RESERVE

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the amendment of rule ARM 2.32.101 concerning the adoption of the Uniform Building Code by reference.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.101 concerning the Uniform Building Code

TO: All Interested Persons:

1. On November 23, 1982 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.101, Incorporation By Reference of Uniform Building Code.

2. The proposed amendment replaces the present rule ARM 2.32.101 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1982 Edition of the Uniform Building Code, by reference along with listed appendix chapters.

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

2.32.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The building codes division of the department of administration adopts and incorporates by reference herein the Uniform Building Code, ~~1979~~ 1982 Edition, together with the Appendix Chapter ~~23 (Weights and Building Materials)~~ 7 (Part I, Covered Mall Buildings) (Part II, Aviation Control Towers), Appendix Chapter 32 (Re-Roofing), Appendix Chapter 49 (Patio Covers), ~~Appendix Chapter 51 (Elevators, Dumbwaiters, Escalators and Moving Walks),~~ Appendix Chapter 53 (Energy Conservation in New Building Construction), Appendix Chapter 55 (Membrane Structures), ~~as amended,~~ with the following amendments thereto:

~~(a) Any reference made to city or municipality will also be considered to be referenced to the county and state.~~

~~(b) The annual certificates of inspection fees in Sec. 5108, p. 674 of Chapter 51, shall be as follows:~~

~~(i) Fees when Inspections are Made by the Division For each elevator, escalator, and moving walk.....$50~~

~~(ii) Fees when Inspections are Made by Certified Inspector For each elevator, escalator, and moving walk.....$25~~

~~(iii) Fees when Inspections are Made by Certified Inspector and No Follow Up is required by the Department For each elevator escalator, and moving walk.....$10~~

~~(c) Chapter 51 shall apply only to conveyances used by members of the general public in public places, as defined in 50-60-101, MCA.~~

~~(d)~~ (a) Add a new paragraph to section ~~303~~ 304 of the Uniform Building Code to read, "~~(e)~~ (f) Requested Inspection Fee - $30, provided that such service is not in excess of 1 hour in duration, and then $15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items."

~~(e)~~ (b) Section 204 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The division and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 204.

~~(f)~~ (c) Section 205 of the code will be left as is for use by local governments; i.e., municipalities and counties. The division and the state of Montana will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 205. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the division, the division, as authorized by 50-60-109, MCA, will bring a civil action to enjoin him from constructing or using the building.

~~(g)~~ (d) Subsection (a) of section 304 of the Uniform Building Code, ~~1979~~ 1982 Edition, found on page ~~30~~ 34 of the Uniform Building Code, ~~1979~~ 1982 Edition, is amended to read as follows: "Sec. 304.(a) Permit Fees. The fee for each permit shall be as set forth in Table No. 3-A. The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is the state of Montana, acting through the department of administration, building codes division, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the International Conference of Building Officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. As provided by rule ARM 2.32.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of

building valuation."

(2) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property, and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures and certain equipment specifically regulated therein.

(3) The Uniform Building Code, ~~1979~~ 1982 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code, ~~1979~~ 1982 Edition, may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(4) The "International Conference of Building Officials Building Standards" magazine mentioned in subsection (1) ~~(g)~~ (d) of this rule is the trade magazine for building officials published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. A copy of the most current "Building Valuation Data" table mentioned in subsection (1) ~~(g)~~ (d) of this rule may be obtained free of charge from the department of administration, building codes division, Capitol Station, Helena, Montana 59620.

(5) Appendix Chapter 1 (Life Safety Requirements for Existing Buildings), Appendix Chapter 11 (Agricultural Buildings), Appendix Chapter 12 (Requirements for Group R, Division 3 Occupancies), Appendix Chapter 23 (Earthquake Instrumentation, Appendix Chapter 35 (Sound Transmission Control), Appendix Chapter 38 (Basement Pipe Inlets, Appendix Chapter 57 (Regulations Governing Fallout Shelters), Appendix Chapter 70 (Excavation and Grading) are adopted for use by local governments specifically adopting them. However, the department will not be enforcing them.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Building Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than November 25, 1982

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA, and implements Sections 50-60-103 and 50-60-104, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Dave Ashley
DAVE ASHLEY

Certified to the Secretary of State Oct. 6, 1982

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

In the matter of the amendment of rule ARM 2.32.102 concerning the adoption of the Uniform Housing Code by reference.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.102 concerning the Uniform Housing Code

TO: All Interested Persons:

1. On November 23, 1982 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.102, Incorporation By Reference of Uniform Housing Code.

2. The proposed amendment replaces the present rule ARM 2.32.102 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1982 Edition of the Uniform Housing Code by reference.

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

2.32.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE (1) The building codes division of the department of administration adopts and incorporates by reference herein the Uniform Housing Code, ~~1979~~ 1982 Edition, with the following amendments thereto:

~~(a)--Any-reference-made-to-city-or-municipality-will-also be-considered-to-be-reference-to-the-county-and-state.~~

~~(b)~~ (a) Section 203 of the code will be left in as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The division and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedures Act in all cases of appeal in lieu of section 203.

~~(c)~~ (b) Section 204 of the code will be left in as is for use by local governments; i.e., municipalities and counties. The division and state of Montana will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 204. When a person fails to submit plans, obtain a permit, correct plans, or comply with an order of the division, the division will apply 50-60-109, MCA, and thereby enjoin the person from constructing or using the building.

(2) The purpose of this code is to provide minimum requirements for the Protection of life, limb, health, property, safety, and welfare of the general public and the owners and occupants of residential buildings.

(3) The Uniform Housing Code, 1982 Edition, is a nationally recognized model code setting forth minimum standards and requirements for maintenance of residential buildings. A copy of the Uniform Housing Code, 1982 Edition, may be obtained from the department of administration, building codes division, Capitol station, Helena,

Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Building Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than November 25, 1982

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA, and implements Sections 50-60-103 and 50-60-104, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: _____
DAVE ASHLEY

Certified to the Secretary of State _____

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

In the matter of the amendment of rule ARM 2.32.103 concerning the adoption of the Uniform Code For The Abatement Of Dangerous Buildings by reference)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.101 concerning the Uniform Code for the Abatement of Dangerous Buildings

TO: All Interested Persons:

1. On November 23, 1982 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.103, Incorporation By Reference of Uniform Code For The Abatement Of Dangerous Buildings.

2. The proposed amendment replaces the present rule ARM 2.32.103 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1982 Edition of the Uniform Code For The Abatement Of Dangerous Buildings by reference.

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

2.32.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The building codes division of the department of administration adopts and incorporates by reference herein the Uniform Code for the Abatement of Dangerous Buildings, ~~1979~~ 1982 Edition, with the following amendments thereto:

~~(a) Any reference made to city or municipality will also be considered to be reference to the county and state.~~

~~(b)~~ (a) Section 203 of the code will be left as is for use by local governments; i.e., municipalities and counties. The division and state of Montana will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 203. When a person fails to submit plans, obtain a permit, correct plans, or comply with an order of the division, the division will apply 50-60-109, MCA, and thereby enjoin the person from constructing or using the building.

~~(c)~~ (b) Section 205 of the code will be left in as is for use by local governments (i.e., municipalities and counties) who by 50-60-303, MCA, must provide an appeal procedure. The division and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 205.

(2) The purpose of this code is to provide a just, equitable and practicable method, to be cumulative with and in addition to, any other remedy provided by the Uniform Building Code or Uniform Housing Code, or otherwise available at law, 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.

(3) The Uniform Code for the Abatement of Dangerous Buildings, 1982 Edition, is a nationally recognized model code setting forth minimum standards and requirements for dangerous buildings. A copy of the Uniform Code for the Abatement of Dangerous Buildings, 1982 Edition, may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Code For The Abatement Of Dangerous Buildings. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than November 25, 1982.

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA, and implements Sections 50-60-103 and 50-60-104, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: _____
DAVE ASHLEY

Certified to the Secretary of State _____

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

In the matter of the amendment of rule ARM 2.32.105 concerning the adoption of the Uniform Mechanical Code by reference.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.105 concerning the Uniform Mechanical Code

TO: All Interested Persons:

1. On November 23, 1982 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.105, Incorporation By Reference Of Uniform Mechanical Code.

2. The proposed amendment replaces the present rule ARM 2.32.105 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1982 Edition of the Uniform Mechanical Code, by reference along with listed appendix chapters.

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

2.32.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) The building codes division of the department of administration adopts and incorporates by reference herein the Uniform Mechanical Code, ~~1979~~ 1982 Edition, as amended, with the following amendments thereto:

~~(a) Any reference made to city or municipality will also be considered to be reference to the county and state.~~

~~(b)~~ (a) The fees contained in section 304 shall be deleted and replaced with the following:

--for the issuance of each permit	$10.00
--for the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h	11.00
--for the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h	13.00
--for the installaton or relocation of each floor furnace, including vents	10.00
--for the installation or relocation of each suspended heater, recessed wall heater, or floor mounted unit heater	10.00
--for the installation, relocation, or replacement of each appliance vent installed and not included in an appliance permit	4.00
--for the repair of, alteration of, or addition to each heating appliance, refrig-	

eration unit, cooling unit, absorption unit, or each heating, cooling, absorption, or evaporative cooling system, including installation of controls regulated by this code	7.00
--for the installation or relocation of each boiler or compressor to and including three horsepower, or each absorption system to and including 100,000 Btu/h	7.00
--for the installation or relocation of each boiler or compressor over three horsepower to and including 15 horsepower, or each absorption system over 100,000 Btu/h and including 500,000 Btu/h	13.00
--for the installation or relocation of each boiler or compressor over 15 horsepower to and including 30 horsepower, or each absorption system over 500,000 Btu/h to and including 1,000,000 Btu/h	20.00
--for the installation or relocation of each boiler or compressor over 30 horsepower to and including 50 horsepower, or for each absorption system over 1,000,000 Btu/h to and including 1,750,000 Btu/h	27.00
--for the installation or relocation of boiler or refrigeration compressor over 50 horsepower, or each absorption system over 1,750,000 Btu/h	67.00
--for each air handling unit to and including 10,000 cubic feet per minute, including ducts attached thereto NOTE: This fee shall not apply to an air handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler, or absorption unit for which a permit is required elswhere in this code.	7.00
--for each air handling unit over 10,000 cfm	13.00
--for each evaporative cooler other than portable type	7.00
--for each ventilation fan connected to a single duct	3.00
--for each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit	7.00

--for the installation of each hood which is served by mechanical exhaust, including the ducts for such hood	7.00
--for the installation or relocation of each domestic type incinerator	13.00
--for the installation or relocation of each commercial or industrial type incinerator	47.00
--for each appliance or piece of equipment regulated by this code but not classed in other appliance categories, or for which no other fee is listed in this code	7.00
--requested inspection fee - $30, provided that such service is not in excess of 1 hour in duration, and then $15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items.	

~~(c)~~ (b) Section 203 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The division and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of section 203.

~~(d)~~ (c) Section 204 of the code will be left as is for use by local governments; i.e., municipalities and counties. The division and state of Montana will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of section 204. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the division, the division will, as authorized by 50-60-109, MCA, enjoin him from constructing or using the building.

~~(e)~~ (d) Chapter 21, Appendix B, pages ~~271-288~~ 264-280 titled "Steam and Hot-water Boilers, Steam and Hot-water Piping (Hydronics)" shall be adopted as part of the Uniform Mechanical Code except as follows:

(i) In section 2102 change the wording of the first paragraph to read: "The requirements of this chapter apply to the construction, installation, repair, and alteration of steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not over 50 pounds per square inch guage pressure and temperatures not over 250°F when in private residences or apartments of six or

less families. All other systems are under the control of the bureau of safety and health, division of workers' compensation, department of labor and industry, state of Montana."

(ii) Eliminate sections 2124, 2125, and 2126 entirely.

(2) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances.

(3) The Uniform Mechanical Code, ~~1979~~ 1982 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the Uniform Mechanical Code, ~~1979~~ 1982 Edition, may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032, or the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Mechanical Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than November 25, 1982

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA, and implements Sections 50-60-103 and 50-60-104, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: _____
DAVE ASHLEY

Certified to the Secretary of State _____

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

In the matter of the amendment of rule ARM 2.32.302 concerning the adoption of the Uniform Plumbing Code by reference.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.302 concerning the Uniform Plumbing Code

TO: All Interested Persons:

1. On November 23, 1982 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.302, Incorporation By Reference Of Uniform Plumbing Code.

2. The proposed amendment replaces the present rule ARM 2.32.302 found in the Administrative Rules of Montana. The proposed amendment would adopt the 1982 Edition of the Uniform Plumbing Code by reference.

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

2.32.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The building codes division of the department of administration adopts and incorporates by reference herein the Uniform Plumbing Code, ~~1979~~ 1982 Edition, as amended by this rule. The Uniform Plumbing Code, ~~1979~~ 1982 Edition, is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code, ~~1979~~ 1982 Edition, may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032. The Uniform Plumbing Code, ~~1979~~ 1982 Edition, adopted herein by reference, is amended as follows:

(a) The following exceptions hold true throughout the entire code:

(i) Asbestos-cement vent pipe is not an acceptable material in the state of Montana for DWV.

(ii) Homogenous bituminized fiberdrain and sewer pipe is not acceptable material in the state of Montana, except in drain fields.

(b) The following amendments are listed according to section and page number of the Uniform Plumbing Code:

(i) Sec. 20.3, Violation and Penalties, page 2a. This entire section is to be deleted and replaced by the violation and penalty procedure contained in 50-60-110 and 50-60-515, MCA.

(ii) Sec. 20.5, Work Not Requiring a Permit, page 3a. This

section is to be deleted and replaced with the following wording: "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act. Factory-built buildings covered by an insignia issued by the building standards bureau need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on site work, as provided for in these rules."
for in these rules."

(iii) Sec. 20.7, Cost of Permit, page 4a. Delete the Schedule of Fees and replace with the following schedule:

--for issuing each permit	$10.00
--for each plumbing fixture or trap or set of fixtures on one trap (including water, drainage piping, and backflow protection therefore)	4.00
--water service - domestic or commercial	4.00
--for each building sewer and each trailer park sewer	7.00
--storm drains and storm drainage	4.00
--for each water heater	4.00
--for each gas piping system of one to four outlets	4.00
--for each gas piping system of five or more per outlet	1.00
--for each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	5.00
--for installation, alteration, or repair of water piping and/or water treatment equipment	4.00
--for repair or alteration of drainage or vent piping	4.00
--for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	4.00
--for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping--one to four	4.00

--five or more, each 1.00
--requested plumbing inspection fee 30.00
provided that such service is not in excess of 1 hour in duration, and then $15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items.
--reinspection (provided the $20 does not exceed the original permit fee, in which case the original fee will be charged) 20.00
*except for replacement of water heaters

(iv) Sec. 20.14 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The division and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of Sec. 20.14.

(v) Sec. 203(a), Use of Copper Tubing, page 14. Delete "DWV" and substitute "L".

(vi) Sec. 203~~(c)~~ (d), Use of Copper Tubing, Page 14. Delete "or underground outside of structures." ending the sentence with "building."

(vii) Sec. 401(a), Materials, Item 2, page 37. Amend to read as follows: "~~2.--ABS-or-PVC-installations-limited-to-residential,-commercial,-institutional,-and-industrial-construction-not-more-than-two-(2)-stories-in-height,-provided-that--ABS-or-PVC-may-be-used-for-horizontal-branch-lines-regardless-of-the-number-of-stories~~ (2) ABS and PVC DWV piping installations shall be limited to ~~these-structures-where-combustible-construction-is-allowed~~ residential, commercial, institutional, and industrial construction not more than two stories in height, provided that ABS and PVC DWV may be used for horizontal branch lines regardless of the number of stories."

(iii) Sec. 406(a), Cleanouts, page 40. Line 4 shall be changed to read as follows: ". . . shall be provided with a cleanout for each 50 feet . . . .", rather than " . . . 100 feet. . ." Also add: "Lines 6 inches in size and larger shall be provided with a cleanout for each 100 feet, or fraction thereof, in length of such piping."

(ix) Sec. 407, Grade of Horizontal Drainage Piping, page 41. Change "four (4) inch" to "2 inch," and delete "When first approved by the Administrative Authority."

(x) Sec. 409(a), Drainage of Fixtures Located Below ~~Curb~~ the Next Upstream Manhole ~~and-Also~~ or Below the Main Sewer Level, page 41, ~~Line-5~~ Lines 3-4, amend to read as follows: "~~gravity-into-the-main-sewer,-and-shall-may-be-protected-from-backflow-of~~ the public sewer serving such drainage

piping ~~shall~~ may be protected from backflow."

(xi) Sec. 503(a), Materials, Item 2, page 45. Amend to read as follows: "~~2.--ABS-or-PVC-installations-limited to-residential,-commercial,-institutional,-and-industrial construction-not-more-than-two-(2)-stories-in-height~~ (2) ABS and PVC DWV piping installations shall be limited to ~~those-structures-where-combustible-construction-is-allowed~~ residential, commercial, institutional, and industrial construction not more than two stories in height, provided that ABS and PVC DWV may be used for horizontal branch lines regardless of the number of stories.

(xii) Sec. 506(a) and (c), Vent Termination, pages 46-47. Change "six inches" to "12 inches."

(xiii) Sec. 1004(a), Materials, page 75, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron; galvanized steel, lead or other approved materials. Asbestos-cement, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. PB water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."

(xiv) Sec. 1008, Installation, Inspection and Testing, page 77, after subsection (e) add the following new subsection (f): "(f) Disinfection. (1) When required by the administrative authority having jurisdiction, potable-water systems or any part thereof installed or repaired shall be disinfected in accordance with one of the following methods:

--by filing the system or any part thereof with a solution containing 50 parts per million of available chlorine and allowing it to stand for a minimum period of 6 hours before flushing.

--by filling the system or any part thereof with a solution containing 100 parts per million of available chlorine and allowing it to stand for a minimum period of 2 hours before flushing.

--In the case of a potable-water storage tank where it is not possible to disinfect by one of the above methods, the entire interior of the tank shall be swabbed with a solution containing 200 parts per million of available chlorine and allowing to stand 2 hours before flushing.

--In the case of potable-water filters or similar equipment, the mixture shall be determined by the administrative authority having jurisdiction."

(xv) Sec. 1009(h), Size of Potable Water Piping, page 79. Amend the second paragraph to read: "No building supply pipe shall be less than 3/4 inch in inside diameter."

~~(xvi)--Sec. 1101, Sewer Required, page 85--Delete (c), (d), and (e).~~

~~(xvii)--Sec. 1109 through 1118--Delete these sections completely.--The section on private sewer systems shall be as required by the state department of health and environmental sciences.~~

(xvi) Sec. 1106, Grade, Support and Protection of Building Sewers, pages 86-87. Amend line 7 to read: "pipe or piping ~~four (4)~~ three (3) inches ~~(101.6mm)~~ (76.2mm) or larger may have a slope of".

~~(xviii)~~ (xvii) Appendix E, Mobile Home Parks, pages ~~162-174~~ 163-175. Delete.

~~(xix)~~ (xviii) Appendix G, Swimming Pools, pages ~~175-176~~ 176-177. Delete.

~~(xx)~~ (xix) Appendix C, Minimum Plumbing Facilities, pages ~~152-153~~ 151-154. Delete. Rule ARM 2.32.303 will be used in lieu of Appendix C.

~~(xxi)~~ (xx) Appendix I, Private Sewage Disposal Systems, pages ~~177-191~~ 180-194. Delete.

(2) The purpose of this code is to provide minimum requirements and standards for plumbing installations for the protection of the public heath, safety, and welfare.

4. The Division is proposing this amendment to its rule to keep the state building code current with modern technology by adopting the latest available edition of the Uniform Plumbing Code. The requirement to maintain current codes is provided in Section 50-60-201, MCA.

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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than November 25, 1982.

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sectons 50-60-104 and 50-60-203, MCA. The authority for implementation is provided in Sections 50-60-103, 50-60-104 and 50-60-504, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: _____
DAVE ASHLEY

Certified to the Secretary of State _____

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

In the matter of the amendment of rules ARM 2.32.601 and 2.32.604 concerning the enforcement of the elevator code.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES ARM 2.32.601 and 2.32.604 concerning the Enforcement of the Elevator Code

TO: All Interested Persons:

1. On November 23, 1982 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.601, Incorporation By Reference of Safety Code for Elevators and Escalators ANSI/ASME A 17.1-1981 and rule ARM 2.32.604, Certificates of Inspection.

2. The proposed amendment replaces the present rules ARM 2.32.601 and 2.32.604 found in the Administrative Rules of Montana. The proposed amendments would adopt the 1981 Edition of ANSI/ASME A 17.1, by reference and add fees for review of new elevators and annual inspections that were previously listed in the Uniform Building Code but since deleted, in the most recent edition of that code. The amount of fees remains unchanged from those previously used.

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

2.32.601 INCORPORATION BY REFERENCE OF ~~AMERICAN-NATIONAL-STANDARD~~ SAFETY CODE FOR ELEVATORS~~,-DUMBWAITERS,~~ AND ESCALATORS~~,-AND-MOVING-WALKS~~, ANSI/ASME A17.1 - 1981

(1) The building codes division of the department of administration adopts and incorporates by reference herein the ~~American-National-Standard~~ Safety Code for Elevators~~,~~ ~~Dumbwaiters,~~ and Escalators~~,-and-Moving-Walks~~, ANSI/ASME A17.1, ~~1971~~-1981 Edition, as amended. A copy of the Safety Code for Elevators and Escalators ANSI/ASME A 17.1 - 1981 can be obtained from The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(2) The purpose of this code is to provide safety standards for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair or elevators, dumbwaiters, escalators, private residence elevators and inclined lifts, moving walks, and their hoistways.

(3) The following amendment is made to ANSI/ASME A17.1, section 1001, rule 1001.6B, p. ~~234-235~~ 126. The test period shall be changed from 12 months to 36 months.

(4) The permit fee for new installations and major alterations shall be as follows:

Passenger elevator, escalator, moving walk:
--up to and including $40,000 of valuation - $55.00
--over $40,000 of valuation - $55.00 plus $1.00 for each $1,000 or fraction thereof over $40,000
(5) The elevator code applies only to conveyances used by members of the general public.

The authority of the agency to make the proposed amendment is based on Sections 50-60-104, 50-60-203 and 50-60-702, MCA, and implements Sections 50-60-103, 50-60-104, and 50-60-701, MCA.

2.32.604 CERTIFICATES OF INSPECTION (1) After the annual inspection by the division reveals a unit complies with the requirements of the code and the annual certificate of inspection fee has been paid, a final certificate will be issued.

(2) After the annual inspection by the division reveals a unit has minor deficiencies that do not offer imminent hazard to life and safety but that should be corrected before the next annual inspection, a conditional certificate will be issued after the certificate of inspection fee has been paid.

(3) Prior to issuance of a final certificate where location of a new elevator is such that a final inspection cannot be performed within a reasonable time, a temporary certificate may be issued upon payment of the annual certificate inspection fee. A temporary certificate may be withdrawn at any time, for cause, by the building codes division.

(4) After the annual inspection by the division reveals a unit has deficiencies rendering it an imminent hazard to life and safety, the unit shall be sealed from operation by the division and an unsafe certificate shall be placed on the unit. The annual certificate fee will be charged even though the unit is not certified for operation, and at such time as the deficiencies are corrected, a reinspection fee will be charged.

(5) When a certificate of inspection becomes lost, another will be issued for a $10 fee.

(6) The annual certificates of inspection fees shall be as follows:

(a) Fees when inspections are made by the division, for each elevator, escalator, and moving walk $58.00

(b) Fees when inspections are made by certified inspectors, for each elevator, escalator, and moving walk $25.00

(c) Fees when inspections are made by certified inspectors and no follow-up is required by the division, for each elevator, escalator, and moving walk $10.00

(7) When an inspection reveals an unsafe condition, the inspector shall immediately file with the owner and the division a full and true report of such inspection and such unsafe condition. If the Division finds that the unsafe condition endangers human life, it shall cause such elevator, escalator or moving walk to be posted with a notice, in a conspicuous place, stating that such conveyance is unsafe. The owner shall see to it that such notice is legibly maintained where placed by the division. The division shall also issue an order in writing to the owner requiring the repairs or alterations to be made to such conveyance which are necessary to render it safe and may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed. A posted notice of unsafe conditions shall be removed only by the division when they are satisfied that the unsafe conditions have been corrected.

(8) It shall be unlawful to operate any elevator, escalator or moving walk without a current certificate of inspection issued by the division. Such certificate shall be issued annually upon payment of prescribed fees and the presentation of a valid inspection report indicating that the conveyance is safe and that the inspection was made within the previous six months. Certificates shall not be issued when the conveyance is posted as unsafe pursuant to number (7) above. Obtaining a certificate of inspection shall be the responsibility of the owner of the conveyance.

4. The Division is proposing these amendments to its rules to keep the state building code current with modern technology by adopting the latest available edition of ANSI A 17.1. The requirement to maintain current codes is provided in Section 50-60-201, MCA. In addition, the amendments replace wording previously contained in the Uniform Building Code but deleted in the current edition of that code.

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 John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than November 25, 1982.

6. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is based on Sections 50-60-104, 50-60-203 and 50-60-702, MCA, and implements Sections 50-60-103, 50-60-104, and 50-60-701, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Dave Ashley
DAVE ASHLEY

Certified to the Secretary of State Oct 6 1982

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

IN THE MATTER of the proposed Amendments of arm 8.48.903 concerning late renewals and 8.48.1105 concerning the fee schedule, subsection (4)) NOTICE OF PROPOSED AMENDMENT OF 8.48.903 LATE RENEWAL and 8.48.1105 (4) FEE SCHEDULE) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 27, 1982 the Board of Professional Engineers and Land Surveyors proposes to amend 8.48.903 concerning late renewals and 8.48.1105 subsection (4) fee schedule.

2. The proposed amendment of 8.48.903 will read as follows: (new matter underlined, deleted matter interlined)

"8.48.903 LATE RENEWAL (1) The failure on the part of any registrant to renew his certificate in the month of December ~~September~~ as required shall not deprive such person of the right of renewal.

(2) The fee to be paid for the renewal of a certificate after the month of December shall be increased 10% for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed 50% ~~twice~~ the normal renewal fee."

3. The board is proposing the amendment of the December date in subsection (1) as this is the month the board renews the licenses. Some time in the past an error was made and December was changed to September through retyping of the page. The amendment from twice the amount of the normal fee to 50% of the renewal fee is being proposed to comply with the requirements of section 37-67-315, MCA. The authority of the board to make the proposed amendment is based on section 37-67-202, MCA and implements section 37-67-315, MCA.

4. The proposed amendment of 8.48.1105 will amend subsection (4) and will read as follows: (new matter underlined, deleted matter interlined)

"8.48.1105 FEE SCHEDULE (1)...

(4) The remainder of the fees shall be as follows:

(a)	EIT application and test	$30.00
(b)	PE application and test (Original)	40.00
(c)	PE application and test for out-of-state EIT	50.00
(d)	PE Comity application	60.00
(e)	LSIT application and test	30.00
(f)	LS application and test	40.00
(g)	LS Comity and test	50.00
(h)	~~(g)~~ ES Comity and test	100.00
(i)	~~(h)~~ Re-exam	30.00
(j)	~~(i)~~ Temporary permit	100.00"

5. The board is proposing the amendment to set the LS Comity and test fee. The fee was proposed in 1979 but never

adopted. It is the amount the board has determined is necessary to cover the administrative costs of the program. The authority of the board to make the proposed amendment is based on sections 37-67-202, MCA and 37-1-134, MCA and implements sections 37-1-134, and 37-67-303, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 25, 1982.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 25, 1982.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less of those persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a public 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 5 based on the 50 applicants from out-of-state per year.

9. The authority and implements sections are listed after each proposed change.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
LOUIS FONTANA, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 18, 1982.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Board Rule 36.22.601 pertaining to filing and issuance of permits to drill oil or gas wells.	NOTICE OF PROPOSED AMENDMENT OF RULE 36.22.601. NOTICE OF INTENTION AND PERMIT TO DRILL

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On December 2, 1982, the Board of Oil and Gas Conservation (Board) proposes to amend Rule 36.22.601 which sets forth procedures for filing and issuance of drilling permits.

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

36.22.601 NOTICE OF INTENTION AND PERMIT TO DRILL (1) No person shall commence the drilling of a well for oil or gas without first giving to the Board written notice of intention to drill on Form No. 2 and obtaining a drilling permit from the Board. Prior to the commencement of recompletion operations on any oil or gas well, notice shall likewise be delivered to the Board of such intention, and approval shall be obtained.

(2) No person, shall commence the drilling of a stratigraphic test well without first filing with the Board Form No. 2 showing location, elevation, and proposed work and obtaining a no-fee drilling permit from the Board.

(3) If the staff determines that a person applying for a drilling permit or approval of recompletion operations is not in substantial compliance with the Board's rules governing any of the applicant's operations in Montana, the staff may refer the request for a permit to the Board which shall then, after notice and hearing, determine if the permit should be granted and, if so, under what conditions.

3. The Board proposes to amend the rule to establish procedures for the staff to refer applications for drilling permits or approval of recompletion operations to the Board when the applicant's current operations are not in substantial compliance with the Board's rules governing any of the

applicant's operations in Montana. Currently the staff must determine whether a request for a drilling permit shall be approved or denied solely by determining whether the permit applied for is in compliance with Board rules and not whether the applicant's other operations in Montana are in compliance with the rules.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than November 26, 1982.

5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing he must make written requests for a hearing and submit that request along with any written comments he has to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624 no later than November 26, 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 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 greater than 25 persons based on the Board's determination that there are more than 250 persons who operate oil and gas wells in Montana.

7. The authority of the Board to make the proposed amendment is based on Section 82-11-111, MCA, and the rule implements Section 82-11-123, MCA.

Richard A. Campbell
Richard A. Campbell, Chairman
Board of Oil and Gas Conservation

BY: Dee Rickman
Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State October 18, 1982.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Rules 36.22.1012 and 36.22.1013 pertaining to confidentiality of stratigraphic test hole information and Rule 36.22.1242 concerning the due date of production reports.	NOTICE OF PROPOSED AMENDMENT OF RULE 36.22.1012 SAMPLES OF CORES AND CUTTINGS, RULE 36.22.1013 FILING OF COMPLETION REPORTS, WELL LOGS, ANALYSES, REPORTS, AND SURVEYS AND RULE 36.22.1242 REPORTS BY PRODUCERS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 2, 1982, the Board of Oil and Gas Conservation (Board) proposes to amend Rules 36.22.1012 and 36.22.1013 which set forth requirements for submitting information, reports and samples on oil and gas wells and stratigraphic test holes to the Board and Rule 36.22.1242 concerning the obligation to file monthly production reports on oil and gas wells to the Board.

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

36.22.1012 SAMPLES OF CORES AND CUTTINGS (1) Any owner or operator drilling or deepening a well for oil or gas or stratigraphic information shall deliver prepaid to the Board at the office stipulated on the approved Permit to Drill a complete and representative sample of the corechips~~,~~ and cuttings within a period of 6 months after the completion or abandonment of such well. The Board may at its discretion relieve any owner or operator from the obligation to so deliver samples of corechips or cuttings.

(2) Cores, chips, and cuttings from a stratigraphic well or core hole will be impounded by the Board and not made available to the public for a period of 3 years from the date of abandonment of the well, unless prior consent is obtained from the owner or operator.

AUTH: 82-11-111 IMP: 82-11-123 & 82-11-125

36.22.1013 FILING OF COMPLETION REPORTS, WELL LOGS, ANALYSES, REPORTS, AND SURVEYS (1) Within 30 days after the completion, reworking, or abandonment of any well drilled to known productive horizons within a delineated field, the operator or owner shall transmit to the Board 3 copies of Form No. 4, 4 copies of Form No. 2 and 2 original copies of all well logs, drill stem test survey reports, sample and core description logs, analyses, and reports, water analyses, and all other logs, surveys, and reports run or made.

(2) In the case of a wildcat, exploratory, or stratigraphic well, or core hole, the owner or operator shall transmit to the Board within 6 months after completion or abandonment 3 copies of Form No. 4, 4 copies of Form No. 2 and 2 original copies of all logs, surveys, reports, and analyses run or made as described in subsection (1). In the case of a stratigraphic well, all information will be impounded by the Board and will not be made available to the public for a period of 3 years from the date of abandonment, unless prior consent is obtained from the owner.

AUTH: 82-11-123 IMP: 82-11-123 & 82-11-125

36.22.1242 REPORTS BY PRODUCERS (1) Each producer or owner of an oil or gas well shall file or cause to be filed with the Board on or before the ~~20th~~ last day of each month succeeding the month in which the producing or taking occurs a report on Form No. 6 containing all information required by said form.

(2) Each producer of oil and each producer of gas shall not later than the last day of each of the calendar months of February, May, August and November of each and every calendar year file with the Board a report on Form No. 12 containing all information required by said form.

AUTH: 82-11-123 IMP: 82-11-123 & 82-11-125

3. Effective July 16, 1982, the Board removed the underlined language in the proposed amendments to Rules 36.22.1012 and 36.22.1013 which is required by Section 82-11-125, MCA, in the belief that Article II, Section 9 of the Montana Constitution prohibited the Board from keeping any of its files confidential. Since those new rules were adopted, several interested persons have asked the Board to revert to the earlier rule until the Legislature reviews the statute. Because stratigraphic test hole information is considered highly proprietary by the industry the Board agrees that this problem should be referred to the Legislature and that Section 82-11-125 should be followed until the Legislature acts. The Board proposes to amend Rule 36.22.1242 to allow operators of oil and gas wells one full month to file monthly production reports on oil and gas wells because the 20 days currently allowed does not provide sufficient time

for operators to receive run statements from their purchasers and then prepare and file their production reports within the time allowed.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than November 26, 1982.

5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing he must make written requests for a hearing and submit that request along with any written comments he has to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624 no later than November 26, 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 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 greater than 25 persons based on the Board's determination that there are more than 250 persons who are either oil or gas producers or who are eligible to drill stratigraphic test holes in Montana.

7. The authority of the Board to make the proposed amendments is based on Section 82-11-111, MCA, and the rule implements Sections 82-11-123 and 82-11-125,MCA

Richard A. Campbell

Richard A. Campbell, Chairman
Board of Oil and Gas Conservation

BY: Dee Rickman

Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State October 18, 1982.

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

IN THE MATTER of Repeal of Rule 38.5.504 Regarding Hearings on Interim Utility Rate Increases.	NOTICE OF PROPOSED REPEAL OF RULE 38.5.504 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 29, 1982, the Department of Public Service Regulation proposes to repeal Rule 38.5.504, regarding hearings on interim utility rate increases.

2. The rule as proposed to be repealed is on page 38-505 of the Administrative Rules of Montana.

3. Because of amendments previously made to ARM 38.5.506(3), Section (1) of this rule does not make sense as presently enacted. The amendments made in 38.5.506(3) resulted in an objective formula for determination of an interim revenue requirement which, in most cases makes a hearing unnecessary.

Section (2) of this rule is simply a restatement of statutes that require the Commission to hold contested case hearings on rate increase requests if one is requested by an interested party; it is, therefore redundant.

Pursuant to 69-3-304, MCA, the Commission has the discretionary authority to hold a hearing on an interim rate increase request, and the Commission believes that rules are no longer needed in view of the objective criteria of ARM 38.5.506(3).

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Eileen E. Shore, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than November 26, 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 E. Shore, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than November 26, 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 repeal; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based on all public utility customers in the State of Montana.

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 repeal this rule is based on Section 69-3-103, MCA, and the rule implements Section 69-3-304, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 18, 1982.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42.17.131 relating to withholding exemptions and the adoption of New Rule I, Computation of Withholding Tax.	NOTICE OF PUBLIC HEARING on the Amendment of Rule 42.17.131 relating to withholding exemptions and the Adoption of New Rule I, Computation of Withholding Tax.

TO: All Interested Persons:

1. On November 17, 1982, at 1:00, p. m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Fifth and Roberts, Helena, Montana, to consider the amendment of Rule 42.17.131, Withholding Exemptions and the adoption of New Rule I, Computation of Withholding Tax.

2. Rule 42.17.131 to be amended can be found at page 42-1721, ARM. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

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

42.17.131 WITHHOLDING ~~EXEMPTIONS~~ ALLOWANCES (1) The employee's ~~exemptions~~ withholding allowances for purposes of determining the amount of tax to be withheld are deemed to be, unless the department has determined otherwise, ~~to be~~ the same as or less than those claimed on line 4 of the I.R.S. Form W4 withholding ~~exemption~~ allowance certificate ~~furnished~~ 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~~ allowances on line 4 of Form W-4, the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to line 4 of Form W-4 for federal purposes, including federal redeterminations of ~~allowable exemptions~~, allowances 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~~ allowance certificate (W-4) to the Department of Revenue, Helena, Montana, on which an employee has claimed

more than 9 ~~or more~~ withholding ~~exemptions~~ allowances. 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 ~~exemption~~ allowances claimed and advise the employer of a maximum number of ~~exemption~~ withholding allowances permitted the employee for state purposes. The filing of a new certificate by an employee whose ~~exemption~~ withholding 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.

(6) When adjusting claimed withholding allowances for an employee under subsection (5) above, the department shall consider:

(a) exemptions provided under 15-30-112, 15-30-113 and 15-30-114, MCA;

(b) marital status and number of employers;

(c) estimated wages and salaries;

(d) estimated allowable deductions under 15-30-121, 15-30-122, 15-30-123 and 15-30-131, MCA to the extent that such deductions exceed the average itemized deductions taken into account in the withholding tables;

(e) business losses;

(f) annuity plan contributions; and

(g) residency.

(7) If an employee fails to provide the department with sufficient information to make the determination in subsection (6) above, the department shall use its best estimate of the employee's eligible exemptions when determining the withholding allowances.

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

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

(a) $Y = PZ$

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

Y is the individual's annualized gross earnings.

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

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

(b) T=

$0.72811Y - 960 N$ whenever $0 \leq Y \leq 10326.84$

$935.508 + 0.63752Y - 960N$ whenever $10326.84 \leq Y \leq 45511.89$

$9413.463 + 0.45124Y - 960N$ whenever $Y \geq 45511.89$

where T is the annualized net taxable income; and
N is the number of withholding allowances claimed.

If T in Step (2) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

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

ANNUALIZED NET TAXABLE EARNINGS T				
At Least	But Less Than	A	B	C
$ 0	$ 1,200	$ 0	.02	$ 0
$ 1,200	$ 2,400	$ 24	.03	$ 1,200
$ 2,400	$ 4,800	$ 60	.04	$ 2,400
$ 4,800	$ 7,200	$ 156	.05	$ 4,800
$ 7,200	$ 9,600	$ 276	.06	$ 7,200
$ 9,600	$12,000	$ 420	.07	$ 9,600
$12,000	$16,800	$ 588	.08	$12,000
$16,800	$24,000	$ 972	.09	$16,800
$24,000	$42,000	$1,620	.10	$24,000
$42,000	-------	$3,420	.11	$42,000

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

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

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

4. The amendments to Rule 42.17.131 provide standards by which the department will determine the appropriateness of the withholding allowances claimed by employees in those

cases selected for review. In making such determinations, the Department will take into account the items listed to attempt to balance amounts withheld with the final amount of income tax likely to be due in each individual case.

The Department is proposing the adoption of Rule I because under the terms of 15-30-202, MCA, the Department is to establish tables which shall be used to compute the amount of tax withheld from an employee's wages by his employer. In the past, the Department has prepared such tables and distributed them to employers throughout the state. Recently the Department has begun a program to insure compliance by employers and employees with state withholding. To insure that any redetermination of withholding made by the Department is valid pursuant to 2-4-103(3), MCA, it is necessary that the withholding tables become substantive rules of the Department.

Because of the length of the withholding tables, the Department believes it a better use of space to adopt the formula from which the tables are computed. The formula contained in the proposed rule exactly reproduces the withholding tables which have been previously distributed by the Department.

The purpose of the withholding tables is to insure that a sufficient amount of tax withheld from an employee's wages to pay whatever income tax may be due at the close of the employees tax year. The formula contained in the proposed rule takes into account the number of dependants which the employee may claim, average itemized deductions and average tax paid.

The Department shall continue to publish withholding tables and supply them to employers for their use.

5. Interested persons may present their data, view, or agreements, either orally or in writing, at the hearing. Written data, view, or arguments may also be submitted to:

Ann Kenny
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

no later than November 26, 1982.

6. Mr. Allen B. Chronister, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the amendment and proposed rule is based on 15-30-305, MCA, and the rule implements 15-30-202, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.6.105, 42.6.106 and 42.6.108 relating to an increase in minimum child support contributions.	NOTICE OF PROPOSED AMENDMENT OF RULES 42.6.105, 42.6.106 and 42.6.108 relating to an increase in minimum child support contributions. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 29, 1982, the Department of Revenue proposes to amend Rules 42.6.105, 42.6.106 and 42.6.108 to increase minimum child support contributions.

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

42.6.105 ADJUSTMENT FOR LIVING STANDARDS (1) In computing monthly net available resources, an allowance for adult living standards is subtracted from the monthly gross available resources according to the following table (based on the number of legal dependents in the household financially dependent upon the responsible parent with the responsible parent considered a legal and financial dependent for purposes of this rule):

1 PERSON	2 PERSONS	EACH ADDITIONAL PERSON
~~$426~~ 560	~~$558~~ 732	~~$230~~ 302

(2) A legal dependent in the household of the responsible parent is considered to be financially dependent if his gross monthly income is equal to or less than ~~$426~~ $560.

AUTH: 40-5-202, MCA; IMP: 40-5-214, MCA.

42.6.106 ADJUSTMENT FOR SPECIAL NEEDS (1) In computing monthly net available resources, the following items (computed on a monthly basis) are subtracted from the monthly gross available resources:

(a) medical expenses, when not reimbursed by insurance and when the cost exceeds the amount provided for medical care in the dependent adult standard (~~11.3~~ 12.4%);

(b) payments on debts contracted for large medical or dental expenses, not reimbursed by insurance;

(c) when related to a medical or health problem, educational expenses, or special child care arrangements;

(d) child care costs for a child counted as a dependent in the responsible parent's household, when necessary to enable the parent to be employed;

(e) cost of special clothing or equipment required for employment and not reimbursed by the employer.

(2) The purpose of an adjustment for special needs is to avoid serious inequities in those situations where the expense is beyond the control of the responsible parent and failure to take into account such expense would lead to undue hardship. AUTH: 40-5-202,MCA; IMP: 40-5-214, MCA.

46.6.108 CONTRIBUTION TABLE (1) The table on the following pages is used to compute the suggested minimum monthly child support contribution. (see next page) The table entries give the monthly minimum support payment per child. The obligation is obtained by multiplying the monthly support per child by the number of dependent children for whom support is sought.

~~MONTHLY CHILD SUPPORT~~
~~MINIMUM PER CHILD~~
~~CONTRIBUTIONS TABLE~~

~~RESPONSIBLE PARENT'S MONTHLY NET AVAILABLE RESOURCES~~	~~TOTAL # OF DEPENDENT CHILDREN~~								
	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~9~~
~~0-9~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~10-19~~	~~9~~	~~4~~	~~3~~	~~2~~	~~1~~	~~1~~	~~1~~	~~1~~	~~1~~
~~20-29~~	~~18~~	~~9~~	~~6~~	~~4~~	~~3~~	~~3~~	~~2~~	~~2~~	~~2~~
~~30-39~~	~~27~~	~~13~~	~~9~~	~~6~~	~~5~~	~~4~~	~~3~~	~~3~~	~~3~~
~~40-49~~	~~36~~	~~18~~	~~12~~	~~9~~	~~7~~	~~6~~	~~5~~	~~4~~	~~4~~
~~50-74~~	~~45~~	~~22~~	~~15~~	~~11~~	~~9~~	~~7~~	~~6~~	~~5~~	~~5~~
~~75-99~~	~~67~~	~~33~~	~~22~~	~~16~~	~~13~~	~~11~~	~~9~~	~~8~~	~~7~~
~~100-124~~	~~90~~	~~45~~	~~30~~	~~22~~	~~18~~	~~15~~	~~12~~	~~11~~	~~10~~
~~125-149~~	~~112~~	~~56~~	~~37~~	~~28~~	~~22~~	~~18~~	~~16~~	~~14~~	~~12~~
~~150-174~~	~~135~~	~~67~~	~~45~~	~~33~~	~~27~~	~~22~~	~~19~~	~~16~~	~~15~~
~~175-199~~	~~157~~	~~78~~	~~52~~	~~39~~	~~31~~	~~26~~	~~22~~	~~19~~	~~17~~
~~200-224~~	~~180~~	~~90~~	~~60~~	~~45~~	~~36~~	~~30~~	~~25~~	~~22~~	~~20~~
~~225-249~~	~~202~~	~~101~~	~~67~~	~~50~~	~~40~~	~~33~~	~~28~~	~~25~~	~~22~~
~~250-274~~	~~225~~	~~112~~	~~75~~	~~56~~	~~45~~	~~37~~	~~32~~	~~28~~	~~25~~
~~275-299~~	~~247~~	~~123~~	~~82~~	~~61~~	~~49~~	~~41~~	~~35~~	~~30~~	~~27~~
~~300-324~~	~~270~~	~~135~~	~~90~~	~~67~~	~~54~~	~~45~~	~~38~~	~~33~~	~~30~~
~~325-349~~	~~275~~	~~146~~	~~97~~	~~73~~	~~58~~	~~48~~	~~41~~	~~36~~	~~32~~
~~350-374~~	~~280~~	~~157~~	~~105~~	~~78~~	~~63~~	~~52~~	~~45~~	~~39~~	~~35~~
~~375-399~~	~~285~~	~~168~~	~~112~~	~~84~~	~~67~~	~~56~~	~~48~~	~~42~~	~~37~~
~~400-424~~	~~290~~	~~180~~	~~120~~	~~90~~	~~72~~	~~60~~	~~51~~	~~45~~	~~40~~
~~425-449~~	~~300~~	~~191~~	~~127~~	~~95~~	~~76~~	~~63~~	~~54~~	~~47~~	~~42~~
~~450-474~~	~~305~~	~~202~~	~~135~~	~~101~~	~~81~~	~~67~~	~~57~~	~~50~~	~~45~~
~~475-499~~	~~310~~	~~207~~	~~142~~	~~106~~	~~85~~	~~71~~	~~61~~	~~53~~	~~47~~

~~MONTHLY CHILD SUPPORT~~
~~MINIMUM PER CHILD~~
~~CONTRIBUTIONS TABLE~~

~~RESPONSIBLE PARENT'S MONTHLY NET AVAILABLE RESOURCES~~	~~TOTAL # OF DEPENDENT CHILDREN~~								
	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~9~~
~~500-524~~	~~315~~	~~212~~	~~150~~	~~113~~	~~90~~	~~75~~	~~64~~	~~56~~	~~50~~
~~525-549~~	~~320~~	~~217~~	~~157~~	~~118~~	~~94~~	~~78~~	~~67~~	~~59~~	~~52~~
~~550-574~~	~~325~~	~~222~~	~~165~~	~~123~~	~~99~~	~~82~~	~~70~~	~~61~~	~~55~~
~~575-599~~	~~330~~	~~227~~	~~172~~	~~129~~	~~03~~	~~86~~	~~73~~	~~64~~	~~57~~
~~600-624~~	~~335~~	~~232~~	~~180~~	~~135~~	~~08~~	~~90~~	~~77~~	~~67~~	~~60~~
~~625-649~~	~~340~~	~~237~~	~~187~~	~~140~~	~~12~~	~~93~~	~~80~~	~~70~~	~~62~~
~~650-674~~	~~345~~	~~242~~	~~191~~	~~146~~	~~17~~	~~97~~	~~83~~	~~73~~	~~65~~
~~675-699~~	~~350~~	~~247~~	~~195~~	~~151~~	~~21~~	~~01~~	~~86~~	~~75~~	~~67~~
~~700-724~~	~~355~~	~~252~~	~~199~~	~~157~~	~~26~~	~~05~~	~~90~~	~~78~~	~~70~~
~~725-749~~	~~360~~	~~257~~	~~203~~	~~163~~	~~30~~	~~08~~	~~93~~	~~78~~	~~70~~
~~750-774~~	~~365~~	~~262~~	~~207~~	~~168~~	~~35~~	~~12~~	~~96~~	~~84~~	~~77~~
~~775-799~~	~~370~~	~~267~~	~~211~~	~~174~~	~~39~~	~~16~~	~~99~~	~~87~~	~~77~~
~~800-824~~	~~375~~	~~272~~	~~215~~	~~170~~	~~44~~	~~20~~	~~02~~	~~90~~	~~80~~
~~825-849~~	~~380~~	~~277~~	~~219~~	~~182~~	~~48~~	~~23~~	~~06~~	~~92~~	~~82~~
~~850-874~~	~~385~~	~~282~~	~~223~~	~~186~~	~~51~~	~~27~~	~~09~~	~~95~~	~~85~~
~~875-899~~	~~390~~	~~287~~	~~227~~	~~190~~	~~54~~	~~30~~	~~12~~	~~98~~	~~87~~
~~900-924~~	~~395~~	~~292~~	~~231~~	~~194~~	~~57~~	~~33~~	~~15~~	~~01~~	~~90~~
~~925-949~~	~~400~~	~~297~~	~~235~~	~~198~~	~~60~~	~~36~~	~~18~~	~~03~~	~~92~~
~~950-974~~	~~405~~	~~302~~	~~239~~	~~202~~	~~63~~	~~39~~	~~21~~	~~05~~	~~93~~
~~975-999~~	~~410~~	~~307~~	~~241~~	~~206~~	~~66~~	~~42~~	~~24~~	~~07~~	~~94~~
~~1,000-1,049~~	~~415~~	~~312~~	~~245~~	~~210~~	~~69~~	~~45~~	~~27~~	~~10~~	~~95~~
~~1,050-1,099~~	~~420~~	~~317~~	~~249~~	~~214~~	~~72~~	~~48~~	~~30~~	~~12~~	~~96~~
~~1,100-1,149~~	~~425~~	~~322~~	~~253~~	~~218~~	~~75~~	~~51~~	~~33~~	~~14~~	~~97~~
~~1,150-1,199~~	~~430~~	~~327~~	~~257~~	~~222~~	~~78~~	~~54~~	~~36~~	~~16~~	~~98~~

CHILD SUPPORT MONTHLY MINIMUM

PER CHILD CONTRIBUTIONS TABLE

Responsible Parent Net Funds Available	Total Number of Dependent Children								
	1	2	3	4	5	6	7	8	9
0-50	50	25	16	12	10	8	7	6	5
51-100	90	45	30	22	18	15	12	11	10
101-150	135	67	45	33	27	22	19	16	15
151-200	175	87	58	43	35	29	25	21	19
201-250	188	107	74	55	45	37	32	27	24
251-300	200	125	90	67	55	45	39	33	30
301-350	213	150	107	79	65	53	46	39	35
351-400	225	175	123	91	75	61	53	45	41
401-450	238	184	140	103	85	69	60	51	46
451-500	250	190	156	115	95	77	67	57	52
501-550	263	197	175	127	105	85	74	63	57
551-600	275	203	179	139	115	93	81	69	63
601-650	288	209	183	151	125	101	88	75	68
651-700	300	216	188	163	135	109	95	81	74
701-750	313	222	192	175	145	117	102	87	79
751-800	325	228	196	180	155	125	109	92	85
801-850	338	234	200	183	165	133	116	100	90
851-900	350	241	204	186	175	141	123	106	96
901-950	363	247	208	189	175	141	123	106	96
951-1,000	375	253	213	192	180	153	132	120	110
1,001-1,050	388	259	217	195	183	155	134	122	111
1,051-1,100	400	266	221	198	185	157	136	124	112
1,101-1,150	413	272	225	202	188	159	138	125	113
1,151-1,200	425	278	229	205	190	161	139	127	114
1,201-1,250	438	284	233	208	193	163	141	128	115
1,251-and above	450	290	238	211	195	165	143	130	116

(Additional computations are available from the Department of Revenue, Child Support Enforcement Bureau, Mitchell Building, Helena, Montana ~~59602~~ 59620.)
AUTH: 40-5-202, MCA; IMP: 40-5-214, MCA.

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

42.6.105 ADJUSTMENT FOR LIVING STANDARDS - Section

40-5-214, MCA, requires the Department to establish a "Scale of Suggested Minimum Contributions". The Scale shall "(b) authorize an expense deduction for determining net income". The current revision is suggested in light of inflationary trends since the original amounts for living standards were established. The figures are based on costs of living in the western United States.

42.16.106 ADJUSTMENT FOR SPECIAL NEEDS - This rule implements 40-5-214(b), MCA. The change in the medical expense deduction is proposed because of the rapidly rising costs of medical care. The figure is based on current United States Department of Labor statistics.

42.16.108 CONTRIBUTION TABLE - 40-5-214, MCA, requires the Department "to establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child. . .". The change in amounts and categories of the Contribution Table is reflective of inflationary living trends for raising a child in the western United States since the last publication of the table.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 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 this request along with any written comments he has to Ann Kenny at the above address no later than November 26, 1982.

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

7. The authority of the agency to make the proposed amendments is based on §42-5-202, MCA, and the rules implement §42-5-214, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rules 42.32.101 and 42.32.103 and the Repeal of Rule 42.32.102 relating to the Resource Indemnity Trust Tax.	NOTICE OF PUBLIC HEARING on the Amendment of Rules 42.32.101 and 42.32.103 and the Repeal of Rule 42.32.102, relating to the Resource Indemnity Trust Tax.

TO: All Interested Persons:

1. On November 18, 1982, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building at Fifth and Roberts, Helena, Montana, to consider the amendment of Rules 42.32.101 and 42.32.103 and the repeal of Rule 42.32.102 relating to the Resource Indemnity Trust Tax.

2. The rule proposed to be repealed can be found on page 42-3205 of the Administrative Rules of Montana. The proposed amendments modify the present rules found in the Administrative Rules of Montana so as to eliminate sections exceeding statutory authority.

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

42.32.101 TERMINOLOGY (1) For resource indemnity trust tax purposes, mineral is defined as any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana, including sand and gravel.

~~(2)--For the purposes of Title 15, chapter 38, MCA, refinement process includes but is not limited to any crushing, smelting, washing, concentrating, or screening of any mineral.~~

AUTH: 15-1-201, MCA; IMP: 15-38-103 and 15-38-105, MCA.

42.32.103 COMPUTATION OF TAX (1) The resource indemnity trust tax is computed on the gross value of the mineral at the time of extraction from either the surface or subsurface of the earth.

(2) Producers may not reduce gross value for any costs or expenses of bringing minerals to mine mouth. However, ~~"mines mouth" value may require a detailed computation if the gross yield has been increased due to value added by refinement, treatment, or transportation. The burden of proof for any reduction to gross yield rests with the person, corporation, or association filing the resource indemnity trust tax statement of gross yield.~~

AUTH: 15-1-201, MCA; IMP: 15-38-105, MCA.

4. Rule 42.32.102 is proposed to be repealed because it is beyond the scope and intent of the statute it implements. Section 42.32.102(1) purports to implement 15-38-105, MCA. The statute provides reporting requirements for the tax whereas the rule incorrectly defines when minerals are taxable. The rule is contrary to the intent of 15-38-104 and 15-38-103(2), MCA, in that it specifies that a mineral is taxable when it is "started in a refinement process, treated in any manner or sold". However, the constitutional provision of Articles IX, §2 of the Montana Constitution and the statutory provisions appear to impose the tax at the time of extraction. No mention is made of a requirement that minerals must be started in a refinement process, treated, or sold before they become taxable. All that is necessary is that they have been extracted.

Section 42.32.102(2) also attempts to implement 15-38-105, MCA. Nothing in this statute or any other statutes of the Resource Indemnity Trust Tax Act allows stockpiled or stored minerals to be exempted from the tax. Again, there is no requirement that the minerals be refined, treated, or sold before taxation. Only extraction is required. For these reasons, the Department proposes that the rule be repealed.

Subsection (2) of 42.32.101 is proposed to be deleted because it is beyond the scope and intent of the statute it implements. This subsection attempts to implement 15-38-103 and 15-38-105, MCA. It defines the phrase "refinement process", however, neither the statutes it implements or the rest of the Resource Indemnity Trust Tax Act make any mention whatsoever of refining.

Subsection (2) of 42.32.103 also implements 15-38-105, MCA. The first sentence is correct but the remaining two sentences of the subsection are confusing and exceed statutory authority. The second sentence indicates that "gross yield" may be increased due to "value added" by post-extraction activities. However, as the express language and legislative history of the Act indicates, the post-extraction costs are irrelevant for purposes of calculating the tax. For tax purposes, the pure, "merchantable" mineral has the same market value whether in processed or unprocessed form. The tax is measured by the "market value" of "merchantable minerals" extracted from the ground and is not measured on the value of the unprocessed mineral substance. The tax is calculated by multiplying the quantity of the mineral mined (gross yield), by the market value of the pure, merchantable mineral at the time of extraction. The phrase "at the time of extraction" relates to the time at which the numerical market value of the merchantable mineral is to be ascertained. The time at which the mineral is to be valued is set as the date of extraction and not the date of ultimate refinement. The market value is the value of the final mineral product and is not a value of the raw, unrefined product in which it may be contained upon extrac-

tion from the ground. Subsections (2) and (3) of 15-38-103, MCA, and 15-38-104, MCA, read together support this conclusion. For these reasons, the Department proposes to delete the last two sentences in subsection (2) of 42.32.103.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than November 26, 1982 to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

6. Dan Hoven, Agency Legal Services has been designated to preside over and conduct the hearing.

7. The authority of the Department to repeal the rule is based on 15-1-201, MCA, and 72-16-337, MCA, and the rules implement 72-016-331-342, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF PROPOSED ADOPTION of Rule I to implement the windfall profit tax deduction from the net proceeds tax on oil.	NOTICE OF PUBLIC HEARING ON Rule I to implement the windfall profit tax deduction from the net proceeds tax on oil.

TO: All Interested Persons:

1. On November 17, 1982, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building at Fifth and Roberts, Helena, Montana, to consider the adoption of Rule I to implement the windfall profit tax deduction from the net proceeds tax on oil.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

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

RULE I DEDUCTION OF WINDFALL PROFIT TAX (1) Each operator of a lease or producer of crude oil filing a return pursuant to 15-23-602, MCA, shall provide the department of revenue a complete list of interests for each lease or unit for which the operator/producer files a return. The list of interests shall include all working, royalty and overriding royalty interests, and any other interest in the lease or unit, showing names and complete addresses for all interests and percentage of ownership by each interest in the lease or unit. The sum of the percentages of interest for each lease or unit shall equal 100 so as to ensure full accountability of ownership.

(2) If any working, royalty, or overriding royalty interest, or any other interest in crude oil being produced from a lease or unit, files with the Internal Revenue Service a claim for refund of any excise taxes (as defined in 15-23-601(1), MCA) or claim all, or a portion of, the excise tax as a credit against any other federal tax, then the amount of the credit or refund received shall be used to reduce the amount claimed as a deduction for excise taxes on the net proceeds returns. Any adjustments to the deduction for excise taxes on the net proceed returns will be made in the same year the original deduction was claimed.

(3)(a) All ownership interests in a lease or unit who file for a credit or refund with the Internal Revenue Service shall file copies of those same forms with the department of revenue when filing the return(s) described in 15-23-602, MCA. If the credit or refund cannot be determined in time to file a timely net proceeds return then the return should be filed. Subsequently, the claim for credit or refund shall be filed with the department within 30 days of it being filed with the Internal Revenue Service (IRS).

(b) Copies of any and all federal forms filed with the IRS, including supplemental or amended forms for overpaid windfall profit tax, shall be provided to the department. Generally, the federal IRS form numbers are 6249, 6249-A and 843; however, if subsequent forms replace or supplement these, then copies of these forms shall be provided.

(c) All forms must have sufficient supporting detail to enable the department to determine the credit or refund on a lease or unit basis. The detail will include at a minimum the following information:

(i) name and address of the operator or producer who files the return upon which the excise tax deduction was claimed;

(ii) name of the lease or unit for which the person in (i) filed the return;

(iii) location of the lease or unit including county, school district, section, township and range; and

(iv) amount of credit or refund claimed on the lease or unit.

(4) If the IRS audits the taxpayer for the excise tax and determines that the tax was either over or underpaid, the operator/producer shall provide to the department copies of all work papers and schedules provided by the IRS in recomputing the additional excise tax.

(5) Upon receipt of any refund claims, credits, or supplemental information, the department shall issue a revised notice of valuation and shall notify its agents in the counties within 60 days of the receipt of the change in excise tax and instruct them as to the additional value or reduction in value.

(6) Any questions as to the proper determination of credits, refunds, or exemption from the excise tax may be resolved by referring to the appropriate provisions of the Internal Revenue Code of 1954, and Title I of the Crude Oil Windfall Profit Tax Act of 1980 and the attendant regulations. AUTH: 15-1-201, MCA; IMP: 15-23-601, 15-23-602, 15-23-603 and 15-23-607, MCA.

4. The rule as proposed to be adopted is a direct result of the passage of the Windfall Profit Tax as a deduction for net proceeds by the 1981 Legislature.

Subsection (1) - This subsection requires that each operator who files a net proceeds return must provide to the department a computer list of owners for each property. This will provide the necessary information needed to determine who owns the various interests in a particular lease. Once the department has this data, it can contact each of the interests and request any information needed to verify the windfall property tax deduction.

Subsection (2) - This subsection clarifies the ownership interests' responsibility for the filing of information whether

the reduction in the original windfall profit tax was in the form of an actual refund or a credit against another federal tax. Also, if a taxpayer receives a refund or credit the rule provides that the refund or credit shall be used to reduce the windfall profit tax (WPT) deduction in the same year in which the original deduction was claimed. For example: A taxpayer claimed a WPT deduction of $1,500 on the return filed for 1980 production. Because of delays in receiving the necessary information, the taxpayer could not compute and therefore file the refund claim for 1980 until 1982. The refund was for $1,000. The $1,000 would be used to offset the $1,500 deduction claimed in 1980, and would be reported to the assessor as 1980 taxable value.

Subsection (3)(a) - Because much of the information needed to file for refunds is not available until March 31, which is also the due date of the net proceeds returns, the taxpayer cannot compute his refund in time to report it on the net proceeds return. Rather than hold up the filing of the net proceeds returns and delay the county assessors' office, the Department will process the information when it is made available to it.

Subsection (3)(b) - This subsection of the rule identifies the IRS forms that should be provided to the Department. These forms must be provided to the IRS; therefore, the rule would only require the taxpayer to make a photocopy of the form. The forms, with the exception of the 843, can only be used to file for refunds for the windfall profit tax; therefore, the department would not be receiving information that was not needed or used.

Subsection (3)(c) - Finally, the last part of this subsection requires the taxpayer to furnish sufficient information to cross-reference the refund claim with the original net proceeds return. It requires the filer to provide the name of the operator filing the net proceeds, name of the lease, specific location of the property, and the amount of refund or credit claimed. Without this information where a taxpayer is filing a 6249, 6429-A, or an 843 for more than one lease, there would not be adequate information to identify it by the county and school district in which it is located. The department needs this data so that it may provide it to the county assessor, and the assessor can then apply the proper mill levy to process the refund or additional tax notice.

Subsection (4) - This subsection provides that in the case of an IRS audit, the taxpayer shall provide to the department the IRS workpapers, Revenue Agent Reports or any other items that pertain to the windfall profit tax. This requirement is specifically intended to apply only to the windfall profit tax.

Subsection (5) - This subsection places a time constraint upon the department as to when notices must be processed and mailed to the counties. The time allotted by the rule should be sufficient to allow the department to review all claims for

refund or additional tax and notify the appropriate county assessor.

Subsection (6) - In the case of a dispute as to how the windfall profit tax should be computed, this subsection provides references to attempting to resolve the dispute. The Internal Revenue Code of 1954 (IRC) is specifically named because the Crude Oil Windfall Profit Tax Act of 1980 statutes and regulations made specific references to the IRC.

5. Interested persons 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 November 26, 1982, to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

6. Allen B. Chronister, Agency Legal Services has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on 15-1-201, MCA, and the rule implements 15-23-601, 15-23-602, 15-23-603 and 15-23-607, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rules 42.35.104) 42.36.312, 42.36.313,) 42.36.401, 42.36.501, and the) Adoption of Rule I concerning) bringing inheritance tax) rules into compliance with) legislative changes.)	NOTICE OF PUBLIC HEARING on the Amendment of Rules 42.35.104, 42.36.312, 42.36.313, 42.36.401 and 42.36.501 and the Adoption of Rule I.

TO: All Interested Persons:

1. On November 18, 1982, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building at Fifth and Roberts, Helena, Montana, to consider the amendment of Rules 42.35.104, 42.36.312, 42.36.313, 42.36.401 and 42.36.501 and the adoption of Rule I all of which concern bringing inheritance tax rules into compliance with legislative changes.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

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

42.35.104 TRANSFER OF ASSETS -- WAIVER (1)(a) Waivers or consents to transfer are generally necessary for transfers of stocks or bonds in a domestic or foreign corporation from the name of a resident decedent or from the name of the trustee of a revocable or an irrevocable trust created by the decedent. Waivers or consents are not required for the transfer of securities in a Montana corporation by a nonresident decedent if such securities are exempt from the Montana inheritance tax on the basis of reciprocity.

(b) If a decedent was resident of a foreign country or was not domiciled in a district or state of the United States, a waiver is generally necessary on stock owned by the decedent in any Montana corporation.

(2)(a) Upon the death of an insured, resident decedent, waivers or consents to transfer for life insurance proceeds are not required if the proceeds of the policies do not exceed $50,000 or if the proceeds are payable entirely to a surviving spouse or a lineal descendant of the decedent regardless of the amount. In all other cases involving an insured, resident decedent, a waiver or consent is generally necessary. When the proceeds of a policy or policies exceed $10,000, a notice of payment is required to be mailed by the company to the department. Policies which have been left with insurer and matured endowments require a consent to transfer regardless of the amount unless payable to a surviving spouse, or lineal descendant.

Sections 42.35.104(2)(b) and (3) remain the same.

AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-304, 72-16-313 and 72-16-433, MCA, and Title 72, chapter 16, part 7, MCA.

42.36.312 REQUEST FOR DEFERRAL -- FORM (1) Request for deferral of payment of tax, allowed by ARM 42.36.311, must be made on the form prescribed by the department of revenue. Until that form is available, requests must be made by letter from the beneficiary, beneficiaries, or personal representative to the ~~administrator of the Inheritance Tax Division of the~~ Department of Revenue.
AUTH: 15-1-201, 72-16-201, 72-16-201, MCA; IMP: 72-16-438, MCA.

42.36.313 TIME FOR MAKING REQUEST (1) Request must be made within 18 months after either the date of death of the decedent or the date property was transferred. The day of death or the day of transfer is not included in the 18-month period. If the period ends on a weekend or a state holiday, it shall be extended through the next full working day for the state.

(2) If a protective election is filed within 18 months of the decedent's date of death, under the rules covering the provisions of 72-16-452, MCA, and if, because of changes made in valuation which disqualify the estate from deferring the tax under that section, the time requirement will be considered to have been met under section (1) of this rule.
AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-438, MCA.

42.36.401 SUBMISSION OF DOCUMENTS (1) and (2) remain the same.

(3) The purpose of form INH-3X is to provide a means to terminate a joint tenancy or other nonprobate interest in real property when other assets of the decedent require probate. This form must be filed in duplicate. After certification by the department, one copy will be returned to the sender to be ~~filed~~ recorded with the clerk and recorder of the appropriate county.
AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-201, 72-16-207 and 72-16-401, MCA.

42.36.501 SUBMISSION OF DOCUMENTS (1) Remains the same.

(2) Form INH-3 is designed to comply with 72-16-502(2)(b) and 72-16-503 ~~(a)~~(a) (1), MCA, and is used only when the decedent owned no property requiring probate. The INH-3 must be submitted in duplicate. After certification by the department, one copy will be returned to the applicant to be recorded with the county clerk and recorder if real estate is being reported. If real property is located in more than one county, additional copies may be submitted to the department with a request that they be certified and returned to the applicant.

AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-502 and 72-16-503, MCA.

NEW RULE I EXEMPTION AMOUNTS ON OR AFTER JANUARY 1, 1981 (1) Where the decedent dies on or after January 1, 1981, the clear value of all property distributed or passing to the decedent's surviving spouse or lineal descendant's is exempt. The following amounts of property are also exempt:

(a) the first $7,000 transferred to ancestors;

(b) the first $1,000 transferred to brothers, sisters, or descendants thereof; and

(c) the first $1,000 transferred to a son's wife or a daughter's husband.

AUTH: 15-30-305, 72-16-201, MCA; IMP: 72-16-313 and 72-16-321, MCA.

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

42.35.104 - The Department is proposing these changes because of a 1981 legislative change to 72-16-313, MCA, and 72-16-321, MCA, that raised the exemption for lineal descendants to 100%.

42.36.312 - This change is proposed because the Department consolidated the Inheritance Tax Division as a bureau under the Miscellaneous Tax Division.

42.36.313 - This change is proposed because the 1979 Legislature enacted 72-16-452, MCA. This addition allows an estate to make a protective election when it is not known within 18 months if the estate qualifies for deferment of the tax due.

42.36.401 - These changes are proposed because the 1981 Legislature substituted the word "recording" for "filing" in 72-16-503(2), MCA. This necessitated a change in the rule concerning 72-16-503(2), MCA, which now requires INH3 Forms to be recorded.

42.36.501 - These changes are proposed because the 1981 Legislature changed 72-16-503(1) and (2) which requires the certified certificate to be recorded with the county clerk and recorder if real estate is being reported in the application.

Rule I - This rule is proposed because the Legislature changed 72-16-313 and 72-16-321, MCA. This rule spells out the exemption change caused by dropping the words "or ancestor" from 72-16-321(1)(a), MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than November 26, 1982, to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

6. Denny Moreen, Agency Legal Services has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on 15-1-201, MCA, and the rules implement 72-16-313 and 72-16-321, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF PROPOSED ADOPTION OF Rules I through XX, relating to alternate valuation (special use) of certain farm and business real property.	)))))	NOTICE OF PUBLIC HEARING on the Adoption of Rules I through XX, relating to alternate valuation (special use) of certain farm and business real property.

TO: All Interested Persons:

1. On November 18, 1982, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building at Fifth and Roberts, Helena, Montana, to consider the adoption of Rules I through XX relating to alternate valuation (special use) of certain farm and business real property.

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

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

RULE I. ELECTION OF ALTERNATE VALUATION (1) The personal representative may elect to use the alternative valuation method by applying to the department of revenue within 18 months of the date of death and by filing an agreement with the department. The value of qualified real property for the purposes of this tax is its value for the use under which it qualifies under 72-16-333(1), MCA, as qualified real property. The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of this section may not exceed $500,000.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-333, 72-16-334, MCA.

RULE II ELECTIONS TO SPECIALLY VALUE LESS THAN ALL QUALIFIED REAL PROPERTY INCLUDED IN AN ESTATE (1) An election under 72-16-335(2)(b), MCA, need not include all real property included in an estate which is eligible for special use valuation, but sufficient property to satisfy the threshold requirements of 72-16-331(11), MCA, must be specially valued under the election.

(a) If joint or undivided interests (e.g., interests as joint tenants or tenants in common) in the same property are received from a decedent by qualified heirs, an election with respect to one's heir's joint or undivided interest need not include any other heir's interest in the same property if the electing heir's interest, plus other property to be specially valued, satisfy the requirements of 72-16-311(11), MCA.

(b) If successive interests (e.g., life estates and remainder interests) are created by a decedent in otherwise qualified property, an election under 72-16-335(2)(b), MCA, is available only with respect to that property (or portion thereof) in which qualified heirs of the decedent receive all of the successive interests, and such an election must include the interests of all of those heirs. For example, if a surviving spouse received a life estate in otherwise qualified property and the spouse's brother receives a remainder interest in fee, no part of the property may be valued pursuant to an election under 72-16-335, MCA. Where successive interests in specially valued property are created, remainder interests are treated as being received by qualified heirs only if: (i) a qualified heir receives a present interest in that real property;

(ii) all preceding interests in the property are vested absolutely in qualified heirs; and

(iii) such remainder interests are not contingent upon surviving an alternate taken who is not a member of the decedent's family or are not vested subject to divestment in favor of a nonfamily member.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-336, MCA.

RULE III. TIME AND MANNER OF MAKING ELECTION (1) An election under this section is made by attaching to a timely filed application for determination of inheritance tax, Form INH-2, along with an inventory and appraisement, the agreement described in rule IV of this section and a notice of election which contains the following information:

(a) the decedent's name and social security number;

(b) the relevant qualified use;

(c) the items of real property shown on the inventory and appraisement to be specially valued pursuant to the election (identified by schedule and item number);

(d) the fair market value of the real property to be specially valued under 72-16-333, MCA, and its value based on its qualified use (both values determined without regard to adjustments provided by 72-16-331(1), MCA);

(e) the adjusted value (as defined in 72-16-338(3), MCA) of all real property which is used in a qualified use and which passes from the decedent to a qualified heir and the adjusted value of all real property to be specially valued;

(f) the items of personal property shown on the inventory that pass from the decedent to a qualified heir and are used in a qualified use under 72-16-333, MCA, (identified by schedule and item number) and the total value of such personal property adjusted as provided under 72-16-338(1), MCA;

(g) the adjusted value of the gross estate as defined in 72-16-331(1), MCA;

(h) the method used in determining the special value based on use;

(i) copies of written appraisals of the fair market value of the real property;

(j) a statement that the decedent and/or a member of his or her family has owned all specially valued real property for at least 5 years of the 8 years immediately preceding the date of the decedent's death;

(k) any periods during the 8-year period preceding the date of the decedent's death during which the decedent or a member of his or her family did not own the property, use it in a qualified use, or materially participate in the operation of the farm or other business within the meaning of 72-16-331(8), MCA;

(l) the name, address, taxpayer identification number and relationship to the decedent of each person taking an interest in each item of specially valued property, and the value of the property interests passing to each such person based on both fair market value and qualified use; and

(m) affidavits describing the activities constituting material participation and the identity of the material participant or participants.

AUTH: 15-1-201, 72-16-337, MCA; IMP 72-16-331, 72-16-777 and 72-16-338, MCA.

RULE IV AGREEMENT TO SPECIAL VALUATION BY PERSONS WITH AN INTEREST IN PROPERTY (1) The agreement required under 72-16-333, MCA, must be executed by all parties who have any interest in the property being valued based on its qualified use as of the decedent's death and must:

(a) in the case of a qualified heir, express consent to personal liability under 72-16-338, MCA, in the event of certain early disposition of the property or early cessation of the qualified use;

(b) in the case of parties (other than qualified heirs) with interests in the property, express consent to collection of any additional tax imposed by 72-16-338, MCA;

(c) be in a form that is binding on all parties having an interest in the property;

(d) designate an agent with satisfactory evidence of authority to act for the parties to the agreement in all dealings with the department of revenue on matters arising under 72-16-333, MCA (normally this agent will be the personal representative).

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-333, MCA.

RULE V. MATERIAL PARTICIPATION REQUIREMENTS (1) If an election is made under 72-16-331 through 72-16-442, MCA, the property will be valued on the basis of its value for its qualified use in farming or the other trade or business rather than its fair market value determined on the basis of highest and best use (irrespective of whether its highest and best use is the use in farming or other business).

(2) For the special valuation rules to apply, the deceased owner and/or a member of the owner's family (as defined in 72-16-331(9), MCA) must materially participate in the operation of the farm or other business.

(a) Whether the required material participation occurs is a factual determination and the types of activities and financial risks which will support such a finding will vary with the mode of ownership of both the property itself and of any business in which it is used.

(b) Passively collecting rents, salaries, dividends, or other income from the farm or other business is not sufficient for material participation, nor is merely advancing capital and reviewing a crop plan, or other business proposal and financial reports each season or business year.

AUTH: 16-1-201, 72-16-337, MCA; IMP: 72-16-331(8), MCA.

RULE VI TYPES OF QUALIFIED PROPERTY (1) Real property valued under these sections must pass from the decedent to a qualified heir or be acquired from the decedent by a qualified heir. The real property may be owned directly or may be owned indirectly through ownership of an interest in a corporation, a partnership, or a trust. However, real property is considered to be qualified real property only if a qualified heir receives or acquires a present interest in the property from the decedent. Where the ownership is indirect, however, the decedent's interest in the business must, in addition to meeting the tests for qualification under 72-16-331 through 72-16-342, MCA, qualify under the tests of 72-16-453, MCA, as an interest in a closely held business on the date of the decedent's death and for sufficient other time (combined with periods of direct ownership) to equal at least 5 years of the 8-year period preceding death. For example, real property owned by the decedent and leased to a farming corporation or partnership owned and operated entirely by the decedent and fewer than 15 members of the decedent's family is eligible for special use valuation.

(a) Under 72-16-331(13)(a)(ii), MCA, the term "trade or business" applies only to an active business, such as a manufacturing, mercantile, or service enterprise, or to the raising of agricultural or horticultural commodities, as distinguished from passive investment activities. The mere passive rental of property will not qualify. The decedent must own an equity interest in the farm operation. A trade or business is not necessarily present even though an office and regular hours are maintained for management of income-producing assets. Additionally, no trade or business is present in the case of activities not engaged in for profit.

(2) Qualified real property includes residential buildings and other structures and real property improvements occupied or used on a regular basis by the owner or lessee of real property (or by employees of the owner or lessees) for the purpose of operating the farm or other closely-held business. A farm residence occupied by the decedent owner of the specially valued property is considered to be occupied for the purpose of operating the farm even though a family member (not the decedent) was the person materially participating in the operation of the farm as required under 72-16-331(12)(b), MCA.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-331(11) and 72-16-453, MCA.

RULE VII PERIOD MATERIAL PARTICIPATION MUST LAST (1) The required participation must last:

(a) for a period totaling 5 years or more during the 8 years immediately preceding the date of the decedent's death; and

(b) for periods totaling 5 years or more during any 8 year period ending after the date of the decedent's death (up to a maximum of 15 years after decedent's death, when the additional inheritance tax provisions of 72-16-338, MCA, cease to apply).

(2) In determining whether the material participation requirement is satisfied, no exception is made for periods during which real property is held by the decedent's estate. Additionally, contemporaneous material participation by 2 or more family members during a period totaling a year will not result in that year being counted as 2 or more years for purposes of satisfying the requirements of this subsection. Death of a qualified heir before the requisite time has passed ends any material participation requirement for that heir's portion of the property as to the original decedent's estate if the heir received a separate, joint, or other undivided property interest from the decedent. If qualified heirs receive successive interests in specially valued property (e.g., life estate and remainder interests) from the decedent, the material participation requirement does not end with respect to any part of the property until the death of the last qualified heir (or, if earlier, the expiration of 15 years from the date of the decedent's death). The requirements of 72-16-333, MCA, will fully apply to an heir's estate if an election under this section is made for the same property by the heir's personal representative. In general, to determine whether the required participation has occurred, brief periods (e.g., periods of 30 days or less) during which there was no material participation may be disregarded. This is so only if these periods were both preceded and followed by substantial periods (e.g., periods of more than 120 days) in which there was uninterrupted material participation. AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-331(11)(c)(ii), MCA.

RULE VIII PERIOD PROPERTY MUST BE OWNED BY DECEDENT AND FAMILY MEMBERS (1) Only real property which is actually owned by any combination of the decedent, members of the decedent's family and qualified closely held businesses for periods totaling at least 5 of the 8 years preceding the date of the decedent's death may be valued under 72-16-333, MCA.

(a) Replacement property acquired in a like-kind exchange is considered to be owned only from the date on which the replacement property is actually acquired.

(b) Replacement property acquired as a result of an involuntary conversion, if it occurred after the date of the decedent's death, is considered to have been owned from the date in which the involuntarily converted property was acquired.

(2) Property transferred from a proprietorship to a corporation or a partnership during the 8-year period ending on the date of the decedent's death is considered to be continuously owned to the extent of the decedent's equity interest in the corporation or partnership if the decedent's interest in the corporation or partnership meets the requirements for indirectly held property contained in rule X.

(3) Property transferred to a trust is considered to be continuously owned if the beneficial ownership of the trust property is such that the requirements would be so satisfied if the property were owned by a corporation and all beneficiaries having vested interests in the trust were shareholders in the corporation.

(4) Any period following the transfer during which the interest in the corporation, partnerships, or trust does not meet the requirements of 72-16-331, MCA, may not be counted for purposes of satisfying the ownership requirement of this section.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-331(11)(c)(i), MCA.

RULE IX REQUIRED ACTIVITIES - IN GENERAL (1) Actual employment of the decedent (or a member of the decedent's family) on a substantially full-time basis (35 hours a week or more) or to any lesser extent necessary to fully manage in person the farm or business in which the real property to be valued under 72-16-333, MCA, is used constitutes material participation. For example, many farming operations require only seasonal activity. Material participation is present as long as all necessary functions are performed even though little or no activity occurs during nonproducing seasons.

(2) In the absence of this direct involvement in the farm or other business, the activities of either the decedent or family members must meet the standards prescribed below:

(a) If the participant(s) is self-employed with respect to the farm or other trade or business, his or her income from the farm or other business must be earned income for the purposes of the tax on self-employment income before the participant is considered to be materially participating under 72-16-331, MCA. Payment of the self-employment tax is not conclusive as to the presence of material participation. If no self-employment taxes have been paid, however, material participation is presumed not to have occurred unless the personal representative establishes to the satisfaction of the department of revenue that material participation did, in fact, occur and informs the department of the reason no such tax was paid.

(b) In addition, all such taxes (including interest and penalties) determined to be due must be paid.

(c) In determining whether the material participation requirement is satisfied, the activities of each participant are viewed separately from the activities of all other participants and at any given time the activities of at least one participant must be material.

(d) If the involvement is less than full-time, it must be pursuant to an arrangement providing for actual participation in the production or management of production where the land is used by any nonfamily member, or any trust or business entity in farming or other business. The arrangement may be oral or written, but must be formalized in some manner capable of proof.

(e) Activities not contemplated by the arrangement will not support a finding of material participation under 72-16-331, MCA, and activities of any agent or employee other than a family member may not be considered in determining the presence of material participation.

(f) Activities of family members are considered only if the family relationship existed at the time the activities occurred.

(3) No single factor is determinative of the presence of material participation, but physical work and participation in management decisions are the principal factors to be considered. As a minimum, the decedent and/or a family member must regularly advise or consult with the other managing party on the operation of the business. While they need not make all final management decisions alone, the decedent and/or family members must participate in making a substantial number of these decisions. Additionally, production activities on the land should be inspected regularly by the family participant, and funds should be advanced and financial responsibility assumed for a substantial portion of the expense involved in the operation of the farm or other business in which the real property is used. In the case of a farm, the furnishing by the owner or other family members of a substantial portion of the machinery, implements and livestock used in the production activities is an important factor to consider in finding material participation. With farms, hotels, or apartment buildings, the operation of which qualifies as a trade or business, the participating decedent or heirs maintaining his or her principal place of residence on the premise is a factor to consider in determining whether the overall participation is material. Retention of a professional farm manager will not by itself prevent satisfaction of the material participation requirement by the decedent and family members. However, the decedent and/or a family member must personally materially participate under the terms of arrangement with the professional farm manager to satisfy this requirement.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-331(5) and (8), MCA.

RULE X SPECIAL RULES FOR CORPORATION, PARTNERSHIPS AND TRUSTS (1) With indirectly owned property as with property that is directly owned, there must be an arrangement calling for material participation in the business by the decedent owner or a family member. Where the real property is indirectly owned, however, even full-time involvement must be pursuant to an arrangement between the entity and the decedent or family member specifying the services to be performed. Holding an office in which certain material functions are inherent may constitute the necessary arrangement for material participation. Where

property is owned by a trust, the arrangement will generally be found in one or more of 4 situations.

(a) The arrangement may result from appointment as a trustee.

(b) The arrangement may result from an employer-employee relationship in which the participant is employed by a qualified closely-held business owned by the trust in a position requiring his or her material participation in its activities.

(c) The participants may enter into a contract with the trustee to manage or take part in managing the real property for the trust.

(d) Where the trust agreement expressly grants the management rights to the beneficial owner, that grant is sufficient to constitute the arrangement required under this section.

(2) The same participating standards apply under 72-16-331, MCA, where property is owned by a qualified closely-held business as where the property is directly owned. In the case of a corporation, a partnership, or trust where the participating decedent and/or family members are employees and thereby not subject to self-employment taxes, they are to be viewed as if they were self-employed and their activities must be activities that would subject them to self-employment taxes were they so. Where property is owned by a corporation, a partnership, or a trust, participation in the management and operation of the real property itself as a component of the closely-held business is the determinative factor. Nominally holding positions as a corporate officer or director and receiving a salary therefrom or merely being listed as a partner and sharing in profits and losses will not alone support a finding of material participation. This is so even though as partners, the participants pay self-employment taxes on their distributive shares of partnership earnings. Further, it is especially true for corporate directors in states where the board of directors need not be an actively functioning entity or need only act informally. Corporate officers held by an owner are, however, to be considered with all other relevant facts in judging the decree of participation. When real property is directly owned and is leased to a corporation or a partnership in which the decedent owns an interest which qualifies as an interest in a trade or business within the meaning of 72-16-331, MCA, the presence of material participation is determined by looking at the activities of the participant with regard to the property in whatever capacity rendered. During any periods when qualified real property is held by an estate, material participation is to be determined in the same manner as if the property were owned by a trust.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-337 and 72-16-453, MCA.

RULE XI METHOD OF VALUING FARM REAL ESTATE (1) Unless the personal representative of the decedent's estate elects otherwise under 72-16-335(b), MCA, the value of the property which is used for farming purposes and which is subject to an election under 72-16-335, MCA, is determined by:

(a) subtracting the average annual state and local real estate taxes on actual tracts of comparable real property in the same locality from the average annual gross cash rental for that same comparable property; and

(b) dividing the results so obtained by the average annual effective interest rate charged on new federal land bank loans - the computation of each average annual amount is based on the 5 most recent calendar years ending before the date of the decedent's death.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-335(1), MCA.

RULE XII GROSS CASH RENTAL Gross cash rental is the total amount of cash received for the use of actual tracts of comparable farm real property in the same locality as the property being specially valued during the period of one calendar year. This amount is not diminished by the amount of any expenses or liabilities associated with the farm operation or the lease. See Rule XIX for a definition of comparable property and rules for property on which buildings or other improvements are located and farms including multiple property types. Only rentals from tracts of comparable farm property which are rented solely for an amount of cash which is not contingent upon production are acceptable for use in valuing real property under 72-16-335, MCA. The rentals considered must result from an arm's length transaction as defined in this section. Additionally, rentals received under leases which provide for payment solely in cash are not acceptable as accurate measures of cash rental value if involvement by the lessor (or a member of the lessor's family who is other than a lessee) in the management or operation of the farm loan extent which amounts to material participation unde the provisions of 72-16-331, MCA, is contemplated or actually occurs. In general therefore rentals for any property which qualifies for special use valuation cannot be used to compute gross cash rentals under this section because the total amount received by the lessor does not reflect the true cash rental value of the real property.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-336, MCA.

RULE XIII DOCUMENTATION REQUIRED OF PERSONAL REPRESENTATIVE The personal representative must identify to the department of revenue actual comparable property for all specially valued property and cash rentals from that property if the decedent's real property is valued under 72-16-333, MCA. If the personal representative does not identify such property and cash rentals, all specially valued real property must be valued under rules of 72-16-336, MCA, if special use valuation has been elected.

AUTH: 15-1-201, 72-16-337, MCA: IMP: 72-16-331 and 72-16-337, MCA.

RULE XIV CASH RENTALS - ARM'S LENGTH TRANSACTION REQUIRED Only those cash rentals which result from a lease entered into in an arm's length transaction are acceptable under

72-16-333, MCA. For these purposes, lands leased from the federal government, the state, or any local government, which are leased for less than the amount that would be demanded by a private individual leasing for profit are not leased in an arm's length transaction. Additionally, leases between family members which do not provide a return on the property commensurate with that received under leases between unrelated parties in the locality are not acceptable under this section.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-336(2), MCA.

RULE XV RENT COMPARABLES Rents which are paid wholly or partly in kind (e.g., crop shares) may not be used to determine the value of real property under 72-16-333, MCA. Likewise, appraisals or other statements regarding rental value as well as area-wide averages of rentals (i.e., those compiled by the United States department of agriculture) may not be used under 72-16-333 because they are not true measures of the actual cash rental value of comparable property in the same locality as the specially valued property.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-336(2), MCA.

RULE XVI COMPARABLE REAL PROPERTY Comparable real property rented solely for cash must be identified for each of 5 calendar years preceding the year of the decedent's death if 72-16-335, MCA, is used to value the decedent's real property. Rentals from the same tract of comparable property need not be used for each of these 5 years however provided an actual tract of property meeting the requirements of this section is identified for each year.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-335, MCA.

RULE XVII ADJUSTMENT-RENT No adjustment to the rents actually received by the lessor is made for the use of any farm equipment or other personal property, the use of which is included under a lease for comparable real property unless the lease specifies the amount of the total rental attributable to the personal property and that amount is reasonable under the circumstances.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-336(2), MCA.

RULE XVIII TAX DEDUCTION For purposes of the farm valuation formula under 72-16-335,MCA, state and local taxes are taxes which are assessed by the state or by local governmental entities and which are allowable deductions under section 164, I.R.C. However, only those taxes on the comparable real property from which cash rentals are determined may be used in the formula valuation.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-335, MCA.

RULE XIX COMPARABLE REAL PROPERTY DEFINED Comparable real property must be situated in the same locality as the specially valued property. This requirement is not to be viewed in terms of mileage or political divisions alone, but rather is to be

judged according to generally accepted real property valuation rules. The determination of properties which are comparable is a factual one and must be based on numerous factors, no one of which is determinative. It will therefore frequently be necessary to value farm property in segments where there are different uses or land characteristics included in the specially valued farm. For example, if 72-16-335, MCA, is used, rented property on which comparable buildings or improvements are located must be identified for specially valued property on which buildings or other real property improvements are located. In cases involving multiple areas or land characteristics, actual comparable property for each segment must be used and the rentals and taxes from all such properties combined (using generally accepted real property valuation rules) for use in the valuation formula given in this section. However, any premium or discount resulting from the presence of multiple use or other characteristics in one farm is also to be reflected. All factors generally considered in real estate valuation are to be considered in determining comparability under 72-16-333, MCA. While not intended as an exclusive list, the following factors are among those to be considered in determining comparability:

(a) similarity of soil as determined by any objective means, including an official soil survey reflected in a soil productivity index;

(b) whether the crops grown are such as would deplete the soil in a similar manner;

(c) the types of soil conservation techniques that have been practiced on the two properties;

(d) whether the two properties are subject to flooding;

(e) the slope of the land;

(f) in case of livestock operations, the carrying capacity of the land;

(g) where land is timbered, whether the timber is comparable to that of the subject matter;

(h) whether the property as a whole is unified or whether it is segmented and where segmented, the availability of the means necessary for movement among different segments;

(i) the number, types and conditions of all buildings and other fixed improvements located on the properties and their location as it affects efficient management and use of property and value; and

(j) availability of and typical transportation facilities in terms of costs and of proximity of the properties to local markets.

AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-335, MCA.

RULE XX DETERMINATION OF INTEREST RATE IN CAPITALIZATION FORMULA (1) The annual effective interest rate on new federal land bank loans is the average billing rate charged on new agricultural loans to farmers and ranchers in the farm credit district in which the real property to be valued under 72-16-333, MCA, is located, adjusted as provided in rule XX(2) of this section. This rate is to be a single rate for each district

covering the period of one calendar year and is to be computed to the nearest 100th of 1 percent. In the event that the district billing rates of interest on such new agricultural loans change during a year, the rate for that year is to be weighed to reflect the portion of the year during which each such rate was charged. If a district's billing rate on such new agricultural loans varies according to the amount of the loan, the rate applicable to a loan in an amount resulting from dividing the total dollar amount of such loans closed during the year by the total number of the loans closed is to be used under 72-16-333, MCA.

(2) The billing rate of interest determined under this paragraph is to be adjusted to reflect the increased cost of borrowing resulting from the required purchase of land bank association stock. For the purposes of 72-16-333, MCA, the rate of required stock investment is the average of the percentages of the face amount of new agricultural loans to farmers and ranchers required to be invested in such stock by the applicable district bank during the year. If this percentage changes during a year, the average is to be adjusted to reflect the period when each percentage requirement was effective. The percentage is viewed as a reduction in the loan proceeds actually received from the amount upon which interest is charged.
AUTH: 15-1-201, 72-16-337, MCA; IMP: 72-16-335, MCA.

4. The Department is proposing these rules because they are necessary to implement sections 72-16-331 through 342, MCA, which were enacted by the 1979 Legislature. This legislation was enacted to make "alternate valuation" available to Montana estates for inheritance tax purposes. These sections parallel section 2932A of the Federal Estate Tax Code.

A specific explanation of each rule follows:

Rule I - states the time limitation for the election, the qualifying value of estate property, and the dollar amount of the decrease.

Rule II - explains an election of less than all qualified property for alternative evaluation.

Rule III - lists the information to be supplied to the Department in an election for alternative valuation.

Rule IV - specifies who must execute the agreement for alternative valuation and that the agreement must designate an agent.

Rule V - sets out the requirements of material participation.

Rule VI - outlines the requirements of the qualified property rule.

Rule VII - states what period of time material participation is required to last.

Rule VIII - states how long property must be owned by the decedent and family members.

Rule IX - specifies the standards for family activities in management of property.

Rule X - lists special rules for material participation in corporations, partnerships and trusts.

Rule XI - gives the formula used to value farm property.

Rule XII - describes gross cash rental of comparable land.

Rule XIII - outlines the necessary documentation required of the personal representative to identify comparable property.

Rule XIV - outlines the use of lease rentals for comparables.

Rule XV - prohibits the use of rent in kind as comparables.

Rule XVI - restricts the use of comparables which are rented solely for cash.

Rule XVII - limits adjustment to rents to a lessor for personal property.

Rule XVIII - limits tax deduction in alternate valuation formula.

Rule XIX - limits comparable real property to some liability as estate property.

Rule XX - determines the calculation of the interest rate to be used in capitalization.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than November 26, 1982, to:

Ann Kenny
Department of Revenue
Legal Bureau
Mitchell Building
Helena, Montana 59620

6. Mr. Denny Moreen, Agency Legal Services, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on 15-1-201, MCA, and 72-16-337, MCA, and the rules implement sections 72-16-331-342, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF PROPOSED ADOPTION of Rules I, II and III concerning deferred payment of inheritance tax.	NOTICE OF PUBLIC HEARING ON the Adoption of Rules I, II and III concerning deferred payment of inheritance tax.

TO: All Interested Persons:

1. On November 18, 1982, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the adoption of Rules I, II and III concerning deferred payment of inheritance tax.

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

3. The proposed rules provide as follows:

RULE I TIME AND MANNER OF ELECTION (1) The election provided under §72-16-452, MCA, is made by attaching to an INH-2, Application for Determination of Inheritance Tax, accompanied by an inventory and appraisement, a notice of election containing the following information:

(a) the decedent's name and a statement that the deceased was at the time of death a resident of Montana and that 18 months has not elapsed since the date of death;

(b) the amount of tax which is to be paid in installments;

(c) the date selected for payment of the first installment;

(d) a listing of annual installments including the first installment in which the tax is to be paid;

(e) the property shown in the inventory which constitutes the closely held business interest (identified for schedule and item number); and

(f) the facts which form the basis for the personal representative's conclusion that the estate qualifies for the payment of inheritance tax in installments.

AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-452, MCA.

RULE II TREATMENT OF DEFICIENCIES (1) Where an election has been timely filed to defer the inheritance tax under this section, any deficiencies of tax later assessed by the department may also be deferred by the personal representative.

(a) The amount of the deficiency which can be paid in installments is the portion of the deficiency which is attributable to the closely held business interests. The amount of any deficiency which is so attributable is the difference between the amount of tax which the personal representative has previously elected to pay in installments under this section and the maximum amount of tax which the personal representative could

have elected to pay in installments on the basis of the adjustments which resulted in the deficiency.

(b) The payments will be prorated to the installments payable pursuant to the original election. Any part of the deficiency prorated to an installment, the date for payment of which has arrived, is due upon notice and demand. Interest for any such period, including the deferral period, is also payable upon notice and demand.

(2) Where an election has not been timely filed by the personal representative, neither the basic tax nor any deficiency thereon can be deferred under this section.

AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-459, 72-16-462 and 72-16-463, MCA.

RULE III PROTECTIVE ELECTION A protective election may be made to defer payment of any portion of tax remaining unpaid at the time values are finally determined and any deficiencies attributable to the closely held business interests. Extension of tax payments pursuant to this election is contingent upon final values meeting the requirements of 72-16-452, MCA. A protective election does not however extend the time for payment of any amount of tax. It is suggested that a protective election include an option of qualifying under 72-16-438, MCA, if the adjustments disqualify the estate from continuing under 72-16-452, MCA. The protective election must be filed within 18 months after the date of death of the decedent in order to qualify.

AUTH: 15-1-201, 72-16-201, MCA; IMP: 72-16-438 and 72-16-452, MCA.

4. The Department is proposing these rules because of the following reasons:

Rule I - This rule is proposed because it states the required information upon which the election qualifies under 72-16-452, MCA.

Rule II - This rule is proposed because it states the rule for protecting an estate's election for deferment when the tax is not determined within the time limit.

Rule III - This rule is proposed to provide a protective election that affects deficiencies, late interest and late payment.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted no later than November 26, 1982 to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

6. Denny Moreen, Agency Legal Services has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on 15-1-201 and 72-16-201, MCA, and the rules implement 72-16-438, 72-16-452, 72-16-459, 72-16-462 and 72-16-463, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/18/82

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rule pertaining to scheduled dates - Montana Administrative Register.	NOTICE OF PROPOSED AMENDMENT 1.2.419 - FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On November 29, 1982, the Secretary of State proposes to amend the rule pertaining to scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

1983 Schedule

Filing	Compiling	Printer Pickup	Publication
January 3	January 4	January 5	January 13
January 17	January 18	January 19	January 27
January 31	February 1	February 2	February 10
February 14	February 15	February 16	February 24
March 7	March 8	March 9	March 17
March 21	March 22	March 23	March 31
April 4	April 5	April 6	April 14
April 18	April 19	April 20	April 28
May 2	May 3	May 4	May 12
May 16	May 17	May 18	May 26
June 6	June 7	June 8	June 16
June 20	June 21	June 22	June 30
July 1	July 5	July 6	July 14
July 18	July 19	July 20	July 28
August 1	August 2	August 3	August 11
August 15	August 16	August 17	August 25
September 2	September 6	September 7	September 15
September 19	September 20	September 21	September 29
October 3	October 4	October 5	October 13
October 17	October 18	October 19	October 27
October 31	November 1	November 2	November 10
November 14	November 15	November 16	November 25
December 5	December 6	December 7	December 15
December 19	December 20	December 21	December 29

(2) All material to be published must be submitted by 5:00 p.m., of the scheduled filing date. All material submitted after the schedule filing date will not be published until the next scheduled publication date.

3. The rule is proposed to be amended to indicate the scheduled dates for 1983 that pertain to the Montana Administrative Register.

4. Interested parties may submit their data, views or arguments concerning the schedule in writing to Julie Glosser, Office of the Secretary of State, State Capitol, Helena, Montana, 59620, no later than November 25, 1983.

5. The authority and the implementing section to make the proposed amendment is based on Section 2-4-312, MCA.

JIM WALTERMIRE
Secretary of State

Dated this 18th day of October, 1982.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of amendment of rules governing special education programs of the public schools of the state of Montana.	))))	NOTICE OF AMENDMENT OF RULES CONTAINED IN CHAPTER 16, SPECIAL EDUCATION

TO: All Interested Persons:

1. On September 16, 1982 the superintendent of public instruction published notice of proposed amendment of rules contained in Chapter 16, Special Education at page 1643 of the 1982 Montana Administrative Register, issue number 17.

2. The superintendent has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of repeal of rules governing special education programs in the public schools of the state of Montana	))))	NOTICE OF REPEAL OF RULES CONTAINED IN CHAPTER 16, SPECIAL EDUCATION

TO: All Interested Persons:

1. On September 16, 1982 the superintendent of public instruction published notice of a proposed repeal of rules contained in Chapter 16, Special Education at page 1652 of the 1982 Montana Administrative Register, issue number 17.

2. The superintendent has repealed the rules as proposed except that Rule 10.16.102 THE APPROVAL OF PROGRAMS was inadvertently listed as a rule to be repealed; this rule will remain the same as presently adopted.

3. No comments or testimony were received.

ED ARGENBRIGHT, SUPERINTENDENT
OFFICE OF PUBLIC INSTRUCTION

Certified to the Secretary of State, October 18, 1982.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of rule 12.7.501 relating to fish disease certification) NOTICE OF ADOPTION OF AMENDMENT OF RULE 12.7.501 FISH DISEASE CERTIFICATION

TO: All Interested Persons.

1. On June 17, 1982, the Montana Department of Fish, Wildlife, & Parks published notice of proposed amendment of rule 12.7.501 relating to fish disease certification at pages 1157-1158 of the Montana Administrative Register, issue #11.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

Certified to Secretary of State October 13, 1982

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

In the matter of the repeal of ARM 16.28.711, requiring schools to report exempted pupils, and the amendment of ARM 16.28.712, summary report of immunization status, and ARM 16.28.705, establishing accepted documentation of immunization status of pupils enrolling for the first time after July 31, 1981	))))))))	NOTICE OF REPEAL OF ARM 16.28.711 AND AMENDMENT OF ARM 16.28.712 AND ARM 16.28.705 (School Immunization)

TO: All Interested Persons

1. On September 16, 1982, the department published notice of the proposed repeal of ARM 16.28.711, requiring schools to report exempted pupils, and a proposed amendment of rule 16.28.712 requiring a summary report of the immunization status of each school's pupils, and rule 16.28.705, establishing the type of documentation of immunization status which may be accepted by schools for students enrolling for the first time after July 31, 1981, at page 1655 of the 1982 Montana Administrative Register, issue number 17.

2. The department has repealed rule 16.28.711 and amended rules 16.28.705 and 16.28.712 as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 18, 1982

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

In the matter of the adoption of Rules I through XV establishing groundwater classifications, standards, and a permit program	)))))	NOTICE OF ADOPTION OF RULES I THROUGH XV (Groundwater)

TO: All Interested Persons

1. On June 17, 1982, the board published notice of proposed adoption of Rules I through XV concerning the establishment of groundwater classifications, standards and a permit program at page 1167 of the 1982 Montana Administrative Register, issue number 11.

2. The board has adopted the rules with the following changes:

RULE I (16.20.1001) DEFINITIONS For the purpose of this sub-chapter, the following definitions, in addition to those in section 75-5-103, MCA, will apply:

(1) "Beneficial use" means any legal use of groundwater authorized under the laws of the state of Montana.

(2) "Discharge" means the addition of any pollutant to waters of the state.

(3) "Discharge limitations" means limitations imposed on the design or operation of a source to control the entry of pollutants into groundwater.

~~(3)~~ (4) "Existing source" means a source ~~existing~~ which is or has been in operation or on which construction has commenced on the effective date of this rule. ~~which is in compliance with Montana water quality laws and regulations.~~

~~(4)~~ (5) "Groundwater" means water occupying the voids within a geologic stratum and within the zone of saturation.

~~(5)~~ (6) "Mixing zone" means a portion of groundwater to which pollutants are discharged and in which otherwise applicable groundwater standards may be exceeded.

~~(6)~~ (7) "Montana groundwater quality standards" means the standards for groundwater quality set forth in ARM 16.20.1003.

~~(7)~~ (8) "Montana pollutant discharge elimination system (MPDES)" means the system developed by the state of Montana for issuing permits for the discharge of pollutants from point sources into state surface waters pursuant to ARM Title 16, Chapter 20, sub-chapter 9.

~~(8)~~ (9) "MIMUCS" means the Montana in-situ mining of uranium control system as defined in ARM Title 16, Chapter 20, sub-chapter 11.

~~(9)~~ (10) "MGWPCS" means the Montana groundwater pollution control system established in this sub-chapter.

~~(10)~~ (11) "MPDES permit" means any permit or equivalent document or requirement issued by the department pursuant to ARM Title 16, Chapter 20, sub-chapter 9 to regulate the

discharge of pollutants from point sources into state surface waters.

~~(11)~~ (12) "Nonpoint source" means a diffuse source of pollutants resulting from the activities of man over a relatively large area, the effects of which normally must be addressed or controlled by a management practice rather than by an engineered containment or structure.

~~(12)~~ (13) "Owner or operator" means any person who owns, leases, operates, controls or supervises a source discharging pollutants to groundwaters.

~~(13)~~ (14) "Source" means any sewage system, treatment works, point source, disposal system, ~~stockpile~~ concentration of pollutants, or pond containing process wastes or pollutants used, employed or operated so that the same results or under normal operating conditions may reasonably be expected to result in the discharge of pollutants to groundwaters of the state.

~~(14) "TDS" means total dissolved solids - evaporation 180° C. method.~~

(15) "UIC program" means the underground injection control program established in compliance with the federal safe drinking water act, 42 USCA 300f et seq.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE II (16.10.1002) CLASSIFICATION OF GROUNDWATER

(1) These groundwater classifications are established to protect the present and future most beneficial uses of water, i.e., the highest classification level into which groundwater may be placed based upon existing quality or use on the effective date of this rule.

(2) The groundwaters of the state are classified as follows:

(a) Class I groundwaters are generally suitable for public and private water supplies, culinary and food processing purposes, irrigation, livestock and wildlife watering, and for commercial and industrial purposes with little or no treatment. Class I groundwaters have a specific conductance of less than 1000 micromhos/cm at 25° C. ~~TDS concentration of no more than 500 mg/l.~~

(b) Class II groundwaters are generally marginally suitable for public and private water supplies, culinary and food processing uses and are suitable for irrigation of some agricultural crops, for drinking water for most wildlife and livestock, and for most commercial and industrial purposes. Class II groundwaters may be used for municipal or domestic water supplies in areas where better quality water is not readily available. Class II groundwaters have specific conductance ranging from 1000 to 2500 micromhos/cm at 25° C. ~~have a TDS concentration of no more than 1500 mg/l.~~

(c) Class III groundwaters are suitable for some

industrial and commercial uses and as drinking water for some wildlife and livestock and for irrigation of some salt-tolerant crops using special water management practices. ~~Class III groundwaters have a TDS concentration of no more than 5000 mg/l.~~ In some cases Class III groundwaters are the only economically feasible source for municipal or domestic water supplies. Class III groundwaters have specific conductance ranging from 2500 to 15,000 micromhos/cm at 25° C.

(d) Class IV groundwaters may be suitable for some industrial, commercial and other uses, but are unsuitable or, for practical purposes, untreatable for higher class beneficial uses. These groundwaters have specific conductance greater than 15,000 micromhos/cm at 25° C. ~~These groundwaters, where they have a beneficial use, are to be protected to continue that beneficial use. These groundwaters contain more than 5,000 mg/l of total dissolved solids, or are unsuitable or, for practical purposes, untreatable for higher class beneficial uses.~~

~~(3) In the event sufficient data is unavailable for groundwater classification at the time an MGWPCS application is received, the applicant shall perform sufficient groundwater investigations and surveys of current beneficial uses to enable the designation to be made.~~

(3) Groundwater is classified according to actual quality or actual use, as of the effective date of these rules, whichever places the groundwater in a higher class. [Class I is considered the highest class and Class IV the lowest.]

AUTHORITY: 75-5-401 MCA
IMPLEMENTING: 75-5-301 MCA

RULE III (16.10.1003) GROUNDWATER QUALITY STANDARDS

(1) The board hereby adopts and incorporates by reference EPA publication, EPA 600/4-79-020, "Methods for Chemical Analysis of Water and Wastes" which sets forth EPA-approved testing procedures for chemical analysis of water. Copies of EPA 600/4-79-020 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The board hereby adopts and incorporates by reference ARM 16.20.203, 16.20.204, 16.20.206 and 16.20.207 which set forth maximum allowable chemical, radiological and microbiological contaminant levels for drinking water. Copies of ARM 16.20.203, 16.20.204, 16.20.206 and 16.20.207 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(3) These standards for quality of groundwaters of the state are established to protect their present and future most beneficial uses, i.e., the highest classification level into

which they may be placed based upon their existing quality or use on the effective date of this rule. The standards are based on the dissolved portion (after filtration through a 0.45 micron filter) of the contaminating substance as specified in the EPA publication, EPA 600/4-79-020, "Methods for Chemical Analysis of Water and Wastes."

(4) Concentrations of dissolved substances in Class I and Class II groundwater and in Class III groundwater which is used for drinking water supplies shall not exceed the Montana maximum contaminant levels for drinking water as set forth in ARM 16.20.203, 16.20.204, 16.20.206 and 16.20.207.

(5) Concentrations of other dissolved or suspended substances ~~shall~~ must not ~~exceed the following amounts:~~ exceed levels which render the waters harmful, detrimental or injurious to public health. Maximum allowable concentrations of these substances also must not exceed acute or chronic problem levels which would adversely affect existing beneficial uses or the designated beneficial uses of groundwater of that classification. The values listed in "Quality Criteria for Water", U.S. Environmental Protection Agency, Washington, D.C., (EPA Red Book), July, 1976; Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Water," Second Edition, USGS Water Supply Paper 1473, USGPO, Washington, D.C., 1970; McKee, J.E., and Wolf, H.W., "Water Quality Criteria," Second Edition, California State Water Quality Control Board, Publication No. 3-A, 1963; and "Diagnosis and Improvement of Saline and Alkali Soils," Agriculture Handbook No. 60, U.S. Department of Agriculture, February, 1954, shall be used as a guide to determine problem levels unless local conditions make these values inappropriate.

(6) The board hereby adopts and incorporates by reference "Quality Criteria for Water", U.S. Environmental Protection Agency, Washington, D.C., (EPA Red Book), July, 1976; Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Water," Second Edition, USGS Water Supply Paper 1473, USGPO, Washington, D.C., 1970; McKee, J.E., and Wolf, H.W., "Water Quality Criteria," Second Edition, California State Water Quality Control Board, Publication No. 3-A, 1963; and "Diagnosis and Improvement of Saline and Alkali Soils," Agriculture Handbook No. 60, U.S. Department of Agriculture, February, 1954, which are government publications setting forth standards and criteria for groundwater quality. Copies of "Quality Criteria for Water", U.S. Environmental Protection Agency, Washington, D.C., (EPA Red Book), July, 1976; Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Water," Second Edition, USGS Water Supply Paper 1473, USGPO, Washington, D.C., 1970; McKee, J.E., and Wolf, H.W., "Water Quality Criteria," Second Edition, California State Water Quality Control Board, Publication No. 3-A, 1963; and "Diagnosis and

Improvement of Saline and Alkali Soils," Agriculture Handbook No. 60, U.S. Department of Agriculture, February, 1954, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(following table to be deleted)

	GROUNDWATER CLASS		
POLLUTANTS	CLASS I	CLASS II	CLASS III
Chloride, Cl	250 mg/l	--------	2000 mg/l
Copper, Cu	0.2 mg/l	--------	.5 mg/l
Cyanide, CN	0.2 mg/l	--------	---------
Iron, Fe	0.3 mg/l	--------	---------
Manganese, Mn	0.05 mg/l	--------	---------
Phenolic compounds (as phenols)	0.001 mg/l	--------	---------
Sulfate, SO_4	250 mg/l	--------	3000 mg/l
TDS	500 mg/l	1500 mg/l	5000 mg/l
Uranium, U	5.0 mg/l	--------	---------
Zinc, Zn	5.0mg/l	--------	---------
Aluminum (Al)	--------	5.0 mg/l	---------
Boron (B)	--------	0.75 mg/l	---------
Cadmium (Cd)	*	0.01 mg/l	.05 mg/l
Cobalt (Co)	--------	0.05 mg/l	---------
Molybdenum (Mo)	--------	0.01 mg/l	---------
Nickel (Ni)	--------	0.2 mg/l	---------
$NO_2 + NO_3$	--------	10 mg/l	100 mg/l
Oil and grease	--------	10 mg/l	10 mg/l
Selenium (Se)	*	0.02 mg/l	---------
SAR (ratio)	--------	8	---------
Arsenic, As	*	---------	0.2 mg/l
Lead, Pb	*	---------	0.1 mg/l
Sodium, Na	--------	---------	2000 mg/l
Nitrite nitrogen as N	--------	---------	10 mg/l

* See ARM 16.20.203

~~(6)--Concentrations of other toxic, hazardous, or deleterious substances shall not exceed levels that would interfere with the designated beneficial uses of groundwater of that classification.~~

AUTHORITY: Sec. 75-5-401 MCA

IMPLEMENTING: Sec. 75-5-301 MCA

RULE IV (16.20.1010) MIXING ZONE Discharges of pollutants to groundwaters may be entitled to a mixing zone.

(1) The areal and vertical extent of the mixing zone ~~must be determined by the department and generally will extend to a point where a beneficial use of groundwater occurs or is reasonably expected to occur. The size of the mixing zone need not necessarily be determined by the property boundaries of the operator of the source.~~ will be established by the department to prevent adverse effects on existing or reasonably anticipated beneficial uses. The size of the mixing zone will generally not extend beyond the property boundaries of the operator of the source.

(2) The burden will be on the applicant to show, based on best professional judgment, that beneficial uses of groundwater will not be adversely affected by the allowance of a mixing zone, and that the groundwater standards established in this sub-chapter will not be violated beyond the boundaries of the mixing zone.

(3) If local geology, soils, hydrology, groundwater use, nature of the discharge or other factors indicate that beneficial uses cannot otherwise be protected, no mixing zone will be allowed.

(4) For the purposes of this rule, only those beneficial uses need be protected which are:

(a) not owned by the applicant; or

(b) owned by the applicant but are unrelated to the operations for which a MGWPCS permit is being requested.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE V (16.10.1011) NONDEGRADATION (1) Any groundwater whose existing quality is higher than the established groundwater quality standards for its classification must be maintained at that high quality, unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present or anticipated use of such waters.

(2) Except as provided in ~~subsections~~ subsection (3) ~~and (4)~~ of this rule, "degradation" means that as a result of any source discharging pollutants to groundwaters, the concentration, outside of applicable mixing zones, of a pollutant for which maximum contaminant levels are established in Rule III(4) has become worse, or that the concentration of other pollutants, outside of mixing zones, has become worse and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(3) Changes in groundwater quality, whether or not

applicable groundwater quality standards for dissolved substances are violated, resulting from nonpoint source pollutants from lands or operations where all reasonable land, soil and water conservation practices have been applied do not constitute degradation.

~~(4)--Temporary changes in groundwater quality resulting from short-term construction, maintenance or rehabilitation activities performed in accordance with conditions approved by the department do not constitute degradation.~~

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-303 MCA

RULE VI (16.20.1012) EXCLUSIONS FROM PERMIT REQUIREMENTS (1) For the purposes of this sub-chapter, the following are not subject to the permit requirements of ARM 16.20.1013 through 16.20.1021:

(a) discharges or activities regulated under the federal UIC program;

(b) solid waste management systems licensed pursuant to ARM 16.14.501 et seq.;

(c) natural persons disposing of their own normal household wastes on their own property;

~~(c)~~(d) hazardous waste management facilities permitted pursuant to ARM 16.44.601 et seq.;

~~(d)~~(e) water injection wells, reserve pits and produced water pits employed in oil and gas field operations and approved pursuant to ARM 36.22.1005, ARM 36.22.1226 through 36.22.1234, and ARM 16.20.916;

~~(e)~~(f) agricultural irrigation facilities;

~~(f)~~(g) stormwater disposal or stormwater detention facilities;

~~(g)~~(h) ~~individual~~ subsurface disposal systems, for sanitary wastes serving individual residences.

(i) subsurface disposal systems reviewed and approved by the department pursuant to Title 50, Chapters 50, 51 and 52, and systems reviewed and approved by the department or local authorities under Title 76, Chapters 3 and 4.

~~(h)~~(j) existing treatment works as reviewed and approved by the department prior to the effective date of this rule;

~~(i)~~(k) facilities approved by the department pursuant to ARM 16.20.401;

~~(j)~~(l) in-situ mining of uranium facilities controlled under MIMUCS;

~~(k)~~(m) mining operations subject to operating permits or exploration licenses in compliance with the Strip and Underground Mine Reclamation Act, 82-4-201 et seq., MCA, or the Metal Mine Reclamation Act, 82-4-301 et seq., MCA.

(n) projects reviewed under the provisions of the Major Facility Siting Act, Title 75, Chapter 20, MCA.

(2) Notwithstanding the exclusions set forth in subsection (1) of this rule, all sources are subject to the provisions of Rules I through V and Rule XV. Furthermore, any excluded source which the department determines may be causing or is likely to cause violations of groundwater quality standards may be required to submit monitoring information pursuant to Section 75-5-602 MCA.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE VII (16.20.1013) PERMIT APPLICATIONS (1) The owner or operator of any existing source not excluded under ARM 16.20.1012 discharging pollutants into state groundwaters shall file an MGWPCS permit application within ~~2 years~~ one year of the effective date of this rule.

(2) The owner or operator of any source with an MGWPCS permit ~~discharging pollutants into state groundwaters~~, who proposes any ~~extension~~, modification, ~~addition or enlargment~~ subsequent to the effective date of this rule which the department determines may result in violation of existing permit conditions shall file a new completed MGWPCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the modified discharge.

(3) The owner or operator of any proposed source not excluded under ARM 16.20.1012 which may discharge pollutants into state groundwaters shall file a completed MGWPCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the source.

(4) All applications for an MGWPCS permit must be submitted on forms obtained from the department and must contain the following information as deemed necessary by the department:

(a) A specific site plan, indicating topography ~~if available~~;

(b) Location of treatment works and disposal systems;

(c) Location of adjacent state surface waters;

(d) List of surface owners and lessees of land within one mile of the proposed source; ~~overlying affected groundwaters or adjoining affected surface waters~~;

(e) Location of water supply wells and springs within one mile;

(f) Description of waste or process solutions to be contained on site; and

(g) ~~The existing groundwater classification at the proposed site, accompanied by data and information to support that designation.~~ Information describing existing groundwater quality and uses within one mile of the site.

(5) The department may require the submission of additional data and information with any MGWPCS permit application where warranted by the potential impacts of a source including but not limited to the following:

(a) Specific design conditions and process descriptions, proposed alternatives, soil conditions, descriptions in areas proposed for location of treatment ponds and land disposal, geological conditions, groundwater characteristics, local hydrogeology, discussion of potential for and measures to be taken for emergency and accidental spills, chemical and physical characteristics of process water and wastewater, nature of proposed pond sealants and linings.

(b) For industrial wastes, waste flow diagrams showing water and material balances, chemical additions, and waste volumes and concentrations before and after treatment, including but not limited to oil and other floating material, biochemical oxygen demand, settleable and suspended solids, acids, alkalies, dissolved salts, organic materials, toxic materials, compounds producing taste and odor in water and colored materials and dyes.

(c) Proposed ~~means~~ measures to be taken to provide ~~of providing~~ alternative water supplies or treatment ~~for~~ in the event any domestic, municipal, agricultural, or commercial/industrial well ~~that~~ is adversely affected by the operation of the source ~~proposed discharge to groundwater~~; and

(d) A written evaluation of alternative disposal practices for maximization of environmental protection.

(6) Operators who have submitted permit applications for groundwater discharge sources to the department under the MPDES permit program will be deemed to have complied with the requirements of this Rule.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE VIII (16.20.1014) REVIEW PROCEDURES (1) No application will be processed by the department until all of the requested information is supplied and the application is complete. The department shall make a determination of the completeness of the information within 30 calendar days of receipt of an application.

(2) After receipt of a ~~completed~~ MGWPCS permit application and requested supplemental information, the department shall make a tentative determination with respect to issuance or denial of an MGWPCS permit. The tentative determination must be based on compliance or noncompliance with the requirements of this sub-chapter and Title 75, Chapter 5, MCA.

(3) After making the tentative determination, the department shall take the following action:

(a) If the determination is to deny an MGWPCS permit, the department shall give written notice of the denial to the applicant~~.~~, including a statement of reasons for the denial.

(b) If the determination is to issue an MGWPCS permit, the department shall prepare a draft MGWPCS permit, which must include the following:

(i) proposed ~~effluent~~ discharge limitations and conditions;

(ii) monitoring and reporting requirements if any;

(iii) necessary schedules of compliance, including interim dates and requirements for meeting proposed ~~effluent~~ discharge limitations or other special conditions.

(4) ~~Except as provided in subsection (10) below,~~ a A public notice of every completed MGWPCS permit application must be circulated by the department in accordance with the procedures described in ARM 16.20.1020 to inform the public of the proposed discharge and of the tentative determination.

(5) The department shall provide a period of not less than 30 days following the date of the public notice during which time any person may submit written views or request a public hearing on the tentative determination. Any request for a public hearing must indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(6) The department may hold a hearing on its own initiative or when it determines good cause exists to hold such a hearing upon request of any person. ~~Except as provided in subsection (10) below, public~~ Public notice of a public hearing on a tentative determination must be given in accordance with ARM 16.20.1020.

(7) If a public hearing is not held pursuant to subsection (6) above, the department shall, within 30 days after termination of the comment period provided for in subsection (5) above, make a final determination on issuance or denial of a MGWPCS permit. All written comments submitted during the 30-day comment period must be retained by the department and considered in the formation of the final determination.

(8) If a public hearing is held on the tentative determination, the department shall make its final determination on the MGWPCS permit application within 60 days following the hearing. All comments recorded during the public hearing and written comments submitted during the 30-day comment period required in subsection (5) of this rule must be retained by the department and considered in the formation of the final determination.

(9) After making the final determination on a MGWPCS permit application the department shall issue a MGWPCS permit or give written notice to the applicant of the department's decision to deny, including notice to the applicant of its right to appeal the denial to the board.

~~(10) If the MGWPCS application is also an application under the Major Facility Siting Act, rules 16.2.501, 16.2.502, and 16.2.503 apply and take precedence in the event of a conflict with the provisions of this sub-chapter.~~

~~(11) The board hereby adopts and incorporates by reference ARM 16.20.501, 16.2.502, and 16.20.503 which set forth public participation procedures for permits issued by the department where the proposed activity is also subject to review under the Major Facility Siting Act. Copies of ARM 16.2.501, 16.2.502, and 16.2.503 may be obtained from the~~

~~Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.~~
AUTHORITY: Sec. 75-5-401, 75-20-216(3) MCA
IMPLEMENTING: Sec. 75-5-401, 75-20-216(3) MCA

RULE IX (16.20.1015) GENERAL PERMIT CONDITIONS All issued MGWPCS permits must contain general conditions including but not limited to, the following:

(1) All discharges of pollutants into state groundwaters authorized by an MGWPCS permit must be consistent with the conditions of the permit; any sewerage system, treatment works or disposal system expansions, production increases or process modifications which may result in new or increased discharges of pollutants into state groundwaters in violation of permit conditions must be reported to the department. After review of this information, the department will determine whether by submission of a new or modified MGWPCS permit application, is necessary.

(2) The discharge of pollutants to state groundwaters more frequently than or at a level in excess of that identified and authorized by an MGWPCS permit is a violation of the conditions of the permit.

(3) An MGWPCS permit may be modified, suspended, or revoked in whole or in part during its term under provisons of sections 75-5-403 and 75-5-404, MCA, for cause, including but not limited to, any of the following:

(a) violation of any conditions of the permit;

(b) obtaining an MGWPCS permit by misrepresentation or failure to disclose fully all relevant facts;

(c) a change in any condition or a violation of groundwater standards or degradation of high quality groundwaters caused by the discharge that requires either a temporary or permanent reduction or elimination of the authorized discharge; or

(d) a failure or refusal by the permittee to comply with the requirements of section 75-5-602, MCA.

~~(4) An MGWPCS permit may be modified in whole or in part during its term to apply a more stringent condition or effluent limitation if the department finds that substantial impairment of an existing beneficial use is imminent as a result of the discharge.~~

~~(5)~~ (4) The department shall notify the permittee of any tentative determination that a permit should be modified pursuant to this section. The department shall provide a period of not less than 30 days following such notification during which time the permittee may submit its views regarding the tentative determination, which shall be considered in the formation of a final determination. The permittee may appeal any permit modification to the board of health and environmental sciences pursuant to section 75-5-403, MCA.
AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401, 75-5-403, 75-5-404 MCA

RULE X (16.20.1016) SPECIAL PERMIT CONDITIONS All issued MGWPCS permits must contain special conditions which will assure compliance with the groundwater quality standards, giving consideration to the economics of waste treatment and prevention~~, including but~~ These conditions may include, but are not limited to, the following:

(1) Authorization of discharges of pollutants into state groundwaters.

(2) ~~Effluent~~ Discharge limitations and, if necessary, compliance schedules on each authorized discharge of pollutants into state groundwaters.

(3) The basis of calculation of ~~effluent~~ discharge limitations.

(4) The prohibition of certain discharges without prior approval from the department.

(5) Self-monitoring requirements for each authorized discharge, including but not limited to, the following:

(a) monitoring well configuration;

(b) pollutants to be monitored;

(c) frequency of monitoring, recording, and reporting;

(d) analytical and sampling methods to be utilized by the permittee;

(e) recording and reporting procedures to be utilized by the permittee; and

(f) procedures for reporting other considerations having an effect on authorized discharges or that may affect any of the conditions of the permit;

(g) the permittee will be required to maintain self-monitoring records for a minimum of 3 years.

(6) Procedures to be used to alleviate groundwater pollution if pollution in violation of permit conditions or groundwater standards is detected.

~~(7)--Owners or operators of sources discharging togroundwaters shall provide notice to the department in thefollowing situations:~~

~~(a)--any new introduction of pollutants into the disposal system or treatment works;~~

~~(b)--any substantial change in volume or character ofpollutants being introduced into the treatment works.~~

~~(8)--Such notice shall include information on the qualityand quantity of pollutants to be or being introduced into thetreatment works and the anticipated impact of such change inthe quality and quantity of pollutants to be discharged to state groundwaters.~~

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XI (16.20.1017) DURATION OF PERMIT Every permit issued under this sub-chapter must have a fixed term not to exceed 10 years.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XII (16.20.1018) REISSUANCE OF PERMITS (1) Any permittee who wishes to continue to discharge after the expiration date of his MGWPCS permit must request reissuance of his permit at least 90 days prior to its date of expiration.

(2) The request for reissuance of an MGWPCS permit must be in letter form and contain as a minimum the following information:

(a) The number of the issued MGWPCS permit and date of its issuance; and

(b) Any past, present, or future changes in the quantity or quality of the authorized discharge not reflected in the conditions and terms of the issued MGWPCS permit.

(3) The department shall review each request for reissuance of an MGWPCS permit in light of the existing MGWPCS permit, information provided by the permittee with the request for reissuance, and other information available to the department to insure that the following conditions exist:

(a) That the permittee is in compliance with or has substantially complied with all the conditions and terms of the expiring MGWPCS permit.

(b) That the discharge is consistent with applicable ~~effluent~~ discharge limitations and compliance schedules and groundwater quality standards.

(c) That the department has up-to-date information on the permittee's production levels and waste treatment practices and the quantity, quality, and frequency of the permittee's discharge~~, either pursuant to the submission of new MGWPCS forms and applications or pursuant to monitoringrecords and reports submitted to the department by thepermittee~~.

(4) Following the review of the request for reissuance of an MGWPCS permit and any other supplemental information requested by the department, ~~the other considerations described in ARM 16.20.1014~~, the department shall make a tentative determination to reissue or refuse to reissue a MGWPCS permit.

(5) The processing procedures for MGWPCS permit applications described in subsections (4) through (9) of ARM 16.20.1014 will apply to the reissuance of an MGWPCS permit.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XIII (16.20.1020) PUBLIC NOTICE (1) Public notice of every completed MGWPCS application must be mailed to any person upon request and must be circulated within the geographic area of the proposed discharge. Circulation may include any of the following:

(a) posting in the post office and public places of the municipality nearest the premises of the applicant in which the discharge is located;

(b) posting near the entrance to the applicant's premises and in nearby places; or

(c) publishing in local newspapers and periodicals, or if appropriate, in a daily newspaper of general circulation.

(2) Public notice of any public hearing held pursuant to this sub-chapter must be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MGWPCS application. Circulation must include at least the following:

(a) publication of notice in at least one newspaper of general circulation;

(b) distribution of notice to all persons and agencies receiving a copy of the notice for the MGWPCS application; and

(c) distribution to any person or group upon request.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-401 MCA

RULE XIV (16.20.1021) DISTRIBUTION OF INFORMATION

(1) The following governmental agencies must be included on a mailing list for public notice of MGWPCS applications and are exempted from a copying fee where copies of a draft permit, fact sheet, or any related documents are requested:

(a) United States Environmental Protection Agency.

(b) United States Bureau of Land Management.

~~(b)~~(c) United States Bureau of Reclamation.

~~(c)~~(d) United States Soil Conservation Service.

~~(d)~~(e) United States Forest Service.

(f) United States Geological Survey.

~~(e)~~(g) Montana Department of Natural Resources and Conservation.

(h) Montana Bureau of Mines and Geology.

~~(f)~~(i) Montana Department of Fish, Wildlife and Parks.

~~(g)~~(j) Montana Department of Agriculture.

~~(h)~~(k) Montana Environmental Quality Council.

~~(i)~~(l) Any state or federal agency requesting an opportunity to participate in the MGWPCS permit review process.

(m) Local health authorities in the county in which the source is located.

(2) Any state whose waters may be affected by the issuance of an MGWPCS permit shall be provided a copy, upon request, of the MGWPCS application, draft permit, or any related documents.

(3) Upon request, the department shall add the name of any person or group to a mailing list to receive copies of notices for all MGWPCS application.

(4) Interested parties may request or inspect a copy of the draft MGWPCS permit, or any related documents. A reasonable copying fee will be charged for any of the aforementioned documents. The copying fee for the documents relating to any particular MGWPCS application will be included as part of the notice of application. A request for MGWPCS application

documents will not be processed unless payment of the stated copying fee is included with the request.

(5) The department shall provide facilities for the inspection of all information relating to MGWPCS applications and forms, except reports, papers, or information determined to be confidential in accordance with section 75-5-105, MCA. A copying machine will be available to provide copies of this information at a reasonable fee.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-105, 75-5-401 MCA

RULE XV (16.20.1025) EMERGENCY POWERS OF THE DEPARTMENT

(1) This rule is applicable to spills or unanticipated discharges of pesticides, herbicides, other toxic substances or any other materials that would lower the quality of any groundwaters of the state below Montana groundwater quality standards.

(2) The owner, operator, or person responsible for a spill or unanticipated discharge must notify the department as soon as possible by contacting the Montana Hazardous Materials Emergency Response System ((406)-449-3034), and provide all relevant information about the spill.

(3) Pursuant to MCA 75-5-621 and 75-5-622 and depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:

(a) take immediate remedial measures;

(b) monitor the direction, depth and rate of movement of any contaminated groundwaters and of the spilled or discharged material;

(c) determine the probable impact, including the duration of impact, on existing water supply wells, springs, and anticipated future beneficial uses of the groundwater supply impacted;

(d) determine the probable impact, including the duration of impact, on surface waters that may be affected by contaminated groundwaters; or

(e) provide alternate water supplies to existing water uses disrupted by the spill or unanticipated discharge.

AUTHORITY: Sec. 75-5-401 MCA
IMPLEMENTING: Sec. 75-5-621, 75-5-622 MCA

3. The following is a summary of comments received and the board's responses:

RULE I (16.20.1001) Definitions

COMMENT: In paragraph (1), clarify whether "beneficial use" includes uses of water for which no water right has been filed or claimed.

RESPONSE: Beneficial uses include any actual use of waters, whether or not a formal water right has been filed.

COMMENT: In paragraphs (2) and (13), define "pollutant".
RESPONSE: "Pollution" is defined by statute (75-5-103(5) MCA). A pollutant is simply any substance which causes pollution. No further definition is necessary.

COMMENT: In paragraph (3), the definition of "existing source" is unclear. It is not clear to whom the "grace period" of Rule VII will apply.
RESPONSE: See proposed changes in text.

COMMENT: In paragraph (4), "groundwater" should be defined to include only "usable" groundwater, or water recoverable in economic quantities.
RESPONSE: This suggestion is rejected. Limitation of the permit program to "usable" groundwater would create tremendous uncertainty. It would leave it up to the discretion of the operators of sources to determine whether it is necessary to apply for a permit. Many pollution sources might go unregulated because of the operator's belief that only "unusable" groundwater is being impacted. It should be up to the Department to make that determination. That is one of the purposes of the permit review process. If, in fact, only "unusable" groundwater would be impacted by a source, then only minimal conditions, if any, would have to be imposed by the permit.

COMMENT: In paragraph (13), inactive sources should be excluded.
RESPONSE: This suggestion is rejected. The responsibility for a discharge of pollutants into state waters does not terminate when the active use of the source is discontinued. (See 75-5-605(1)(a) and (2)(c) MCA)

COMMENT: In paragraph (13), the phrase "may reasonably be expected to result" should be replaced by "will result" to avoid unnecessary regulation of sources which have only a remote potential to discharge.
RESPONSE: The proposed changes in the text should clarify the intent to regulate only those sources which, under normal operating conditions, can be expected to cause discharges. Occasional or accidental discharges can be handled under Rule XV.

COMMENT: In paragraph (14), the evaporation 180° C. method is not best for TDS measurement.
RESPONSE: This suggestion is adopted. Clause (14) is deleted, and "specific conductance" is used in Rules II and III.

RULE II (16.20.1002) Groundwater Classifications

COMMENTS: Many comments were received indicating lack of clarity in the derivation and basis of the proposed groundwater classifications. It was not clear, for example, whether groundwater was to be classified primarily on the basis of quality or use.

RESPONSE: After review of the comments received, substantial revisions in Rules II and III relating to groundwater classifications and standards have been adopted. The new approach sets up a straightforward classification scheme for groundwater based on current use or quality, whichever would place the water in the higher class. The only water quality standards will be the maximum contaminant levels for safe drinking water, and these standards will apply to any water which has significant use as a drinking water supply. As for other contaminants, the approach used for surface water is followed: using standard references for guidance, "problem levels" are identified which would be injurious to public health or adversely affect the designated beneficial uses of groundwater of that classification.

By adopting these rules, the board will have established a "classification of all waters in accordance with their present and future beneficial uses," as required by statute (75-5-301(1) MCA). It will still be necessary to identify on a case-by-case basis the classification of specific sites. This will necessarily entail the gathering of site-specific information by the applicant regarding current quality and use of groundwater, but it is the Board, through the adoption of these rules, which will have classified the waters and established the applicable standards.

COMMENT: A mechanism should be established for reclassification of groundwater in case water quality improves.

RESPONSE: The mechanism exists in the rules as proposed. If groundwater quality changes for the better, more stringent requirements will be imposed when an applicant applies for a permit renewal. In any case, the nondegradation provisions (Rule V) will prevent adverse impacts on beneficial uses.

COMMENTS: In paragraph (3), the rule should more explicitly describe the nature and extent of investigations and surveys which may be required.

RESPONSE: To clarify the intent, this provision is deleted. Permit application requirements will specify the information to be submitted by the applicant. (See Rule VII(4)(g) and (5))

RULE III (16.20.1003) Groundwater Standards

COMMENTS: Numerous comments were received regarding the proposed groundwater standards. Comments covered a broad spectrum of positions, from those who felt that standards

should be tightened up, to those who argued that there is insufficient technical basis for any standards at all, and that only "guidelines" are supportable.

RESPONSE: The proposed revisions to Rule III address all these comments. See Response to Comments on Rule II (Groundwater Classification) for a further discussion.

COMMENT: Maximum contaminant levels should be flexible, rather than making the safe drinking water standards mandatory.

RESPONSE: Safe drinking water standards are mandatory under federal law.

RULE IV (16.20.1010) Mixing Zones

COMMENTS: Again, numerous comments were received covering a broad spectrum of opinions. Some felt that all sources should always be entitled to a mixing zone, while others argued that the mixing zone concept is not appropriate for groundwater and mixing zones should never be allowed.

RESPONSE: The board feels that neither an "all" nor a "nothing" approach is appropriate. Where toxic substances are discharged which are not likely to be significantly diluted or "taken up" by the soil, no mixing zone may be permissible and pretreatment or total containment may be required. On the other hand, some discharges -- such as sanitary wastes -- may be beneficially affected by a mixing zone. The Department should have the flexibility to make case-by-case determinations based on the criterion of no adverse impacts on beneficial use. The proposed changes in the text clarify this approach.

COMMENT: No mixing zone should be allowed in fractured bedrock or a perched aquifer.

RESPONSE: Paragraph (3) of the proposed revised rule allows the Department to take local geology into account in determining whether a mixing zone is appropriate.

COMMENT: A mixing zone should be allowed only if the applicant can show that there will be no violation of standards at the boundary of the proposed mixing zone.

RESPONSE: This suggestion is adopted, with the qualification that the applicant's showing need only be based on "best professional judgment" rather than a conclusive showing.

COMMENT: Opinions varied as to whether the property line of the operator should be the maximum or minimum allowable extent of a mixing zone, or whether some other fixed limit should be established. A need was perceived to spell out more clearly the basis for determining the size and extent of a mixing zone.

RESPONSE: See proposed text. In general, the property line should be the furthest allowable extent of a mixing zone. In some cases, however, some variation from this rule may be appropriate. Adjacent landowners will have the opportunity to file their protests during the public comment period.

COMMENT: The extent of mixing zones should be established to protect only those beneficial uses which are not owned by the operator of the source; i.e., the operator should not be required to protect his own uses.

RESPONSE: This suggestion is adopted with qualifications. There is a danger, for example, that a source operator may purchase land for temporary use (e.g., a mining company purchasing rangeland) with the intent of disposing of the land when the use is concluded. Groundwater sources which are "incidentally" owned by such an operator, and which can be expected to be returned to other uses in the future, should be protected. The Department feels that the recommended language accomplishes this purpose.

COMMENT: Strict monitoring of mixing zones should be required. Regulations similar to those of MIMUCS should be imposed for monitoring of mixing zones.

RESPONSE: The primary obstacle to spelling out the monitoring requirements more explicitly is that these rules must be applicable to an extremely broad variety of sources. Monitoring requirements relevant to in situ uranium mining may not be applicable to sanitary wastes. Rules IX and X give the Department discretion to impose monitoring conditions as appropriate.

RULE V (16.20.1011) Nondegradation

COMMENT: A procedure should be established by which the Board will determine whether degradation is justifiable. Criteria should be explicitly set out for the determination of "justifiable" degradation and "necessary" economic or social development.

RESPONSE: New nondegradation procedures for surface waters have been proposed and are currently before the board for adoption. When the groundwater rules have been finalized, those nondegradation procedures can be made applicable to groundwater as well. Those procedures will address the concerns expressed in these comments.

COMMENT: There appears to be a contradiction between paragraph (1), which would not allow degradation to "preclude present or anticipated uses," and paragraph (2), which implies that beneficial uses may be adversely affected. This should be clarified.

RESPONSE: The Board does not see this as a contradiction. It is clearly possible for beneficial uses to be minimally "adversely affected" without being totally precluded.

COMMENT: In paragraph (2), the sentence should be ended at "worse" (i.e., don't allow any change in pollutant levels, regardless of effects on use).

RESPONSE: The board adopts this suggestion in part. The nondegration provision of the law applies only to waters whose quality is higher than established standards (75-5-303 MCA). The revised proposed rules establish standards only for safe drinking water maximum contaminant levels. For those pollutants, the strict definition of degradation is applied. For other pollutants, "problem levels" rather than standards are proposed. The emphasis is on protection of use rather than on quantitative standards. For these pollutants, a use-oriented approach to non-degradation is taken.

COMMENT: In paragraph (4), the concept of "temporary" changes in groundwater quality must be clarified. Groundwater impacts are usually long-term.

RESPONSE: The exemption for temporary changes is deleted. This is a concept which was borrowed from surface water rules, but, as the comment indicates, it does not carry over.

RULE VI (16.20.1012) Exclusions from Permit Requirements

COMMENT: Many comments were received regarding the proposed exclusions from permit requirements. Once again, comments covered a broad spectrum. Several commenters felt that no exclusions at all should be allowed. Others argued that specific categories, such as stormwater control systems, septic tanks, or irrigation systems should be covered.

RESPONSE: While the board would, ideally, like to extend permit review to all sources, this would be impossible in practice. The vast number of groundwater discharge sources throughout the state, coupled with the limited staff and resources available to the Department, makes some reasonable system of exclusions imperative. For the most part, only those sources already subject to review under other regulatory programs are exempted from the MGWPCS permit requirement. This assures that such sources do not totally escape review, and avoids needless and burdensome duplication of review procedures.

COMMENT: An exclusion from the permit process should be available whenever it can be shown that there will be no adverse impacts on groundwater quality.

RESPONSE: This suggestion is not practicable. It is the purpose of the permit review process to determine the nature and extent of groundwater impacts from a source and to impose

measures necessary to mitigate those impacts. It should not be up to the source operator to make those determinations on its own.

COMMENT: Treatment works approved under the MPDES program should be excluded from the groundwater permit rules and regulated under BMP provisions.

RESPONSE: The board agrees that duplication of procedures should be avoided. However, MPDES review does not address groundwater discharges per se. Therefore, rather than exempting MPDES projects from the permit requirement, the board proposes excluding them from the application requirement (see Rule VII). Thus, an application submitted under MPDES will be accepted as meeting the application requirements of MGWPCS. Reviews under both programs will be coordinated to avoid any additional delays.

COMMENT: Projects reviewed under the Major Facility Siting Act should be excluded from MGWPCS permit requirements.

RESPONSE: This suggestion is accepted. Certification by the Department pursuant to 75-20-216, MCA, of the Siting Act should provide adequate safeguards.

COMMENT: The rules should state explicitly whether and in what manner the Department will review permit applications submitted in the excluded categories, and how the groundwater standards and nondegradation requirements will be applied to projects excluded from the MGWPCS permit requirements.

RESPONSE: A statement is added to clarify that the excluded categories are still subject to the substantive provisions of these rules (groundwater standards, mixing zones, nondegradation), to the emergency provisions of Rule XV, and to the monitoring provisions of Section 75-5-602 MCA. The Department has worked closely with the Department of State Lands in the past in the review of mining activity subject to DSL jurisdiction under the reclamation laws. Such review has been effective in assuring adequate groundwater protection. We see no obstacle to continuing that cooperative effort and extending it to other agencies. Coordination of review of other programs already under Department jurisdiction (e.g., solid waste management systems, in-situ uranium mining) will be easily accomplished. The Department's enforcement authority (75-5-601 et seq. MCA) will be available to prevent pollution of groundwater and to maintain water quality standards, even in the absence of permit requirements.

COMMENT: In paragraph (1)(b), non-licensed solid waste facilities should be excluded.

RESPONSE: This suggestion is rejected. Many highly polluting private solid waste disposal sites may be exempt from licensing under 75-10-214 MCA, but should receive review

under MGWPCS to protect groundwater. However, the board does agree that persons disposing of normal household wastes on their own property should be excluded (see proposed text).

COMMENT: In paragraph (1)(b), facilities satisfying EPA's criteria for solid waste management facilities should be excluded.
RESPONSE: This suggestion is rejected. In many respects, EPA's criteria simply do not provide adequate protection for groundwater.

COMMENT: The language in subsections (1)(b), (c) and (h) should be similar to that in paragraph (a); i.e., "activities regulated under" rather than "activities licensed pursuant to . . . " Many activities are subject to extensive substantive regulation even though not actually licensed.
RESPONSE: This suggestion is rejected. While substantive standards and controls may exist, it is the license or permit review process which acts as the initial safeguard to prevent violation of those standards. This is generally a more effective regulatory mechanism than after-the-fact enforcement.

COMMENT: In paragraph (1)(g), reference to "individual subsurface disposal systems" should be clarified. If read loosely, it could include almost anything.
RESPONSE: The changes adopted should clarify the applicability of this exclusion.

RULE VII 916.20.1013) Permit Applications
COMMENT: In paragraph (1), existing sources should be given only one year to apply for a permit.
RESPONSE: The rules reduce the grace period for submission of applications by existing sources to one year, as suggested.

COMMENT: In paragraph (4)(d), the requirement of a list of all affected landowners is open-ended and overly burdensome. This requirement should either be eliminated or explicitly limited (e.g., to adjacent landowners, or to owners within 1 mile, or 1/2 mile.)
RESPONSE: Suggestion accepted. See text.

COMMENT: In paragraph (4)(g), the applicant should not be responsible for identifying the groundwater classification. Instead, the applicant should only be required to submit data and information, from which the Department can determine the classification.
RESPONSE: Suggestion accepted. See text.

COMMENT: In paragraph (5), limit applicability to new facilities.

RESPONSE: The adopted language ("may require," "where warranted") gives the Department the necessary flexibility to accommodate existing sources where the full range of information may not be needed. However, in some cases, because of changed circumstances or especially troublesome conditions, it may be essential to obtain complete information from an existing source.

COMMENT: In paragraph (5)(c), the possibility of adverse impacts on water supplies contradicts the nondegradation requirement of Rule V (16.20.1011(1)) If degradation of a water supply is found to be justifiable, either the Department or the operator of the source should be responsible for locating and securing an alternate source.

RESPONSE: This is meant to be a contingency provision, i.e., what will the applicant do in the event that water supplies are impacted. This is not meant to imply that the Department would give prior approval to any such impacts. See text for language clarifying this point.

COMMENT: In paragraph (5)(d), insert "cost effective" before "environmental".

RESPONSE: This suggestion is rejected. The applicant is free to include a discussion of cost-effectiveness of various mitigating measures in the submission required by the rule.

COMMENT: A provision should be added to avoid duplication of submissions where the Department already has available portions of the required information.

RESPONSE: The Department has always been willing to accommodate applicants in this way to the extent practicable. An explicit statement does not seem necessary.

RULE VIII 16.20.1014) Review Procedures

COMMENT: In paragraphs (1) and (2), the Department should not be allowed to request supplemental information after the application is declared complete.

RESPONSE: The board agrees. See text changes for clarification.

COMMENT: In paragraph (2), a deadline should be imposed within which the Department must make its tentative and final determinations. Sanctions should be imposed if the deadline is not met.

RESPONSE: This suggestion is rejected. The intent of the proposed procedure is to achieve consistency with the existing MPDES procedures. In many cases, an applicant will be applying simultaneously for surface and groundwater discharges. It is obviously desirable to be able to coordinate

the MGWPCS review with the MPDES review. At present, there are no deadlines for reaching a tentative determination under MPDES. As presently proposed, the two review schedules are identical. Imposing a deadline for MGWPCS would create confusion. In addition, coordination of reviews with other agencies (e.g., when the Department of State Lands prepares an EIS on a mining application) often requires longer review periods.

The proposed review process has worked well for MPDES. We see no reason why it shouldn't work as well for MGWPCS.

COMMENT: In paragraph (3), the rule should state that the permit will be granted if all requirements of these rules are satisfied.

RESPONSE: Subsection (2) of this Rule states that the decision "must be based on compliance or non-compliance with the statute and rules." This should suffice.

COMMENT: In paragraph (3), if the permit is denied, the Department should give its reasons in writing.

RESPONSE: Suggestion accepted. See text.

COMMENT: In paragraph (3)(b)(i), the rules should define a mechanism for establishing effluent limitations. Otherwise, the concept should not be used.

RESPONSE: The board agrees that the term "effluent limitation" has a specific meaning as defined in statutes and regulations which may not be completely applicable to groundwater discharges. Therefore, the term "effluent" is changed to "discharge" throughout these rules, and a definition of "discharge limitation" is provided.

RULE IX (16.20.1015) General Permit Conditions

COMMENT: In paragraph (1), instead of automatically requiring a new MGWPCS application for changes in discharge levels, the rule should require the operator to report the change to the Department, which can determine case-by-case whether a new application will be necessary.

RESPONSE: Suggestion accepted. See text.

COMMENT: In paragraph (1), the Department should have no more than 30 days in which to make that determination.

RESPONSE: This suggestion is rejected. Such a deadline is unnecessary, as the current permit would remain valid until a new permit is issued.

COMMENT: In paragraph (3)(b), insert "requested" before "relevant".

RESPONSE: This suggestion is rejected. The burden should not be on the Department to determine whether additional relevant information is known to the applicant. Permit

application forms require the applicant to certify that all information is "true, complete and accurate". Relevant information should not be withheld.

COMMENT: In paragraph (4), replace "impact on use" by "violation of standards".
RESPONSE: Suggestion adopted. See text. The board agrees that this is a more objective and easily ascertainable criterion.

RULE X (16.20.1016) Special Permit Conditions
COMMENT: The rule should make clear that the special conditions listed may not all be required in every permit.
RESPONSE: Suggestion accepted. See text.

COMMENT: In paragraph (5), specific monitoring requirements (e.g., minimum frequency, number of wells) should be set out explicitly, as in RCRA rules.
RESPONSE: The broad variety of sources covered by the MGWPCS program makes specificity in the rules infeasible. See response to similar comments under Rule IV.

COMMENT: In paragraphs (7) and (8), these requirements appear to duplicate RULE IX (16.20.1015(1)). This should be clarified.
RESPONSE: The board agrees. Subsections (7) and (8) are deleted.

RULE XI (16.20.1017) Duration of Permit
COMMENT: The term should be reduced to 5 years to encourage greater Department control.
RESPONSE: This suggestion is rejected. Many permitted discharges are in areas where water quality and discharge conditions are not expected to change for long periods of time. This is reflected in proposed federal rules which will adopt a 10-year term. The Department retains necessary control through Rule IX(1). In addition, 10 years is a maximum. Shorter terms can be imposed where conditions warrant.

RULE XII (16.20.1018) Reissuance
COMMENT: In paragraph (4), add "within 30 days of receipt of a reissuance request."
RESPONSE: This suggestion is rejected. A permit renewal is subject to the same procedures as is an application for a new permit. In any event, delay does not harm the applicant, since if the renewal application was timely filed, the existing permit remains valid until the new permit is issued. (2-4-631(2) MCA)

RULE XIII (16.20.1020) Public Notice

COMMENT: The notice should always include all of the options (a), (b) and (c). Newspaper notice should always be mandatory.

RESPONSE: The costs involved preclude publication of legal notice on all applications. However, a press release will be sent to the relevant newspapers for all applications. In addition, to achieve compliance with the public notice requirements of 2-3-103 and 2-3-104 MCA, the Department will publish legal notice of all applications which are determined to be "of significant interest to the public."

RULE XV (16.20.1025) Emergency Powers

COMMENT: The same sources which were excluded from MGWPCS permit requirements should be excluded from these emergency requirements, to avoid conflict with possible emergency jurisdiction of other agencies. Operators regulated under RCRA, CERCLA or other statutes should be excluded.

RESPONSE: Emergency responses will be coordinated through the state's hazardous materials emergency response system. Emergency measures will be coordinated with other agencies with jurisdiction. See text changes.

GENERAL COMMENTS

COMMENT: Are these rules really necessary in light of existing regulations such as those adopted under the Safe Drinking Water Act, RCRA, etc.?

RESPONSE: The state's water quality law requires the board to establish classifications and standards for all waters (75-5-301 MCA) and to establish a permit program for discharges into state waters (75-5-401 MCA). By definition, "state waters" include groundwater (75-5-103(9) MCA). Therefore, the program implemented by these rules is mandated by statute.

COMMENT: An environmental impact statement should be written on these rules.

RESPONSE: The Department did prepare a preliminary environmental review (PER) in compliance with the Montana Environmental Policy Act and the Department's own MEPA regulations (16.2.621(1)(1). The PER predicted no major environmental impacts as a result of these rules. This is largely because the rules are designed to protect and maintain current water quality and use.

COMMENT: The rules should include enforcement provisions and remedial measures for clean-up of contaminated groundwater.

RESPONSE: Remedial and enforcement authority is provided in the law (75-5-601 et seq. MCA). There is no need to repeat those provisions in the rules. Discharge permits generally include required actions by the applicant in case of violation of standards.

COMMENT: The rules should provide for the establishment of local groundwater pollution control programs such as are provided for in the Clean Air Act.

RESPONSE: The Water Quality Act does not authorize the establishment of local enforcement programs as does the Clean Air Act. This suggestion is therefore beyond the Board's jurisdiction.

JOHN F. McGREGOR, Chairman

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

Certified to the Secretary of State October 18, 1982

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Rule 36.22.502 pertaining to plugging and abandonment procedures for seismic shot holes.	NOTICE OF AMENDMENT OF RULE 36.22.502 PLUGGING AND ABANDONMENT

TO: All Interested Persons

1. On July 29, 1982, the Board of Oil and Gas Conservation (Board) published Notice of a proposed amendment to ARM 36.22.502 concerning the procedures for proper plugging and abandonment of seismic shot holes. The notice was published at page 1460 of the 1982 Montana Administrative Register, issue number 14.

2. The Board amended the rule as proposed except for the following changes:

36.22.502 PLUGGING AND ABANDONMENT Unless otherwise agreed to between the surface owner and the company, firm, corporation, or individual responsible for the drilling of seismic shot holes, all such holes shall be plugged and abandoned as set forth below:

(1) The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the Board in writing at its Billings office of its intent to plug and abandon, including the date and time such activities are expected to commence, the location by Section, Township and Range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of this notice shall be sent to the surface owner at the same time.

(2) All seismic shot holes shall be plugged as soon after being utilized as reasonably practicable; however, in no event shall they remain unplugged for a period of more than 30 days unless, upon application, the Board or its staff grants an extension which may not exceed 90 days. All holes shall be temporarily capped during the period between drilling and final plugging.

(3)(a) When drilling seismic shot holes, and artesian flow is not encountered at the surface, the shot hole shall be

filled with bentonite-water slurry by hose injection and displacement ~~from the bottom up~~ upwards from the maximum depth attainable. The slurry mixture shall have a marsh funnel viscosity of 60 seconds or greater per quart (subject to field verification on site) and shall contain a minimum of 28 pounds of commercial plugging bentonite per 42 gallons of water. ~~Cuttings shall not be added to the slurry mixture except with the approval of a representative of the Board where the hole is drilled with air.~~ Except where the addition of cuttings or other solid or coagulating additives to the slurry mixture is required to form an effective plug, cuttings shall not be added to the slurry mixture where the hole is drilled with air. The hole shall be filled in all cases to approximately four feet from the ground surface. A commercial plug shall be set on top of the bentonite with a permit number or the name of the contractor or plugging subcontractor either imprinted on the plug or on a plastic or metallic tag securely attached to the plug. The remainder of the hole shall be filled with cuttings and soil, and a ~~small~~ sufficient mound ~~no more than three inches high~~ shall be left over the hole to allow for settling.

(3)(b) Seismic holes that penetrate artesian water deposits shall be stabilized with a cement slurry to a level not higher than four feet below the surface of the ground level. The cement slurry shall be of sufficient density to contain the waters to their native strata. The remainder of the hole shall be filled with native surface material. When alkaline or saline waters are encountered, the hole shall be plugged immediately as set forth in (3)(a) except that a heavier slurry mix must be used with the addition of inorganic drying or stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to assist in the effective plugging and stability of the bentonite column in the hole.

(3)(c) Seismic shot holes that tend to crater or slough at the surface after being shot shall be plugged as set forth in subsections (3)(a) or (3)(b) insofar as those procedures are reasonably possible. However, deviations for those procedures are permissible as circumstances may dictate, provided the procedures are designed to accomplish the primary objective of containing waters penetrated by the hole to their native strata and restoring the surface as near as practicable to its original conditions. The Board and surface owner shall be notified of such deviations.

(4) The surface area around each seismic shot hole shall be restored to its original condition insofar as such restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area shall be removed

from the drill site and deposited in a convenient sanitary landfill or other approved site or disposed of by an approved disposal method. Appropriate seeds shall be planted when required to restore the surface to its original condition.

(5) A seismic shot hole may be left unplugged at the request of the surface owner for conversion to a fresh water well provided the surface owner executes a release furnished by the Board of Oil and Gas Conservation relieving the party otherwise responsible for the plugging and abandonment of the hole from any liability for damages that may thereafter result from the hole remaining unplugged. This release will cite the date, location, surface elevation, depth to aquifer or gas emitting strata, and any action taken. This information shall be furnished by the geophysical operator.

3. The Board changed the language of paragraph 3(a) in three respects. First, it deleted the words "from the bottom up" concerning filling seismic holes and used the term "upwards from the maximum depth attainable." This recognizes the fact that detonation will cause the hole to partially cave in. The Board also changed the language concerning adding materials to the slurry mixture to delete the requirement of Board approval because that would be impractical. The Board also deleted the requirement that the mound left over the hole to allow for settling be no more than three inches high as unduly restrictive.

4. No request for a public hearing was received but the Board received comments and testimony from several interested persons.

5. The authority of the Board to make the proposed amendment is based on Section 82-1-104, MCA, and the rule implements Section 82-1-104, MCA.

Richard A. Campbell, Chairman
Board of Oil and Gas Conservation

Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State October 18, 1982.

VOLUME NO. 39 OPINION NO. 74

LAND DEVELOPMENT - Subdivision review exemption for conversions of existing buildings to condominiums;
SUBDIVISION AND PLATTING ACT - Subdivision review exemption for conversions of existing buildings to condominiums;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 41 (1977), 39 Op. Att'y Gen. No. 28 (1981);
MONTANA CODES ANNOTATED - Sections 76-3-103(15), 76-3-201, 76-3-204, 76-3-207(1), 76-4-102(7).

HELD: Conversions of existing rental occupancy apartment houses or office buildings to individual condominium ownership are exempted from the requirements of the Montana Subdivision and Platting Act, Title 76, chapter 3, MCA, by section 76-3-204, MCA.

12 October 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion concerning the applicability of the requirements of the Montana Subdivision and Platting Act, Title 76, chapter 3, MCA, to existing structures, usually apartment or office buildings, that are sold individually as condominiums. In other words, does an owner's sale of an existing apartment house or office building, owned by one entity, to several individual owners, trigger the application of the Montana Subdivision and Platting Act? I have concluded that it does not.

Section 76-3-103(15), MCA, defines the term "subdivision" as follows:

> "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision

> and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes.

This definition is very similar to the definition of subdivision contained in section 76-4-102(7), MCA, of the Sanitation in Subdivisions Act:

> "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

Based on the reasoning contained in 39 Op. Att'y Gen. No. 28 (July 28, 1981), interpreting the nearly identical definition of "subdivision" found in the Sanitation in Subdivisions Act, I must first conclude that the provisions of the Montana Subdivision and Platting Act apply to all condominiums not expressly exempted by one of the provisions of Title 76, chapter 3, part 2. Your specific question then becomes whether the conversion of an apartment or office building to a condominium is a subdivision subject to the exemption stated in section 76-3-204, MCA. I conclude that it is.

I addressed the exemption contained in section 76-3-204, MCA, in 39 Op. Att'y Gen. No. 28 (July 28, 1981), in the context of responding to an argument proffered by those who argued that section 76-3-204, MCA, exempted all condominiums from review. However, the much narrower question of whether this section might apply to existing structures was not addressed or answered in that opinion.

Section 76-3-204, MCA, provides as follows:

> Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

The word "situated" indicates that the Legislature was referring to an existing building, built and utilized prior to the time the division occurs. This would be the situation where a developer converts an existing apartment or office building used for rental purposes to condominiums.

Because new condominium developments may physically affect the environment and increase demand upon public services, it is consistent with the Subdivision and Platting Act that condominium developments be reviewed and approved prior to construction. However, the same physical impacts do not flow from a change in the ownership of an existing building. Therefore the necessity for public review is not present with respect to the nondevelopmental aspects of the condominium form of property ownership. Moreover, from a practical standpoint, existing structures do not lend themselves to the kind of public interest review specified in the Subdivision and Platting Act. As noted in a relevant New Jersey case, "...it is use rather than form of ownership that is the proper concern and focus of zoning and planning regulation." Maplewood Village Ten. Ass'n v. Maplewood Village, 116 N. J. Super. 372, 282 A.2d 428, 431 (1971).

It should be noted, though, that while condominiums created by conversion from another form of ownership are exempted by section 76-3-204, MCA, they are still subject to the general prohibition in the Subdivision and Platting Act that the conversion not simply be the final step in a plan designed to purposely evade the application of the Act. See, e.g., §§ 76-3-201 and 76-3-207(1), MCA; 37 Op. Att'y Gen. No. 41 (1977). The pattern or manner of division, sale, and/or construction upon land may suggest that conversion was a tool for avoiding subdivision review. For example, construction of an apartment building closely followed by conversion to condominiums may suggest that the Act and the public interest it seeks to protect may have been circumvented.

THEREFORE, IT IS MY OPINION:

> Conversions of existing rental occupancy apartment houses or office buildings to individual condominium ownership are exempted from the requirements of the Montana Subdivision and Platting Act, Title 76, chapter 3, MCA, by section 76-3-204, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 75

INTERGOVERNMENTAL COOPERATION - Creation of consolidated planning boards;
INTERLOCAL AGREEMENT - Creation of consolidated planning boards;
LAND USE - Local government discretion to create planning boards;
LAND USE - Local government required to substantially adhere to master plan;
LAND USE - Planning boards, membership, responsibilities;
LOCAL GOVERNMENT - Consolidated planning boards, membership;
LOCAL GOVERNMENT - Discretion to create planning boards and zoning commissions;
LOCAL GOVERNMENT - No authority to levy extra mills for planning purposes when planning board is eliminated;
LOCAL GOVERNMENT - Planning board must advise on subdivision plat review;
LOCAL GOVERNMENT - Requirement to substantially adhere to master plan for land use purposes;
PLANNING BOARDS - Consolidated planning boards, membership, responsibilities;
PLANNING BOARDS - Designation of authority;
SUBDIVISIONS - Advice of planning board on subdivision plat review;
MONTANA CODE ANNOTATED - Title 76, chapters 1 and 2, section 76-3-605.

Held:

1. The number of members and length of their terms on a consolidated planning board may be determined by the interlocal agreement forming the board.

2. If a planning board is eliminated, the governing body has no authority to levy the extra mills for planning board purposes.

3. If a planning board is eliminated, the governing body must substantially adhere to any master plan previously adopted or amend the plan to its needs.

4. Any official action or power specifically delegated to the planning board must be approved by the full board.

5. The creation of planning boards and zoning commissions is within the discretion of the

governing body. Once created, however, the statutory mandates as to each board must be followed.

6. If a planning board exists, a governing body must seek its advice in addition to holding a public hearing on all subdivision plat review.

15 October 1982

Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following questions:

1. Where a consolidated planning board is formed pursuant to section 76-1-112, MCA, may the number of members and the length of their terms be different from the statutorily prescribed numbers and terms for city-county and county planning boards?

2. If a planning board is completely eliminated, does the governing body have the authority to levy extra mills for planning purposes and to take any action with respect to a previously adopted master plan?

3. May the administrative and regulatory functions of a planning board be handled by a subcommittee of the planning board without review, consideration, and action by the full board?

Planning boards are authorized by statutes set forth in Title 76, chapter 2, MCA. The chapter permits a variety of boards to be formed: city, county, city-county, joint or consolidated planning boards. Your first question concerns the number of members and length of terms on the latter type of board--a consolidated planning board. Membership and length of terms for planning boards are set out in part 2 of the chapter. Consolidated planning boards are formed and

governed by interlocal agreement. Section 76-1-112(2)(c), MCA, provides that the agreement shall "specify the representation, means and manner of appointment, membership duties, and manner of sharing costs...which may be on any basis agreeable" to those boards joining forces. (Emphasis added.) The underlined portion of this section contains the crucial language. The section indicates that as long as the parties agree, the terms set forth in the document will control. "Representation" and "means and manner of appointment," without further specific direction, are sufficiently broad terms to allow for the number of members and their terms of service to be determined by interlocal agreement. As you indicated in your opinion request, this interpretation is illustrated in the latest interlocal agreement establishing a consolidated planning board for the city and county of Missoula. That agreement, approved by this office, provided for a thirteen-member board which is within the range established for either city, county, or city-county planning boards, sections 76-1-201, 76-1-211, 76-1-221, MCA.

Your second question involves the ability of a governing body to levy extra mills for planning purposes in the absence of an established planning board. Part 4 of the planning board chapter concerns financial administration. Sections 76-1-403 through 76-1-407, MCA, give a city or county the authority to levy a property tax for planning board purposes subject to certain restrictions. Your position is that the creation of a planning board is discretionary and since the local government would have to perform many of the tasks with or without the board, the mill levy is necessary for planning board purposes. The levy should still be allowed, therefore, to pay for the extra burden incurred by the local government.

It is a general rule of statutory construction that statutes are to be read in their entirety and considered as a whole without giving particular attention to any one section or sentence. Vita-Rich Dairy, Inc. v. Dept. of Business Regulation, 170 Mont. 341, 553 P.2d 980 (1976). Planning boards are created by statute and must be governed by the authority given them by statute. Sections 76-1-403 and 76-1-404, MCA, both provide that when a planning board has been established, planning districts may be created and a tax may be levied under certain restrictions. Section 76-1-406, MCA, provides that "any city or town represented upon a planning board may levy a tax...." The sections, plainly read, indicate that a planning board and a planning

district must be established before a mill levy may be imposed to fund such operations. The fact that planning board functions such as subdivision plat review and approval are statutorily required regardless of the existence of a planning board does not imply that an extra mill levy is permissible. Taxing authority must be explicitly given. No authority exists for the local governing unit to levy extra mills for planning purposes in the absence of a planning board.

The second part of this question concerns the actions a governing body may take if a master plan has been adopted but the planning board which created it is eliminated. Section 76-1-601, MCA, provides that "[t]he planning board shall prepare and propose a master plan for the jurisdictional area." The use of the word "shall" is mandatory and requires the planning board to create a master plan. "Master plan" is defined in section 76-1-103(4), MCA, as:

> [A] comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

The Montana Supreme Court in Little v. Board of County Commissioners, 38 St. Rptr. 1124, 1134, 631 P.2d 1282, 1291 (1981), found the term "master plan" synonymous with "comprehensive development plan" as used in the zoning statutes. The exact layout of a master plan is not statutorily dictated but section 76-1-601, MCA, lists a number of things the plan may contain. Once the master plan is proposed and adopted by a planning board under sections 76-1-602 and 76-1-603(3), MCA, the governing bodies represented on the board (see section 76-1-103(3), MCA) "shall adopt a resolution of intent to adopt, revise, or reject" the proposed master plan or any of its parts. § 76-1-604, MCA. That section goes on to provide in subsection (3) that "[t]he governing bodies may adopt, revise, or repeal a master plan under this section." (Emphasis added.) Thus, the governing body may take such action as it finds necessary regarding the master plan. This interpretation is supported by section 76-1-605, MCA, which provides that if the master plan is adopted, the governing body within the territorial jurisdiction of the planning board "shall be guided by and give consideration to the general policy and pattern of development set out in the master plan...." The section does not require strict conformance with the master plan. For zoning purposes, however, the Montana Supreme

Court's decision in Little clarifies the requirements of the section. The Court ruled that "the governing body must follow the 'comprehensive development plan' [master plan] when creating zoning districts and when promulgating zoning regulations." 631 P.2d at 1291. The requirement is not one of strict adherence to the master plan but rather "the governmental unit, when zoning, must substantially adhere to the master plan." 631 P.2d at 1293. (Emphasis added.) The Court also noted that circumstances may change and thus require changes in the master plan. "If this is so, the correct procedure is to amend the master plan rather than to erode the master plan by simply refusing to adhere to its guidelines." Id. Substantial adherence as a standard is "flexible enough so that the master plan would not have to be undergoing constant change. Yet, this standard is sufficiently definite so that those charged with adhering to it will know when there is an acceptable deviation, and when there is an unacceptable deviation from the master plan." Id. In light of this decision as to zoning and the master plan, it is apparent that governing bodies must give considerable weight to the plan's recommendations in any area it covers.

Your third question concerns the delegation of administrative and regulatory duties of the board to a subcommittee. You wish to know whether a subcommittee could handle such duties without review, consideration, and action by the full board. Section 76-1-304, MCA, provides that a majority of the members of the planning board constitute a quorum and that no action of the board is official unless authorized by a majority of the members of the board at a properly called meeting. However, section 76-1-306(2), MCA, provides the board may delegate authority to employees to perform "ministerial acts in all cases except where final action of the board is necessary." The board also has the power under section 76-1-305, MCA, to "exercise general supervision of and make regulations for the administration of the affairs of the board." Harmonizing these sections to avoid ambiguity, McClanathan v. Smith, 37 St. Rptr. 113, 606 P.2d 807 (1980), it appears that a subcommittee could handle administrative functions of the full board. The full board, however, should exercise general supervision over such a subcommittee and draw up regulations governing its actions, section 76-1-305, MCA. Any official action that carries the board's recommendation, however, must be approved by a majority of the entire board at a properly called meeting. Thus, a subcommittee may develop proposals, research

problems and solutions, keep records, and spend appropriations but the final approval or recommendation must come from the full planning board.

The question of what constitutes official action cannot be entirely answered. Title 76, chapter 1, MCA, lists several powers delegated to the planning board such as preparing a master plan, § 76-1-601, MCA, acceptance and administration of gifts and donations, § 76-1-408, MCA, and hiring and firing of employees, § 76-1-306, MCA. The planning board is specifically required to perform these duties and in order for the actions to be official a majority of the entire board must vote to act on them in a certain way. Those actions specifically delegated to the planning board must be considered by the full board and are to be viewed as "official" actions. Information and other material presented to the board to enable them to make their decisions as well as ministerial acts may be performed by employees of the board or a subcommittee.

Finally, you ask several questions regarding zoning commissions and subdivision plat review. You indicate that section 76-2-204, MCA, states that the county commissioners shall require "the county planning board and the city-county planning board" to recommend zoning boundaries and appropriate regulations. There is also authority under section 76-2-220, MCA, for the appointment of a county zoning commission. Your questions concern the authority of each body in the zoning process and the overlap in their duties.

Section 76-2-204, MCA, provides that the county commissioners shall require planning boards to recommend boundaries and appropriate regulations. The section goes on to state that the recommendations shall be advisory only and that if only one planning board has been established it shall make the recommendations, Little v. Board of County Commissioners, 38 St. Rptr. 1124, 631 P.2d 1282 (1981). But there is no absolute mandate that a planning board of any kind exist. § 76-1-101, MCA. In the absence of a planning board, no recommendations must be solicited for zoning decisions. The zoning commission authorized in section 76-2-220, MCA, is also discretionary. "[T]he county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications." The proviso of subsection (2) requiring a hearing "[i]f a commission is appointed" further clarifies the discretionary creation of such a commission. See also Montana Wildlife

Federation v. Sager, 37 St. Rptr. 1897, 620 P.2d 1189, 1194 (1980). Should a zoning commission be created the section requires that it consist of "five members appointed at large from the zoning district." Since there can be several zoning districts within a county, § 76-2-202, MCA, there may be several zoning commissions, each of which is responsible only for advising the county commissioners on changes within that zoning district. Thus, both planning boards and zoning commissions are discretionary in nature and if neither is created the county commissioners must resolve the problems under their general authority, § 76-2-201, MCA, subject, of course, to the general requirement that a comprehensive plan has been adopted, § 76-2-201, MCA.

The question you raise concerning subdivision plat review involves the interaction of sections 76-1-107 and 76-3-605, MCA. Section 76-1-107, MCA, requires that if a planning board is created and a comprehensive plan and subdivision regulations adopted, the governing body shall seek the planning board's advice. Section 76-3-605, MCA, requires a governing body or its authorized agency to hold a public hearing on a proposed preliminary plan and to consider all relevant evidence to determine whether the plan should be approved. If an agent holds the hearing, the agent shall advise the governing body of its recommendation. This latter statute does not mean the agent's recommendation may be substituted for the planning board's. The statutes do not conflict; there are simply two distinctly separate duties which must be performed. First, if the governing body creates a planning board or boards, their recommendation(s) must be solicited and second, a public hearing shall be held "to solicit evidence on the various effects the proposed plan would have on the public." The recommendation made by an agent under section 76-3-605, MCA, is one made after consideration of the evidence presented at the public hearing. The purpose in soliciting a number of recommendations from a variety of sources is to give the governing body, the ultimate decision maker, a wide range of input. The agency's recommendation cannot be substituted for that of the full planning board if it exists. Both bodies must comply with their statutory duties.

THEREFORE, IT IS MY OPINION:

1. The number of members and length of their terms on a consolidated planning board may be determined by the interlocal agreement forming the board.

2. If a planning board is eliminated, the governing body has no authority to levy the extra mills for planning board purposes.

3. If a planning board is eliminated, the governing body must substantially adhere to any master plan previously adopted or amend the plan to its needs.

4. Any official action or power specifically delegated to the planning board must be approved by the full board.

5. The creation of planning boards and zoning commissions is within the discretion of the governing body. Once created, however, the statutory mandates as to each board must be followed.

6. If a planning board exists, a governing body must seek its advice in addition to holding a public hearing on all subdivision plat review.

Very truly yours,

MIKE GREELY
Attorney General

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 a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 128, Montana State Capitol, Helena, Montana 59620.

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

Definition: 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 Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1982. This table includes those rules adopted during the period July 1, 1982 through September 30, 1982, 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 June 30, 1982, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1982 Montana Administrative Registers.

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