor or two-party payment.

(d) Title IV-A day ~~Day~~ care payment will be made ~~paid~~ upon evidence of ~~need~~ actual charge or cost. Evidence of ~~need~~ actual charge or cost includes verification from the provider of day care services. Verification includes the signature of the individual provider or his designee, the month of service, and names of children served.

(e) Except as provided in (h) and (i) below, ~~D~~day care payments shall not exceed $154 per month, or $7 per day, or $3.50 per half day per child for children in licensed day care centers.

(f) Except as provided in (h) and (i) below, ~~D~~day care payments shall not exceed $143 per month or $6.50 per day or $3.25 per half day per child in registered group day care homes.

(g) Except as provided in (h) and (i) below, ~~D~~day care payments shall not exceed $132 per month, or $6 per day, or $3 per half day per child in registered day care homes.

(h) Upon written approval of the district social services supervisor, the following services are also eligible for payment under Title IV-A day care:

(i) extra meals at a rate of 60¢ per meal per child; and

(ii) exceptional child care, as defined in ARM 46.5.903, at a maximum of $8 per day per child for full-time care or $1 per hour per child for part-time care.

(i) When extra meals and/or exceptional child care is provided, day care payment shall not exceed $160 per month per child.

~~(h)~~ (j) Title IV-A ~~Special Needs Bday Ccare~~ is available for care provided in licensed or registered day care facilities only.

~~(i)~~ (k) The recipient shall choose his day care provider.

31. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

32. Rule 46.10.406 proposed to be amended provides as follows:

46.10.406 PROPERTY RESOURCES (1) Definitions: For purposes of this rule, the following definitions apply:

(a) "Property resources" means real or personal, tangible or intangible assets owned by members of the ~~household~~ assistance unit.

(b) "Home" means the assistance ~~household~~ unit's principle residence.

~~(c) "Household unit" means all family members residing together for whom AFDC is sought or received.~~

~~(d)~~ (c) "Equity value" means the market value of a property resource minus the amount of any enforceable lien, encumbrance, or security interest, reasonable sales costs, and transfer taxes.

~~(e)~~ (d) "Market value" means the prevailing price that property brings when sold on a given market.

~~(f)~~ (e) "Currently available property resources" means assets which any member of the ~~household~~ assistance unit has a legal right and reasonable practical ability to liquidate for cash market value.

(2) General rule: In determining eligibility for AFDC, the department will evaluate property resources which are currently available to an assistance ~~a household~~ unit requesting or receiving assistance, and will apply the limitations set out in this rule. Property resources in excess of the limitations established in this rule will disqualify the assistance ~~household~~ unit for AFDC assistance.

(3) "General property resources limitation": The equity value of all currently available property resources owned by members of the assistance ~~household~~ unit will be counted in the process of determining eligibility for assistance, unless such property resources are specifically excluded by this section.

(4) "Property resources exclusions": The following property resources are specifically excluded from treatment as currently available property resources:

(a) The ~~equity value, not to exceed $26,000, of a~~ home regardless of value.

~~(b) The equity value, not to exceed $26,000, for income producing property resources, if such property resources produce are turn that is reasonable for similar property resources in the community. Income from such property resources, less all costs necessarily incurred in producing the income, shall be deducted from the assistance payments.~~

~~(c)~~ (b) One vehicle for family transportation. ~~An additional vehicle may be excluded~~ if equity value does not exceed $1500. ~~and if the vehicle is necessary for medical, educational or employment purposes.~~ Equity in this one vehicle over $1500 and equity in any additional vehicles must be counted as a currently available property resource.

~~(d)~~ (c) Household goods, clothing, and other essential personal effects, ~~and~~ home produce ~~and livestock~~ for family use and consumption only, and other similarly essential day-to-day items of limited value.

~~(e)~~ (d) Essential tools for the owner's trade, ~~or equipment~~ needed for ~~the~~ this owner's employment.

~~(f)~~ (e) Equipment necessary for securing or producing food.

~~(g)~~ (f) Any other property resources not excluded in (4)(a) through (4)~~(g)~~(e) of this section not to exceed $1000 ~~$1500~~ in equity value.

33. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

34. Rule 46.10.505 proposed to be amended provides as follows:

46.10.505 ~~UNEARNED~~ INCOME, DEFINITIONS ~~(1) "Unearned income" means all income that is not earned income as defined in ARM 46.10.509. Unearned income includes, but is not limited to social security income benefits, veteran's benefits or payments, workers' compensation payments, unemployment compensation payments, and returns from capital investments with respect to which the individual is not actively engaged.~~

(1) "Income" means all unearned income and earned income received or expected to be received in a month by members of an assistance unit.

~~(2) Unearned income shall be treated as provided in ARM 46.10.506 through 46.10.508.~~

(2) "Unearned income" means all income that is not earned income as defined in ARM 46.10.505(3). Unearned income includes, but is not limited to social security income bene-

fits, veteran's benefits or payments, workers' compensation payments, unemployment compensation payments, and returns from capital investments with respect to which the individual is not actively engaged.

(a) Unearned income shall be treated as provided in ARM 46.10.506 through 46.10.508(1)(a).

(3) "Earned income" means all income earned by an individual through receipt of wages, salary, commissions, tips, or any other profit from activity in which he is actively engaged.

(a) Earned income from self-employment means the total profit from business enterprise and farming, resulting from a comparison of the gross income received with the business expenses or total cost of the production of the income. Returns from capital investments are earned income when produced as a result of the individual's own efforts, including managerial responsibilities.

(b) Earned income shall be treated as provided in ARM 46.10.508(1)(b) and 46.10.510 through 46.10.512.

(4) "Gross monthly income" means all unearned income that is available for current use in the budget month, except for excluded unearned income as provided in ARM 46.10.506, plus all earned income that is available for current use in the budget month, including any earned income otherwise excluded in ARM 46.10.510.

(a) In stepparent household cases, gross monthly income includes any income, both earned and unearned, of the stepparent deemed available to the stepchildren as unearned income as provided in ARM 46.10.512(2).

(b) When applying gross monthly income to the gross monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month, except that when income is reported or discovered after receipt, the budget month is two months prior to the benefit month.

(5) "Net monthly income" means gross monthly income less any earned income excluded in ARM 46.10.510, plus earned income credit defined according to ARM 46.10.508(1)(b), less any earned income disregarded in ARM 46.10.512.

(a) When applying net monthly income to the net monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month.

(b) When applying net monthly income to the benefit standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first two months of eligibility, and for the third and subsequent months of eligibility the budget month is two months prior to the benefit month.

(6) "Budget month" means the calendar month from which the income or circumstances of the assistance unit are used to calculate income.

(7) "Benefit month" means the calendar month for which the grant amount is issued.

35. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

36. Rule 46.10.506 proposed to be amended provides as follows:

46.10.506 ~~DISREGARDED UNEARNED INCOME~~ EXCLUDED UNEARNED INCOME (1) In testing gross monthly income and net monthly income and in determining grant ~~need and~~ amount, ~~of assistance,~~ the following unearned income shall be ~~disregarded:~~ excluded:

(a) complementary assistance from other agencies and organizations which consists of:

(i) goods and services not included in or duplicated by the AFDC payment,

(ii) a supplement to AFDC payments, for a different purpose.

(b) home produce utilized for household consumption;

(c) undergraduate student loans and grants for educational purposes made or insured under any program administered by the commissioner of education;

(d) extension of OASDI benefits for 18 to 22 year olds who are fulltime students;

(e) the value of the food stamp coupon allotment;

(f) the value of U.S. department of agriculture donated foods;

(g) any benefits received under Title VII of the Nutrition Program for the Elderly of the Older Americans Act of 1965 as amended;

(h) the value of supplemental food assistance received under the Child Nutrition Act of 1966, and the special food services program for children under the National School Lunch Act (PL 92-433 and PL 93-150);

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims ~~shall be disregarded~~ as authorized by PL 93-134, 92-254, 94-540, and 94-114;

(j) payments received under Title II of the ~~u~~Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(k) any contribution furnished by relatives or others which is unavailable directly to the recipient;

(l) the tax exempt portions of payments made pursuant to PL 92-203, the Alaska Native Claims Settlement Act;

(m) all payments under Title I of the e~~E~~lementary and ~~s~~Secondary Education Act;

(n) all weekly incentive allowances paid under PL 93-203, the Comprehensive Employment and Training Act of 1973;

(o) incentive payments or reimbursement of training-related expenses made to WIN participants by the manpower agency;

(p) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in service corps of the retired executives and active corps of executives, and any other program under Titles II and III of PL 93-113;

(q) payments to individual volunteers under Title I (VISTA) of PL 93-113, pursuant to section 404(g) of that law;

(r) individuals receiving supplemental security income shall not be considered as a member of the assistance unit unless they choose to relinquish their SSI grant.

37. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

38. Rule 46.10.508 proposed to be amended provides as follows:

46.10.508 SPECIALLY TREATED INCOME (1) The types of income listed below shall be treated as follows:

~~(a) Lump sum payments are considered as income on a prospective basis in the initial two months and on a retrospective basis after the first two months. After the initial two months, any sum that is retained will be considered against the property resources limitation. The following are examples of lump sum payments: social security, veteran's benefits, unemployment compensation, railroad retirement or disability, workers' compensation.~~

~~(b)~~ (a) Income tax refunds shall be considered toward the property resources limitation and not treated as income.

~~(c) Indian per capita payments may be considered toward the property resources limitation.~~

~~(d) Income from leased land, land sale, and other accrued income may be considered as income available to meet need when received, prorated over the year, or programmed for special needs, such as, but not limited to: housing and home repair, household furnishings and equipment, financial institution debts, education and/or training, recreation equipment, medical debts, bedding and clothing, necessary repair or replacement of a vehicle. Programming must have the approval of the recipient, paying agent, and the county welfare department.~~

(b) Earned income credit advance payments for which an individual is eligible shall be included in net monthly income whether the individual actually receives the advance payment or not. The earned income tax credit actually received and assumed to be received will be reconciled at the end of the tax year and settled as an underpayment or overpayment.

39. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

40. Rule 46.10.510 proposed to be amended provides as follows:

46.10.510 ~~DISREGARDED EARNED INCOME~~ EXCLUDED EARNED INCOME (1) In testing gross monthly income no income is to be excluded and/or disregarded from earnings of assistance unit members.

~~(1)~~ (2) In ~~determining~~ testing net monthly income ~~need~~ and determining grant amount ~~of assistance~~, the following earned income shall be ~~disregarded~~ excluded:

(a) earned income of a full-time student who works full-time or part-time; ~~a child under 14 years of age;~~

(b) earned income of a part-time student who works part-time, but his/her earnings are not to be excluded if employment is full-time; ~~a child over 14 years of age who is a full- or part-time student;~~ and

(c) income received under Title II of CETA, "youth employment demonstration program," of PL 95-93. These programs include the youth incentive pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs.

41. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

42. Rule 46.10.511 proposed to be amended provides as follows:

46.10.511 TREATMENT OF EARNED INCOME (1) The following are methods and treatment of earned income.

(a) The income reasonably expected to exist during the month of application and the month immediately following the month of application shall be estimated. ~~Any income received prior to the date of application shall not be considered.~~

(b) Business expenses such as materials, labor, tools, rental equipment, supplies and utilities shall be subtracted from the gross self-employment income to arrive at gross income for disregard purposes. Personal employment expenses and work related expenses are not business expenses. Income that is paid during the budget month but earned for a period of time greater than the budget month may be averaged. The period of time for which this income is averaged is based upon the number of months that the income is intended to cover (e.g. teacher's salaries cover an entire 12 month period although they may receive a paycheck in only 9 of the 12 months). The prorated amount is the gross monthly earned income.

43. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

44. Rule 46.10.512 proposed to be amended provides as follows:

46.10.512 EARNED INCOME DISREGARDS ~~(1) The following disregards are applied to earned income of applicants for and recipients of AFDC, except as provided in ARM 46.10.513:~~

~~(a) $30 from the gross monthly income;~~

~~(b) one-third of the remainder;~~

~~(c) the mandatory deductions as determined by the employer's tax guide tables for the maximum number of exemptions the individual is entitled under the law. Mandatory deductions are state, federal, FICA taxes, and other deductions over which the individual has no control;~~

~~(d) work related expenses of $25 per month or more if the need is documented;~~

~~(e) the full cost of public transportation or 12 cents per mile if the individual's own vehicle is used to and from work; and~~

~~(f) child care as a work expense in determining initial eligibility of an applicant. When a suitable placement is not available under Title XX, day care expenses may be allowed as a work related expense.~~

(1) When testing net monthly income and determining grant amount, the following disregards are subtracted in the order listed from earned income of each working member of the assistance unit after exclusions provided in ARM 46.10.510 and inclusion of earned income credit advance payments provided in ARM 46.10.508, except as provided in ARM 46.10.513:

(a) $75 from each person's earned income if the person was employed 120 hours or more in the budget month; $40 if the person was employed 20 to 119 hours in the budget month; and $10 if the person was employed less than 20 hours in the budget month.

(b) Expenses for the care of each working person's dependent child or incapacitated adult living in the same home and receiving assistance under ARM Chapter 10, not to exceed the daily and monthly rates for day care provided in ARM 46.10.404.

(i) The amount actually paid in the budget month will be deducted. This amount may include payment for charges incurred in the month immediately prior to the budget month; however, payments in the budget month will not be allowed as a deduction under this rule.

(c) $30 and one-third of the earned income not already disregarded.

(2) In the case of stepparent households the income of the natural or adoptive parent's children is deemed to include

any income of the stepparent not otherwise disregarded below, plus all of the natural or adoptive parent's income with no disregards, whether or not such income is available to the natural or adoptive parent's children.

(a) Disregard the work expense provided in ARM 46.10.512 (1)(a).

(b) Disregard an amount of earned and unearned income equal to the AFDC net monthly income standard for a family consisting of the natural or adoptive parent and the stepparent and his/her children by a former marriage, if such children are claimed as dependents for federal income tax purposes and are living in the same household as the natural or adoptive parent's children.

(c) Disregard actual amounts paid by the stepparent to individuals not living in the household in which the natural or adoptive parent's children are living and claimed by the stepparent as dependents for federal income tax purposes. These amounts must be verified.

(d) Disregard actual payment by the stepparent of alimony or child support with respect to individuals not living in the household in which the natural or adoptive parent's children are living. These amounts must be verified.

45. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

46. Rule 46.10.513 proposed to be amended provides as follows:

46.10.513 ~~EARNED INCOME NOT DISREGARDED~~ LIMITS ON DISREGARDS ~~(1) Disregards of mandatory deductions, work related expenses, transportation, and child care shall be allowed. The $30 + 1/3 disregards outlined in ARM 46.10.512 shall not be allowed as follows:~~

~~(a) to the children's natural or adoptive parents in stepparent cases when the natural or adoptive parents are not included in the AFDC payment;~~

~~(b) to any individual whose needs are not included in the AFDC payment;~~

~~(c) to new applicants (those who have not received AFDC within any of the previous four months prior to application);~~

~~(d) to any person included in the AFDC payment who reduced his/her income, or terminated or refused employment, within the preceding 30 days without good cause;~~

~~(e) to income from public service employment under WIN.~~

(1) The $30 and one-third disregard provided in ARM 46.10.512(1)(c) does not apply to applicants who have not received AFDC assistance within any of the previous four months prior to application, nor to applicants or recipients after the fourth consecutive month it has been applied to the

earner's earned income unless he/she has not been a recipient of AFDC assistance for 12 consecutive months.

(2) The disregards provided in ARM 46.10.512 do not apply to the earned income of the earner for the budget month when one of the following applies:

(a) the recipient failed without good cause to return the monthly report by the 8th of the month as provided in ARM 46.10.108 (4);

(b) the applicant or recipient earner terminated his employment or reduced his earned income without good cause within the period of 30 days preceding the benefit month;

(c) the applicant or recipient earner refused without good cause to accept a bona fide employment within the period of 30 days preceding the benefit month;

(d) the individual voluntarily requests assistance to be terminated for the sole purpose of avoiding receiving the $30 plus 1/3 disregard for four consecutive months.

47. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

48. Rule 46.10.514 proposed to be amended provides as follows:

46.10.514 TERMINATION OF INCOME When unearned or earned income terminates, the AFDC payment shall be adjusted the second month ~~immediately~~ after the income terminates.

49. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

50. Rule 46.10.209 proposed to be repealed is on page 46-774 of the Administrative Rules of Montana.

51. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

52. Rule 46.10.304 proposed to be repealed is on page 46-783 of the Administrative Rules of Montana.

53. The authority of the department to repeal the rule is based on Section 53-4-212, MCA. and the rule implements Section 53-4-211, MCA.

54. Rule 46.10.507 proposed to be repealed is on page 46-813 of the Administrative Rules of Montana.

55. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

56. Rule 46.10.509 proposed to be repealed is on page 46-814 of the Administrative Rules of Montana.

57. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

58. Rule 46.10.515 proposed to be repealed is on page 46-816 of the Administrative Rules of Montana.

59. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 534-241, and 53-4-242, MCA.

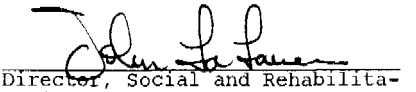
60. The department is proposing to amend these rules in order to implement changes in the Aid to Families with Dependent Children (AFDC) program and the Medicaid program which are made necessary by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) with the attendant budget cuts; the 1980 Work Incentive Program Amendments (to the Social Security Act); the repeal of 53-2-401 through 53-2-408, MCA (Chapter 310, Montana Session Laws 1981); the amendment of 53-4-231, MCA (House Bill 5, 47th Legislature (1st Special Session); the enactment of House Bill 6, 47th Legislature (1st Special Session); and the elimination of the unemployed parent program (House Bill 4, 47th Legislature, 1st Special Session). State law mandates that the department administer all state and federal funds allocated to the department for public assistance in conformity with state and federal law; these proposed amendments fulfill that mandate.

The department is also promulgating these rules in order to implement an increase in AFDC standards from 50% to 55% of the poverty level, which was mandated by both the regular and 1st special sessions of the 47th Legislature.

Finally, the department is promulgating these rules to clarify department policies on day care.

61. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than January 20, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 7, 1981.

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

In the matter of the amendment of Rule 46.2.101 and the adoption of a rule pertaining to the procedures for the making of rules and declaratory rulings	))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.2.101 AND THE PROPOSED ADOPTION OF A RULE PERTAINING TO THE PROCEDURES FOR MAKING OF RULES AND DECLARATORY RULINGS

TO: All Interested Persons

1. On January 8, 1982, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.2.101 and the adoption of a rule pertaining to the procedures for the making of rules and for declaratory rulings.

2. The proposed amendment and the rule proposed to be adopted will replace present Rule 46.2.101 found in the Administrative Rules of Montana on page 46-29.

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

46.2.101 ~~PROCEDURES FOR RULE CHANGES AND DECLARATORY RULINGS~~ PROCEDURES FOR ADOPTING, AMENDING AND REPEALING AGENCY RULES (1) The department of social and rehabilitation services ~~has herein adopted and incorporated the~~ does hereby adopt attorney general's model procedural rules 1 through 7. ~~12 and 28 through 34 by reference to such rules as stated in ARM 1.3.102 through ARM 1.3.215 and ARM 1.3.231 through ARM 1.3.233 of this code.~~ The department adopts these rules by incorporating by reference the following rules: ARM 1.3.102 through ARM 1.3.210. A copy of the amended model rules may be obtained by contacting the Attorney General's Office, State Capitol, Helena, Montana 59601. Phone 449-2026.

4. The authority of the agency to amend the proposed rule is based on Section 2-4-202, MCA and the rule implements Section 2-4-201, MCA.

5. The rule as proposed to be adopted reads as follows:

RULE I PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The department of social and rehabilitation services does hereby adopt attorney general's model procedural

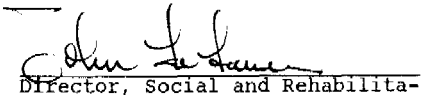
rules 22 through 28. The department adopts these rules by incorporating by reference the following rules: ARM 1.3.226 through ARM 1.3.233. A copy of the amended model rules may be obtained by contacting the Attorney General's Office, State Capitol, Helena, Montana 59601. Phone 449-2026.

6. The authority of the agency to adopt the proposed rule is based on Section 2-4-202, MCA and the rule implements Section 2-4-501, MCA.

7. The department is proposing this amendment of Rule 46.2.101 in order to conform to the new Model Procedural Rules adopted by the Attorney General's Office. It is proposing the adoption of a new rule in order to conform its rules pertaining to declaratory rulings to the Administrative Procedure Act, particularly Section 2-4-501, MCA.

8. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. box 4210, Helena, Montana 59604, no later than the 18th day of January, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 3, 1981.

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

In the matter of the amendment of Rule 46.12.702 pertaining to medical services, outpatient drugs	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT TO RULE 46.12.702 PERTAINING TO MEDICAL SERVICES, OUTPATIENT DRUGS

TO: All Interested Persons

1. On January 6, 1982, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.702 pertaining to medical services, outpatient drugs.

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

46.12.702 OUTPATIENT DRUGS, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Drugs may not be filled or refilled without the authorization of the physician.

(2) The department will participate only in the payment of drugs which require a prescription and those over-the-counter drugs which are insulin, antacids or laxatives.

(3) The inappropriate use of drugs, as determined by professional review, may result in the imposition of a limitation upon the quantities of medications which are payable by the medical assistance program. Retroactive limitation will not be applied, unless the involved pharmacy has knowledge or can reasonably be expected to have had knowledge of the inappropriate use of drugs by the recipient.

(4) Each prescription shall be dispensed in the quantity ordered by a physician.

(a) Prescriptions for chronic conditions for which a physician has not ordered a specific quantity shall be dispensed in quantities of 100 or a minimum of one month's supply of medication.

(b) Prescriptions for acute conditions for which a physician has not ordered a specific quantity shall be dispensed in sufficient quantities to cover the period of time for which the condition is being treated except for injectable antibiotics, which may be dispensed in sufficient quantities to cover a three day period.

(5) The department will not participate in the payment of prescription drugs:

(a) which the secretary of HHS has determined to be less than effective for all conditions of use prescribed, recommended or suggested in the drug's labeling; and

(b) any other prescription drug products which are identical, related or similar.

3. The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.

4. An amendment to Section 1862 of the Social Security Act that became effective October 1, 1981, requires this change in Medicaid coverage. That amendment to the Social Security Act gives the Secretary of HHS authority to determine which drugs are not coverable under State Medicaid Programs because the drugs are determined to be less effective than suggested in their labeling, and there is not a compelling justification for their medical need. Rule 46.12.702 must be changed to assure compliance with the federal law and assure continual federal financial participation for drug payments made under the Montana Medicaid Program.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana, no later than January 14, 1982.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 3, 1981.

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

In the matter of the amendment of Rule 46.12.3803 pertaining to medical services, medically needy income standards	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICAL SERVICES, MEDICALLY NEEDY INCOME STANDARDS

To: All Interested Persons

1. On January 6, 1982, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.3803 pertaining to medical services, medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

(1) Notwithstanding the provisions found in sub-chapter 2, ~~T~~the following table contains the amount of net income protected for maintenance by family size in compliance with the following federal regulations, which are hereby incorporated by reference. The federal regulations incorporated by reference are 42 CFR 435.811, "general requirements"; 42 CFR 435.812 (a) (1) and (2), and (b) (1) and (2) "medically needy income standard for one-person, non-institutionalized"; 42 CFR 435.814 (a) (1) and (2), and (b) (1) and (2) "medically needy income standard for two-persons non-institutionalized"; 42 CFR 435.816 "medically needy income standards for three or more persons"; and 42 CFR 435.1007 "medically needy". A copy of the above cited regulations may be obtained from the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59604.

MEDICALLY NEEDY INCOME LEVELS

FAMILY SIZE	INCOME LIMIT
1	$265.00
2	~~$17.00~~ 342.00
3	375.00
4	475.00
5	567.00
6	633.00
7	700.00
8	767.00
9	833.00
~~Each Additional Person~~	~~75.00~~
10	900.00
11	967.00
12	1,033.00

13	1,100.00
14	1,167.00
15	1,233.00
16	1,300.00

(2) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in establishing those amounts of net income protected for maintenance.

3. The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-101, 53-6-131, and 53-6-141, MCA.

4. The proposed changes to the MNIL table are required to comply with federal regulations. The legislature's decision to raise AFDC standards from 50% to 55% of the poverty level required a change in the income level for a family size of two. Further changes were required by federal regulation in that the income limits for families sized 10 to 16 must be stated and figured in a different manner than done in the present rule.

5. Interested parties may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 14, 1982.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 3, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 2.21.601 through 2.21.604 and the adoption of rules 2.21.605 through 2.21.610 and 2.21.616	))))	NOTICE OF THE REPEAL OF RULES ARM 2.21.601 THROUGH 2.21.604 AND THE ADOPTION OF RULES 2.21.605 THROUGH 2.21.610 AND 2.21.616

To: All Interested Persons

1. On October 29, 1981, the Department of Administration published notice of proposed repeal of rules 2.21.601 through 2.21.604 relating to holidays and holiday pay and the adoption of new rules in the matter at pages 1246 through 1249 of the 1981 Montana Administrative Register, issue number 20.

2. The department has adopted the rules with the following change:

2.21.606 HOLIDAYS (1) "The following are legal state holidays," as provided in 1-1-215, MCA:

(a) "New Year's Day, January 1;
(b) Lincoln's Birthday, February 12;
(c) Washington's Birthday, the third Monday in February;
(d) Memorial Day, the last Monday in May;
(e) Independence Day, July 4;
(f) Labor Day, the first Monday in September;
(g) Columbus Day, the second Monday in October;
(h) Veteran's Day, November 11;
(i) Thanksgiving Day, the fourth Thursday in November;
(j) Christmas Day, December 25, and
(k) State General Election Day."

(2) "If any holiday" . . . falls on "a Sunday, the Monday following is a holiday," as provided in 1-1-216, MCA. ~~If any holiday falls on Saturday, the Friday preceding will be a holiday.~~ Employees who are regularly scheduled to work Monday through Friday shall have off the Friday preceding a legal holiday falling on Saturday.

(3) State primary election days are not state holidays.

3. The following comments were received concerning these rules:

COMMENT: (Gary J. Wicks, Director, Department of Highways: RULE II. 2 (2.21.606) The provision "Any holiday that falls on a Saturday, the Friday preceding will be a holiday" creates a holiday not intended by statute. The language should be changed to provide that

when any holiday falls on Saturday, the Friday preceding will be an additional day off.

RESPONSE: The department agrees and the language in the rules as finally adopted is changed accordingly.

COMMENT: (Wicks) Rule IV. 1 (2.21.608) This proposed rule should be changed to read, "A regularly scheduled eligible employee receives pay for a holiday (scheduled to work on the holiday) or for an alternate leave day (if not scheduled to work on the holiday) based on the average number of hours in a pay status per day in the pay period in which the holiday falls."
RESPONSE: The department does not agree.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 2.21.6601 through 2.21.6604 and the adoption of rules 2.21.6605 through 2.21.6609 and 2.21.6622	)))))	NOTICE OF THE REPEAL OF RULES ARM 2.21.6601 THROUGH 2.21.6604 AND ADOPTION OF RULES 2.21.6605 THROUGH 2.21.6609 AND 2.21.6622

To: All Interested Persons

1. On October 29, 1981, the Department of Administration published notice of proposed repeal of rules 2.21.6601 through 2.21.6604 relating to employee record keeping and the adoption of new rules in the matter at pages 1250 through 1253 of the 1981 Montana Administrative Register, issue number 20.

2. The department has repealed and adopted the rules as proposed.

3. No comments or testimony were received.

Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State December 7, 1981

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendments of rules 4.12.1012 and 4.12.1013 ARM.) NOTICE OF THE AMENDMENTS OF RULES 4.12.1012 and 4.12.1013 ARM.

(Grain Fee Schedule & Sample Lot Inspection Service)

TO: All Interested Persons

1. On October 29, 1981, the Department of Agriculture published notice of the proposed amendments of the above rules. The notice was published at page 1258 of the Montana Administrative Register, issue number 20.

2. The rules were amended as proposed.

3. No statements were received regarding the proposed amendments.

4. The authority for the amendments is Section 80-4-113 and 80-4-119 MCA.

W. Gordon McOmber
Director

Certified to the Secretary of State December 7, 1981.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through IX, inclusive, regulating the keeping, importation and sale of alfalfa leafcutting bees.

) NOTICE OF THE ADOPTION OF
) NEW RULES 4.12.1201 THROUGH
) 4.12.1209 INCLUSIVE, REGU-
) LATING THE KEEPING, IMPORTA-
) TION AND SALE OF ALFALFA
) LEAFCUTTING BEES.

TO: All Interested Persons:

1. On October 29, 1981 the Department of Agriculture published notice of adoption of new rules I through IX regulating the keeping, importation and sale of alfalfa leafcutting bees at page 1254 of the 1981 Montana Administrative Register, issue number 20.

2. The agency adopted rules I (4.12.1201); VIII (4.12.1208) and IX (4.12.1209) as proposed.

3. The agency adopted rule II(4.12.1202) with changes:

RULE II(4.12.1202) DEFINITIONS: As used in ~~this (act)~~ these rules the following definitions apply: . . . .

4. Rule III (4.12.1203) was amended in its entirety and is replaced by the following:

RULE III (4.12.1203) STANDARDS FOR CERTIFICATION (1) The following certifications are as to the official sample analyzed at the designated laboratory.

(2) Unconditional Alfalfa Leafcutting Bee Certification -- Bees that have been officially examined and analyzed and found to contain no more than 10% composite infestation by parasites listed below and which contain no more than 0% infestation by the pathogens listed below, shall be eligible for certification for import into the state of Montana, or for possession or sale within this state. Zero percent means none detected within the official sample.

(3) Restricted Alfalfa Leafcutting Bee Certification (a) Bees that are officially reported as containing composite parasite infestation levels of more than 10% through 25%, or composite pathogen infestation levels of more than 0% through 10% shall be designated as being under (A) restricted certification and may not be sold, transferred, or distributed without prior written approval of the department.

(b) Bees that are officially reported as containing composite parasite infestation levels of more than 10% through 25% or composite pathogen infestation levels of more than 10% through 30% shall be designated as being under (B) restricted certification and shall not be removed from owners property. The bees may be removed from the state under department supervision.

(4) Parasites and pathogens that the bees are to be specifically examined for are:

Parasites:

(a) Minute chalcid (Tetrastichus megachi)

(b) Sapyga wasp (Sapyga pumila)
(c) Canadian chalcid (Pteromalus venustus)
(d) Imported chalcid (Monodontomerus obscurus)
(e) Checkered flower beetle (Trichodes ornatus)
(f) Giant flour beetle (Tribolium brevicornis)
(g) Sunflower beetle/Longtongued blister beetle (Nemognatha lutea)
(h) Dried fruit moth (Vitula edmandsae)
(i) Indian meal moth (Plodia interpuntella)
(j) Cadelle beetle (Tenebriodes mauritanicus)

Pathogens:
(a) Alfalfa leafcutting bee chalkbrood (Ascosphaera sp.)
(b)

A general statement written as (1) was needed to clarify the fact that certification was being granted as per the official sample analyzed by the laboratory. Section (1) of the original rule was changed to (2) Unconditional Alfalfa Leafcutting Bee Certification. The percentage levels of pathogens in (2) were changed from .2% to 0% as per recommendation from the bee industry. The Department of Agriculture concurs with the request as the purpose of the Leafcutting Bee Act is to control disease. Section 2 was changed to section 3 - Restricted Alfalfa Leafcutting Bee Certification whereby sub-section (a) and subsection (b) were proposed to allow for greater tolerance levels of parasites and pathogens. The Department of Agriculture concurs with industry's request as original tolerance levels would have forced several beekeepers out of business.

Section (3) of the original rule listing parasites and pathogens has been changed to section (4). The list of parasites has been expanded at the request of industry to include in addition to the original, (f) through (j) above.

5. Rule IV (4.12.1204) was amended in its entirety and is replaced by the following:

RULE IV (4.12.1204) ALFALFA LEAFCUTTING BEES NOT MEETING CERTIFICATION STANDARDS (1) Bees that are officially reported as containing composite parasite infestation levels above 25% or composite pathogen levels above 30% shall be designated as failing minimum certification standards. The bees and associate nesting materials may be placed under separate quarantines. The bees may be destroyed or removed from the state under department supervision within 30 days of the issuance of said designation. Equipment placed under quarantine shall, under department supervision, be destroyed, removed from the state, or properly sterilized within 30 days of said designation. Beekeepers with said sterilized equipment must obtain permission from the department to retain the sterilized equipment.

The Department of Agriculture changed the percentage of pathogen levels from 10% to 30%. The 30% level of pathogens

will allow beekeepers to stay in business. Industry believes that those beekeepers with higher than 30% levels will not be able to economically stay in the pollination business.

In the original proposed rule, equipment was not addressed. The Department of Agriculture strongly believes that contaminated equipment spreads disease and therefore must be a part of the certification process.

6. The agency adopted Rule V (4.12.1205) with changes:

RULE V (4.12.1205) CERTIFICATION OF IMPORTED ALFALFA LEAFCUTTING BEES (1) Bees imported into Montana must meet the standards for Unconditional Alfalfa Leafcutting Certification set forth in Rule III~~(1)~~(2). Bees that do not meet these certification standards shall not be released for distribution or other delivery within the state. The ~~exporter/~~importer of the bees shall be notified by certified mail of the fact of non-certification, together with a notice that the said bees must be removed from the state of Montana, at ~~exporter's/~~importer's expense, within 30 days, or the said bees will be destroyed.

In order to adhere to the requirements of Section 80-6-1107 MCA, the Department proposed to change or eliminate the word exporter.

7. The agency adopted Rule VI (4.12.1206) with changes:

(2) A ~~one~~ two ounce sample shall be taken from each 20 pounds of bees owned or possessed by a beekeeper.

An official sample size shall not consist of less than eight ounces (8 oz.)

If a beekeeper owns or possesses more than ~~400~~ 200 pounds, then the cocoon larvae will be divided into ~~400~~ 200 pound lots and official samples shall be obtained from each lot.

All official samples shall become the property of the department.

(3) Once the official sample has been obtained, the remaining composite sample shall be officially sealed and left in the possession of the ~~grower~~ owner/manager. The owner/manager has 30 days from date of receipt of certification to appeal the original laboratory test results.

(5) All official samples will be obtained by ~~designated department~~ department designated personnel in the presence of the owner/manager of the bees.

In rule VI section (2) the samples size taken from each 20 pounds of bees was increased from one ounce to 2 ounces. By increasing the sample size, the chance for picking up a diseased cell would increase significantly.

It was also determined that by changing the 400 pound lot size to 200 pound lot size that the incidence of discovering a diseased cell would greatly increase.

Section (5) of the proposed rule read designated department personnel and was changed to department designated personnel. The change will allow for the appointment of an inspector currently not on staff.

8. The agency adopted Rule VII(4.12.1208) with changes:

(a) Import Certification -- All bees proposed to be imported into Montana shall be delivered on or before April 15 to the examination/analysis laboratory located at Montana State University, Bozeman, Montana, where they shall be examined and analyzed following the submission of a request for certification and payment of appropriate fees. Bees requiring import certification after April 15 must receive permission to import from the department.

(b) Annual Certification -- Any person owning or possessing bees within Montana shall make, on or before ~~October 1 of each year~~ January 31, 1982 and on or before October 1, 1982 and of each year thereafter, a request for ~~re-certification~~ certification or re-certification and arrange a date for sampling each year of said possession and pay assessment fees thereon.

~~(i)~~ (c) A certification fee of ~~$3.00 per bee box per year. Nesting materials containing 3,000 nest tunnels shall be designated as one bee box, regardless of the composition of the nesting materials.~~ 26¢ per pound will be assessed for all bees certified by the state.

(d) Any person owning or possessing bees within the state of Montana that are not ready for re-certification sampling on or before January 31 - July 1 of each year shall ~~pay a penalty of $25.00 in addition to the certification and sampling fees regularly required, and in addition, shall pay the mileage and per diem required for the department inspector to draw the official samples required for re-certification.~~ be subject to the penalties imposed under Section 80-6-1105(5) MCA.

Section (1) subsection (b) Annual Certification date of October 1 was changed to January 31, 1982 to accommodate late registration for this year. The late appointment of the Advisory Committee created a delay in the formulation of the rules. The annual certification deadline will return to October 1 for the year 1982 and for each October 1 thereafter.

Section (1) subsection (c) the certification fee of $3.00 per bee box per year was changed to 26¢ per pound per year. The industry proposed the change as being the only fair way to adequately assess each grower for certification. No data currently exists as to the number of bee boxes in the state.

Section (1) subsection (d) was changed as per a recommendation from the Administrative Code Office. Bees requiring sampling after January 31 and before July 1 shall pay a penalty as imposed by Section 80-6-1105(5) MCA. The Department concurs with this change in assessing a penalty for late sampling.

9. Statements were received regarding the proposed rules, and several amendments were made upon recommendations from these statements.

10. The authority for the adoption is Section 80-6-1103 MCA and the rule implements Section 80-6-1103 MCA.

W. GORDON MCOMBER, DIRECTOR
BY: Keith Kelly
Deputy Director

Certified to the Secretary of State December 8, 1981

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.6.901 relating to water safety regulations	NOTICE OF THE AMENDMENT OF RULE 12.6.901 RELATING TO WATER SAFETY REGULATIONS

TO: ALL INTERESTED PERSONS.

1. On August 17, 1981, the Montana Fish & Game Commission published notice of the proposed amendment of Rule 12.6.901 relating to water safety regulations, at page 792 of the 1981 Montana Administrative Register, Issue #15.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

Certified to Secretary of State December 7, 1981

Reviewed and Approved:

Steven L. Pilcher
Water Quality Bureau
Environmental Sciences Div.
Dept. Health & Environmental Sciences

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of Rule 12.6.901 relating to) OF RULE 12.6.901 **RELATING**
water safety regulations) **TO WATER SAFETY REGULATIONS**

TO: All Interested Persons.

1. On August 13, 1981, the Montana Fish and Game Commission published notice of a public hearing on a proposed amendment of rule 12.6.901, relating to water safety regulations, at page 792 of the 1981 Montana Administrative Register, issue No. 15.

2. The agency has amended the rule as proposed with the following changes shown in capital letters and interlined:

12.6.901 WATER SAFETY REGULATIONS (1) remains the same

(a) The following waters are closed to THE use of any motor-propelled water craft except in case of use for official patrol, search and rescue ~~craft~~, MAINTENANCE OF HYDROELECTRIC PROJECTS AND RELATED FACILITIES WITH PRIOR NOTIFICATION BY THE UTILITY, or for scientific purposes:

Beaverhead County:	Big Hole River
Big Horn County:	Arapooish access area
Cascade County:	Smith River
	THAT PORTION OF THE MISSOURI RIVER FROM THE BURLINGTON NORTHERN RAILWAY BRIDGE NO. 119.4 AT BROADWATER BAY IN GREAT FALLS TO BLACK EAGLE

(remainder of rule remains the same)

3. A copy of the minutes of this public hearing and the tapes upon which the meeting was recorded have been retained in the files of the department's Helena office. These files are available for inspection during normal working hours of the department.

There were seven people in attendance.

For the proposed amendment: 2

Against the proposed amendment: 0

A summary of the comments in favor of the proposed amendment is:

The Parks and Recreation Board of the City of Great Falls plans a wildlife park in the area of the closure and the use of motorboats in the area would pose a hazard for users of the park; would disrupt birds and wildlife; and would pose a hazard to the users of motorboats. The area proposed for closure is extremely shallow and motorboats that do go into the area frequently have to be rescued by the city fire

department.

A lawyer for Montana Power Company asked that the Federal Energy Regulatory Commission (FERC) project boundaries and authority be considered in making this amendment. The hearing officer left the record open until a Montana Power Company representative could provide further input as to possible conflict with the FERC project. The FERC never responded. While the record was open, Mr. Zimmerman, Montana Power Company, asked that the rule be expanded to authorize Montana Power Company to operate boats in the area, when necessary, for purposes of maintenance and repair of the project facilities, particularly the dam. This recommendation has been accepted.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

Certified to Secretary of State December 7, 1981

Reviewed and Approved:

Steven L. Pilcher
Water Quality Bureau
Environmental Sciences Div.
Dept. Health & Environmental Sciences

BEFORE THE BOARD OF WATER AND WASTEWATER OPERATORS
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.18.201, definitions; 16.18.202, classification of plants; 16.18.203, certification of operators; and 16.18.204, examinations	NOTICE OF AMENDMENT OF RULES 16.18.201, 16.18.202, 16.18.203 and 16.18.204 AND THE ADOPTION OF RULES 16.18.205 and 16.18.206
-and-	
In the matter of the adoption of a new rule 16.18.205, setting experience/education requirements for wastewater plants, water treatment plants, and water distribution system operators; and 16.18.206, requiring certified operators at water or wastewater treatment plants or water distribution systems, with exceptions	

TO: All Interested Persons

1. On September 30, 1981, the board of water and wastewater operators published notice of proposed amendment of rules 16.18.201, 16.18.202, 16.18.203 and 16.18.204 concerning water and wastewater plants and operators at page 1085 of the 1981 Montana Administrative Register, issue number 18, and notice of proposed adoption of rules 16.18.205 and 16.18.206 at page 1092 of the 1981 Montana Administrative Register, issue number 18.

2. The board has amended rules 16.18.201, 16.18.202, 16.18.203 and 16.18.204 as proposed, and adopted rules 16.18.205 and 16.18.206 as proposed, noting, however, that a typographical error in the notice of rule 16.18.204(9) ["reviewing" should be "receiving"] has been corrected.

3. No comments or testimony were received.

CARL LAUTERJUNG, Chairman

By: DONALD G. WILLEMS

Certified to the Secretary of State December 7, 1981

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

In the matter of the amendment of rules 16.28.706, setting requirements for conditional enrollment; and 16.28.714, requiring reporting whenever a child is excluded from school for failure to comply with the law	)))))))	NOTICE OF AMENDMENT OF RULES ARM 16.28.706 AND ARM 16.28.714 (Immunization)

TO: All Interested Persons

1. On October 29, 1981, the department published notice of proposed amendments of rules 16.28.706 and 16.28.714, concerning immunization requirements for public schools, at page 1267 of the 1981 Montana Administrative Register, issue number 20.

2. The department has amended the rules as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State December 7, 1981

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

IN THE MATTER of Proposed Amendment of Rule 38.2.316 Regarding Transcripts of Proceedings before the Department of Public Service Regulation.	NOTICE OF AMENDMENT OF RULE 38.2.316

TO: All Interested Persons

1. On September 17, 1981, the Department of Public Service Regulation published notice of proposed amendment of Rule 38.2.316 which establishes the procedure by which a party may obtain a transcript of a proceeding before the Department at pages 1025-1026 of the 1981 Montana Administrative Register, issue number 17.

2. The agency has amended the rule with the following changes:

38.2.316 TRANSCRIPTS (1) Transcripts may be requested by any party, or their preparation may be directed by the Commission. Any party, other than the Commission or its staff, who requests and receives transcripts shall pay the specified costs therefor.

(2) An applicant may request that a court reporter other than the Commission's staff reporter be retained, or upon being advised by the Commission that its reporter is unavailable at the time desired, may request that another court reporter be retained. Such election shall be made at the time of the scheduled prehearing conference, or if a prehearing conference is not scheduled, no later than 20 days prior to hearing. If the applicant elects to request the services of a nonstaff court reporter, it shall pay the costs of providing the Commission with the original and one copy of the transcript, and shall pay any appearance fee for such reporter.

3. Comment: Comments to the proposed rule were received from Mountain Bell, Montana-Dakota Utilities Company (MDU) and the Montana Power Company. All endorsed the general intent of the rule. However, Mountain Bell demanded the right to select the court reporter if the Staff court reporter did not take the hearing. Similarly, MDU offered to relieve the Staff of the "ministerial" burden of procuring independent reporters. The Commission operates under a nine month statutory deadline (69-3-302, MCA) for issuance of its final orders. Thus, the Commission has reason independent from the utilities in assuring timely production of transcripts. In addition, the Commission believes that it has the responsibility for assuring that an accurate record is produced for every proceeding. In order to meet this responsibility, the Commission must have the ability to hire independent court reporters it knows to be capable of accurately transcribing what are often complex proceedings.

The changes in the amendment as originally proposed reflect the comments of MDU. It was MDU's opinion, accepted by

the Commission, that this change enhances the legal basis for the rule.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 7, 1981.

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

IN THE MATTER of Proposed Amend-) NOTICE OF AMENDMENT OF RULE
ment of Rule 38.5.1107 Regarding) 38.5.1107
the Interest to be Paid on)
Deposits for Utility Service.)

TO: All Interested Persons

1. On September 17, 1981, the Department of Public Service Regulation published notice of proposed amendment of rule 38.5.1107 which establishes that the interest on deposits for utility service shall be paid at the rate of 6 percent per annum from the time of deposit to the time of termination or refund at pages 1023-1024 of the 1981 Montana Administrative Register, issue number 17.

2. The agency has amended the rule with the following changes:

38.5.1107 INTEREST ON DEPOSITS (1) Interest on deposits held shall be accrued at the rate of 1 percent per month. Interest shall be computed from the time of deposit to the time of refund or of termination.

3. Comment: Numerous comments were received from the major utilities regulated by the Commission. All opposed the proposed amendment and offered a vast variety of alternatives, most of which would have established interest rates below those contemplated by the original rule. These included rates paid for passbook accounts and savings bonds, and the actual earned overall return of the utility that has the deposit. By contrast, District XI Human Resource Council endorsed the rule as proposed.

The Montana-Dakota Utilities Company (MDU) in addition to opposing the rule pointed out real administrative difficulties with implementing it. These included problems in keeping accurate accounting of multiple rates of interest and problems with consumer deposit payment plans.

The changes made in the rule as proposed fully address the administrative issue raised by MDU.

The Commission rejects other comments submitted by the utilities, while noting that the changes in the final rule will result in interest rates below those contemplated by the proposed rule.

The Commission acknowledges the utilities' arguments that the basic purpose of deposits is to assure timely payments and that, unlike the utilities' common shareholder deposits are risk free "investments." However, the Commission believes that these arguments must be balanced against the obvious fact that deposits also constitute a source of inexpensive capital to the utilities, and that those making such contributions should be paid a reasonable rate for doing so.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 7, 1981.

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

In the matter of the amendment of Rules 46.5.901, 46.5.902, 46.5.907 46.5.908, 46.5.909, 46.5.910 and the repeal of 46.5.903 and 46.5.911 pertaining to day care homes and centers; definitions, standards, services, licensing and terminology	))))))))	NOTICE OF AMENDMENT OF RULES 46.5.901, 46.5.902, 46.5.907, 46.5.908, 46.5.909, 46.5.910 AND REPEAL OF 46.5.903 AND 46.5.911 PERTAINING TO DAY CARE HOMES, GROUP DAY CARE HOMES AND CENTERS

TO: All Interested Persons

1. On August 27, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rules 46.5.901, 46.5.902, 46.5.907, 46.5.908, 46.5.909, 46.5.910 and the repeal of 46.5.903 and 46.5.911 pertaining to day care homes and centers; definitions, standards, services, licensing and terminolgy at page 945 of the Montana Administrative Register, issue number 16.

2. The agency has repealed Rule 46.5.903. The notice of hearing on these rule changes indicated amendments to Rule 46.5.903 but that rule is now being repealed. Based on comments received, it was determined that the rule was ambiguous in that it was unclear whether it related to facility requirements, licensure or financial requirements. Since the proposed amendments did not clarify the rule, it was determined that the rule should be repealed and its subsections moved to applicable existing rules.

46.5.903(1)(a) related to the definition of child for purposes of day care so it was incorporated in 46.5.901(1) which is the general definition of day care. 46.5.903(1)(b) through (e) were determined to be repetitious of existing rules and repealed. 46.5.903(f) dealing with confirmation to parents and providers of approval of day care or changes therein and 46.5.903(g) dealing with redetermination of day care services eligibility was appropriately moved under 46.5.901(4) which deals with the determination and need for day care services by a family. 46.5.903(1)(h) was left as repealed since it is nothing more than a suggestion to providers and nonmandatory suggestions are more appropriate in a provider's manual.

46.5.903(2) in its entirety with the amendments as noticed was moved into 46.5.901 as 46.5.901(6). That rule addresses supplemental care services provided whereas 46.5.903(2) defined specific kinds of supplemental care services.

Thus, the only effect of repealing 46.5.903 is to delete several repetitious subsections and to move the rest of the rule into other rules more consistent in subject matter. No substantive changes result.

3. The agency has repealed Rule 46.5.911 as proposed.

4. The agency has amended Rule 46.5.901 as proposed with the following changes:

46.5.901 SUPPLEMENTAL CARE SERVICES, PURPOSES AND LICENSING ~~(1) The purpose of day care is to provide an organized service for the care of children away from their own homes during some part of the day when circumstances call for normal care in the home to be supplemented.~~

~~(a)~~ (1) Day care is a supplemental form of care which provides parental care to a child BETWEEN THE AGES OF 6 WEEKS AND 12 YEARS EXCEPT AS INDICATED HEREUNDER by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for ~~part of a day but~~ daily periods of less than 24 hours. ~~The primary purpose of day care is to enable the child to continue his development in all areas, i.e. physical, intellectual, and emotional, and in a supplemental atmosphere to his natural environment.~~

~~(b)~~ (2) A day care ~~home, center or~~ facility may not provide care for more than the number of children permitted at any one time by its day care license, or registration certificate.

~~(c)~~ (3) Licensing, registration and reevaluation of family day care homes, group day care homes and centers is the responsibility of the department. Licensing and issuing certificates of registration is delegated to the district office social worker supervisor III.

~~(d)~~ (4) The evaluation and determination of the need and eligibility for day care of a child and his family is the responsibility of the social worker located at the county welfare office or with the work incentive (WIN) program.

(a) THE PARENT AND THE DAY CARE OPERATOR SHALL RECEIVE WRITTEN CONFIRMATION FROM THE SOCIAL SERVICE WORKER OF THE APPROVAL OF DAY CARE, FOR THE OPENING OF DAY CARE, FOR THE TERMINATION OF DAY CARE, AND THE APPROVAL OF SPECIAL RATES.

(b) DAY CARE SERVICES (APPROPRIATENESS OF PLAN/ARRANGEMENT AND THE FINANCIAL ELIGIBILITY FOR DAY CARE SERVICES) SHALL BE REDETERMINED EVERY 6 MONTHS OR SOONER WHENEVER INFORMATION INDICATES ELIGIBILITY MAY HAVE CHANGED OR THE ADEQUACY OF THE DAY CARE PLAN NEEDS TO BE REEVALUATED.

~~(e)~~ (5) The final authority for approval of a day care placement remains the responsibility of the social worker supervisor III. Ultimate responsibility for the day care program rests with the community services division.

(6) SPECIFIC REQUIREMENTS:

(a) PROTECTIVE DAY CARE REQUIRES:

(i) THE FAMILY CAN BE A SINGLE OR TWO-PARENT FAMILY.

(ii) THE FAMILY IS NOT ABLE TO PAY FOR DAY CARE, AND THE SITUATION IS DOCUMENTED IN THE CASE RECORD.

(iii) THE CHILD IS IN NEED OF DAY CARE BECAUSE OF DANGER OF NEGLECT OR ABUSE, FOR PHYSICAL OR EMOTIONAL REASONS THAT ARE DOCUMENTED.

(iv) FOSTER CHILDREN IN EXCEPTIONAL AND DOCUMENTED SITUATIONS, AND, AFTER ALL OTHER REQUIREMENTS FOR PROTECTIVE DAY CARE THAT ARE APPROPRIATE HAVE BEEN MET, UPON WRITTEN APPROVAL OF THE SOCIAL WORKER SUPERVISOR III.

(v) DAY CARE IS NOT APPROVED FOR FOSTER CHILDREN FOR THE PURPOSE OF ENABLING THE FOSTER PARENT TO WORK.

(b) WIN RELATED DAY CARE REQUIRES:

(i) THE FAMILY IS REGISTERED FOR WIN.

(ii) IF THE CERTIFIED REGISTRANT IS PLACED IN EMPLOYMENT, BUT IS NO LONGER RECEIVING AN ADC SUBSISTENCE GRANT AND MEETS THE OTHER DAY CARE ELIGIBILITY REQUIREMENTS STATED IN THIS SECTION, DAY CARE SERVICES WILL CONTINUE FOR 30 DAYS FROM THE DATE OF ENTRY INTO EMPLOYMENT.

(c) SPECIAL-NEED-RELATED OR EXTRA MEAL DAY CARE REQUIRES:

(i) THAT THE EXTRA MEAL IS NOT PART OF THE FULL DAY CARE OR FULL NIGHT CARE SERVICES.

(ii) THAT THE PARENTS' SITUATION IS SUCH AS TO REQUIRE THE PROVISION OF THE EXTRA MEAL (I.E., PARENT IS EMPLOYED FROM 7:00 A.M. TO 5:30 P.M.). THIS MUST BE DOCUMENTED IN THE CASE RECORD.

(iii) THAT THE DAY CARE FACILITY IS IN AGREEMENT TO PROVIDE THE EXTRA SERVICE.

(iv) THAT THE CHILD'S NEEDS AND BEST INTEREST ARE BEING MET THROUGH THE SERVICE PROVIDED.

(v) THAT THIS RATE HAS BEEN APPROVED IN WRITING BY THE DISTRICT OFFICE SOCIAL WORKER SUPERVISOR III UPON RECEIVING A WRITTEN EVALUATION FOR THE NEED FROM THE SOCIAL WORKER.

(d) SPECIAL CHILD OR EXCEPTIONAL CHILD DAY CARE REQUIRES:

(i) THAT THE CHILD BE BETWEEN THE AGES OF 0 THROUGH 17 YEARS OF AGE AND THE CASE RECORD CONTAINS WRITTEN VERIFICATION OF THE PHYSICAL HANDICAPS OR RETARDATION FROM THE APPROPRIATE AUTHORITY.

(ii) THAT A WRITTEN EVALUATION ON THE APPROPRIATENESS OF THE DAY CARE BEING GIVEN THE CHILD IN THE FACILITY HAS BEEN SUBMITTED TO AND APPROVED BY THE DISTRICT OFFICE SOCIAL WORKER SUPERVISOR III, WHICH EVALUATION SHALL INCLUDE:

(A) THE LONG RANGE GOAL FOR THE FAMILY, PARTICULARLY THE CHILD AND HOW DAY CARE IS INCORPORATED INTO THIS PLAN;

(B) THE POSITIVES AS WELL AS THE NEGATIVES OF THIS PLACEMENT;

(C) THE STEPS THAT WOULD BE TAKEN TO ENSURE APPROPRIATE ADJUSTMENTS OF THE PARENT AND CHILD TO THE PLACEMENT; AND
(D) THE PLAN FOR FOLLOW-UP EVALUATIONS OF THE PLACEMENT.

5. The agency has amended Rule 46.5.902 as proposed with the following changes:

46.5.902 DEFINITIONS AND STANDARDS (1) "Day care facility" means a person, association or place, incorporated or unincorporated, that ~~receives care during the day or part of the day, 3 or more children of separate families and continues this type of care for 5 or more consecutive weeks.~~ provides supplemental parental care on a regular basis. It includes a family day care home, a day care center, or a group day care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, ~~and all~~ or any group ~~facilities~~ facility established chiefly for educational purposes.

(2) "Family day care home" means a ~~home that provides care for no more than 6 children at a time and for~~ private residence in which supplemental parental care is provided to three to six children, no more than 23 children under 2 years of age from separate families on a regular basis -- including the provider's own children who are less than 6 years of age.

(3) "Day care center" means a ~~day care facility that receives 7 or more children for care for 5 or more hours of the day for 5 or more consecutive weeks.~~ place in which supplemental parental care is provided to 13 or more children on a regular basis, INCLUDING THE PROVIDER'S OWN CHILDREN WHO ARE LESS THAN 6 YEARS OF AGE. It may include facilities known as ~~child care centers,~~ nursery schools, day nurseries, and centers for the mentally retarded.

(4) "Group day care home" means a private residence in which supplemental parental care is provided to 7 to 12 children on a regular basis, INCLUDING THE PROVIDER'S OWN CHILDREN WHO ARE LESS THAN 6 YEARS OF AGE.

(5) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

~~(6) "Day care" means supplemental parental child care.~~

~~(7)~~ (6) "Regular basis" means providing supplemental parental care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

~~(8)~~ (7) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules,

and requires the operator of a family day care home or a group day care home to certify that he has complied with the prescribed standards and promulgated rules.

~~(9)~~ (8) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

~~(10)~~ (9) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day care homes and group day care homes.

~~(11)~~ (10) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day care centers.

~~(12)~~ (11) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

~~(13)~~ (12) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

~~(4)~~ ~~(14)~~ (13) "Back-up care" or "substitute care" means care provided by a person in their home by a person not designated as the primary care person; and for the purpose of substituting during the primary care person's illness, temporary absence, emergency absence, or for the purpose of isolating an ill child from other children receiving care in the same facility. ~~This person should be licensed.~~

~~(5)~~ ~~(15)~~ (14) "Secondary child care" means care provided in exceptional cases to provide additional care to a child beyond that care provided by a primary care person (day care operator who provides majority of care or is determined to be the basic child care person), i.e., the mother is employed or in training for an extensive period of time each day, resulting in the need for care during day and part of the night. A secondary child care situation may be appropriate and could be approved to provide evening care.

~~(6)~~ ~~(16)~~ (15) "Full day care" means care given to a child (ren) in a center, group day care home or family day care home licensed or registered by the agency for such, and provided for a continuous period of not less than 5 hours per day to 10 hours per day. This care includes one main meal, which may be breakfast, lunch, or dinner/supper, and two snacks during the period of care.

~~(7)~~ ~~(17)~~ (16) "Part-time care" means care given to a child in a center or home licensed or registered by the agency, whether day or night care, and provided for a period of less than 5 hours per day paid on an hourly basis.

~~(18)~~ (17) Drop-in care program - a family day care program providing care to any child for less than 5 consecutive hours. ~~on an intermittent basis.~~ ~~The drop-in care~~

~~requirements shall apply for each child receiving care for less than 5 consecutive hours on an intermittent basis.~~

~~(19)~~ (18) Night care program - a family day care home program providing care for a child between the hours of 7 p.m. and 7 a.m. in which the parent(s) desires a child to sleep. If the parent(s) desires the child to sleep, the night care program requirements as specified shall apply for that child during these hours. If the parent(s) desires the child to nap only, no night care program requirement shall apply for that child.

~~(20)~~ (19) Infant - a child 6 weeks to 24 months of age.

~~(21)~~ (20) Preschooler - a child 24 months of age to approximately the age the child initially enters the first grade of a public or private school system.

~~(22)~~ (21) School age child - a child from the date the child initially enters the first grade of a public or private school system to 12 years of age.

6. The agency has amended Rule 46.5.907 as proposed.

7. The agency has amended Rule 46.5.908 as proposed with the following changes:

46.5.908 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME ~~LICENSING~~ REGISTRATION SERVICES, DAY CARE CENTER LICENSING SERVICES, PROCEDURES FOR OBTAINING SERVICES (1) Any individual may apply for a ~~license~~ registration certificate to operate a family day care home or group day care home ~~by filling out an application for license, which can be obtained at any SRS office.~~ or any individual, agency or group may apply for a license to operate a day care center. Applications may be obtained from any department, county, or district office in the county in which the applicant lives.

(2) Refer to 53-4-507, MCA for applications for a license or registration certificate by Indians residing on Indian reservations.

(3) Within 30 days of receipt of the application, the department shall investigate to determine whether a license ~~or registration certificate~~ should be issued. OR SHALL INVESTIGATE THE APPLICATION FOR REGISTRATION FOR COMPLETENESS AND VERACITY.

~~(2)~~ (4) Any individual, group or other agency may request that the agency determine whether or not a home should be licensed or registered according to law. Referral may be either in writing or by telephone.

(5) An individual must be a minimum of 18 years of age to apply for a registration certificate or license.

(6) An individual must be a minimum of 16 years of age to be employed as an assistant caregiver or helper in a family day care home, group day care home or day care center.

8. The agency has amended Rule 46.5.909 as proposed with the following changes:

46.5.909 FAMILY DAY CARE HOME, GROUP DAY CARE HOME ~~LICENSING SERVICES~~, REGISTRATION, GENERAL ELIGIBILITY REQUIREMENTS, AND PROGRAM REQUIREMENTS (1) General eligibility requirements.

~~(1)~~ (a) A family day care home or group day care home must be ~~licensed~~ registered. ~~which receives from 3 to 6 children of separate families for 5 or more consecutive weeks for care for more than 4 hours during any 24 hour period.~~

~~(2) A home must be licensed when the children cared for are not related by blood or marriage or under the legal guardianship of the operator.~~

~~(3) A day care home may not provide care for more than 6 children (no more than 2 children under 2 years of age including the day care mother's children under 6 years of age).~~

~~(4) The day care operator must provide the department with a physician's report-child care personnel, which can be obtained from any SRS office.~~

(b) No registrant shall discriminate in child admissions or demissions, or employment of staff on the basis of race, sex, religion, creed, color or national origin. No registrant shall discriminate on the basis of physical and/or mental handicap when the handicap does not prevent fulfillment of normal job responsibilities.

(c) Upon receipt of signed and completed application forms, the social worker will evaluate the ~~prospective family day care home or group day care home~~ APPLICATION FOR REGISTRATION based upon the standards found in these rules. A prospective family day care home or group day care home that meets minimum standards AS EVIDENCED BY THE APPLICATION shall be recommended to the social worker supervisor for issuance of a registration certificate. This certificate may be either provisional or regular.

(i) A provisional registration certificate shall be issued for a period of up to three months when the family day care home or group day care home does not fully comply with the standards. A second three month provisional certificate may be issued in special circumstances, at the discretion of the social worker supervisor III, the total not to exceed six months.

(ii) A plan for full compliance with standards must be submitted by the family day care home or group day care home to the department before issuance of a provisional certificate.

(iii) Written notification of the granting of a provisional certificate by the department must be made to the child care operator specifying the reason, duration and conditions for continuing and/or terminating the provisional certificate.

~~(5) A department social worker does a study and evaluation of the day care home and makes a recommendation as to licensing.~~

~~(6) The social service supervisor reviews the study and has the final licensing decision.~~

~~(7)~~ (d) ~~Licenses~~ Registration certificates are issued from an SRS district or regional office, for periods not to exceed one year.

(e) Revocation of registration:

(i) a provider receiving 3 warnings of noncompliance shall be subject to revocation of their registration certificate;

(ii) should any one noncompliance place a child in danger, revocation will be immediate;

(iii) 30 days will be given to correct the noncompliance issue. This will be monitored by the social worker.

(f) The provider shall maintain all policies, records, and reports that are required by the department. These policies, records, and reports must be reviewed and updated annually.

(g) The provider shall report immediately any child suspected of being abused or neglected to their local county welfare department or the child abuse hotline, 1-800-332-6100.

(h) The provider shall submit a report to the appropriate ~~regional~~/district office for the department within 24 hours after occurrence of an accident, such as the death or serious injury of a child while at the facility or when a fire occurs which requires the services of a fire department. A serious injury is defined as one requiring inpatient hospitalization.

(i) The registration certificate is not transferable to another operator or site.

(j) The department must be notified of any changes that would affect the terms of the registration.

(k) Separate registration certificates shall be required for programs maintained on separate premises even when operated under the same auspices.

(l) Public support will not be provided to children of compulsory school age during regular school hours as established by the local education agency.

~~(8) Duration of the license is the decision of the social service supervisor, not to exceed one year.~~

~~(9)~~ (m) Family ~~D~~day care home and group day care home operators must have a signed medical request, on file if the child is receiving any medication. This form can be obtained from any SRS office.

~~(10)~~ (n) Family day care and group day care homes must have fire and public liability insurance coverage. This requirement may not be waived.

~~(11) At any time a facility is found out of conformity with licensing standards the license may be revoked by written~~

~~notification from the social service supervisor. The notification will include the reasons for revocation and advice to the operator of the right to appeal.~~

9. The agency has amended Rule 46.5.910 as proposed with the following changes:

46.5.910 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME ~~LICENSING~~ REGISTRATION SERVICES PROVIDED The department will provide the following:

(1) assistance to the applicant to meet ~~licensing~~ registration standards;

(2) counseling services concerning children's problems;

(3) assistance to the day care ~~mother operator~~ PROVIDER in providing enrichment experiences for the children, proper environment and nutrition; and

(4) suppling the ~~operator~~ PROVIDER with the proper forms to obtain agency payment.

(i) Each month the ~~operator~~ PROVIDER must submit a voucher for child care services, to an SRS district office before deadline date, as established by the SRS district office.

(5) The department may investigate and inspect the conditions and qualifications of any family day care home and group day care homes ~~seeking or~~ holding a registration certificate.

(6) The department must visit and inspect at least 15% of all registered family day care homes and group day care homes in each of the governor's planning regions annually.

(7) Upon request of the department, the state department of health or the state fire marshal or his designee shall inspect any day care home or group day care home for which a registration certificate is applied for or is issued and shall report its findings to the department.

(8) Upon request, the department shall give consultation to every registrant who desires to upgrade the services of his program.

10. The Department has thoroughly considered all verbal and written commentary received:

Comment: The statement "or relative" should be dropped from the day care definition because in many cases it is appropriate that relatives be registered or licensed for care.

Response: The Department has licensed relatives voluntarily to care for children. This practice will continue with registration; however, because it is not a requirement by law that "persons caring for three or more children who are their relatives must be licensed or registered" the Department did not change the statement. The Department will license or

register voluntarily relatives and/or those persons who are caring for less than three children.

Comment: Limiting family day homes to two children under the age of two is overly restrictive, since it restricts not only taking three children under one year of age, but also three children under two years of age.

Response: In the interest of offering more flexibility to providers to serve the "older infant", the family day care home requirements have been changed "no more than three children under two years of age".

Comment: SRS licensing social workers indicated their desire to have the requirement deleted that reads "Day care is not approved for foster children for the purpose of enabling the foster parent to work".

Response: Day care is approved for foster children in unusual circumstances by the social worker supervisor. It is not usually approved for the sole purpose of enabling the foster-parent to work; therefore, the requirement has not been changed.

Comment: The requirement that day care aides be at least sixteen years of age is overly restrictive. It was stated that older children in care after school are used as "aides" for younger children.

Response: While the Department agrees that there are exceptional adolescents under the age of sixteen who can accept the responsibilities of a day care aide, this is not usually the case. Since the day care aide position is counted in determining the staff/child ratio, the Department feels that it is important that there be minimum qualifications for such a position. The requirement has not been changed.

Comment: Several providers indicated that the Child Care Food Program is dropping the reimbursement for one snack. These providers will be offering a late breakfast and drop the morning snack; therefore, they suggested that the Department change the definition of "full day care" to reflect the Child Care Food Program change.

Response: The intent of this requirement is to insure that the minimum nutritional needs of the children in care are met. Since the requirement of "one main meal and two snacks" is less restrictive, the Department has not changed the requirement. This requirement will have been met by these providers who offer another main meal in place of one snack.

Comment: Some requirements are duplicated in the proposed program standards that will be heard on October 7, 1981. In addition to these duplications, there were other questions about the format.

Response: In an effort to avoid confusion and to simplify the rules, the Department's legal unit is deleting some items that are more appropriately dealt with in a "policies and procedures manual". Some other items are being rewritten or rearranged for clarification.

Comment: A clarification on "drop in care" particularly as it relates to "after school care" is recommended. "Drop in care" is defined as intermittent care but "after school care" is regular.

Response: The Department has changed the definition of "drop in care" to "a day care program providing care to any child for less than five consecutive hours". "Drop in care" therefore applies to both intermittent and regular care, including after school care.

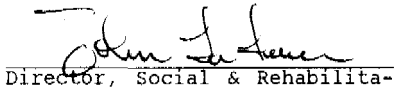
Comment: Rule 46.5.903, both before and after the proposed amendment, is unclear. It is not possible to tell if the provisions relate to requirements for licensure, financial participation or facility operations.

Response: Because of its ambigious wording and because several portions of the rule are unnecessary, Rule 46.5.903 will be repealed. Subsections (1)(a), (f), and (g) plus subsection (2) with minor wording changes are currently being incorporated in Rule 46.5.901.

Comment: The requirement that family day care homes and group day care homes be investigated prior to registration fails to properly implement Ch. 606, L. 1981 since Section 53-4-501(10) of that law defines "registration" as "the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or group day care home to certify that he has complied with the prescribed standards and promulgated rules". (emphasis added)

Response: Rule 46.5.908 and 46.5.909 will be amended to delete any indication that on-site investigations be done of family day care homes and group day care homes prior to the issuance of registration certificates. Investigations will be limited to the face of the application to determine the completeness and veracity of the application. This will satisfy the meaning of registration while assuring quality day care for children. The provisions in 46.5.910 relating to investi-

gation of family day care homes and group day care homes holding registration certificates is provided for in Ch. 606, L. 1981 and will be maintained in the rule to allow recourse when responsible information or complaints are received indicating a day care home is not complying with regulations or statutes.



Director, Social & Rehabilitation Services

Certified to the Secretary of State December 3, 1981

VOLUME NO. 39 OPINION NO. 39

BUILDING CODE - Collection of demolition assessments;
COUNTY OFFICERS AND EMPLOYEES - Treasurer: duty to collect municipal assessments;
MUNICIPAL CORPORATIONS - Collection of special assessments;
TAXATION AND REVENUE - Collection of municipal assessments by county treasurer;
WORDS AND PHRASES - "Taxes";
MONTANA CODE ANNOTATED - Sections 7-6-4407(2)(a), 7-6-4413, 7-12-4181;
OPINIONS OF THE ATTORNEY GENERAL - 3 Op. Att'y Gen. at 198 (1909); 3 Op. Att'y Gen. at 199 (1909); 3 Op. Att'y Gen. at 201 (1909); 38 Op. Att'y Gen. No. 40 (1979).

HELD: The county treasurer must collect a properly certified special assessment that a city has imposed pursuant to an ordinance adopting the Uniform Code for the Abatement of Dangerous Buildings, unless the city has provided for the city treasurer to collect taxes under section 7-6-4413, MCA.

1 December 1981

David N. Hull, Esq.
Assistant City Attorney
Civic Center
Helena, Montana 59601

Dear Mr. Hull:

You have asked for my opinion on the following question:

> Must the county treasurer collect a special assessment that a city has imposed pursuant to an ordinance adopting the Uniform Code for the Abatement of Dangerous Buildings?

The Uniform Code for the Abatement of Dangerous Buildings [hereinafter referred to as U.C.A.D.B.] sets forth the procedure "whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished."

U.C.A.D.B. § 102(a). If required demolition is not performed by the building owner, the city may cause the building to be demolished and the lot to be cleared of materials, rubble, and debris. U.C.A.D.B. § 701(c)(3). Under sections 801(b) and 905, the city council may order that the costs of demolition be made a personal obligation of the property owner or be assessed against the property. If the city council chooses to make a special assessment, then, under section 909, "certified copies of the assessment shall be given to the assessor and the tax collector for [the city], who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes." Section 911 provides that: "[t]he amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected. ..."

You have provided me with no facts concerning the procedure used by the city to adopt this ordinance or to make the special assessments that prompted your request. From the correspondence accompanying your request, it appears there is no dispute as to the validity of the provisions of the U.C.A.D.B. discussed above, nor as to the special assessments in question. The only question concerns the duty of the county treasurer to collect those assessments.

Section 7-6-4413, MCA, states:

> (1) Except in case of such cities of the first, second, and third classes as may provide by ordinance for the city treasurer to collect the taxes from [the corrected municipal assessment book], the county treasurer of each county must collect the tax levied by all cities and towns in his respective county.
>
> (2) The county treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

The issue presented by your request is whether the term "city or town taxes" encompasses special assessments imposed by the city for the demolition of dangerous buildings. I conclude that it does.

For certain purposes, courts have recognized a distinction between ordinary property taxes and other assessments. See

Vail v. Custer County, 132 Mont. 205, 216, 315 P.2d 993, 1000 (1957); Thomas v. City of Missoula, 70 Mont. 478, 482-83, 226 P. 213, 214 (1924)(dictum); 38 Op. Att'y Gen. No. 40 (1979). However, in other cases courts have ruled that the term "taxes" as used in a particular statute includes special assessments. See State ex rel. Wolf Point v. McFarlan, 78 Mont. 156, 162, 252 P. 805, 808 (1927); Thomas, 70 Mont. at 483, 226 P. at 215; First National Bank v. Sorenson, 65 Mont. 1, 6, 210 P. 900, 902 (1922). Whether the term "taxes" is to be construed broadly or narrowly "must be determined by reference to the intention of the legislature, as that intention may be disclosed by the context, the purpose sought to be accomplished, the general scope of the act and related acts." Thomas, 70 Mont. at 483, 226 P. at 214.

The purposes of section 7-6-4413, MCA, are clearly to avoid needless duplication of the effort and cost of billing owners and collecting money and to provide taxpayers the convenience of a single bill. These purposes are best served by a broad interpretation of the term "taxes." The Montana Supreme Court held in McFarlan, 78 Mont. at 162, 252 P. at 808, that "assessments for special improvements...fall within the meaning of the words 'tax' and 'taxes' as employed in section 5214 [R.C.M. 1921 (the predecessor to section 7-6-4413, MCA)]." This holding was based in part on another statute explicitly requiring the county treasurer to collect special improvement district assessments. See § 7-12-4181, MCA (formerly § 5251, R.C.M. 1921). However, even before that statute was adopted in 1913, two Attorney General's Opinions had held that county treasurers had the duty under the predecessor to section 7-6-4413 to collect all certified city assessments, either general or special. See 3 Op. Att'y Gen. at 201 (1909); 3 Op. Att'y Gen. at 199 (1909). Based on these consistently broad interpretations of the term "taxes" in section 7-6-4413, MCA, and the purposes of that provision, I find that the term includes special demolition assessments.

The county in this instance has expressed concern about "unnecessary exposure to liability" for the collection of the assessments in question. To allay that concern, I note that in collecting city taxes under section 7-6-4413, MCA, the county treasurer acts as an agent of the city. McFarlan, 38 Mont. at 160, 252 P. at 807. Of course, the county treasurer must exercise due care to collect only those city assessments that have been correctly certified by the city council to the county under sections 905 and 909 of

the Uniform Code for the Abatement of Dangerous Buildings. The procedure for certification must be in accord with section 7-6-4407(2)(a), MCA, which requires the city clerk to certify to the county clerk a copy of the city council's resolution determining the amount of city taxes. Once the city taxes have been correctly certified, the county treasurer is responsible for following proper collection procedures. If there is any problem with the validity of the assessment, however, it is the city, not the county treasurer, that may be liable. See Sorenson, 65 Mont. at 4, 210 P. at 901 (challenge to city assessments dismissed as to the county); cf. McFarlan, 78 Mont. at 162, 252 P. at 808 (county treasurer not in a position to assert unconstitutionality of city assessments); 3 Op. Att'y Gen. at 198 (1909) (county to collect certified city poll taxes despite questions as to their validity).

THEREFORE, IT IS MY OPINION:

> The county treasurer must collect a properly certified special assessment that a city has imposed pursuant to an ordinance adopting the Uniform Code for the Abatement of Dangerous Buildings, unless the city has provided for the city treasurer to collect taxes under section 7-6-4413, MCA.

Very truly yours,

MIKE GREELY
Attorney General