MONTANA ADMINISTRATIVE REGISTER

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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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE adoption of Rules, relating to Blind Vendors Bidding Preference	)))))	NOTICE OF PUBLIC HEARING on the Proposed Adoption of Rule Relating to Blind Vendors' Bidding Preference.

TO: All Interested Persons:

1. On November 20, 1986, at 1:00 p.m. a public hearing will be held in room 160 of the Mitchell Building, Capitol Complex, Helena, Montana, to consider the adoption of rule relating to Blind Vendor's Bidding Preference.

2. The proposed rule provides as follows:

RULE I BLIND VENDORS' BIDDING PREFERENCE

(1) Blind persons who meet the following definition from House Bill 48 (passed by the June 1986 special session) may claim a bidding preference for award of contracts for vending facilities and/or vending machines on state property.

(2) For the purposes of this rule the following definitions apply:

(a) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an opthalmologist or a physician skilled in diseases of the eye.

(b) "State property" means a building or portion of a building or other real property that is owned or leased by the state or an agency of the state; utilized in the conduct of state matters; and occupied principally by state employees. State property does not include vocational institutions or institutions of higher education.

(3) A blind person wishing to claim preference must complete the determination form provided with the bid document. The determination form is available from Department of Administration, Purchasing Division. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye or a State of Montana, Department of Social and Rehabilitative Services, Visual Services Counselor.

(4) A determination form shall be submitted with each individual bid. The determination form shall be valid for six (6) months. At the end of the six (6) month period, a new determination form will be required or submitted with bids. A new determination form will be required for renewal of a contract if the contract renewal date exceeds 6 months from the completion date of the original determination form.

(5) Preference will be applied in the following manner:

(a) A preference shall be granted to eligible persons whose proposal is substantially equal to other responsible

bidder's proposals for contracts effective July 1, 1986, or after. A proposal shall be substantially equal if the overall rating of the proposal does not differ by more than 3% from the other proposals as determined by the purchasing official.

(b) The preference does not apply to contracts established prior to July 1, 1986. The preference does not apply to contract renewals with an original effective date prior to July 1, 1986.

AUTH: House Bill 48, June 1986 Special Legislative Session; IMP: House Bill 48, June 1986 Special Legislative Session.

Auth: Sec. 18-4-221, MCA; IMP: Sec. 18-4-221, MCA.

3. The department is proposing this rule because the June 1986 Special Legislative Session adopted a new law on blind vendor's bidding preference. The Department of Administration is required by the law to adopt rules.

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

Mike Muszkiewicz, Administrator
Department of Administration
Purchasing Division
Mitchell Building, Room 165
Helena, Montana 59620

no later than November 28, 1986.

5. Earl Fred, Bureau Chief, Purchasing Division, Room 165, Mitchell Building, Helena, Montana has been designated to preside over and conduct the hearing.

BY: _____
ELLEN FEAVER, Director
Department of Administration

Certified to the Secretary of State October 20, 1986

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed amendments of 8.22.610 concerning stewards, 8.22.710 concerning trainers, 8.22.711 concerning veterinarians, 8.22.801 concerning general requirements, 8.22.1606 concerning types of bets and adoption of new rules concerning twin trifecta, alcohol and drug testing and Pick (N) wagering	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF 8.22.610 STEWARDS, 8.22.710 TRAINERS, 8.22.711 VETERINARIANS, 8.22.801 GENERAL REQUIREMENTS, 8.22.1606 TYPES OF BETS, and ADOPTION OF NEW RULES ENTITLED TWIN TRIFECTA, ALCOHOL AND DRUG TESTING RULE, AND PICK (N) WAGERING

TO: All Interested Persons.

1. On Saturday, December 6, 1986, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the amendments and adoption of the above-stated rules.

2. The proposed amendment of 8.22.610 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-652 through 8-655, Administrative Rules of Montana)

"8.22.610 STEWARDS (1) Selection of stewards.

(a) The board shall maintain a list of the licensed racing officials who have qualified for the position of steward by the board. The selection of stewards shall be made from such list. ~~The board shall name one steward and the association shall name one steward. The stewards so named shall name their associate. The three stewards so selected comprise the board of stewards. The selection of stewards for a race meeting shall be made as soon as possible after the allocation of dates for a racing meet, but in no event later than 30 days before the race meeting; or should the steward named by the board and the steward named by the association fail to agree upon the selection of their associate, the board may name and appoint the stewards for the meeting or may appoint the associate steward.~~ There shall be three stewards to supervise each race meet. One steward shall be appointed by the board to be the presiding steward. He or she shall be compensated by the board. One steward shall be assigned by the board to be the deputy state steward. He or she shall be compensated by the association at an amount approved by the board. One steward shall be appointed by the association and compensated by the association. The three stewards so selected will comprise the board of stewards for the race meeting. The selection of stewards for a race meeting shall be made as soon as possible after the allocation

of dates for a racing meet, but in no event later that 30 days before the race meeting.

(b) through (29) will remain the same."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

3. This rule amendment was noticed for a public hearing by the board in 1985 but was tabled by the board. In May of 1986, Al McCarthy requested its consideration once again. This rule amendment is to give the Board of Horse Racing greater control over the competence of stewards at race tracks.

4. The proposed amendment of 8.22.710 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-671 through 8-673, Administrative Rules of Montana)

"8.22.710 TRAINERS (1) through (14) will remain the same.

(15) Each trainer shall require every jockey, ~~and~~ exercise person, and pony person to wear a safety helmet and boots with heels when exercising horses for him/her. The safety helmet shall be of a type approved by the board and any changes in the helmet must be approved in writing by the stewards.

(16) through (28) will remain the same."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

5. This rule is to expand the safety requirements for persons on horseback.

6. The proposed amendment of 8.22.711 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-674, Administrative Rules of Montana)

"8.22.711 VETERINARIANS (1) and (2) will remain the same.

(3) Any licensed veterinarian who administers or makes available for administration by external application, ingestion, or injection or by any other means any material or substance to a horse stabled at a licensed race meeting shall ~~complete and sign, in triplicate, a form to be furnished by the board, which form shall name and identify the horse and the stall number where stabled, identify the owner, trainer or other person requesting the medication, specify the medication given, state the hour and day given, and the dosage, purpose and generic name of the medication used.~~ maintain records of all treatments and make those records available to the board or its representative upon demand."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

7. This rule amendment was requested by James Bailey, DVM, on behalf of the MVMA. It's intent is to make the rule more consistent with the current practice of record keeping and reporting.

8. The proposed amendment of 8.22.801 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-679 through 8-685.1, Administrative Rules of Montana)

"8.22.801 GENERAL REQUIREMENTS (1) through (6) will remain the same.

(7) For the purpose of encouraging the breeding within the state of valuable thoroughbreds, quarter horses, appaloosa and other purebred registered horses, at least one race each day at each race meeting shall be limited to Montana bred horses. If sufficient competition cannot be obtained among the Montana bred horses, said race may be ~~eliminated for the day and substitute race provided~~ opened with Montana breds being preferred.

(8) through (37)(a) will remain the same.

(b) The stewards shall have the discretion to split trainer entries, if the entries have different owners, ~~for stake races~~ for the purpose of wagering.

(38) through (50) will remain the same.

(51) Any horse which is entered and has drawn a post position in a race shall be termed an "in today" horse. Any "in today" horse shall not be eligible to enter for the following ~~calendar day~~ race day to the exclusion of any other horse.

(52) through (66) will remain the same."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

9. The proposed amendment of 8.22.801(7) was brought to the board in April by Fran Nelson on behalf of the Montana Horsebreeders. The intent is to allow Montana breds more opportunity to run.

The proposed amendment of 8.22.801(37)(b) was brought to the board in early May by Allison Hines. The intent is to allow the splitting of entries in all races. This will allow horsemen a greater opportunity to run all their horses at a small race meet.

The proposed amendment of 8.22.801(51) was requested by management to allow for a horse to be started more often at a meet with limited days for running.

10. The proposed amendment of 8.22.1606 will read as follows: (new matter underlined, deleted matter interlined)

(full text of the rule is located at pages 8-737 and 8-738, Administrative Rules of Montana)

"8.22.1606 TYPES OF BETS (1) through (8) will remain the same.

(9) The twin trifecta is a contract by the purchaser of a ticket to select the three horses that will finish first, second, and third in each of two designated twin trifecta races in the exact order as officially posted.

~~(9)~~ (10) . . .

~~(10)~~ (11) . . .

~~(11)~~ (12) . . .

~~(12)~~ (13) . . ."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

11. This amendment will amend section 8.22.1606 to define twin trifecta as a type of bet permitted in a race.

12. The proposed new rules will read as follows:

"I. TWIN TRIFECTA (1) A licensee to conduct a horse race meeting may feature a twin trifecta wager.

(2) The twin trifecta is a form of pari-mutuel wagering. It is not a parlay and has no connection with, or relation to, any other pari-mutuel pools made and conducted by an association. The twin trifecta also is not connected with, or related to, any win, place and show pools shown on the totalizator board, nor is it governed by any commission rule pertaining to the distribution of any other pari-mutuel pools.

(3) In the twin trifecta, the wagerer selects the three horses that will finish first, second and third in the exact order as officially posted in each of the two designated twin trifecta races.

(4) Twin trifecta tickets may be sold and exchanged only from the association's ticket-issuing machines.

(5) Twin trifecta tickets may be sold only in multiples of $1.00.

(6) Each wagerer purchasing twin trifecta tickets shall designate three selections as the first three horses to finish in that order in the first race of the two designated as twin trifecta races.

(7) After the wagering closes for the first half of the twin trifecta, the commission will be deducted from the pool in accordance with the rules of the Montana board of horse racing. The remaining pool will then be divided into two separate pools of equal amounts.

(8) The money in the first part of the divided pool will be distributed to the holders of twin trifecta tickets selecting the first three horses, in order, on the first designated twin trifecta race, in accordance with the established pari-mutuel practice. The term "first part of

divided pool" shall mean one-half of the net distributable pool of the total money wagered in the twin trifecta on the current program only. Specifically excluded therefrom shall be any carryover of any special cumulative second race twin trifecta pool from any previous program.

(9) The second part of the divided pool, less any consolation payoff, will be placed in a separate pool to be distributed to holders of "second half" twin trifecta tickets selecting the first three horses, in order, on the second designated twin trifecta race, in accordance with the established pari-mutuel practice.

(10) If, in the first half of the twin trifecta only, there is a failure to select, in the exact order, the first three horses, payoffs and exchanges shall be made on twin trifecta tickets selected in the following order of priority:

(a) tickets selecting the first and second place horses;
(b) tickets selecting the first and third place horses;
(c) tickets selecting the second and third place horses;
(d) tickets selecting the horse that finished first;
(e) tickets selecting the horse that finished second;
(f) tickets selecting the horse that finished third.

In the event that there are no tickets satisfying (a) through (f), the twin trifecta shall be refunded.

(11) After the official declaration of the first three horses to finish in the first race of the twin trifecta, each wagerer holding a winning ticket must, prior to the running of the second twin trifecta race, exchange the winning ticket for both the monetary value established by the mutuel department and a twin trifecta "exchange" ticket and, at such time, shall select the three horses to finish in the second race of the twin trifecta in exact order as officially posted. No additional money shall be required of the holders of the winning ticket in order to make the exchange. Each association conducting the twin trifecta shall designate all windows to be used as "exchange" windows except when the first half payoff is $600.00 or more in winnings (if such winnings are at least 300 times the amount of the single wager). If such is the case, valid exchange tickets will be exchanged only at windows designated I.R.S. windows.

(12) No twin trifecta exchange ticket for the second race of the twin trifecta shall be issued except upon surrender of the winning twin trifecta from the first race of the twin trifecta as described in these rules. Windows for the purpose of cashing and exchanging twin trifecta tickets shall be open only after the first race of the twin trifecta has been declared official and such window shall close when wagering closes for the race designated as the second half of the twin trifecta. Not more than one race shall elapse between the race designated the first half of the twin trifecta and the race designated as the second half of the twin trifecta.

(13) If a winning twin trifecta ticket from the first race is not presented for cashing and exchange within the time provided, the wagerer may still collect the monetary value attached to the ticket, but shall forfeit all rights to any distribution of the second race twin trifecta pool.

(14) Coupled entries and/or mutuel fields are prohibited in twin trifecta races.

(15) If a horse is scratched for the first race of the twin trifecta, all twin trifecta tickets on the scratched horse will be refunded. If a horse is scratched for the second race of the twin trifecta, public address announcements will be made and a reasonable attempt will be made for exchange of tickets on the scratched horse.

(16) In the event of a dead-heat or dead-heats in either the first or second half of the twin trifecta, all twin trifecta tickets selecting the correct order of finish counting a horse in a dead-heat as finishing in any position dead-heated shall be winning tickets. In the case of the dead-heat occurring in the first half, the payoff shall be calculated as a win pool. In the case of the dead-heat occurring in the second half, contrary to the usual pari-mutuel practice, the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

(17) If a horse is scratched in the second race of the twin trifecta, all exchange tickets combining the scratched horse with either scratchers or any of the first three finishers of the second twin trifecta race in exact order in each position shall become consolation tickets and shall be paid a price per dollar calculated as follows: The money from the second part of the divided pool shall be divided by the total purchase price of all tickets combining the winners of the first race of the twin trifecta. The quotient thus obtained shall be the price paid to holders of second race twin trifecta consolation tickets. The entire consolation pool (number of eligible tickets times the consolation price) shall be deducted for the second part of the divided pool.

(18) In the event there is no twin trifecta ticket issued accurately selecting the officially declared first three finishers of the second twin trifecta race in the exact order, such second race pool, as divided earlier, shall be held for the next consecutive program and shall be combined with that program's second race twin trifecta pool. The sum shall be termed the "carryover jackpot". Distribution of the special cumulative second race twin trifecta pool shall be made only upon the accurate selection, in exact order, of the first three officially declared finishers of the second twin trifecta race, except on the closing program of the meeting. See (20) below.

(19) If for any reason, the second half of the twin trifecta is not declared "official," the winning ticket

holders who have cashed their tickets on the first half and have received an exchange ticket and winning first half twin trifecta tickets which were not exchanged, will be entitled to the remaining amount of the current program's divided pool. In the event, all consolation tickets will be considered winners and there will be no consolation payoff.

(20) On the closing program of the meeting, the current carryover jackpot, if any, plus the second half pool for that program will be combined and distributed in the following manner:

(a) If there is no winning ticket(s) (i.e. selecting the correct order of finish of the first three horses), the sum of the combined pools shall be divided equally and distributed to holders of valid exchange tickets and winning first half twin trifecta tickets which were not exchanged. In this event, all consolation tickets will be considered winners and there will be no consolation payoff.

(21) Sales of twin trifecta tickets other than from the association's ticket-issuing machines or from one individual to another shall be deemed illegal and shall be prohibited. Exchange tickets shall be non-transferable. Holders of transferred exchange tickets shall not be entitled to any winnings. Persons involved in the unauthorized transfer of exchange tickets shall be subject to ejection from the pari-mutuel facility."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

"II. ALCOHOL AND DRUG TESTING RULE (1) No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised race track shall have present within his/her system any amount of alcohol which would constitute legal impairment or intoxication.

(2) A designated board of horse racing representative may direct any such licensee or employee to submit to a breathalyzer test. Such licensee or employee shall, when so directed, submit to such examination. If the results thereof show a reading of .05 percent alcohol content or more, such licensee or employee shall not be permitted to continue his/her duties for that day. Such licensee or employee shall then be subject to fine or suspension by the stewards or board of horse racing.

(3) For a subsequent violation such licensee or employee may be subject to procedures following positive chemical analysis (below).

(4) No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised race track shall have within his/her system any controlled substance as listed in the U.S. Code, Title 21 (Food and Drug Laws) or any prescription legend drug unless such prescription legend drug was obtained directly or

pursuant to valid prescription or order from a duly licensed physician who is acting in the course of his/her professional practice.

(5) Acting with reasonable cause, the stewards or a designated board of horse racing representative may direct any such licensee or employee to deliver a specimen of urine in the presence of the track physician or subject his/herself to the taking of a blood sample or sample of other body fluids by the track physician or other duly licensed physician as designated by the board of horse racing.

(6) In such cases the stewards or the board of horse racing representative may prohibit such licensee or employee from participating in that day's racing or until such time as said licensee or employee evidences a negative test result.

(7) Sufficient sample shall be collected to insure a quantity for a split sample when possible.

(8) Refusal by such licensee or employee to provide the samples herein described, as so directed, shall be in violation of these rules and shall subject such licensee or employee to sanctions by the stewards or the board of horse racing.

(9) All testing shall be at the expense of the board of horse racing or racing association.

(10) For a licensee's or employee's first violation he/she shall not be allowed to participate in racing until such time as his/her condition has been professionally evaluated.

(a) After such evaluation, if said licensee's or employee's condition proves non-addictive and not detrimental to the best interest of racing, said licensee or employee shall be allowed to participate in racing provided he/she can produce a negative test result and agrees to further testing at the discretion of the stewards or designated representative of the board to insure his/her unimpairment.

(b) After such professional evaluation, should said licensee's or employee's condition prove addictive or detrimental to the best interest of racing, said licensee or employee shall not be allowed to participate in racing until such time as he/she can produce a negative test result and show documented proof that he/she has successfully completed a certified alcohol/drug rehabilitation program approved by the board of horse racing. Said licensee or employee must agree to further testing at the discretion of the stewards or designated representative of the board to insure his/her unimpairment.

(11) For a licensee's or an employee's second violation, he/she shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the board of horse racing, to apply for reinstatement only at the discretion of the board of horse racing."

holders who have cashed their tickets on the first half and have received an exchange ticket and winning first half twin trifecta tickets which were not exchanged, will be entitled to the remaining amount of the current program's divided pool. In the event, all consolation tickets will be considered winners and there will be no consolation payoff.

(20) On the closing program of the meeting, the current carryover jackpot, if any, plus the second half pool for that program will be combined and distributed in the following manner:

(a) If there is no winning ticket(s) (i.e. selecting the correct order of finish of the first three horses), the sum of the combined pools shall be divided equally and distributed to holders of valid exchange tickets and winning first half twin trifecta tickets which were not exchanged. In this event, all consolation tickets will be considered winners and there will be no consolation payoff.

(21) Sales of twin trifecta tickets other than from the association's ticket-issuing machines or from one individual to another shall be deemed illegal and shall be prohibited. Exchange tickets shall be non-transferable. Holders of transferred exchange tickets shall not be entitled to any winnings. Persons involved in the unauthorized transfer of exchange tickets shall be subject to ejection from the pari-mutuel facility."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

"II. ALCOHOL AND DRUG TESTING RULE (1) No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised race track shall have present within his/her system any amount of alcohol which would constitute legal impairment or intoxication.

(2) A designated board of horse racing representative may direct any such licensee or employee to submit to a breathalyzer test. Such licensee or employee shall, when so directed, submit to such examination. If the results thereof show a reading of .05 percent alcohol content or more, such licensee or employee shall not be permitted to continue his/her duties for that day. Such licensee or employee shall then be subject to fine or suspension by the stewards or board of horse racing.

(3) For a subsequent violation such licensee or employee may be subject to procedures following positive chemical analysis (below).

(4) No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised race track shall have within his/her system any controlled substance as listed in the U.S. Code, Title 21 (Food and Drug Laws) or any prescription legend drug unless such prescription legend drug was obtained directly or

pursuant to valid prescription or order from a duly licensed physician who is acting in the course of his/her professional practice.

(5) Acting with reasonable cause, the stewards or a designated board of horse racing representative may direct any such licensee or employee to deliver a specimen of urine in the presence of the track physician or subject his/herself to the taking of a blood sample or sample of other body fluids by the track physician or other duly licensed physician as designated by the board of horse racing.

(6) In such cases the stewards or the board of horse racing representative may prohibit such licensee or employee from participating in that day's racing or until such time as said licensee or employee evidences a negative test result.

(7) Sufficient sample shall be collected to insure a quantity for a split sample when possible.

(8) Refusal by such licensee or employee to provide the samples herein described, as so directed, shall be in violation of these rules and shall subject such licensee or employee to sanctions by the stewards or the board of horse racing.

(9) All testing shall be at the expense of the board of horse racing or racing association.

(10) For a licensee's or employee's first violation he/she shall not be allowed to participate in racing until such time as his/her condition has been professionally evaluated.

(a) After such evaluation, if said licensee's or employee's condition proves non-addictive and not detrimental to the best interest of racing, said licensee or employee shall be allowed to participate in racing provided he/she can produce a negative test result and agrees to further testing at the discretion of the stewards or designated representative of the board to insure his/her unimpairment.

(b) After such professional evaluation, should said licensee's or employee's condition prove addictive or detrimental to the best interest of racing, said licensee or employee shall not be allowed to participate in racing until such time as he/she can produce a negative test result and show documented proof that he/she has successfully completed a certified alcohol/drug rehabilitation program approved by the board of horse racing. Said licensee or employee must agree to further testing at the discretion of the stewards or designated representative of the board to insure his/her unimpairment.

(11) For a licensee's or an employee's second violation, he/she shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the board of horse racing, to apply for reinstatement only at the discretion of the board of horse racing."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

"III. PICK (N) WAGERING (1) The Pick (N) is a form of pari-mutuel wagering. The Pick (N) is not a parlay and has no connection with or relation to any other pari-mutuel pool made and conducted by an association, nor is the Pick (N) connected with or related to any win, place and show pool shown on the totalizator board, nor is it governed by any board rules pertaining to the distribution of any other pari-mutuel pools. Each person participating in a Pick (N) pool selects the entry or field for win in each of a certain number of races designated by the association with the approval of the board. The number of races so designated may be 4, 5, 6, 7 or 8. Once an association has decided the number of races comprising the Pick (N), it may not change that number in the middle of a meet without prior approval of the board of horse racing, which may be given if it is in the best interests of the wagering public to do so. The races so designated comprise the Pick (N) for that performance. The association issues the Pick (N) participant a ticket which reflects the participant's selections in the designated races.

(2) A validly issued Pick (N) ticket timely surrendered to the association by the legal holder thereof shall be the only evidence of a person's participation in a Pick (N) pari-mutuel pool. The acceptance of a Pick (N) ticket by taking an issued ticket away from the window or terminal from which it is purchased shall constitute an acknowledgement by the purchaser of the correctness of the ticket, and each purchaser of a Pick (N) ticket agrees to be bound by the terms and provisions of this and all other applicable board rules and regulations and by the laws of the state of Montana pertaining to pari-mutuel wagering. Neither the association, totalizator company nor the state of Montana shall be liable to any person for any ticket which is not a winning ticket in accordance with the provisions of this rule nor shall they, or any of them, be liable to any person for any Pick (N) ticket not delivered for any reason, including but not limited to, mechanical malfunction, electrial failure, machine locking, or other causes.

(3) In all races, those horses constituting an entry of coupled horses or those horses grouped to constitute the field in a race included in the Pick (N) shall race as a single wagering interest for the purpose of the Pick (N) pari-mutuel pool calculations and payouts to a winner. However, if any wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Pick (N) calculation and the pari-mutuel ticket shall not be withdrawn from that pool.

(4)(a) Pick (N) shall be composed of two separate and distinct pari-mutuel pools. Seventy-five percent of the gross

amount of all sums wagered on Pick (N) tickets on each performance shall be paid into a pari-mutel pool to be known as "the jackpot." The remaining twenty-five percent of the gross amount of all sums wagered on Pick (N) tickets for that performance shall be paid into a pari-mutuel pool to be known as "the super four," "the super five," "the super six," "the super seven," or "the super eight," depending on the association's decision as to how many races comprise the Pick (N) wager.

(b) Subject to the provions of this rule pertaining to refunds and after the deduction of all legal sums therefrom, the net amount in the jackpot pool subject to distribution among winning ticket holders shall be distributed only among the holders of Pick (N) tickets which correctly designate all official winners of the races comprising the Pick (N) for the performance.

(c) Subject to the provisions of this rule pertaining to refunds and after deduction of all legal sums therefrom, the net amount in the super (N) pool subject to distribution among winning ticket holders shall be distributed among the holders of Pick (N) tickets which correctly designate the most official winners of the contests comprising the Pick (N) for that performance.

(d) In the event there is no Pick (N) ticket issued which would entitle the ticket holder to the jackpot, then, and in such event, the entire jackpot shall be carried over and included in the jackpot pool for the next day. The jackpot shall be supplemented each day by the amount added thereto from all previous days' jackpot pools that have not been won by a holder of a Pick (N) ticket which correctly selects all official winners of the races comprising the Pick (N) for any race day.

(e) In the event the accumulated jackpot has not been distributed prior to the closing day of the meeting in which the jackpot was generated, the accumulated jackpot and the net amount in the super (N) pool subject to distribution among winning ticket holders shall be distributed among closing day holders of Pick (N) tickets which correctly designate the most official winners of the races comprising the closing day Pick (N). Where a split meet is held, all jackpot and super (N) pools shall be distributed as stated in this section on the final day of each portion of the split meet.

(f) In the event a Pick (N) ticket designates as a selection to win in any one or more of the races comprising the Pick (N), a single wagering interest which is scratched, excused or determined by the stewards/judges to be a non-starter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs; provided further, that in the event that the win pool for two (2) or

more favorites is identical, the selection in the lowest program position shall be substituted for the non-starting selection.

(g) In the event one or more of the races comprising the Pick (N) is cancelled for any reason, the distribution of the net amount subject to distribution in the super (N) pool shall be among the holders of pari-mutuel tickets which correctly designate the most official winners in all of the remaining races comprising the Pick (N) during such race days, except, that in the event there is officially cancelled or declared as no contest three or more of the races comprising the Pick (N), all pari-mutuel tickets on the Pick (N) for that day shall be refunded, and the Pick (N) shall be cancelled for that day. No person shall win the jackpot unless that person holds a Pick (N) ticket which correctly picks all official winners of the races comprising the Pick (N) for that race day. The cancellation of one or more races comprising the Pick (N) in any race day shall result in the contribution to the super (N) pool of the amount contributed that day to the jackpot pool. The contribution to that day's jackpot pool will then be distributed along with the remainder of the super (N) pool to the winners of the super (N) pool. Any contributions to the jackpot pool from prior race days will remain in the jackpot pool to be carried over and included in the jackpot pool for the next race day as prescribed in (d) above.

(5) In the event of a dead heat for win between two or more contestants in any Pick (N) race, all such contestants in the dead heat for win shall be considered as the winner in the race for the purpose of distributing the jackpot and the super (N) pools.

(6) Once the first race of the races comprising the Pick (N) in any race day has begun, and until the last of the races is concluded, the association shall not report to the public, to any of the association's employees or to any other person, the number of tickets sold, total dollars wagered, or the number of tickets with potential to win the Pick (N) or any information whatsoever about such tickets. Furthermore, the totalizator system shall be constructed or programmed to suppress the publication or printing of any such information from the beginning of the first race until the conclusion of the last of the races comprising the Pick (N) in any one race day, except for the total dollars wagered in the Pick (N) pool.

(7) No pari-mutuel ticket for Pick (N) shall be sold, exchanged or cancelled after the time of the close of mutuel windows for wagering in the first of the races comprising the Pick (N), except for such refunds on Pick (N) tickets as are required under this rule.

(8) Any payments in excess of $100,000 from any Pick (N) pool must be paid by a company check or certified check.

(9) Each jackpot pool shall have a cap which the jackpot pool shall not exceed. The cap for a pick four jackpot pool shall be $4,000 or 2,000 times the minimum wager, whichever is less. The cap for a pick five jackpot pool shall be $30,000 or 15,000 times the minimum wager, whichever is less. The cap for a pick six jackpot pool shall be $250,000 or 125,000 times the minimum wager, whichever is less. The cap for a pick seven jackpot pool shall be $1,000,000. The cap for pick eight jackpot pool shall also be $1,000,000. Prior to the opening of a meet the association may declare a cap for the jackpot pool less than the cap imposed above, provided the cap is in increments of $1,000. Once the association has selected a cap the association may not alter the cap without prior approval of the board. If, at the close of any race day the amount accumulated in the jackpot pool equals or exceeds the cap, then at such time, the jackpot pool shall be frozen until it is won under the other provisions of the applicable Pick (N) rule. Thereafter, the jackpot pool is frozen under these provisions and one hundred percent (100%) of all subsequent contributions shall go to the super (N) pool and be distributed accordingly. Nothing herein shall affect the total distribution of both pools on the closing day of any meet or portion of a split meet.

(10) Prior to the opening of a meet at which a Pick (N) wager will be offered, the association may elect to force an early payout of the jackpot pool, as allowed by this rule and in no other manner. The decision shall be made by informing the board in writing prior to the opening of the meet of the association's intent to force an early payout if the conditions of this rule for an early payout are met. If the decision is made, then an early payout of the jackpot pool shall be made as follows. Within 24 hours after the jackpot pool reaches its cap, the association shall designate the race day at which the early payout will be made by informing the board in writing of the designated race day. The designated race day shall be no sooner than 6 calendar days after the cap is reached and no later than 134 calendar days after the cap is reached. If at the conclusion of the last contest comprising the Pick (N) of the designated race day, no wager has won the jackpot pool, then the funds in the jackpot pool shall be transferred to the super (N) pool for the designated race day and distributed in the manner in which the super (N) pool is distributed."

Auth: 23-4-104, MCA Imp: 23-4-104, 23-4-202, 23-4-301, MCA

13. New rule I was requested by race track management and horsemen groups to allow the tracks another form of "exotic wagering."

New rule II is being proposed to give the board better control over the abuse of "illegal substances" on the race track.

New rule III is being proposed to provide another form of "exotic wagering" for the tracks and to provide added revenue.

14. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Montana Board of Horse Racing, 1424 9th Avenue, Helena, Montana no later than November 27, 1986.

15. Geoffrey L. Brazier of Helena, Montana will preside over and conduct the hearing.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 20, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the proposed adoption of new rules concerning the approval and administration of contracts for audits of local government units pursuant to section 2-7-506, MCA	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES CONCERNING THE APPROVAL AND ADMINISTRATION OF CONTRACTS FOR AUDITS OF LOCAL GOVERNMENT UNITS PURSUANT TO SECTION 2-7-506, MCA

TO: All Interested Persons.

1. As a result of internal reorganization, Chapter 94 entitled "Economic and Community Development Division" has been renamed "Local Government Assistance Division." The following rules will be designated as sub-chapter 40 under that chapter.

2. On November 24, 1986, at 1:00 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, Helena, Montana to consider the adoption of the above-stated rules.

3. The proposed new rules will read as follows:

"I. CRITERIA FOR THE SELECTION OF AN INDEPENDENT ACCOUNTANT/AUDITOR (1) To be eligible to conduct audits of those local government entities enumerated in section 2-7-503, MCA, an independent accountant/auditor must:

(a) if an individual, hold a current Montana certificate as a certified public accountant or a license as a licensed public accountant and hold a current annual permit to engage in the practice of public accounting under section 37-50-314, MCA;

(b) if a partnership or corporation, be currently registered as a partnership of certified public accountants, a partnership of licensed public accountants, a corporation of certified public accountants, or a corporation of public accountants under sections 37-50-331 through 37-50-334, MCA.

(2) The selection of an accountant/auditor to perform an audit will be based on the following criteria:

(a) independence;

(b) work history;

(c) demonstrated understanding of the work to be performed;

(d) willingness to commit qualified staff to the engagement; and

(e) the proposed cost of the engagement.

(3) An independent accountant/auditor will be deemed to be ineligible to conduct audits under contract with the department if:

(a) in the department's judgment, audits performed by the accountant/auditor during the previous two years under contract with the department failed to conform to generally accepted governmental auditing standards;

(b) the accountant/auditor is currently restricted in the conduct of governmental auditing by the Montana board of public accountants;

(c) the accountant/auditor is more than 90 days delinquent in filing an audit report required under an existing contract with the department and has not obtained the department's written consent to an extension of the contracted filing date;

(d) within the previous two years the accountant/auditor has failed to adhere to the terms and conditions of an independent auditing contract with the department; or

(e) a state or federal agency has deemed the accountant's/auditor's audit work to be unacceptable with respect to the requirements described in [rule III (2)]."

Auth: 2-7-506, MCA Imp: 2-7-506, MCA

"II. CRITERIA FOR EXECUTING A CONTRACT WITH AN INDEPENDENT ACCOUNTANT/AUDITOR (1) All contracts for audits of local government entities must be executed on the current standard audit contract form provided by the department and must be approved by a designated signatory of the department before any audit work commences.

(2) The department will not approve a contract in which the independent accountant/auditor has not provided all of the information required by the contract form.

(3) An independent auditing contract may not cover an audit period exceeding two years.

(4) By May 1, of each year the department will notify all local government entities and interested indpendent accountants/auditors of the local government audits the department's staff will perform during the following two-year period. All proposed independent audits of those local government units not included in the department's biennial auditing schedule must be scheduled and contracts therefor must be submitted to the department for approval no later than 90 days after the close of the sole or initial year to be audited, or, in the case of a single audit covering two fiscal years, no later than 90 days after the close of the second fiscal year to be audited.

(5) The department may, in cases where entities scheduled for contract audits fail to arrange for such audits, or in cases where the department's work load will not allow it to meet its original schedule, revise the schedule to insure that the requirements of section 2-7-503(2), MCA, are met."

Auth: 2-7-506, MCA Imp: 2-7-506, MCA

"III. AUDIT AND REPORTING STANDARDS (1) All audits performed and reports prepared under 2-7-506, MCA, must be conducted in accordance with generally accepted auditing standards as adopted by the American institute of certified public accountants.

(2) Audits must conform to the requirements of the federal Single Audit Act of 1984 (P.L. 98-502) and the OMB Circular A-128."

Auth: 2-7-506, MCA Imp: 2-7-506, MCA

4. The rules proposed above are required by section 2-7-506, MCA, to establish standards for the Department's use of independent contractors under that section to perform financial and compliance audits of local government entities. Specifically, the rules are necessary to provide criteria for the selection of auditors, to assure that all required audits are completed within statutory time limits, to assure uniformity in the performance of audits, and to assure the uniform application of state laws and regulations and required accounting principles.

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 the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than November 28, 1986.

6. Richard M. Weddle, Helena, Montana, will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 20, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE HARD-ROCK MINING IMPACT BOARD

In the matter of the proposed adoption of a rule concerning the board's review of impact plans for compliance with statutory requirements and board rules	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF A NEW RULE ENTITLED REVIEW OF PLAN FOR TECHNICAL COMPLIANCE

TO: All Interested Persons.

1. On November 20, 1986, at 1:00 p.m., a public hearing will be held at the War Bonnet Inn in Butte, Montana, to consider the adoption of the above-stated rule.

2. The proposed new rule will read as follows:

"I. REVIEW OF PLAN FOR TECHNICAL COMPLIANCE (1) A document purporting to be an impact plan which on its face does not meet the requirements for a plan contained in section 90-6-307(1) and (2), MCA, is not a plan for purposes of the Hard-Rock Mining Impact Act and may not be approved by the board pursuant to that section.

(2) The board will not approve as an impact plan a document which does not comply with ARM 8.104.203 concerning the format and content of plans.

(3) Any time prior to or during the 90-day review period or an extension thereof, the board's staff will review the plan and advise the board and the parties to the plan as to whether the plan appears to satisfy the statutory and regulatory format and content requirements reflected in (1) and (2) of this rule. The review conducted by the staff under this rule will consider technical compliance matters only and will not inquire into the substance of a plan except as it is inseparable from technical matters.

(4) The board will not approve a proposed impact plan if it is obvious that its provisions for tax crediting would shift the tax burden from the developer to the other local taxpayers.

(5) The board will approve an impact plan pursuant to section 90-6-307, MCA, only after it has determined that the plan meets the technical, statutory, and regulatory requirements reflected in (1) and (2) of this rule.

(6) If the plan has been modified during a formal review or negotiation period by mutual consent of the developer and the affected local government units, the board will approve the modified plan or the modified amendment only after the modifications have been incorporated into the plan in compliance with this rule and ARM 8.104.215. The table of contents, summary, schedule, and statement of commitment must reflect the modifications. Obsolete material must be deleted from the plan.

(7) Any party to the plan may request that the board determine whether an issue is a technical compliance issue or involves substance only.

(8) ARM 8.104.210, which prohibits representatives of parties to a plan from communicating with board members outside the context of a board meeting on any issue related to the plan, applies during the period in which a plan is undergoing technical compliance review."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

3. The reason for adopting proposed rule I is twofold. First, it is necessary to formalize the long-standing procedure by which the Board determines whether it has jurisdiction to approve a document submitted to it as an impact plan. If the document does not contain the bare elements required by statute, it is not technically a "plan" for purposes of the Hard-Rock Mining Impact Act and the board has no authority to approve it. Secondly, the process formalized by the proposed rule is necessary to assure that the board's rule regarding the format and content of plans (ARM 8.104.203) has been complied with.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Montana Hard-Rock Mining Impact Board, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than November 28, 1986.

5. Koehler Stout, Board Chairman, will preside over and conduct the hearing.

HARD-ROCK MINING IMPACT BOARD
KOEHLER STOUT, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of October 20, 1986.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.402, Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.55.402, BASIC INSTRUCTIONAL PROGRAM: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES

TO: All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.55.402, Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates.

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

10.55.402 BASIC INSTRUCTIONAL PROGRAM: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) through (10) remain the same.

(11) A middle school, as defined in ARM 10.13.201, differs from a junior high school because middle school philosophy specifically addresses the unique nature of middle school children by focusing on their intellectual, social, emotional and physical development. To put such philosophy into practice, a middle school must have flexibility to approach instruction and teaching in a variety of ways, to undertake inter-disciplinary work and to plan blocks of course work deriving from the intellectual, social, emotional and physical needs of middle school students.

(a) A middle school minimum curriculum shall include the subjects (see i. through ix. below) which must be maintained in balance. Critical and creative thinking, career awareness, life-long learning and safety will be incorporated in the school program.

(b) Schools using this standard to incorporate flexibility in quest of a quality program shall document the program with curriculum guides, class schedules and other means to maintain balance among and within the disciplines enumerated below. Such documentation shall be reviewed and approved by the Office of Public Instruction. The middle school curriculum must fall within the continuum of skills that are part of the K-12 program in all disciplines.

(c) If the middle school program for grades seven and eight is funded at high school rates, it shall include:

(i) Art: art history, art criticism, aesthetic perception and production.

(ii) English Language Arts: reading, writing, listening and speaking.
(iii) Health and Physical Education
(iv) History, Social and Behavioral Sciences.
(v) Mathematics: written and mental computation and problem solving.
(vi) Music: general music, chorus and band (emphasizing comprehensive music elements, music history, criticism, aesthetic perception and musical production).
(vii) Physical and Natural Sciences.
(viii) Practical Arts: e.g., agriculture, business education, home economics, industrial arts.
(ix) Exploratory courses: e.g., creative writing, dance, drama, foreign language, photography.

AUTH: Sec. 20-2-121(7), 20-7-101, 20-7-111 MCA
IMP: Sec. 20-7-111. 20-2-121(7), 20-7-101 MCA

3. The purpose of this amendment is to provide middle level schools with a program option which is consistent with current professional practice.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. Ted Hazelbaker, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State October 20, 1986.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rules 10.64.301 - 10.64.516, Minimum Standards for School Buses, and the proposed adoption of new rules I - IV, Minimum Standards for School Buses	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF RULES 10.64.301-10.64.516, MINIMUM STANDARDS FOR SCHOOL BUSES, AND THE PROPOSED ADOPTION OF NEW RULES I - IV, MINIMUM STANDARDS FOR SCHOOL BUSES

TO: All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the repeal of Rules 10.64.301 through 10.64.516, Minimum Standards for School Buses, and the proposed adoption of new Rules I through IV, Minimum Standards for School Buses.

2. The rules as proposed to be repealed can be found on pages 10-975 through 10-1004 ARM. The proposed adoption of the new rules provides as follows:

I. BUS CHASSIS (1) The board of public education adopts and incorporates for bus chassis construction by reference herein the 1985 National Minimum Standards for School Buses.

(2) With the following additions:

(a) Electrical System

(i) Generator or Alternator

(A) Type A bus shall have a minimum of 80 ampere per hour.

(B) Type C and D buses shall have a generator or alternator with a minimum rating of at least 130 amperes (in accordance with Society of Automotive Engineers rating) with minimum charging of 30 amperes at manufacturer's recommended engine idle speed (12 volt system), and shall be ventilated and voltage-controlled and, if necessary, current controlled.

(C) Type A, B, C and D buses, equipped with an electrical power lift, shall have a minimum of 130 amperes per hour alternator.

(3) The 1985 Revised Edition of the National Minimum Standards for School Buses, adopted by reference in subsection (1) of this rule, is a nationally recognized model setting forth minimum standards and requirements for school bus construction. A copy of the 1985 National Minimum Standards for School Buses may be obtained from the office of public instruction, Capitol Station, Helena, MT 59620, at cost plus postage and handling. A copy may also be obtained by writing the National Safety Council, 444 North Michigan Avenue, Chicago, IL 60611.

AUTH: Sec. 20-2-121 MCA
IMP: Sec. 20-10-111 MCA
EFFECTIVE: January 1, 1987

II. BUS BODY (1) The board of public education adopts and incorporates for bus body construction by reference herein the 1985 National Minimum Standards for School Buses.

(2) With the following additions:

(a) Insulation

(i) Ceiling and walls shall be insulated with proper material to deaden sound and to reduce vibrations to a minimum. If thermal insulation is specified also, it shall be of fire-resistant material of type approved by Underwriters' Laboratories, Inc.

(ii) Floor insulation is required. It shall be 5-ply, at 5/8-inches thick and/or it shall equal or exceed properties of exterior-type softwood plywood, C-D Grade as specified in standard issued by U.S. Department of Commerce.

(b) Changes

(i) No changes shall be made in the construction of a vehicle used for the transportation of school children which are not approved by the Montana board of public education, by and with the advice of the Montana highway patrol and the superintendent of public instruction.

(3) The 1985 Revised Edition of the National Minimum Standards for School Buses adopted by reference in subsection (1) of this rule is a nationally recognized model setting forth minimum standards and requirements for school bus construction. A copy of the 1985 National Minimum Standards for School Buses may be obtained from the office of public instruction, Capitol Station, Helena, MT 59620, at cost plus postage and handling. A copy may also be obtained by writing the National Safety Council, 444 North Michigan Avenue, Chicago, IL 60611.

AUTH: Sec 20-2-121 MCA
IMP: Sec. 20-10-111 MCA
EFFECTIVE: January 1, 1987, except "Stop Signal Arm," page 27 of the National Minimum Standards for School Buses, July 1, 1987.

III. SPECIAL EDUCATION VEHICLE STANDARDS (1) The board of public education adopts and incorporates for special education vehicle standards for special education vehicle construction by reference herein the 1985 Minimum Standards for School Buses.

(2) With the following deletions:

(i) Delete: All reference to MPV (Multi-Purpose Passenger Vehicles).

(ii) Delete: Third and fourth introduction paragraphs and add the following wording: By federal regulation, buses, including school buses, are defined as vehicles designed to carry ten or more passengers. The rated capacity of the bus

before conversion to a special education unit (bus) is the capacity used for reimbursement.

(3) The 1985 Revised Edition of the National Minimum Standards for School Buses adopted by reference in subsection (1) of this rule is a nationally recognized model setting forth minimum standards and requirements for school bus construction. A copy of the 1985 National Minimum Standards for School Buses may be obtained from the office of public instruction, Capitol Station, Helena, MT 59620, at cost plus postage and handling. A copy may also be obtained by writing the National Safety Council, 444 North Michigan Avenue, Chicago, IL 60611.

AUTH: Sec. 20-2-121 MCA
IMP: Sec. 20-10-111 MCA
EFFECTIVE: January 1, 1987

IV. LP GAS MOTOR FUEL INSTALLATION The board of public education hereby adopts and incorporates by reference Pamphlet No. 58, National Fire Protection Association, Inc., 1986 edition. This pamphlet sets forth the safety specifications for converting gasoline fueled school buses to liquid petroleum gas.

(1) LP gas motor fuel conversion on public school buses is permitted. School districts or contractors converting school buses to LP are requested to contact the office of public instruction in order to be kept up-to-date on new carburetion developments.

(2) All installations of LP gas conversion equipment shall meet or exceed all of the safety specifications set forth by the National Fire Protection Association, Inc. Additional information about safe and correct methods for conversion are available from the National LP-Gas Association, 1301 West 22nd St., Oak Brook, IL 60521 (312-986-4800).

(3) All completed LP gas converted school buses will be inspected by the highway patrol during the semi-annual school bus inspections.

AUTH: Sec. 20-2-121 MCA
IMP: Sec. 20-10-111 MCA
EFFECTIVE: January 1, 1987

3. The board proposes to repeal these rules and proposes the adoption of new rules in order to bring Montana's standards into compliance with the current national standards.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. Ted Hazelbaker, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State October 20, 1986.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.64.601, General	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.64.601, GENERAL

TO: All Interested Persons

1. On December 4, 1986, at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.64.601, General.

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

10.64.601 GENERAL (1) Remains the same.

(2) The board of public education will approve or disapprove annually on an individual basis: those four-wheel drive vehicles currently approved, until July 1990. After July 1990, the entire sub-chapter 6 will be deleted from the rules.

(3) through (5) remain the same.

(6) Effective January 1987, any four-wheel drive vehicles purchased for school use shall be specifically manufactured for the purpose of transporting students to and from school. These vehicles must meet the 1985 minimum national standards for school buses.

(6) (7) Remains the same.

AUTH: Sec. 20-2-121 MCA
IMP: Sec. 20-10-111 MCA

3. The purpose of this amendment is to bring Montana's standards into compliance with the current national standards.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 12, 1986.

5. Ted Hazelbaker, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State October 20, 1986.

MAR Notice No. 10-3-114 20-10/30/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT and TRANSFER of Rules 42.22.2101 through 42.22.2103, and 42.22.2111 through 42.22.2115 relating to gross proceeds tax on coal production.	NOTICE OF THE PROPOSED AMENDMENT and TRANSFER of Rules 42.22.2101 through 42.22.2103, and 42.22.2111 through 42.22.2115 relating to gross proceeds tax on coal production.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 29, 1986, the Department of Revenue proposes to amend and transfer rules 42.22.2101 through 42.22.2103 and 42.22.2111 through 42.22.2115 relating to gross proceeds tax on coal production.

2. Rules 42.25.501 through 42.25.503 amend and transfer rules 42.22.2101 through 42.22.2103; and rules 42.25.511 through 42.25.515 amend and transfer rules 42.22.2111 through 42.22.2115 respectively.

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

~~42.22.2101~~ 42.25.501 DEFINITIONS (1) "Agreement not at arm's length" is defined as an agreement between two parties when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price.

(2) "Contract revenue" is defined as the total receipts or accruals from all sales of coal during the reporting period.

(3) "Contract sales price" is defined as FOB mine price less production taxes included by the producer in the sales price to pay taxes on production or a price imputed by the department of revenue according to ARM ~~42.22.2112~~ 42.25.512.

(4) "FOB mine price" is defined as contract revenue exclusive of all shipping expenses or any other expense incurred by the producer after the coal has been crushed to size and loaded for shipment.

(5) "Market value" is defined as an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the number of tons of coal sold.

(6) "Production taxes" is defined as the resource indemnity trust tax, severance tax, and the gross proceeds tax.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 7 MCA.

~~42.22.2102~~ 42.25.502 FILING REQUIREMENTS (1) Each year on or before March 31, all persons engaged in mining coal in this state are required to compute and file the department of revenue form "gross proceeds #1" reflecting the preceding calendar year production. All information requested on this form must be furnished and the form must be signed by an officer of the firm

mining the coal.

(2) A person who sells coal under a contract which is not an arm's length agreement must comply with subsection (1) and must upon request of the department furnish a copy of his federal income tax return and copies of his current sales contracts.

(3) A person who is producing coal and who uses the production in his own manufacturing and/or energy conversion process must comply with subsections (1) and (2).

AUTH: 15-23-108 MCA; IMP 15-23-701 MCA.

~~42.22.2109~~ 42.25.503 FAILURE TO FILE (1) Any person producing coal in this state who fails to file department of revenue form "gross proceeds #1" by March 31, must do so within 10 days after receipt of demand by the department.

(2) Any person refusing or neglecting to file after receipt of demand by the department will have the value of his coal computed by the department for gross proceeds tax purposes according to ARM ~~42.22.2112~~ 42.25.512.

AUTH: 15-23-108 MCA; IMP: ~~15-23-701~~ MCA.

~~42.22.2111~~ 42.25.511 DETERMINATION OF CONTRACT SALES PRICE (1) The department shall consider the date the coal is loaded for final transportation to the purchaser as the time for determining the contract sales price of the coal. To arrive at FOB mine price any shipping or any other expenses incurred after the coal is prepared for shipment may be excluded from the contract revenue. The contract sales price will be determined by deducting from the FOB mine price amounts charged to the purchaser to pay taxes on production.

(2) In computing production taxes the operator may include that amount which he expects to pay or the amount charged to the purchaser. If the taxes actually paid on the production are more or less than the production taxes deducted and affect the contract sales price, the difference shall be an adjustment in production taxes deducted for the following year.

(3) The formula for computing contract sales price shall be FOB mine price equals contract sales price plus severance tax plus resource indemnity trust tax gross proceeds tax. In computing the contract sales price, the calendar year sales or revenue will be the known reference point.

(4) The above formula should be applied to each contract individually with the exception of those contracts for which the department must impute value. The resource indemnity trust tax and the gross proceeds tax deductions shall be the actual amount charged to the purchaser.

AUTH: 15-23-108 MCA; IMP: 15-23-701 and 15-23-702 MCA.

~~42.22.2112~~ 42.25.512 IMPUTED VALUATION (1) When coal is sold or used under the following circumstances, the department may impute the value:

(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process;

(b) a person sells coal under a contract which is not an arm's length agreement; or

(c) the person neglects or refuses to file a statement.

(2) The department will consider market value to mean the amount determined by multiplying the FOB mine price of a similar ton of coal, as established by the marketplace at the time the sale was negotiated, by the number of tons of coal sold. In determining said FOB mine prices, the department will consider the contract term and other contract conditions as they affect the current FOB mine price of the similar ton of coal.

AUTH: 15-23-108 MCA; IMP: 15-23-701 and 15-23-702 MCA.

~~42.22.2113~~ 42.25.513 TAXABLE VALUATION (1) On or before July 1 each year the department will submit taxable valuations for each operating coal mine to the department's agent in the county where the coal was produced.

(2) In arriving at a taxable valuation the department will apply 45% for strip mines and 33-1/3% for underground mines to the contract sales price or imputed valuation.

AUTH: 15-23-108 MCA; IMP: 15-23-702 MCA.

~~42.22.2114~~ 42.25.514 RIGHT TO AUDIT (1) The department may examine records of coal companies, including contracts for the sale of coal, to determine whether the price of coal as reported is the result of an agreement not at arm's length. The department will, if necessary, examine operator's records as they pertain to gross proceeds, make all adjustments required, and transmit the adjustments to the department's agent in the county and to the operator.

(2) The department also has the right to summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to any matter which the department shall have the authority to investigate and determine. Records obtained from the operator shall be considered confidential.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 7 MCA.

~~42.22.2115~~42.25.515 IMPUTED VALUATION FOR REFINED COAL (1) For purposes of the coal severance tax and the coal gross proceeds tax, the department may, or shall at the request of the taxpayer, impute the value of coal which has been refined by drying, cleaning, or other processing designed to improve the quality of the coal. Refined or refining does not include transportation of the coal from the point of extraction to the point of shipment or to the boiler, nor any normal preparation process leading to shipment of coal.

(2) The imputed value of refined coal will approximate market value ~~from~~ FOB mine of similar type coal after primary and secondary crushing where drying, cleaning, or other further

processing has not occurred. The ~~f.o.b.~~ FOB mine price of similar type coal means the price of such coal as established by the market place at the time the sale for the refined coal occurs. The price will reflect the selling price of coal with like characteristics within the region, as determined by spot sales or other methods which reliably reflect the market value of unrefined coal at the time the sale of refined coal occurs.

(a) ~~Example--Refined~~ An example is when refined coal is sold for $12/ton. The ~~f.o.b.~~ FOB price of similar type coal where drying, cleaning, or further processing has not occurred is $10/ton. The imputed value is $10/ton.

AUTH: 15-35-111 MCA; IMP: 15-35-107 MCA.

4. Rules 42.22.2101 through 42.22.2103 are being transferred from Chapter 22, sub-chapter 21 to Chapter 25, sub-chapter 5; and rules 42.22.2111 through 42.22.2115 are being transferred from Chapter 22, sub-chapter 21 to Chapter 25, sub-chapter 5 of the Administrative Rules to place the rules with the remaining natural resource and corporation license tax rules to comply with an organization change which transferred the responsibility for the taxation of natural resources from the Property Tax Division to the Natural Resource and Corporation License Tax Division.

No substantive changes have been made to the rules other than grammatical changes, the renumbering of ARM sections to comply with the renumbering sequence of these rules, and increased cross-referencing within the rules.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 27, 1986.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Irene LaBare at the above address no later than November 27, 1986.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

8. The authority of the Department to make the proposed amendments is based on §§ 15-23-108 and 15-35-111, MCA. The rules implement Title 15, chapter 23, part 7, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT and TRANSFER of Rules 42.22.1101 through 42.22.1103) and 42.22.1111 through 42.22.1119 relating to net proceeds tax on miscellaneous) mines.	NOTICE OF THE PROPOSED AMENDMENT and TRANSFER of Rules 42.22.1101 through 42.22.1103, and 42.22.1111 through 42.22.1119 relating to net proceeds tax on miscellaneous mines.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 29, 1986, the Department of Revenue proposes to amend and transfer rules 42.22.1101 through 42.22.1103 and 42.22.1111 through 42.22.1119 relating to net proceeds tax on miscellaneous mines.

2. Rules 42.25.1101 through 42.25.1103 amend and transfer rules 42.22.1101 through 42.22.1103; and rules 42.25.1111 through 42.25.1119 amend and transfer rules 42.22.1111 through 42.22.1119 respectively.

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

~~42.22.1101~~ 42.25.1101 DEFINITIONS (1) "Mine" or "mining claim" is the location at which a mineral is produced, extracted, or quarried. The mining claim may include one or more mines depending upon ownership (single), location, integration of mining system, and single management.

(2) ~~The term "mineral"~~ "Mineral" includes precious or semi-precious stones or gems, gold, silver, lead, coal, lime rock, granite, marble, gravel, talc, phosphate, and other minerals, rock, or stone extracted from underground mines, placer mines, quarries, open pits, dumps, or tailings.

(3) "Reduction works" shall be meant to include smelters, mills crushing, washing, or treatment plants which prepare the product mined to a point where it has marketable value.

AUTH: 15-23-108 MCA; IMP: 15-23-501 MCA.

~~42.22.1102~~ 42.25.1102 NET PROCEEDS TAX RETURN (1) ~~Return~~ A return and statement for the assessment of net proceeds must be on the form prescribed by the department of revenue and must contain the following detailed information:

(a) name and address of the owner, lessee, or operator of the mining operation;

(b) name and address of the owner of the mine if other than that of the named operator;

(c) name and address of each royalty owner and the percentage of his royalty interest or the amount per ton, or other unit, which is to be paid under the royalty agreement and the actual amount paid to each royalty owner;

(d) the county in which the mining operation is located,

and if the mining operation extends across county lines, the percentage of the ore or mineral extracted for each county;

(e) the legal description of the location of the mining operation by section, township and range, and the school district in which it is located, and if the mining operation extends into more than one school district, the percentage of ore of mineral extracted for each school district;

(f) the total tonnage must be reported (also the value of the ore in constituents of monetary value for each mineral must be shown):

EXAMPLE

Total tonnage mined _____

_____	oz. gold	@$_____	per oz.	$_____
_____	oz. silver	@$_____	per oz.	$_____
_____	lb. lead	@$_____	per lb.	$_____
_____	lb. copper	@$_____	per lb.	$_____
_____	tons ____	@$_____	per ton	$_____
_____	carats __	@$_____	per carat	$_____
			Total Value	_____

(g) deductions taken as listed and explained in ARM ~~42.22.1111~~ 42.25.1111 through ~~42.22.1117~~ 42.25.1117, and ~~42.22.1119~~ 42.25.1119;

(h) cost of transporting the product of the mining operation to the mill, smelter, or reduction works (depending on the specific operation);

(i) costs of operations of the reduction works;

(j) costs of repairs and replacements of the reduction works;

(k) assessed value of the reduction works as shown on the county tax rolls;

(l) costs of transporting the marketable product to the point of actual sale;

(m) costs of marketing the product and conversion into money;

(n) costs of construction, repairs, and betterments to the mine.

(2) No miscellaneous items will be allowed as deductions. All deductions must be itemized.

(3) No return on which the required information is incomplete will be accepted as the required filing.

AUTH: 15-23-108 MCA; IMP: 15-23-502 MCA.

~~42.22.1103~~ 42.25.1103 VALUATION (1) The department of revenue shall calculate and compute from ~~said~~ the returns the gross product yielded from the mine and its gross value in dollars and cents for the year covered by the return and also shall calculate and compute the net proceeds in dollars and cents yielded to the mine operator. The net proceeds shall be

ascertained and determined by subtracting from the gross value in dollars and cents the deductions which are allowed to the operator of the mine. Allowable deductions are set forth in ARM ~~42.22.1111~~ 42.25.1111 through ~~42.22.1117~~ 42.25.1117.

(2) Each operator shall be notified of the assessment to be placed on each mine. Any changes made in auditing the net proceeds return, which result in a change in the net proceeds assessment from the amount shown by the taxpayer, shall be explained in this notification.

AUTH: 15-23-108 MCA; IMP: 15-23-102 and 15-23-503 MCA.

~~42.22.1111~~ 42.25.1111 TREATMENT OF ROYALTIES (1) All royalties (including those considered to be nontaxable) may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103.

(2) Each royalty interest shall be assessed at its full cash value in the same manner as net proceeds regardless of the net proceeds of the operator or whether he deducted the royalty to arrive at his net proceeds.

(3) Upon receipt of royalty lists the department of revenue shall transmit it to the respective county assessors in whose county the mine is located.

(4) Each royalty owner shall be notified of the amount of his royalty assessment as reported by the mine operator.

(5) ~~(a)~~ Certain royalties are considered to be nontaxable and shall not be assessed. These nontaxable royalties are defined in subsection ~~(5)(b)~~ (6).

~~(b)~~ (6) All royalties are subject to taxation with certain exceptions as defined below:

~~(i)~~ (a) Royalties paid to the U. S. government, state, county, city, school district, or other political subdivision of the state are considered to be nontaxable.

~~(ii)~~ (b) Royalties paid to Indian tribes from production on tribal land have been determined to be taxable, but royalties paid to the U.S. government from production on allotted Indian land have been determined to be nontaxable.

AUTH: 15-23-108 MCA; IMP: 15-23-505 and 15-23-507 MCA.

~~42.22.1112~~ 42.25.1112 EXPENSES RELATED TO MACHINERY (1) All monies expended for machinery may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103.

(2) Machinery shall include all that is used in the construction, sinking, or running of shafts, tunnels, drifts, or other works in the extracting or mining of the ore deposit.

(3) In open pit, placer, and quarry mining operations, heavy equipment, including shovels, draglines, dozers, graders, loaders, trucks, railroad cars, locomotives, and drilling, and pumping equipment used in the actual mining area (extracting ore to point of reduction, beneficiation of shipping, as related to the individual operations) are to be considered as costs of machinery used in extracting and mining of the mineral.

(4) Monies expended for the rental of machinery or equipment used in the mining operations are considered a deductible item.

(5) No monies invested in machinery including leased and rented machinery shall be allowed as a deduction unless all machinery represented by such money shall be returned to the county assessor of the county in which such mine is located for assessment purposes.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1113~~ 42.25.1113 LABOR COSTS (1) All monies expended for labor may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103.

(2) Labor shall include all monies expended for actual costs of necessary labor in the extracting of the mineral deposit.

(3) In the case of a mine where the actual mining operations are performed under contract by a subsidiary, the mine operator must furnish the department of revenue with an explanation of the basis on which the contract is made and an itemized breakdown of the actual costs included in the contract agreement.

(4) Salaries of engineers, geologists, and other technical personnel are a deductible item only to the extent that such personnel are employed exclusively in the mine operation.

(5) Superintendents shall be meant to include only the persons or officers actually engaged directly in the working of the mine or superintending the management thereof (at the mine site or in the vicinity thereof). This deduction is not meant to include any personnel in a corporate or headquarters office who have no part in the actual operations of the mine.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1114~~ 42.25.1114 COSTS OF IMPROVEMENTS, REPAIRS, AND BETTERMENTS (1) All monies expended for improvements, repairs, and betterments necessary in and about the working of the mine shall be allowed as a deduction at the rate of 10% per annum for a period of 10 consecutive years beginning with the year of expenditure in computing net proceeds as provided under ARM 42.25.1102 and 45.25.1103.

(2) The term "improvements, repairs, and betterments" is defined as buildings and improvements to the land located at the mine site.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1115~~ 42.25.1115 COSTS OF MILLING, SMELTER, AND REDUCTION WORKS (1) All monies expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103. There must not be included in this schedule any amount expended for the

construction of new buildings or the purchase or installing of new machinery or apparatus which are in the nature of additions or betterments to plant or equipment. Amounts expended for making repairs to buildings, machinery or equipment, or for constructing new buildings or purchasing and installing new machinery may be deducted when the buildings constructed or machinery purchased and installed are for the sole purpose of replacing old, worn out, or obsolete buildings or machinery.

(2) An amount equal to 6% six percent of the assessed valuation of the mill, smelter, or reduction works, for the calendar year for which the return is made, may be deducted if the person working the mine or deposit also operates the mill, smelter, or reduction works and mills, ~~or~~ smelts, or treats the ore or deposit mined by him. However, if the mill, smelter, or reduction works is used to mill, smelt, or treat the ore or deposit from any other mine or mines, then the amount of such depreciation must be ~~so~~ apportioned so that only the proper proportionate part thereof will be included in this return.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1116~~ 42.25.1116 TRANSPORTATION EXPENSES (1) Cost of transporting crude ore or deposit to mill, smelter, or reduction works may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103. ~~Include in this schedule~~ Included in these amounts shall be costs actually expended for hauling, freight charges, and other expenses connected directly with transporting the ore or deposit from the mine to the mill, smelter, or reduction works.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1117~~ 42.25.1117 MARKETING, ADMINISTRATIVE, AND OTHER OPERATIONAL COSTS (1) All monies expended for supplies may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103.

(2) All monies actually expended for transporting the ores or mineral products to the place of sale and for marketing the product and the conversion of the same into money may also be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103. In the case of ores or concentrates sold or transported in a crude or unfinished condition from a Montana mine, market costs must reflect the actual marketing expenses (including any handling and storage charges and sales costs), including brokers' commissions. In the case of mineral products manufactured in Montana from ores or concentrates produced in this state, the ores or concentrates may be valued at the end of the mining process and prior to further manufacturing; and in that event the deduction for transporting the mineral products to market and the cost of marketing the product and conversions into money will be determined by allocating an amount of the transportation cost to the place of sale based on the actual cost of transporting a crude product to the same

point, and then the amount representing the actual marketing expenses, based on the costs of marketing a crude product, including any handling and storage charges and sales costs including brokers' commissions. No deduction will be allowed for expenses which cannot be shown to be directly related to the transportation, handling, and sales costs incurred in marketing the product and converting it into money.

(3) All monies expended for fire insurance and for ~~workmen's~~ worker's compensation insurance, social security, unemployment insurance, medical-surgical-hospital insurance, and for payments by mine operators to welfare and retirement funds when required by wage contracts between mine operators and employees.

(4) No payments for taxes on production, license taxes, corporation, income, sales, real estate, personal property, and excise taxes may be used as a deduction.

(5) No monies expended for land lease rental or for land lease holdings may be used as a deduction.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1110~~ 42.25.1118 GENERAL TREATMENT OF DEDUCTIONS (1) The Net Proceeds of Mines Law, Title 15, chapter 23, part 5, MCA, as amended, provides for the ad valorem taxation of minerals as they are extracted from the ground and is intended to provide a tax in lieu of a property tax on such minerals in place. To determine the assessed value of the mineral, certain specific expenses are permitted as deductions from the gross value of the mineral.

(2) The purpose of the regulations is to set forth the intent of the law and its interpretation by the courts and to provide firm, unambiguous guidelines for valuing the product of a mining operation. The method followed determines the actual value of the extracted mineral and allows the deduction of just and equitable costs incurred in the actual mining, reduction, and marketing of the product.

(3) The Net Proceeds of Mines ~~law~~ Law provides for limited deductions incurred at the mine location in Montana and not the broad spectrum of deductions allowed by income tax laws. These deductions are specific and should not be construed to include items not listed. The deductions may vary depending on the point of valuation of the mineral, but will never be greater than those provided by statute.

AUTH: 15-23-108 MCA; IMP: 15-23-503 MCA.

~~42.22.1119~~ 42.25.1119 DEDUCTIONS FOR INSURANCE, WELFARE, RETIREMENT, MINERAL TESTING, SECURITY AND ENGINEERING (1) Fire, boiler, ~~and~~ machinery, and public liability insurance will be allowed as a deduction to the extent that it is insurance for equipment and buildings in the mine, and equipment and buildings in the reduction works, to the extent the insurance for the reduction works is not beyond the point of valuation. No insurance costs will be allowed for offices or other

administrative buildings. Where buildings are used both for administrative purposes and for the mining operation, the department will allocate, on a case by case basis, the costs between administration and mining. The department will allow only the insurance expenses attributable to the mining operation.

(2) ~~Cost~~ The cost of welfare and retirement fund payments provided for in wage contracts shall be deductible only for those employees actually involved in the mining or reduction work up to the point of valuation.

(3) The cost of testing minerals extracted, in satisfaction of federal or state health and safety laws or regulations, will be allowed for the mines and reduction works up through the beneficiation process to the extent that the costs are incurred for testing the product to the point of valuation.

(4) The cost of security in and around the mine and including the cost of security around the mill or reduction works in Montana shall be deductible provided these costs are not incurred beyond the point of valuation.

(5) The cost of assaying and sampling for extracted minerals will be allowed to the extent that they are a part of processes that bring the mineral to the point of valuation.

(6) Engineering and geological services will be allowed as described in 15-23-503(1)(h), MCA.

(7) The cost of labor, supplies, and equipment used to reclaim the mine site are deductible. If during the process of reclamation, other costs are incurred that result in an improvement or betterment in and about the working of the mine, those costs will be amortized over a 10-year period. The deductions provided in this paragraph are allowable beginning in the 1985 production year.

AUTH: 15-23-108 MCA; IMP: 15-23-502 and 15-23-503 MCA.

4. Rules 42.22.1101 through 42.22.1103 are being transferred from Chapter 22, sub-chapter 11 to Chapter 25, sub-chapter 11; and rules 42.22.1111 through 42.22.1119 are being transferred from Chapter 22, sub-chapter 11 to Chapter 25, sub-chapter 11 of the Administrative Rules to place the rules with the remaining natural resource and corporation license tax rules to comply with an organization change which transferred the responsibility for the taxation of natural resources from the Property Tax Division to the Natural Resource and Corporation License Tax Division.

No substantive changes have been made to the rules other than grammatical changes, the renumbering of ARM sections to comply with the renumbering sequence of these rules, and increased cross-referencing within the rules.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 27, 1986.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Irene LaBare at the above address no later than November 27, 1986.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

8. The authority of the Department to make the proposed amendments is based on §§ 15-23-108, MCA. The rules implement §§ 15-23-102, 15-23-501, 15-23-502, 15-23-503, 15-23-505, and 15-23-507, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

or operator;

(b) name, address, and phone number of person actively superintending the mining operation;

(c) name and address of each royalty owner, the percentage of his royalty interest, and the actual amount due each royalty owner;

(d) the county in which the well, lease, or unit is located, and if the operation extends across county lines, the percentage of production for each county;

(e) the legal description of the location of the well, lease, or unit by section, township and range, and the school district in which it is located, and if the operator extends into more than one school district, the percentage of production for each school district and special district;

(f) the total barrels of oil of MCF of gas produced and the gross value thereof;

(g) deductions taken as listed and explained in ARM ~~42.22.1211~~ 42.25.1011 through ~~42.22.1217~~ 42.25.1017;

(h) the taxable net proceeds are computed by subtracting the deductions from the gross value.

AUTH: 15-23-108 MCA; IMP: 15-23-602 MCA.

~~42.22.1203~~ 42.25.1003 PROCEDURE UPON DISSOLUTION (1) Every operator who shall cease to do business during any taxpaying year shall make all statements, reports, and returns within 90 days and arrange for payment of the taxes.

(2) The department of revenue will hold the net proceeds returns and certify the values to the county for taxation in the following years.

AUTH: 15-23-108 MCA; IMP: 15-23-609 MCA.

~~42.22.1204~~ 42.25.1004 VALUATION (1) The department of revenue shall review the net proceeds tax returns, noting the gross product yielded from the mining operation and its gross value in dollars and cents for the year covered by the return, and also shall review the computation of the net proceeds in dollars and cents yielded to the oil or gas operator. The net proceeds are determined by subtracting from the gross value in dollars and cents the deductions which are allowed. Allowable deductions are set forth in ARM ~~42.22.1211~~ 42.25.1011 through ~~42.22.1217~~ 42.25.1017.

(2) Prior to certification to the county, each operator shall be notified of the assessment to be placed on his oil or gas production. Any corrections made during the review of the net proceeds return, which result in a change in the net proceeds assessment from the amount shown by the taxpayer, shall be explained in this notification.

AUTH: 15-23-108 MCA; IMP: 15-23-603 MCA.

~~42.22.1205~~ 42.25.1005 NATURAL GAS EXEMPT FROM SEVERANCE TAX (1) Natural gas produced from a well 5,000 feet deep or deeper on

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT and TRANSFER of Rules 42.22.1201 through 42.22.1208) and 42.22.1211 through 42.22.1217 relating to net proceeds tax on oil and gas production.	NOTICE OF THE PROPOSED AMENDMENT and TRANSFER of Rules 42.22.1201 through 42.22.1208 and 42.22.1211 through 42.22.1217 relating to net proceeds tax on oil and gas production.
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 29, 1986, the Department of Revenue proposes to amend and transfer rules 42.22.1201 through 42.22.1208 and 42.22.1211 through 42.22.1217 relating to gross proceeds tax on coal production.

2. Rules 42.25.1001 through 42.25.1008 amend and transfer rules 42.22.1201 through 42.22.1208 and rules 42.25.1011 through 42.25.1015 amend and transfer rules 42.22.1211 through 42.22.1215 respectively.

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

~~42.22.1201~~ 42.25.1001 DEFINITIONS (1) "Gross value" means the worth of the gross yields as determined by the operator's or producer's sales contracts. If the contracts are not arms-length, a value must be applied which reflects the market value at the sales contract date. The ~~Gross Value~~ gross value is not dependent upon a sale.

(2) "Lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. A lease may contain one or more wells. One operator shall be named as the lease operator and shall be responsible for filing the net proceeds tax return.

(3) "Unit "operation" is one in which persons owning leasehold interest in one or more pools or portions thereof in a field combine their operations to function as one unit operation for pressure maintenance of secondary recovery purposes, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced. One operator must be named as the unit operator and shall be responsible for filing the net proceeds tax return.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 6 MCA.

~~42.22.1202~~ 42.25.1002 NET PROCEEDS TAX RETURN (1) The return and statement for the assessment of net proceeds must be on the form prescribed by the department of revenue.

(2) The return must contain the following information:

(a) name, address, and phone number of the owner, lessee,

which drilling was commenced after December 31, 1976, but before December 31, 1992, is exempt from all of the severance tax imposed by section 15-36-101, MCA, for ~~3~~ three years. This exemption applies only when the gas produced qualifies according to section 15-36-121(2)(a) and (b), MCA. The ~~3~~ three year exemption period will run for 36 calendar months beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.
AUTH: 15-1-201 MCA; IMP: 15-36-121 MCA.

~~42.22.1206~~ 42.25.1006 NATURAL GAS EXEMPT FROM ONE-HALF THE NET PROCEEDS TAX (1) Natural gas produced from a well 5,000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, 1992, is exempt from one-half the net proceeds tax imposed by 15-23-607, MCA, for ~~3~~ three years. This exemption applies only when the gas produced qualifies according to section 15-36-121(2)(a) and (b), MCA. The ~~3~~ three year exemption period will run for 36 calendar months beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.
AUTH: 15-23-108 MCA; IMP: 15-23-612 and 15-36-121 MCA.

~~42.22.1207~~ 42.25.1007 STATUTE OF LIMITATIONS (1) The statute of limitations pertaining to adjustments to the net proceeds of oil and gas has been changed to ~~5~~ five years - effective for production years ending on or after December 31, 1980. Any additional assessment or claim for refund must be mailed within ~~5~~ five years of the due date or the date the return was filed whichever is later. The statute may expire at a later date where the tax return is filed after the due date. Production years ending prior to December 31, 1980, remain subject to the 10 year statute of limitations.

(2) Current statute expiration dates are shown below.

Production Year	Statute Expiration Date
1972	December 31, 1983
1973	December 31, 1984
1974	December 31, 1985
1975	December 31, 1986
1976	December 31, 1987
1977	December 31, 1988
1978	December 31, 1989
1979	December 31, 1990
1980	March 31, 1986
1981	March 31, 1987
1982	April 15, 1988
1983	April 15, 1989
1984	April 15, 1990

AUTH: 15-23-108 MCA; IMP: 15-8-601 and 15-23-116 MCA.

~~42.22.1208~~ 42.25.1008 WINDFALL PROFIT TAX (1) Effective for production years beginning on or after January 1, 1980, the amount of the windfall profit tax deduction allowed in the computation of the oil net proceeds is:

(a) ~~Seventy~~ seventy percent of the amount paid or withheld in satisfaction of the liability for windfall profit tax; or

(b) the actual windfall profit tax. For the purpose of this rule, working interest owner's and royalty interest owner's windfall profit tax deduction in a particular property may be determined separately. Nothing in this rule shall preclude either the department or the taxpayer from adjusting the windfall profit tax deduction of all interests to the actual tax liability. The intent of the department, in the administration of the windfall profit tax deduction, will be to determine, whenever administratively feasible, an accurate value for all portions of an oil property, with all interests in a property having their windfall profit tax deduction calculated on an identical basis.

(2) The base to which the 70% factor will be applied is the amount withheld or payment made incident to a bona fide and orderly discharge of the actual tax liability during the production year. It will not include duplicate withholding or withholding for nontaxable royalty interests without regard to whether or not these interests have filed exemption certificates. It will include any corrections for prior tax periods.

(3) When the windfall profit tax is reduced by 30% or adjusted to the actual liability for years 1980, 1981, or 1982, the reduction or adjustment will be assessed in 1984 using the mill levy in effect for the year adjusted.

(4) ~~(a)~~ For the purpose of requesting an adjustment under § section 15-23-615, MCA, the request must be made by the taxpayer who for the purposes of this rule is the operator designated pursuant to ARM ~~42.22.1201(2)~~ 42.25.1001(2) and (3). ~~(b)~~ No adjustment by either the department or taxpayer to the windfall profit tax deduction can be made without considering either all working interests or all royalty interests in the property and their respective windfall profit tax liability.

(5) In the event of an adjustment by either the working interests or royalty interests, the taxpayer-operator will provide the following information, when applicable, for either interest group in the producing properties for which the adjustment is being made:

(a) Form 6248, Annual Information Return of Windfall Profit Tax;

(b) Form 6249, Computation of Overpaid Windfall Profit Tax, or Form 6249-A, Royalty Owner's Credit for Overpaid Windfall Profit Tax;

(c) Form 720, Quarterly Federal Excise Tax Return;

(d) Form 843 Claim (for refund) and any other federal form documenting refund claims relating to the windfall profit tax liability; and

(e) Supporting workpapers for the above forms with sufficient detail and any other documentation necessary to enable the department to determine the amount of windfall profit tax paid and the amounts refunded or allowed as a credit for each property.

(6) The department will require certain information from the taxpayer-operator if either the working interest owners or the royalty owners elect to claim the actual windfall profits tax liability.

(a) If under subsection (1) of this rule a taxpayer-operator elects to adjust only the working interest portion of the windfall profit tax to the actual liability, the following information must be provided for each royalty interest in the ~~property(s)~~ property(ies) for which the actual calculation is proposed to be made:

(i) social security numbers and current addresses for each individual royalty owner in the property; or

(ii) if the royalties are held in a trust, the federal identification number and proper mailing address; or

(iii) if the royalties are held by a corporation, the federal employer's identification number and proper mailing address.

(b) If only the royalty owners elect to report actual windfall profit tax liability, the department may require the taxpayer-operator to provide the information for working interests as described in ~~section~~ subsection (5) above.

(c) If the information described in (6)(a) and (6)(b) is not provided at the time the taxpayer-operator files the request for adjustment to actual, the request will not be processed by the department until such time as all information described above has been received.

(7) Department adjustments to either the working interest or royalty interest portion of the windfall profits tax deduction will require the following information:

(a) In the event of an adjustment by the department of the working interests, the taxpayer-operator will provide for all the working interests the information described in (5)(a) through (5)(e) above.

(b) In the event of an adjustment by the department of the royalty interests, the taxpayer-operator will provide for all the royalty interests the information described in (6)(a) above.

(c) The taxpayer-operator shall also provide any other information that may be reasonably required by the department in either circumstance described above in this section.

AUTH: 15-23-108 MCA; IMP: 15-23-603, 15-23-605, 15-23-615, and 15-23-616 MCA.

~~42.22.1211~~ 42.25.1011 TREATMENT OF ROYALTIES (1) All royalties including those considered to be nontaxable may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004.

(2) All taxable royalty payments shall be assessed at full cash value regardless of the net proceeds of the operator. Certain royalty interests are considered to be nontaxable. These nontaxable royalties are set forth in subsection (3).

(3) All royalties are subject to taxation with certain exceptions as defined below:

(a) Royalties paid to the U. S. government, state, county, city, school district, or other political subdivision of the state are considered to be nontaxable.

(b) Royalties paid to Indian tribes from production on tribal land have been determined to be taxable, but royalties paid to the U. S. government from production on allotted Indian land have been determined to be nontaxable.

AUTH: 15-23-108 MCA; IMP: 15-23-603 and 15-23-605 MCA.

~~42.22.1212~~ 42.25.1012 EXPENSES RELATED TO MACHINERY (1) All monies expended for machinery to the extent used in the development or production of a well, lease, or unit may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004, except as provided in ARM ~~42.22.1215~~ 42.25.1015.

(2) Machinery shall include pumps and pumping equipment, motors, trucks, dozers, wellhead equipment, storage tanks, meters, and other machinery, not to include machinery used beyond the point of sale.

(a) Vehicle acquisition and operating costs, including insurance, are deductible to the extent the costs are incurred for vehicle use directly related to the operation and development of the well. Acquisition costs include either the annual lease cost or the purchase price. No deduction will be allowed for finance charges associated with the operation or acquisition of a vehicle. The deductible amount will be computed using a ratio of miles traveled directly related to the operation and development of the well to total miles traveled. The operator must maintain mileage records to substantiate this deduction.

(b) The pro rata portion of the vehicle purchase price will be deductible only in the year of acquisition. It will be assumed for computational purposes that the vehicle was in service for the entire acquisition year. Annual lease costs will be deductible in the production year that payment is made. The deduction for vehicle acquisition and operating costs is effective for production years beginning on or after January 1, 1985.

(3) Monies expended for lease or rental of machinery or equipment used at well, lease, or unit may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004.

(4) No monies invested in machinery including leased and rented equipment shall be allowed as a deduction unless the property represented by such money is returned to the county assessor of the county in which such well is located for assessment purposes.

AUTH: 15-23-108 MCA, and Sec. 3, Ch. 642, L. 1985; IMP: 15-23-603 MCA.

~~42.22.1213~~ 42.25.1013 LABOR COSTS (1) All monies expended for labor to the extent used in the development or production of a well, lease, or unit, except as provided in ARM ~~42.22.1215~~ 42.25.1015, may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004.

(2) Labor shall include all monies expended for labor in the development or production of gas or oil.

(3) Salaries of engineers, geologists, and other technical personnel are a deductible item only to the extent that such personnel devote time to the specific well, lease, or unit.

(4) Superintendents shall be meant to include only the persons or officers actually engaged directly in the working of the well, lease, or unit or superintending the management thereof. This deduction is not meant to include any personnel in a corporate or headquarters office who are not involved in the actual on site operations.

AUTH: 15-23-108 MCA; IMP: 15-23-603 MCA.

~~42.22.1214~~ 42.25.1014 COSTS OF IMPROVEMENTS, REPAIRS, AND BETTERMENTS (1) All monies expended for improvements, repairs, and betterments necessary in and about the working of the well, lease, or unit may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004.

AUTH: 15-23-108 MCA; IMP: 15-23-603 MCA.

~~42.22.1215~~ 42.22.1015 DEDUCTIONS FOR DRILLING COSTS AND CAPITAL EXPENDITURES (1) Deductions allowable for cost of drilling wells drilled during the period and for other capital expenditures shall be allowed at 10% of such cost each year for a period of 10 consecutive years; provided, however, the operator may elect to amortize these costs over a period of two consecutive years if the well is less than 3,000 feet deep. The election made with the initial filing shall be applicable for the life of the amortization of the asset.

(2) Capital expenditures other than drilling costs may include buildings, equipment, and tanks permanently installed on the lease.

(3) Capital expenditures relating to the production of associated gas may be estimated by using a ratio the numerator of which is the gross value of gas produced from the well; the denominator being the gross value of both the oil and gas produced. This ratio is applied to all capital expenditures and drilling costs which are related either exclusively to gas production or to both oil and gas production. If the ratio is less than 20%, then no capital expenditures or drilling costs will be deemed attributable to the gas production. All these costs would then be amortized against the oil production.

(4) Costs of dry holes drilled on a lease or unit are deductible to the specific lease or unit on which they are drilled. Costs of dry holes drilled outside the boundaries of any lease or unit are not to be deducted on that lease or unit.

(5) The amortization period for deduction of these capital expenditures shall begin with respect to natural gas production, on January 1 of the year production from a nonexempt gas well is first placed into a natural gas distribution system; and, with respect to oil production, on January 1 of the year when production for sale from a crude oil well is pumped or flows. The amortization periods described above are effective for production years beginning on or after January 1, 1985. Prior to that time, amortization periods begin when the nonqualified natural gas or crude oil well is completed.

AUTH: 15-23-108 MCA, and Sec. 3, Ch. 642, L. 1985, IMP: 15-23-604 MCA.

~~42.22.1216~~ 42.25.1016 TREATMENT OF DEPLETION (1) Depletion is not an allowable deduction in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004.

AUTH: 15-23-108 MCA; IMP: 15-23-603 MCA.

~~42.22.1217~~ 42.25.1017 ADMINISTRATIVE AND OTHER OPERATIONAL COSTS (1) All monies expended for supplies to the extent used in the development or production of a well, lease, or unit except as provided for in ARM ~~42.22.1215~~ 42.25.1015 may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004. Clerical and office expenses are allowed only to the extent that they relate to the actual production of the product.

(2) All money expended for fire insurance, liability, and casualty insurance directly attributable to the operation and development of the well, workers' compensation insurance, performance or indemnity bonds required by the laws or rules of this state, and for payment by operators to welfare and retirement funds when required by wage contracts between operators and employees ~~will be allowed as a deduction for net proceeds calculations~~ may be deducted in computing net proceeds as provided under ARM 42.25.1002 and 42.25.1004. Deductions for liability and casualty insurance, and performance or indemnity bonds are effective for production years beginning on or after January 1, 1985.

(3) No payments for taxes on production, license taxes, and corporation, income, sales, real estate, personal property, fuel, and excise taxes may be used as a deduction.

(4) No monies expended for land lease rental or for land lease holding may be used as a deduction.

(5) No miscellaneous items will be allowed. All deductions must be itemized.

AUTH: 15-23-108 MCA, and Sec. 3, Ch. 642, L. 1985; IMP: 15-23-603 MCA.

4. Rules 42.22.1201 through 42.22.1208 are being transferred from Chapter 22, sub-chapter 12 to Chapter 25, sub-chapter 10; and rules 42.22.1211 through 42.22.1217 are being transferred from Chapter 22, sub-chapter 12 to Chapter 25, sub-chapter 10 of the Administrative Rules to place the rules with the remaining natural resource and corporation license tax rules to comply with an organization change which transferred the responsibility for the taxation of natural resources from the Property Tax Division to the Natural Resource and Corporation License Tax Division.

No substantive changes have been made to the rules other than grammatical changes, the renumbering of ARM sections to comply with the renumbering sequence of these rules, and increased cross-referencing within the rules, with the exception of rules 42.22.1208(6) and 42.22.1208(7) where an explanatory paragraph was added in order to clarify the procedures.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 27, 1986.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Irene LaBare at the above address no later than November 27, 1986.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

8. The authority of the Department to make the proposed amendments is based on §§ 15-1-201, 15-23-108, MCA, and Sec. 3, Ch. 642, L. 1985. The rules implement §§ 15-8-601, 15-23-116, 15-36-121, MCA, and Title 15, ch. 23, part 6, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I and II relating to industrial machinery and equipment trend factors and industrial machinery and equipment depreciation schedules.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I and II relating to industrial machinery and equipment trend factors and industrial machinery and equipment depreciation schedules.

TO: All Interested Persons:

1. On November 20, 1986, at 9:00 a.m., a public hearing will be held in Room 202, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of new rules I and II, relating to industrial machinery and equipment trend factors and industrial machinery and equipment depreciation schedules.

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

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

RULE I INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

(1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306.

INDUSTRIAL
MACHINERY AND EQUIPMENT TREND FACTORS
1986 = 100%

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6
1986	1.000	1.000	1.000	1.000	1.000	1.000
1985	1.007	1.004	1.013	1.005	1.006	1.007
1984	1.022	1.019	1.033	1.023	1.021	1.021
1983	1.047	1.042	1.058	1.052	1.049	1.049
1982	1.062	1.058	1.073	1.075	1.065	1.072
1981	1.113	1.118	1.124	1.126	1.115	1.117
1980	1.233	1.243	1.243	1.249	1.233	1.227
1979	1.367	1.371	1.373	1.386	1.365	1.344
1978	1.491	1.498	1.503	1.519	1.484	1.472
1977	1.603	1.612	1.617	1.636	1.593	1.596
1976	1.687	1.703	1.705	1.724	1.675	1.689
1975	1.786	1.806	1.811	1.832	1.773	1.821
1974	2.003	2.055	2.033	2.075	1.992	1.982
1973	2.350	2.408	2.356	2.426	2.336	2.244
1972	2.431	2.494	2.422	2.523	2.427	2.314
1971	2.512	2.585	2.538	2.619	2.524	2.391

1970	2.672	2.745	2.713	2.756	2.695	2.533
1969	2.841	2.924	2.904	2.949	2.885	2.696
1968	2.958	3.052	3.044	3.085	3.024	2.806
1967	3.068	3.173	3.179	3.175	3.158	2.905

TABLE 1:
Chemical Mfg. (12)
Fertilizer Mfg. (12)
Oxygen Generation Plant (20)
Sulfur Mfg. (12)
Flour, Cereal, Feed (16)
Seed Plant (16)
Grain Elevator (16)
Wood Pellet Plant (16)
Printing (12)

TABLE 2:
Industrial Shop (10)
Cement Manufacturing (20)
Stationary Asphalt Plant (15)
Bentonite (20)
Concrete Products (20)
Concrete Ready-Mix Plant (18)
Gypsum Products Mfg. (20)
Lime & Calcium
Benefication (20)
Talc Benefication (20)
Sugar Refinery (20)
Petroleum Refinery (16)
Natural Gas Refinery (16)

TABLE 3:
Creamery & Dairy (12)
Meat Packing (12)
Fruit Cannery (12)
Honey Processing (12)
Candy & Confectionary (20)
Bakery (12)

TABLE 4:
Vulcanizing (15)
Foundry (15)
Metal Machining & Milling (15)
Metal Fabrication (20)
Plastic Products Mfg. (20)
Polystyrene (20)
Rifle Manufacturing (15)

TABLE 5:
Refrigeration Equip. Mfg. (12)
Paint Manufacturing (12)
Steam Power (16)
Hydraulic Generation (20)
Brewing & Distilling (20)
Alcohol Plant (15)
Gasohol Plant (15)
Vegetable Oil Extraction (20)

TABLE 6:
Fruit Packing (12)
Egg Packing (20)
Sawmill Equipment (10)
Wood Furniture Mfg. (20)

YEAR	TABLE 7	TABLE 8	TABLE 9	TABLE 10	TABLE 11
1986	1.000	1.000	1.000	1.000	1.000
1985	1.004	1.005	1.004	1.005	1.009
1984	1.017	1.017	1.018	1.017	1.023
1983	1.039	1.040	1.046	1.045	1.053
1982	1.063	1.052	1.063	1.063	1.071
1981	1.122	1.099	1.105	1.113	1.121
1980	1.245	1.216	1.214	1.228	1.237
1979	1.367	1.324	1.347	1.350	1.354
1978	1.495	1.444	1.475	1.470	1.473
1977	1.614	1.555	1.578	1.587	1.583
1976	1.711	1.641	1.660	1.673	1.663

1975	1.830	1.774	1.756	1.780	1.772
1974	2.091	1.932	1.957	2.005	1.965
1973	2.410	2.183	2.278	2.331	2.274
1972	2.492	2.236	2.354	2.409	2.350
1971	2.569	2.320	2.422	2.489	2.428
1970	2.726	2.471	2.579	2.642	2.577
1969	2.900	2.610	2.734	2.810	2.741
1968	3.020	2.700	2.840	2.926	2.854
1967	3.131	2.798	2.936	3.035	2.959

TABLE 7:
Clay Products (15)
Nonferrous Smelting (15)
Coal Brushing & Handling (20)
Graphite Products (20)
Heap Leach: Pads (5), Mech. (20)
Open Pit Mining & Quarrying (15)
Ore Milling & Concentrating (15)
Phosphate Benefication (20)
Stone Products (15)
Underground Mining (10)
Vermiculite Benefication (15)

TABLE 8:
Warehousing (10)
Peat Moss Bagging Plant (20)
Fertilizer Distribution (10)

TABLE 9:
Electrical Equip. Mfg. (16)
Electronic Component Mfg. (10)
Laundry & Cleaning (10)

TABLE 10:
Pulp & Paper Mfg. (13)
Cardboard Container Fabrication (20)

TABLE 11:
Textile Fabrication (10)
Leather Fabrication (20)

Note: 1. The number in each parenthesis above indicates assigned economic expectancies.

Note: 2. Lab equipment is to be included in its related industry's table at 10-year life expectancy.
AUTH: 15-1-201 MCA; IMP: 15-8-111 MCA.

RULE II INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE The department of revenue will utilize the machinery and equipment depreciation schedule which is set forth in the following table. The depreciation schedule will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306.
AUTH: 15-1-201 MCA; IMP: 15-8-111 MCA.

RULE II
MANUFACTURING MACHINERY AND EQUIPMENT
PERCENT GOOD TABLE

Age	Life Expectancy																									
	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
1	85	86	88	90	91	92	93	94	94	95	95	95	96	96	97	97	97	97	98	98	98	98	98	98	98	98
2	69	73	76	79	81	84	86	87	88	89	90	91	92	93	93	93	93	94	94	95	95	95	96	96	97	97
3	52	57	62	67	72	76	78	80	82	83	85	86	88	89	90	90	90	91	92	93	93	93	94	94	95	95
4	34	41	47	54	61	67	70	73	75	77	79	80	82	83	85	86	87	88	89	90	90	91	91	92	92	93
5	20	30	37	43	50	58	62	66	69	71	73	74	76	78	80	82	83	84	85	86	87	88	89	90	91	91
6		20	27	33	41	49	54	58	62	65	68	69	71	74	76	78	80	81	82	83	84	85	86	87	88	89
7			20	26	33	39	45	50	54	58	62	64	66	68	71	74	76	77	78	80	81	82	83	84	85	86
8				20	25	30	37	43	47	51	55	57	59	63	67	70	72	73	75	77	78	80	81	82	83	84
9					20	24	30	36	41	45	49	52	56	59	62	65	67	69	71	74	75	77	78	80	81	82
10						20	25	29	34	39	43	46	49	53	57	60	63	65	67	69	71	73	75	77	78	79
11							20	24	29	33	37	40	43	47	51	55	58	61	63	65	67	69	71	73	75	76
12								20	24	28	31	34	38	42	46	50	53	56	58	61	64	66	68	70	72	74
13									20	23	26	29	32	36	41	45	48	51	54	57	60	62	65	67	69	71
14										20	23	26	28	32	36	40	44	47	50	53	56	59	62	64	66	68
15											20	23	25	28	32	35	39	43	45	49	52	55	58	61	63	65
16												20	22	25	28	31	35	39	42	45	48	51	54	57	59	61
17													20	22	25	27	31	35	38	41	44	47	50	53	56	58
18														20	22	24	27	31	34	38	41	44	47	50	53	55
19															20	22	24	27	31	34	38	41	44	47	50	53
20																20	22	24	27	31	34	38	41	44	47	50
21																	20	22	24	27	31	34	38	41	44	47
22																		20	22	24	27	31	34	38	41	44
23																			20	22	24	26	29	32	35	38
24																				20	22	24	26	29	32	35
25																					20	22	24	27	29	32
26																						20	22	24	26	29
27																							20	22	24	26
28																								20	22	24
29																									20	22
30																										20

4. The Department is proposing new rules I and II because of a recent District Court ruling that the depreciation and trending factors utilized by the Department to value industrial machinery and equipment for ad valorem tax purposes were rules within the meaning of the Administrative Procedure Act. Since the Department had not formally adopted these trending schedules and depreciation tables pursuant to the Administrative Procedure Act, the Court held that they were void and could not be used to value property. These rules are being proposed to formally adopt the trending tables and the depreciation schedule pursuant to formal rule making procedures.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620-2702

no later than November 27, 1986.

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

7. The authority of the Department to make the proposed adoptions is based on § 15-1-201, MCA, and the rules implement § 15-8-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of New Rule I relating to) commercial personal property) audits.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rule I relating to commercial personal property audits.

TO: All Interested Persons:

1. On November 20, 1986, at 9:00 a.m., in Room 202, 5 South Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the adoption of new rule I relating to commercial personal property audits.

2. The proposed new rule I does not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I COMMERCIAL PERSONAL PROPERTY AUDITS (1) The audit bureau will conduct audits of commercial personal property. These audits will be performed in order to implement 15-8-104, MCA, as amended by the legislature during 1985.

(2) Commercial personal property is defined as all property, other than real property and real property improvements, which is used for the production of income.

(3) Those commercial personal property assets which are appraised by the industrial property bureau will not be subject to this audit program. Those commercial personal property assets which are included in the appraisal of a centrally assessed company will not be subject to this audit program.

(4) The appraisal/assessment bureau will prepare a master list of all commercial personal property owners. This list will be developed based upon information supplied by the secretary of state, livestock department, department of revenue, agriculture department, department of commerce, agricultural stabilization and conservation service offices, and local government entities.

(5) The purpose of this audit program is to ensure that all taxable commercial personal property has been reported by taxpayers for assessment purposes and to ensure that all commercial personal property taxpayers are returning correct and accurate cost data on personal property returns.

(6) The department of revenue will seek access to the following records for purposes of conducting the audits, pursuant to 15-8-304(b), MCA:

(a) personal property returns on file in county assessors' offices,

(b) asset listings, asset registers, asset ledgers, and any information in the possession of the commercial personal property taxpayer which would reflect capital asset investment costs,

(c) any depreciation schedules, age/life programs, asset life schedules, or capital asset investment recovery records in the possession of the commercial personal property taxpayer or

his representative, and

(d) any other information in the possession of the county assessor and/or the commercial personal property taxpayer which is necessary in order to conduct a thorough audit.

AUTH: 15-1-201, MCA, and § 10, Ch. 743, L. 1985; IMP: 15-8-104, MCA.

4. The Department is proposing new rule I because the 1985 Legislature enacted House Bill No. 240 which directed the Department to commence a program of auditing commercial property. Rule I sets forth the operating procedures of the bureau responsible for this audit function.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620-2702

no later than November 27, 1986.

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

7. The authority of the Department to make the proposed adoption is based on § 15-1-201, MCA, and § 10, Ch. 743, L. 1985, and implements § 15-8-104, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I through III; the AMENDMENT of Rules 42.21.101, 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137, through 42.21.140 42.21.151, 42.21.155; and the REPEAL of 42.21.109 through 42.21.111, all relating to personal property taxes.	NOTICE OF PUBLIC HEARING on Rules I through III; the AMENDMENT of Rules 42.21.101 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137 through 42.21.140, 42.21.151, 42.21.155; and the REPEAL OF 42.21.109 through 42.21.111, all relating to personal property taxes.

TO: All Interested Persons:

1. On November 20, 1986, at 9:00 a.m., a public hearing will be held in Room 202, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of new rules I through III; the amendment of 42.21.101, 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137 through 42.21.140, 42.21.151, 42.21.155; and the repeal of 42.21.109 through 42.21.111, all relating to personal property taxes.

2. The proposed new rules I through III do not replace or modify any section currently found in the Administrative Rules of Montana. The rules proposed to be repealed can be found on page 42-2110 of the Administrative Rules of Montana.

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

RULE I DEFINITION OF TAXABLE SUPPLIES (1) Supplies include all tangible materials used or consumed in a business except those tangible materials which are held by a taxpayer as his stock in trade for sale in the ordinary course of business.

(2) Examples of supplies include, but are not limited to, fuel used in operations, parts held for repair of machinery, and chemicals used in process operations.

(3) Supplies do not include raw materials that are part of the final product.

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

RULE II PERSONAL PROPERTY TAXABLE SITUS (1) The taxable situs for personal property owned by a private individual shall be the levy district in which the owner has his principal or permanent residence.

(2) The taxable situs for personal property of a business, partnership, or corporation shall be the levy district within the county in which the principal place of business is located. If the personal property of a business, partnership, or corporation meets either one of the following requirements, its taxable

situs shall be the permanent location of the personal property rather than the principal place of business of its owner:

(a) The owner of the personal property signs an affidavit stating that the personal property will be located in excess of one calendar year in a county other than the county where the principal place of business is located. In that case, the taxable situs of the personal property will be the levy district within the county in which the personal property is located as of the January 1 assessment date; or

(b) The personal property has been located in a county, other than the county where the principal place of business is located in excess of one calendar year. In that case, the taxable situs of the personal property will be the levy district within the county in which the personal property is located as of the January 1 assessment date.

AUTH: 15-1-201 MCA; IMP: 15-8-402, 15-8-404, 15-8-408, and 15-8-409 MCA.

RULE III PERSONAL PROPERTY TAXATION DATES (1) In compliance with 15-8-201 and 15-8-301, MCA, all personal property subject to taxation shall be taxed to the owner or person in control or possession of the property as of midnight on January 1 of each tax year provided the personal property is not in an exempt status.

(2) For personal property situated within the state of Montana on January 1, the exempt and nonexempt status of personal property is as follows:

(a) If personal property is in an exempt status on January 1 of a specific tax year, and at any later date during that tax year loses its exempt status, the personal property will not be taxed until the following tax year.

(b) If the personal property is not in an exempt status on January 1 of a tax year, and at any later date during that tax year is assigned an exempt status, the personal property will be taxed for the entire tax year.

(3) For personal property situated outside the state of Montana on January 1, the exempt and nonexempt status of personal property is as follows:

(a) If personal property is in an exempt status when it is brought into the state of Montana during a tax year, and if at any later date during that tax year the personal property loses its exempt status, the personal property will not be taxed until the following tax year.

(b) If personal property is not in an exempt status when it is brought into the state of Montana, the department will prorate the taxes on the personal property pursuant to 15-24-301 and 15-24-304, MCA.

AUTH: 15-1-201 MCA; IMP: 15-8-201 and 15-24-301 MCA.

42.21.101 AIRCRAFT (1) The average market value of aircraft shall be the average wholesale value as computed from the

"Aircraft Price Digest". The average wholesale value shall be determined by adding the "Average Equipped Inventory" to the "Average Equipped Marketable" value for each model as contained in the "Aircraft Price Digest" and dividing the sum by two. No adjustments will be made for low or high engine hours or for extra equipment. The Winter Edition applicable to the year of assessment of the "Aircraft Price Digest", Aircraft Appraisal Association of America, Inc., Will Rogers Airport, Box 59977, Oklahoma City, Oklahoma 73159, will be used. This book may be reviewed in the department or purchased from the publisher.

(2) If the above-named publication does not value these properties, the department of revenue shall develop ~~trended~~ depreciation tables in which the percentages will approximate the wholesale value as calculated from the guidebook listed in subsection (1).

(3) For all aircraft which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original f.o.b. through old aircraft valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables ~~mentioned~~ indicated in subsection ~~(3)~~ (2) to arrive at a value which approximates wholesale value. The trend factors are contained in the January 1, 1987, Marshall Valuation Service Manual. The Marshall Valuation Service Manual published by "Marshall and Swift Publication Company", 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(4) Remains the same.

(5) The following percent good schedule will be used for the 1987 tax year.

YEAR ACQUIRED	% GOOD
1987	80%
1986	78%
1985	76%
1984	74%
1983	72%
1982	70%
1981	68%
1980	66%
1979	64%
1978	62%
1977	60%
1976	58%
1975	56%
1974	54%
1973	52%
1972	50%
1971	48%
1970	46%

1969	44%
1968	42%
1967	40%
1966	38%
1965	36%
1964	34%
1963	32%
1962	30%
1961	28%
1960	26%
1959	24%
1958	22%
1957 and before	20%

~~(5)~~ (6) This rule is effective for tax years beginning after December 31, ~~1985~~ 1986.
AUTH: 15-1-201 MCA, and Sec. 49, Ch. 516, L. 1985; IMP: 15-6-138 MCA.

42.21.102 WATERCRAFT AND MOTORS (1) The average market value of outboard boats shall be the ~~estimated~~ current estimated average trade-in value less repairs-high of such property as listed in the "Official Outboard Boat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(2) The average market value of inboard/outboard boats shall be the ~~estimated~~ current estimated average trade-in value less repairs-high of such property as shown in the "Official Inboard/Outboard Boat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(3) The average market value of sailboats shall be the ~~estimated~~ current estimated average trade-in value less repairs-high as shown in the "Official Sailboat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publishing Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(4) The average market value of inboard boats shall be the ~~estimated~~ current estimated average trade-in value less repairs-high of such property as listed in the "Official Inboard Boat Trade-In Guide Bluebook",
of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

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

(6) The average market value of outboard motors shall be the ~~estimated~~ current estimated average trade-in value less repairs-high of such property as shown in the "Official Outboard Motor Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(7) If the above named publications do not value these properties, the department of revenue shall develop trended depreciation tables in which the percentages will approximate the ~~estimated~~ current estimated average trade-in value less repairs - high as calculated from the guidebooks listed in subsections (1) through (6).

(8) For all watercraft and motors which cannot be valued under (1) through (6), the department of revenue or its agent shall try to ascertain the original f.o.b. through old watercraft and motor valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables mentioned in subsection (7) to arrive at a value which approximates wholesale value. The trend factors shall be the same as those mentioned in ARM 42.21.101(3).

(9) If the methods mentioned in subsections (1) through (6) and (8) cannot be used to ascertain ~~an estimated~~ current estimated average trade-in value less repairs - high market value for watercraft or motors, the owner or applicant must certify to the department of revenue or its agent the year acquired and the acquired price before that value can be applied to the table mentioned in subsection (7).

(10) The percent good schedules referred to in subsections (7) through (9) are listed below and shall be used for the 1987 tax year.

WATERCRAFT

YEAR ACQUIRED	% GOOD
1987	80%
1986	69%
1985	66%
1984	63%
1983	61%
1982	59%

1981	58%
1980	57%
1979	56%
1978	55%
1977	54%
1976	53%
1975	52%
1974	50%
1973	48%
1972	45%
1971	43%
1970	40%
1969	37%
1968	34%
1967 and before	30%

OUTBOARD BOAT MOTORS

YEAR ACQUIRED	% GOOD
1987	80%
1986	60%
1985	58%
1984	55%
1983	53%
1982	51%
1981	49%
1980	47%
1979	45%
1978	43%
1977	42%
1976	41%
1975	40%
1974	39%
1973	38%
1972	37%
1971	36%
1970	35%
1969	33%
1968	31%
1967 and before	27%

~~(10)~~ (11) This rule is effective for tax years beginning after December 31, ~~1983~~ 1986.
AUTH: 15-1-201 MCA; IMP: 15-6-146 MCA.

42.21.106 TRUCKS (1) and (2) remain the same.
(3) For all trucks which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original f.o.b. through old truck valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b.

The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates 80% of the average retail value. The trend factors shall be the same as those reflected to in ARM 42.21.101(3).

(4) Remains the same.

(5) The percent good schedule referred to in subsections (2) through (4) is listed below and shall be used for the 1987 tax year.

TRUCK % GOOD SCHEDULE

YEAR ACQUIRED	% GOOD
1987	80%
1986	58%
1985	50%
1984	42%
1983	36%
1982	34%
1981	34%
1980	30%
1979	25%
1978	23%
1977	21%
1976	19%
1975	18%
1974	17%
1973	16%
1972 and before	15%

~~(5)~~ (6) The department of revenue may develop other supplementary schedules for unique equipment and other trucks not listed in the guidebook. These schedules will be used in conjunction with the above schedules in the valuation of trucks. The purpose of the department developed schedules will be to arrive at a value which approximates 80% of the average retail value. Supplemental schedules for other trucks and unique equipment for 1987 have been developed and are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

~~(6)~~ (7) This rule is effective for tax years beginning after December 31, ~~1983~~ 1986.

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

42.21.107 TRAILERS (1) The market value for all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax, will be the ~~estimated~~ current estimated average trade-in value less repairs - high of such property as listed in "Boat Trailer Trade-In Guide" of the current year of assessment. This guide may be reviewed in the department or purchased from the

publisher: ABOS Marine Publications Division, Intertec Publishing Corp., P. O. Box 12901, Overland Park, Kansas 66212.

(2) and (3) remain the same.

(4) For all trailers which cannot be valued under subsection (1) and (2), the department of revenue or its agent shall try to ascertain the original f.o.b. through old valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables mentioned in subsection (3) to arrive at a value which approximates wholesale market value. The trend factors shall be the same as those mentioned in ARM 42.21.101(3).

(5) Remains the same.

(6) The percent good schedules referred to in subsections (3) through (5) are listed below and shall be used for the 1987 tax year.

TRAILERS 0 - 18,000 LBS. G.V.W.

YEAR ACQUIRED	% GOOD
1987	80%
1986	62%
1985	59%
1984	56%
1983	52%
1982	49%
1981	46%
1980	43%
1979	40%
1978	37%
1977	35%
1976	33%
1975	31%
1974	29%
1973	27%
1972	25%
1971	23%
1970	21%
1969	19%
1968	17%
1967 and before	15%

TRAILERS EXCEEDING 18,000 LBS. G.V.W.

YEAR ACQUIRED	% GOOD
1987	80%
1986	58%
1985	50%
1984	42%
1983	36%

1982	34%
1981	34%
1980	30%
1979	25%
1978	23%
1977	21%
1976	19%
1975	18%
1974	17%
1973	16%
1972 and before	15%

~~(6)~~ (7) The department of revenue may develop other supplementary schedules to value other unique trailers not listed in the guidebook. These schedules will be used in conjunction with the schedules mentioned in subsection (3) in the valuation of trailers. The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue 1987 trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

~~(7)~~ (8) This rule is effective for tax years beginning after December 31, ~~1984~~ 1986.

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

42.21.113 LEASED AND RENTED EQUIPMENT (1), (2), and (3) remain the same.

(4) The depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for tax year 1987.

Year Acquired	$0 - 500	$501 - 1500	$1501 - 5000
1986	100%	100%	100%
1985	70%	85%	85%
1984	45%	69%	69%
1983	20%	52%	52%
1982	20%	34%	46%
1981	20%	21%	37%
1980	20%	21%	33%
1979 and older	20%	21%	30%

~~(4)~~ (5) Lease or rental equipment which does not meet all of the criteria of subsection (1), shall be assessed and taxed in the appropriate class of property in which it is specifically included.

~~(5)~~ (6) Business inventories do not include goods held for lease and rent or goods leased or rented.

~~(6)~~ (7) This rule is effective for tax years beginning after December 31, ~~1984~~ 1986.

AUTH: 15-1-201 MCA; IMP: 15-6-136 MCA.

42.21.114 ABSTRACT RECORD VALUATION (1) The market value will be one dollar per parcel. The number of parcels per county shall be determined by the previous year end parcel count as determined by the ~~residential-commercial~~ appraisal/assessment bureau.

(2) This rule is effective for tax years beginning after December 31, 1984.

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

42.21.123 FARM MACHINERY AND EQUIPMENT (1) and (2) remain the same.

(3) For all farm machinery and equipment which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original f.o.b. through old farm machinery and equipment valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates wholesale value. The trend factors shall be the same as those mentioned in ARM 42.21.101(3).

(4) Remains the same.

(5) The percent good schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year 1987.

FARM MACHINERY & EQUIPMENT % GOOD SCHEDULE

YEAR	TRENDED % GOOD AVERAGE LOAN
1987	65%
1986	40%
1985	38%
1984	37%
1983	36%
1982	37%
1981	36%
1980	36%
1979	35%
1978	36%
1977	35%
1976	34%
1975	33%
1974	32%
1973	31%
1972	30%
1971	29%
1970	28%
1969	27%
1968	26%

1967	25%
1966	24%
1965	23%
1964	22%
1963	21%
1962 & older	20%

~~(5)~~ (6) The department of revenue may develop ~~other supplementary schedules and manuals~~ a manual for other farm equipment not listed in the guidebooks. ~~These schedules and manuals~~ This manual will be used in conjunction with the schedules mentioned in subsection (2) in the valuation of farm equipment and machinery. The purpose of the department developed ~~schedules and manuals~~ manual will be to arrive at ~~a value~~ values which ~~approximates wholesale value~~ approximate loan value. The 1987 department of revenue farm machinery manual is hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

~~(6)~~ (7) If a piece of farm machinery or equipment's market value is below $100, it is exempt from taxation.

~~(7)~~ (8) This rule is effective for tax years beginning after December 31, ~~1985~~ 1986.

AUTH: 15-1-201 MCA and ~~$~~ 49, Ch. 516, L. 1985, IMP: 15-6-138 MCA.

42.21.131 HEAVY EQUIPMENT (1) and (2) remain the same.

(3) For all heavy equipment which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original f.o.b. through old heavy equipment valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates wholesale value. The trend factors are contained in the January 1, 1987 Marshall Valuation Service Manual. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Company", 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(4) remains the same.

(5) The percent good schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year 1987.

HEAVY EQUIPMENT % GOOD SCHEDULE

YEAR	% GOOD WHOLESALE
1987	80%
1986	67%
1985	53%

1984	48%
1983	42%
1982	38%
1981	36%
1980	36%
1979	35%
1978	33%
1977	31%
1976	31%
1975	29%
1974	33%
1973	33%
1972	31%
1971	27%
1970	25%
1969	25%
1968	24%
1967	24%
1965	24%
1965 & before	20%

~~(5)~~ (6) This rule is effective for tax years beginning after December 31, ~~1983~~ 1986.
AUTH: 15-1-201 MCA; IMP: 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT (1), (2), and (3) remain the same.

(4) The percent good schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year 1987.

SEISMOGRAPH UNITS

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
1987	100%	1.000	100%	80%	80%
1986	85%	1.000	85%	80%	68%
1985	69%	1.000	69%	80%	55%
1984	52%	1.019	53%	80%	42%
1983	34%	1.046	36%	80%	29%
1982	20%	1.061	21%	80%	17%
1981 & older	5%	1.117	6%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.000	69%

1984	52%	1.019	53%
1983	34%	1.046	36%
1982	20%	1.061	21%
1981 & older	5%	1.117	6%

~~(4)~~ (5) This rule is effective for tax years beginning after December 31, ~~1984~~ 1986.
AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT (1) and (2) remain the same.

(3) The percent good schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year 1987.

OIL AND GAS FIELD PRODUCTION
EQUIPMENT PERCENT GOOD SCHEDULE

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	95%	1.000	95%
1985	89%	1.000	89%
1984	83%	1.019	85%
1983	77%	1.046	81%
1982	71%	1.061	75%
1981	65%	1.117	73%
1980	58%	1.242	72%
1979	51%	1.377	70%
1978	45%	1.497	67%
1977	39%	1.613	63%
1976	33%	1.699	56%
1975	28%	1.796	50%
1974	23%	2.007	46%
1973 & older	20%	2.357	47%

~~(3)~~ (4) All downhole equipment in oil and gas wells is exempt from taxation. Downhole equipment includes:

(a) sucker rods;
(b) tubing;
(c) casing; and
(d) submersible pumps.

Downhole equipment which is not in an oil or gas well shall be taxed as class 8 property at 11%.

~~(4)~~ (5) This rule is effective for tax years beginning December 31, ~~1985~~ 1986.
AUTH: 15-1-201 MCA and § 3, Ch. 583, L. 1985; IMP: 15-6-138 MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of workover and service rigs to determine current replacement costs

based on the depth rating listed below. For each depth rating listed below of workover and service rigs, there will be 2 replacement cost categories. One category will represent current replacement cost of a service rig and the second category will represent current replacement cost of a workover rig. Each rig as it is assessed will be placed in one category or another based on its depth.

DEPTH CATEGORIES

Class	Depth Capacity
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 8,000 ft.
4	8,001 ft. to 10,000 ft.
5	10,001 ft. to 14,000 ft.
6	14,001 ft. and over

DEPTH CATEGORIES AND REPLACEMENT COST NEW

MANUFACTURER'S DEPTH RATING	SERVICE RIG R.C.N.	WORKOVER RIG R.C.N.
0 - 3,000'	177,919	217,919
3,001' - 5,000'	214,360	254,360
5,001' - 8,000'	250,281	310,281
8,001' - 10,000'	309,107	409,107
10,001' - 14,000'	406,371	556,371
14,001' and over	449,066	599,066

Pole rigs and cable tool rigs, regardless of depth, is $60,000 R.C.N. These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in subsection (2).

(2) through (5) remain the same.

(6) The percent good schedule referred to subsections (2) and (5) is listed below and shall be used for tax year 1987.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

YEAR	% GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
1987	100%	80%	80%
1986	92%	80%	74%
1985	84%	80%	67%
1984	76%	80%	61%
1983	67%	80%	54%
1982	58%	80%	46%

1981	49%	80%	39%
1980	35%	80%	28%
1979	30%	80%	24%
1978	24%	80%	19%
1977 & older	20%	80%	16%

~~(6)~~ (7) This rule is effective for tax years beginning after December 31, ~~1984~~ 1986.
AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.140 OIL DRILLING RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of oil drilling rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below for oil drilling rigs, there will be 2 replacement cost categories. One category will represent current replacement cost of a mechanical rig and the second category will represent current replacement cost of an electric rig. Each rig as it is assessed will be placed in a value category based on its depth.

DEPTH CATEGORIES

Class	Depth Capacity
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 7,500 ft.
4	7,501 ft. to 10,000 ft.
5	10,001 ft. to 12,500 ft.
6	12,501 ft. to 15,000 ft.
7	15,001 ft. to 20,000 ft.
8	20,001 ft. and over

MANUFACTURER'S DEPTH RATING	SERVICE RIG R.C.N.	WORKOVER RIG R.C.N.
0 - 3,000		285,209
3,001 - 5,000		432,135
5,001 - 7,500	868,250	654,750
7,501 - 10,000	1,167,210	998,750
10,001 - 12,500	1,363,845	1,221,225
12,501 - 15,000	1,788,575	1,601,575
15,001 - 20,000	2,103,275	
20,001 and over	2,262,275	

The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating". These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in subsection (2).

(2) The department of revenue shall prepare a 10-year depreciation schedule for oil drilling rigs. The depreciation schedule shall be derived from depreciation factors published by

"Marshall and Swift Publication Company". The percent good schedule for tax year 1987 is listed below.

DRILL RIG % GOOD SCHEDULE

YEAR	TRENDED % GOOD
1987	100%
1986	92%
1985	84%
1984	76%
1983	67%
1982	58%
1981	49%
1980	35%
1979	30%
1978	24%
1977 and older	20%

(3) and (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~1984~~ 1986.

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

42.21.151 TELEVISION CABLE SYSTEMS (1), (2), and (3) remain the same.

(4) The percent good schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year 1987.

TABLE 1: 5 YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.010	70%
1984	52%	1.024	53%
1983	34%	1.052	36%
1982 & older	20%	1.071	21%

TABLE 2: 10 YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	92%	1.000	92%
1985	84%	1.010	85%
1984	76%	1.024	78%
1983	67%	1.052	70%

1982	58%	1.071	62%
1981	49%	1.122	55%
1980	39%	1.237	48%
1979	30%	1.361	41%
1978	24%	1.488	36%
1977 & older	20%	1.600	32%

~~(4)~~ (5) The dishes are circular shaped pieces of equipment used to receive the television signal. The towers are structures (usually metal) used to support any receiving equipment.

~~(5)~~ (6) All other television cable system equipment not valued from the above schedule will be valued according to guidelines in ARM 42.21.146(4).

~~(6)~~ (7) This rule is effective for tax years beginning after December 31, ~~1984~~ 1986.

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

42.21.155 DEPRECIATION TABLES (1) Remains the same.

(2) The percent good schedules for tax year 1987 are listed below. The categories listed are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	70%	1.000	70%
1985	45%	.989	45%
1984	20%	1.019	20%
1983 and older	10%		10%

CATEGORY 2

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.001	69%
1984	52%	.997	52%
1983	34%	1.004	34%
1982 and older	20%	1.030	21%

CATEGORY 3

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.011	70%

1984	52%	1.054	55%
1983	34%	1.114	38%
1982 and older	20%	1.150	23%

CATEGORY 4

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.026	71%
1984	52%	1.046	54%
1983	34%	1.059	36%
1982 and older	20%	1.130	23%

CATEGORY 5

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.010	70%
1984	52%	1.027	53%
1983	34%	1.057	36%
1982 and older	20%	1.095	22%

CATEGORY 6

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	85%	1.000	85%
1985	69%	1.022	71%
1984	52%	1.041	54%
1983	34%	1.075	37%
1982 and older	20%	1.136	23%

CATEGORY 7

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	92%	1.000	92%
1985	84%	1.020	86%
1984	76%	1.048	80%
1983	67%	1.064	71%
1982	58%	1.104	64%
1981	49%	1.195	59%
1980	39%	1.340	52%
1979	30%	1.511	45%
1978	24%	1.665	40%

1977 and older	20%	1.818	36%

CATEGORY 8

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1987	100%	1.000	100%
1986	92%	1.000	92%
1985	84%	1.040	87%
1984	76%	1.075	82%
1983	67%	1.114	75%
1982	58%	1.174	68%
1981	49%	1.271	62%
1980	39%	1.376	54%
1979	30%	1.476	44%
1978	24%	1.614	39%
1977 and older	20%	1.755	35%

AUTH: 15-1-201 MCA; IMP: 15-6-139 MCA.

4. The Department is proposing new rules I through IV for the following reasons:

Rule I - The Department is adopting a definition of taxable supplies in order to draw a distinction between those types of properties which will remain subject to assessment pursuant to 15-6-138, MCA, and those properties which will be treated as tax exempt business inventory within the meaning of 15-6-202, MCA. The rule affords a broad definition to the concept of a supply item unless the item can be proven to come within the ambit of 15-6-202, MCA.

Rule II - This rule is proposed to provide working guidance to county assessors and implement the Attorney General's Opinion addressing the taxable situs of personal property.

Rule III - This rule is being proposed to advise taxpayers when their property will become subject to ad valorem taxation. The rule clarifies the dates when property becomes subject to ad valorem assessment and distinguishes between those properties which have been in an exempt status and which subsequently become subject to assessment, and that property which is not in an exempt status and subsequently becomes tax exempt.

ARM 42.21.101, 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137 through 42.21.140, 42.21.151, and 42.21.155, are being amended in order to formally adopt trend factor and depreciation schedules. A recent District Court decision held that the depreciation and trending factors utilized by the Department to value personal property taxes had not been adopted pursuant to the Administrative Procedure Act. These amendments and inclusion of schedules for personal property will formalize the rule making procedures.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620-2702

no later than November 27, 1986.

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

7. The authority of the Department to make the proposed adoptions and amendments is based on § 15-1-201, MCA, § 49, Ch. 516, L. 1985, § 3, Ch. 583, L. 1985, and § 10, Ch. 742, L. 1985, and the rules implement §§ 15-6-135, 15-6-136, 15-6-138, 15-6-139, 15-6-140, 15-6-146, 15-8-201, 15-8-402, 15-8-404, 15-8-408, 15-8-409, and 15-24-301 MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I through VII relating to classification requirements for class 18 property for nonproductive, patented mining claims and Rules VIII through XI relating to classification requirements for class 19 property.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I through VII relating to classification requirements for class 18 property for nonproductive, patented mining claims and Rules VIII through XI relating to classification requirements for class 19 property.

TO: All Interested Persons:

1. On November 20, 1986, at 9:00 a.m., a public hearing will be held in Room 202, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of new rules I through VII relating to classification requirements for class 18 property for nonproductive, patented mining claims and rules VIII through XI relating to classification requirements for class 19 property.

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

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

RULE I APPLICATION FOR CLASSIFICATION AS NONPRODUCTIVE, PATENTED MINING CLAIM (1) The property owner of record or his agent must make application to the department of revenue, property assessment division, in order to secure classification of his land as a nonproductive, patented mining claim. In order to be considered for the current tax year, an application must be filed on a form available from the county appraisal/assessment office before March 1 or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later. The form must be filed with the county appraisal office.

(2) The county appraiser will review the application and may conduct a field evaluation. The county appraiser will approve or deny the application, and will return a copy of the form to the property owner or his agent. A copy of the form will be provided to the county assessor.

(3) An annual application is not required. An application is required only if the department reclassifies the property and the taxpayer disagrees with the department's reclassification action. The taxpayer will be notified in writing if the department acts to reclassify the taxpayer's property. The department may review the files of the county clerk and recorder to ensure that the current year affidavit of performance of annual work has been filed.

AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE II DEFINITION OF TERMS (1) "Nonproductive land" means nonfertile land that is incapable of producing animals or plant matter in commercially salable quantities.

(2) "Patented" means land purchased from the federal government for the sole purpose of developing a mining operation. The land purchase must include 100% of the mineral deposits, a 100% right of entry, and all necessary ingress, egress requirements to operate a mine immediately or in the future.

(3) "Incorporated city or town" means any municipality or county area in which the government body has complied with all incorporation provisions outlined in Title 7, MCA.

(4) "Owner" means that the applicant and owner of record are the same individual, corporation, or partnership.

(5) "Has a separate and independent value for such other purposes" means the land has a demonstrated capacity for recreation, commercial, industrial, or agricultural/timber use. That capacity is demonstrated by one of the following criterion:

(a) the filing of a certificate of survey that creates a division of the mining claim, or

(b) ongoing or contemplated (as evidenced by a timber sale) timber harvest within one mile of the mining claim, or

(c) the growth of agricultural commodities on or adjacent to the mining claim, or

(d) the construction of a recreational structure such as a summer home within one mile of the mining claim, or

(e) the construction of a commercial structure or the operation of a commercial operation such as a hunting guide or outfitter within one mile of the mining claim, or

(f) the lease of any portion of the surface area for a recreational, commercial, residential, industrial or agricultural use.

(6) "The mineral interests of the mining claim have not been depleted" means that an assay of the minerals located within the boundaries of the parcel has been made and the assay indicates the presence of a vein, lode, or ledge of rock-in-place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold or other deposit of minerals having a commercial value.

AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE III CRITERIA FOR VALUATION AS MINING CLAIM (1) An applicant for mining claim classification must prove the parcel, which is the subject of the application, meets the following criteria:

(a) is nonproductive;

(b) is patented;

(c) has not been depleted of mineral deposits;

(d) is outside the limits of an incorporated city or town;

(e) has no separate and independent value other than as a mining claim; and

(f) is being held by the owner for the sole purpose of developing the mineral interests on the property.

(2) Proof of the criteria set forth in subsection (1) above must consist of the following:

(a) submission of copies of the most recent three years, dependent on the date of patent issuance, of the affidavits of performance of annual work on file in the clerk and recorder's office in the county where the property is located. The affidavit of performance of annual work is required by 82-2-103, MCA. The affidavit of performance of annual work must be filed by December 31 of the previous calendar year for the land to retain eligibility for class 18 tax treatment during the current tax year. Failure to file each year's affidavit of performance of annual work will automatically result in the denial of class 18 tax treatment to the property owner of record;

(b) submission of a statement from a qualified assayer indicating that an assay has been performed on the property and that the results of the assay conclusively indicate that the minerals have not been depleted and that the minerals are available in large enough quantities to have commercial value;

(c) submission of a copy of the United States patent issued in the name of the owner of record;

(d) submission of a copy of the realty transfer certificate, if provided for by law as of the date of patent issuance, completed by the owner of record or his representative or agent;

(e) submission of evidence that the property is nonproductive as defined in rule II(1); and

(f) submission of evidence that the parcel does not have a separate or independent value for other purposes as that is defined in Rule II(5).

AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE IV ADDITIONAL RESTRICTIONS THAT CURTAIL PREFERENTIAL TREATMENT (1) Land shall not be classified or valued as a class 18 mining claim if the land is restricted, by covenant or ordinance, from mining use.

(2) Land shall not be classified or valued as a class 18 mining claim after mining activity begins. Once mining activity begins, ARM 42.20.159 will apply. AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE V VALUATION OF ACREAGE BENEATH IMPROVEMENTS ON ELIGIBLE MINING CLAIMS (1) For all mining claims that have improvements located upon them, the land that is beneath all the improvements and the land that is necessary for the use of those improvements shall not receive classification and valuation as

class 18 property. A market value determination shall be made for the acreage that is beneath the improvements and for the acreage necessary for the use of those improvements.

(2) The acreage defined in subsection (1) above shall be appraised according to market value consistent with that of comparable land.

(a) In no case will the market value of mining claim acreage be lower than the lowest market value assigned to improved tracts within the county.

(b) No specific site improvement values for water systems and septic systems will be added to the land values determined according to subsection (2a) above.

(3) All mining claim acreages determined according to subsections (1) and (2) above shall be classified and valued as class 4 property.

AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE VI VALUATION OF IMPROVEMENTS LOCATED ON ELIGIBLE MINING CLAIMS (1) All improvements located on eligible mining claims shall be classified and valued as class 4 property.

AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE VII VALUATION OF ELIGIBLE MINING CLAIM LAND (1) All land contained in an eligible mining claim, except that land described in rule V shall be valued as class 3 grazing land. The appropriate grazing land classification will be G2B.

AUTH: 15-1-201 MCA, and § 5, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA.

RULE VIII APPLICATION FOR CLASSIFICATION AS CLASS 19 PROPERTY (1) The property owner of record or his agent must make application to the department of revenue, property assessment division, in order to secure classification of his land as class 19. In order to be considered for the current tax year, an application must be filed on a form available from the county appraisal/assessment office before March 1 or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later. The form must be filed with the county appraisal office.

(2) The county appraiser will review the application and may conduct a field evaluation. The county appraiser will approve or deny the application, and will return a copy of the form to the property owner or his agent. A copy of the form will be provided to the county assessor.

(3) An annual application is not required. An application is required only if the department reclassifies the property due to changing circumstances and the taxpayer disagrees with the department's reclassification action. The taxpayer will be notified in writing if the department acts to reclassify the taxpayer's property.

AUTH: 15-1-201, 15-6-101 MCA, and § 9, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-149 MCA.

RULE IX ELIGIBILITY CRITERIA FOR CLASSIFICATION AND VALUATION AS CLASS 19 (1) Parcels must be contiguous and under one ownership to be eligible for classification as class 19 property.

(2) The applicant must provide certification from the department of health or their representative regarding what portion of the parcel is prohibited from being developed due to subdivision laws, health, water, or sewage regulations, laws, or ordinances.

(3) The taxpayer must obtain certification from the appropriate local government body regarding what portion of the parcel is prohibited from being developed due to government zoning laws, regulations, or ordinances. The appropriate governing body for property located within an incorporated city or town is the city commission or its equivalent. The appropriate governing body for property located outside an incorporated city or town is the county commissioners or their equivalent. Upon request from the governing body, the department of revenue may supply technical assistance in making that decision.

(4) By-laws, covenants, ordinances, and regulations enacted prior to the date of purchase of the property identified on the application and recognized by the owner of record as an existing impediment to further subdivision as of the date of purchase shall not be considered during the class 19 eligibility determination process.

(5) Covenants, ordinances, and regulations enacted by a local governing body and covenants, ordinances, regulations and laws enacted by the state or federal government after the date of purchase by the owner of record of property identified on the application and that specifically prohibit the erection of improvements and structures on contiguous parcels of less than 20 acres under one ownership and that specifically preclude the further division of contiguous parcels of less than 20 acres under one ownership shall be eligible for classification and valuation as class 19 property.

AUTH: 15-1-201, 15-6-101 MCA, and § 9, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-149 MCA.

RULE X PORTIONS OF PARCELS ELIGIBLE FOR CLASSIFICATION AS CLASS 19 (1) Any portion of any parcel which has met the provisions of rule IX shall be eligible for classification and valuation as class 19 property.

AUTH: 15-1-201, 15-6-101 MCA, and § 9, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-149 MCA.

RULE XI PORTIONS OF PARCELS ELIGIBLE FOR CLASSIFICATION AS CLASS 4 (1) The land beneath all improvements and the land necessary for the use of those improvements located on parcels

that are eligible for consideration as class 19 property shall be classified and valued as class 4 property.

(2) Any portion of a parcel that has gained class 19 tax status and that is later used for any form of commercial or industrial activity shall lose class 19 tax status. In that case, that portion of the parcel shall return to classification and valuation as class 4 property.

AUTH: 15-1-201, 15-6-101 MCA, and § 9, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-149 MCA.

4. The Department is proposing new rules I through VII because the 1986 Special Legislative Session enacted House Bill No. 35 which established a separate tax class for certain mining claims. The Bill directed the Department to establish criteria in order to determine which properties would become eligible for Class 18 property treatment. Rules I through VII establish that criteria.

The Department is proposing new rules VIII through XI because the 1986 Special Legislative Session enacted Senate Bill 20 which established a separate tax classification for certain properties which are affected by government ordinances or zoning restrictions. The Bill directed the Department to establish criteria in order to determine which property would become eligible for Class 19 tax treatment. Rules VIII through XI set forth that criteria.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 27, 1986.

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

7. The authority of the Department to make the proposed adoptions is based on §§ 15-1-201, 15-6-101, MCA, and §§ 5 and 9, Ch. 35, L. 1986, and implement §§ 15-6-101, 15-6-148, 15-6-149, 15-6-153, and 15-8-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

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

In the matter of the amendment of Rule 46.13.403 pertaining to the Low Income Energy Assistance Program Method of Payment	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.13.403 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM METHOD OF PAYMENT

TO: All Interested Persons

1. On November 25, 1986, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.13.403 pertaining to the low income energy assistance program method of payment.

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

46.13.403 METHOD OF PAYMENT Subsections (1) through (3) remain the same.

(a) Reimbursement at the rate of 1/7 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. ~~Reimbursement will be made by check directly payable to the household.~~ Paid eligible energy costs claimed by the household must be supported by rent receipts. Payments will not exceed the amount of paid rent evidenced by the rent receipt.

Subsection (4) remains the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

3. The proposed changes are necessary to delete redundant language in the current rule and minimize the possibility of overpayment to eligible LIEAP recipients which violates pertinent federal regulations.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 27, 1986.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 20, 1986.

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

In the matter of the repeal of Rule 46.5.621; the amendment of Rules 46.5.601 through 46.5.607, 46.5.609 through 46.5.612, 46.5.614, 46.5.615, 46.5.616, 46.5.620, 46.5.622, 46.5.630, 46.5.632, 46.5.635, 46.5.636, 46.5.657 and 46.5.669; and the adoption of rules pertaining to child and youth care facilities	SUPPLEMENTAL NOTICE OF PUBLIC HEARING IN THE MATTER OF THE REPEAL, AMENDMENT AND ADOPTION OF RULES PERTAINING TO CHILD AND YOUTH CARE FACILITIES

TO: All Interested Persons

1. On April 10, 1986, the Department published notice of the proposed repeal, amendment and adoption of rules pertaining to child and youth care facilities at page 511 of the Montana Administrative Register, issue number 7.

2. A substantial number of issues remained unresolved at the time the Department originally had intended to file a second notice. Therefore, a notice extending the comment period to December 11, 1986, was published on September 26, 1986, at page 1579 of the 1986 Montana Administrative Register, issue number 18. That notice stated a final hearing on the proposed rules would be held at a future date.

3. The Department has determined that the final hearing will be held on November 20, 1986, at 1:30 p.m. in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed repeal, amendment and adoption of the rules stated above pertaining to child and youth care facilities.

4. Written comments on the proposed rule changes may be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than December 11, 1986.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 20, 1986.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to leaves of absence due to disability	)))	NOTICE OF THE ADOPTION OF RULES RELATING TO LEAVES OF ABSENCE DUE TO DISABILITY

To: All Interested Persons.

1. On August 28, 1986, the department of administration published notice of the proposed adoption of rules relating to leaves of absence due to disability at page 1423 of the 1986 Montana Administrative Register, issue number 16.

2. The rules have been adopted with the following changes except 2.21.920 which is adopted as proposed:

2.21.901 SHORT TITLE (1) This policy may be cited as the disability and ~~(maternity)~~ policy.

2.21.902 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that leaves of absence due to disability shall be requested by the employee and approved or disapproved by the agency consistent with requirements of applicable rules and agency policy relating to the type of leave requested.

(2) - (3) Same as proposed rule.

2.21.903 DEFINITIONS (1) - (4) Same as proposed rule.

(5) "Reasonable accommodation" means, ~~as--provided~~ in accordance with section 504 of the rehabilitation act of 1973, an adjustment made to a job, work environment, or both that enables an otherwise qualified handicapped person to perform the duties of the position, unless the accommodation would impose an undue hardship on the operation of the agency programs. (Criteria for evaluating undue hardship can be found in the reasonable accommodation guide prepared by the state personnel division.)

(6) Same as proposed rule.

2.21.906 APPROVAL OF LEAVE (1) Same as proposed rule.

(2) An agency shall approve or disapprove requests for leaves of absence due to disability consistent with ~~criteria-used by-the-agency-to-approve-leave-of-absence-for-other-purposes~~ this policy, other applicable state rules and agency-established procedures for requesting leaves of absence. The agency may require the employee to produce evidence of the need for leave of absence before leave is approved or at any time during the leave. (For requirements specific to maternity leave, see ARM 2.21.908.)

(3) Leave of absence for a disability ~~which--is--the~~ resulting from ~~of~~ an industrial accident ~~shall~~ must be requested by the employee and approved or disapproved by the agency consistent with this policy~~.~~. This applies whether or not the employee is or ~~may~~ becomes eligible for workers' compensation benefits. (Eligibility for workers' compensation benefits is determined by the workers' compensation division, department of labor and industry, under rules adopted by that agency found at ARM 24.29.101 et seq.)

(4) Same as proposed rule.

(5) ~~An employee who is on an approved leave of absence without pay may be eligible~~ Requirements to self pay insurance premiums ~~in accordance with~~ for an employee on leave of absence without pay due to a disability are found in the state employees health benefits plan document issued by the employee benefits section, state personnel division, department of administration.

(6) Same as proposed rule.

2.21.907 MEDICAL CERTIFICATION (1) - (5) Same as proposed rules.

2.21.908 MATERNITY LEAVE (1) An employee may request leave for a pregnancy-related disability that occurs before the birth of a child. Leave must be requested and approved or disapproved consistent with the leave approval rule, ARM 2.21.906; the Montana Maternity Leave Act found at 49-2-310 and 49-2-311, MCA; and maternity leave rules found at ARM 24.9.1201 et seq. Medical certification for such leave may be required by the employer consistent with ARM 2.21.907.

~~(1)~~ (2) Six (6) calendar weeks after the birth of a child shall be considered a reasonable period of recovery from a temporary disability resulting from childbirth.

~~(2)~~ (3) An employee shall not be required to obtain medical certification of a temporary disability for the initial six (6) calendar weeks of leave following the birth of a child. If the employee requests leave due to disability which exceeds six (6) calendar weeks, the employee shall obtain medical certification that the additional leave is necessary, consistent with ARM 2.21.907.

~~(3)~~ (4) ~~To aid in the efficient operation of the agency,~~ The agency may require notification from the employee that the employee plans to take a leave of absence after the birth of the child. The notification may include the anticipated length and types of leave the employee plans to take.

~~(3)~~ (5) Nothing in this rule prohibits an employee from voluntarily returning to work sooner than six (6) calendar weeks after the birth of a child, except where the employee is determined to be medically unfit in accordance with ARM 2.21.907 (5).

(6) - (7) Same as proposed rules.

2.21.909 REASONABLE ACCOMMODATION OF AN EMPLOYEE'S HANDICAP (1) If a disabling condition becomes a handicap, an agency may be required to provide a reasonable accommodation in accordance with sections 503 and 504 of the rehabilitation act of 1973 and federal regulations, 28 CFR part 41 and 29 CFR part 32, interpreting the act.

(2) Same as proposed rule.

2.21.912 DISCHARGING A DISABLED OR HANDICAPPED EMPLOYEE (1) ~~An agency may discharge a disabled or handicapped employee for, as provided in 39-2-504, MCA, "continued incapacity to~~

~~perform"-the-job-duties.--Such-discharge-shall-be-in-compliance the-state-discipline-handling-policy,-ARM-2.21.6505-et-seq.~~
A disabled or handicapped employee who fails to perform his or her job in a satisfactory manner or whose behavior interferes with or disrupts agency operations may be subject to disciplinary action, up to and including discharge, in compliance with the state discipline handling policy, ARM 2.21.6505 et seq.

(2) ~~In-addition-to-the-requirements-found-in-the-state discipline-handling-policy,--i~~ If ~~the-incapacity-to-perform~~ a disciplinary action or discharge is due to a known handicap, the agency ~~may-discharge-the-employee-if~~ must be prepared to document:

(a) ~~the-employee-is-unable-to-satisfactorily-perform-the job-duties;~~

~~(b)~~ that no reasonable accommodation is possible, ~~and-the agency-is-prepared-to-document;~~ or

(b) that an accommodation would create an undue hardship on the operation of agency programs. ~~(;-and)~~

~~(c)--the-agency-has-complied-with-the-applicable-requirements-of-the-discipline-handling-policy.~~

(3) ~~Nothing-in-this-policy-prohibits-the-discharge-of-a disabled-employee-for-reasons-not-relating-to-the-disability.~~

2.21.913 DISABILITY RETIREMENT (1) An employee who is disabled, ~~as-defined-in-19-3-1001,-MCA,~~ may be eligible for a disability retirement through the public employees' retirement division (PERD) or another applicable retirement system. ~~Rules to-administer-disability-retirements-are-adopted-by-PERD-and~~ Requirements for the administration of the public employees' retirement system are found at 19-3-101 et seq., MCA, and ARM 2.43.101 et seq.

3. A public hearing was conducted on September 18, 1986, to receive comments on these proposed rules. The comments received during the comment period are summarized below.

COMMENT: ARM 2.21.901, the short title should be changed to disability and maternity or disability/maternity. The rules address two subjects of equal stature; disabilities and maternity situations which are disabilities.
RESPONSE: The department agrees and has changed the short title to disability and maternity.

COMMENT: ARM 2.21.902 (1) should be changed to read "...shall be requested by the employee and approved or disapproved by the agency consistent with..."
RESPONSE: The department agrees.

COMMENT: Does addiction to drugs and alcohol qualify under the definition of disability in ARM 2.21.903(1) or handicap in ARM 2.21.903(2)? The rules should include a reference stating where to find detailed explanations of what conditions qualify as a handicap.

RESPONSE: Both definitions are quoted specifically from state and federal law and regulations. Substance abuse may be covered by this policy as a disability or handicap if the condition meets the definition. More detailed information is available through federal regulations, 28 CFR Part 41 and 29 CFR Part 32 implementing Section 504 of the Rehabilitation Act of 1973, the Reasonable Accommodation Guide prepared by the State Personnel Division, and federal and state case law. The policy does not include a list of any specific illnesses or injuries.

COMMENT: In the definition of handicapped, ARM 2.21.903(2), the phrase "is regarded as having such impairment" needs to be clarified.
RESPONSE: Again, this is quoted from state and federal law and regulation. This question is dealt with on a case by case basis.

COMMENT: In the definition of reasonable accommodation ARM 2.21.903(5), the term "undue hardship" is used. This term should be defined or some guidelines should be established.
RESPONSE: A reference has been added to the definition of reasonable accommodation that criteria for evaluating undue hardship can be found in the Reasonable Accommodations Guide prepared by the State Personnel Division.

COMMENT: The meaning of the first sentence in ARM 2.21.906(2) is unclear and may leave more discretion to an agency then was intended. Change to the following language, "An agency shall approve or disapprove requests for leave of absence due to disability consistent with this policy, other applicable state rules and established agency procedures for requesting leaves of absence."
RESPONSE: The department agrees.

COMMENT: The first sentence in ARM 2.21.906(3) needs some clarification.
RESPONSE: The department agrees and has made some changes.

COMMENT: ARM 2.21.906(4) states that paid leave may be combined with leave without pay. Is this statement a suggestion that the employee take leave without pay?
RESPONSE: The department believes the rule is a clear statement that agencies have discretion to approve a combination of paid leave and leave of absence without pay.

COMMENT: ARM 2.21.906(5) should be a clearer statement of when a disabled employee is eligible to self pay insurance premiums.
RESPONSE: The department has changed the language to clarify the rule.

COMMENT: ARM 2.21.908(3) should include a stronger statement that the employee requesting leave for maternity purposes must submit a leave request and what must be included in the leave request.

RESPONSE: The rule was written to provide agencies with some flexibility to deal with leave requests. The rule allows an agency to require advance notification, if the particular agency believes it is necessary.

COMMENT: In ARM 2.21.908(4), clarify what standard is used to decide if an employee is "medically unfit."
RESPONSE: The department has included language to refer the person to the same determinations made under ARM 2.21.907(5), Medical Certification.

COMMENT: In ARM 2.21.908(5), clarify whether leave needed before the birth of the child is part of the 6-week period or if it is granted in addition to the 6 weeks.
RESPONSE: The department has reorganized this rule and added a statement to clarify this concern.

COMMENT: Can ARM 2.21.908(7) apply to a man who wants "paternity leave"? Does this rule need to include a time limit?
RESPONSE: The department believes this is a clear statement that an employee, male or female, may under the current leave system use appropriate leave, for purposes such as childcare and adoption. The employee's request must be made, approved, or disapproved consistent with applicable rules, policy, and procedure for the type of leave requested.

COMMENT: There is an error in the first sentence of ARM 2.21.909 (1). The term "a known handicap" should be "undue hardship".
RESPONSE: The rule is written correctly. The federal regulations regarding section 504 of the rehabilitation act of 1973 requires reasonable accommodation once the handicap is known. The guide prepared by the State Personnel Division addresses known handicap, reasonable accommodation, and undue hardship.

COMMENT: ARM 2.21.912 requires the application of the state discipline handling policy to discharge a disabled employee for continued incapacity to perform. The rule should be reorganized to clarify that the intent of this language is to require the use of the discipline policy in the discharge of a disabled employee for reasons other than continued incapacity to perform.
RESPONSE: The department agrees and has made language changes.

COMMENT: Add "or applicable retirement system" at the end of the first sentence in ARM 2.21.913(1) because some state employees may be covered by a different system than PERD.
RESPONSE: The department agrees.

By: Ellen Feaver
Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State October 20, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed new rules concerning Anhydrous Ammonia facilities	)	NOTICE OF ADOPTION OF PROPOSED NEW RULES ESTABLISHING STANDARDS FOR ANHYDROUS AMMONIA FACILITIES

To All Interested Persons:

1. On August 27, 1986 at 10 a.m. in Room 225, Agriculture/Livestock Building, Sixth and Roberts, in Helena, Montana, the Department of Agriculture conducted a public hearing regarding the above stated proposed new rules published on pages 1231 through 1268 MAR issue number 14, July 31, 1986.

2. The Department has adopted the rules with the following changes.

4.12.701 SCOPE (1) through (8) No Changes

(9) Unless otherwise stated within the rule all incorporations by reference of standards, regulations, codes or other similar systemized provisions contained within shall be adopted within these rules in the most recent version or revision as of September 1, 1986.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

4.12.702 DEFINITIONS No Changes

4.12.703 DISPOSAL No Changes

4.12.704 REQUIREMENTS OF CONSTRUCTION AND ORIGINAL TEST OF CONTAINERS, OTHER THAN REFRIGERATED STORAGE TANKS No Changes

4.12.705 MANUFACTURER'S MARKING REQUIREMENTS ON CONTAINERS AND SYSTEMS No Changes

4.12.706 LOCATION OF STORAGE TANKS No Changes

4.12.707 CONTAINER APPURTENANCES No Changes

4.12.708 PIPING, TUBING AND FITTINGS No Changes

4.12.709 HOSE SPECIFICATION (1) through (2) No Changes

(3) Unless the manufacturer indicates otherwise; ~~Hoses, from date of manufacture shall be changed:~~

(a) hoses from the date of manufacture shall be changed no longer than as follows:

(i) every two years for rayon braid hoses;~~:~~

(ii) every five years for stainless steel hoses.

(b) If a verification of the date of purchase or the date the hoses were put into service is made available to the department, then the hoses shall be changed no longer than:

(i) two years from the date of purchase or placement into service but not to exceed three years from date of manufacture for rayon hoses;

(ii) five years from the date of purchase or placement into service but not to exceed six years from the date of manufacture for stainless steel hoses.

(4) through (5) No Changes

(6) On hoses one-half inch in diameter or larger which are used for the transfer of anhydrous ammonia liquid or vapor, there shall be etched, cast, or impressed at five foot intervals the following information:

Anhydrous Ammonia
xxx psig (Maximum Working Pressure)
Manufacturer's Name or Trademark
Year of Manufacture (or replacement date)

(7) No Changes

4.12.710 SAFETY RELIEF DEVICES No Changes

4.12.711 SAFETY No Changes

4.12.712 FILLINGS DENSITIES No Changes

4.12.713 TRANSFER OF LIQUIDS (1) A qualified attendant shall supervise transfer liquids from the time the connections are first made until the rail car is finally disconnected or the transport truck is completely unloaded and finally disconnected. Any time a site is unattended, the tank car shall not be connected to the unloading riser. During the transfer operations of the transport, chock blocks shall be so placed as to prevent rolling of the vehicle.

(2) through (7) No Changes

(8) Transport ~~trucks~~ vehicles shall not be utilized for bulk storage of anhydrous ammonia unless incapacitated at an approved site. ~~It must be transferred into permanent storage of a capacity equal to or greater than the transport truck.~~

(9) Railway tank cars must be transferred ~~into~~ at a site that has a permanent storage tank of a capacity equal to 50 percent of the railway tank car. Sites not able to meet the 50 percent transfer requirement shall apply to the department annually for a letter of authorization. The department shall, after inspecting the site and its facilities and if these are found in compliance with these rules, except for the 50 percent ~~transfer~~ requirement, issue a one year permit allowing the transfer of anhydrous ammonia at such site. In the case of paragraph 11 of this section, no letter of authorization is required.

(10) through (12) No Changes

(13) The filling of mobile containers with a capacity of 2000 gallons or less with anhydrous ammonia is permissible only at a permanent storage facility approved by the department for this purpose. Anhydrous ammonia may be transferred from a transport truck or other vehicle with a maximum capacity of 10,500 ~~5,000~~ gallons into containers of 2,000 gallons capacity or less mounted on farm vehicles or containers of 3,000 gallons mounted on motor-driven applicators. This transfer operation is limited to rural areas and only on the premises of the consignee.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

4.12.714 TANK CAR OPERATIONS No Changes

4.12.715 LIQUID LEVEL GAUGING DEVICES No Changes

4.12.716 PAINTING OF CONTAINERS No Changes

4.12.717 INFORMATION SIGN No Changes

4.12.718 ELECTRICAL EQUIPMENT AND WIRING No Changes

4.12.719 SYSTEMS UTILIZING STATIONARY, PIER-MOUNTED OR SKID-MOUNTED ABOVEGROUND OR UNDERGROUND NON-REFRIGERATED STORAGE

(1) No Changes

(2) Installation of storage containers:

(a) Aboveground installation of anhydrous ammonia containers shall be installed on reinforced concrete footings or foundations or structural steel supports mounted on reinforced concrete foundations or sufficient equivalent prepared on gravel pad. The reinforced concrete foundations or footings must extend below the established frost line and shall be of sufficient width and thickness to support the total weight of the containers and contents adequately. The foundations shall maintain the lowest point of the tank at not less than 24 inches above the ground. I-beams shall support the weight of the tank and product.

(2) (b) through (9) No Changes

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

4.12.720 SYSTEMS MOUNTED ON FARM WAGONS (IMPLEMENTS OF HUSBANDRY) FOR THE TRANSPORTATION OF ANHYDROUS AMMONIA

(1) through (6) No Changes

(7) ~~Storage of Containers. When a nurse tank containing 10 percent or more of anhydrous ammonia is at an unattended approved storage site, the manually controlled valves shall be secured against tampering or the nurse tank shall be stored inside a locked, fenced enclosure.~~ Nurse tanks containing anhydrous ammonia shall be stored no less than 50 feet from the edge of the adjacent road, 150 feet from place of private or public assembly, and 750 feet from place of institutional occupancy. ~~All pressure and liquid level gauges must be in working order.~~

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

4.12.721 SYSTEMS MOUNTED ON EQUIPMENT (IMPLEMENTS OF HUSBANDRY) FOR THE APPLICATION OF ANHYDROUS AMMONIA No Changes

4.12.722 REFRIGERATED STORAGE No Changes

4.12.723 REQUIREMENT OF CONSTRUCTION AND ORIGINAL TEST OF CONTAINERS No Changes

4.12.724 CAPACITY OF CONTAINERS No Changes

4.12.725 CONTAINER VALVES AND ACCESSORIES No Changes

4.12.726 PIPING, TUBING AND FITTINGS No Changes

4.12.727 HOSE SPECIFICATIONS No Changes

4.12.728 SAFETY DEVICES No Changes

4.12.729 TRANSFER OF LIQUIDS No Changes

4.12.730 TANK CAR LOADING AND UNLOADING POINTS AND OPERATIONS No Changes

4.12.731 LIQUID LEVEL GAUGING DEVICES No Changes

4.12.732 INDICATING DEVICES No Changes

4.12.733 STORAGE INSTALLATIONS FOR NITROGEN FERTILIZER SOLUTIONS No Changes

4.12.734 SYSTEMS MOUNTED ON TRUCKS, SEMI-TRAILERS AND TRAILERS FOR TRANSPORTATION OF NITROGEN FERTILIZER SOLUTIONS (1) through (2) (c) No Changes

(d) If a liquid withdrawal line is installed in the bottom of a container, the connections thereto, including hose, shall not be lower than the lowest horizontal edge of the trailer axle.

(e) and (f) No Changes

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

4.12.735 SYSTEMS MOUNTED ON VEHICLES AND IMPLEMENTS OF HUSBANDRY FOR THE TRANSPORTATION OF NITROGEN FERTILIZER SOLUTIONS No Changes

4.12.736 SYSTEMS MOUNTED ON VEHICLES AND IMPLEMENTS OF HUSBANDRY FOR THE APPLICATION OF NITROGEN FERTILIZER SOLUTIONS No Changes

4.12.737 CERTIFIED STATEMENT No Changes

4.12.738 RIGHT OF ENTRY FOR INSPECTIONS No Changes

4.12.739 ENFORCEMENT No Changes

4.12.740 REQUEST FOR VARIANCE No Changes

4.12.741 VARIANCE PROCEDURE (1) through (4) No Changes

(5) Nothing in this section and no variance, temporary variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of 80-10-303(5), pre-existing facilities. If the department determines that a danger exists to ~~the~~ health, safety or welfare ~~exists~~ that was not known at the time of issuance of the variance, then the variance, or temporary variance may be revoked.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

4.12.742 PRE-EXISTING FACILITIES No Changes

4.12.743 TABLES No Changes

(3) The following comments were received along with the department's response.

Comment: Jim Leir from the Legislative Council noted that regulation incorporated by reference needed to be referenced to a specific date.

Response: The department changed the rules to comply with the recommendation.

Comment: Russ Minor testified that Rule IXX (2) (b) was overly restrictive in that a properly prepared gravel pad could meet the same standards as a concrete slab.

Response: The department made the change to the rule.

Comment: Russ Minor and Ron Fowler and others suggested problems with Rule IX (3) Hoses. They recommended that the time of replacement be extended to reflect when the hoses are put into service. They also mentioned that some manufacturers list the replacement date instead of date of manufacturer.

Response: The department adjusted the rule to address this concern. The change now permits the storage of the hoses for up to one year before they are put into service. The department also recognized that the "replacement date" may be used instead of the manufacture date.

Comment: Erwin Miller and others recommended that the 5,000 gallon limit in Rule XIII (13) be increased to 10,500 because that is the standard size for the industry.

Response: The department incorporated the recommendation.

Comment: Gary Ingrant requested the authority to have transport trucks used for permanent storage if the trucks are set up properly.

Response: The department accepted the recommendation with the provision that the vehicles be properly converted to incapable of movement and be located at an approved site.

Comment: Jim Schieder requested that Rule XIII (9) be changed to permit direct unloading into transport trucks from railroad cars at permanent storage sites. He contended that it is safer to make only one transfer instead of two.

Response: The department incorporated his suggestion but only at facilities that can handle the off loading of at least 50% of the railroad cars or by department permit.

Comment: Don Little stated that it may be economically infeasible to lock up all nurse tanks because many are located in rural areas and it may be impossible to place them in chain link fences.

Response: The department changed the rules to accomodate the comment. The department however still requires the nurse tanks to remain at safe distances away from public places.

All other comments were not made for purposes of suggesting changes in the rules.

(4) No other comments or testimony were received.

Keith Kelly

Certified to the Secretary of State October 20,1986

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the adoption of rules concerning commodity dealers and public warehousemen and repealing certain rules	))))	NOTICE OF CORRECTED ADOPTION OF NEW RULES CONCERNING COMMODITY DEALER AND PUBLIC WAREHOUSEMEN AND THE REPEAL OF CERTAIN RULES

To All Interested Persons:

1. On July 17, 1986 a notice of adoption was published on page 1178 MAR issue number 13. The notice contained a summary of the public hearing held on said rules. The department inadvertantly failed to include the repeal on rules 4.12.1011 and 4.12.1014. These rules were impliedly repealed upon the repeal of section 80-4-209 MCA (1981). The rules were not reimplemented and are therefore a nullity.

2. This notice hereby corrects the above stated notice of adoption to indicate that rules 4.12.1011 and 4.12.1014 are hereby repealed.

Keith Kelly

Certified to the Secretary of State October 20, 1986

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE HARD-ROCK MINING IMPACT BOARD

In the matter of the amendment of 8.104.203 concerning the format of a plan, 8.104.207 concerning the contents of an objection to a plan, and 8.104.211 concerning implementation of an approved impact plan, and the adoption of new rules concerning definitions, waiving impact plan requirements, modifying plans, financial guarantee of tax prepayments, evidence of the provision of services by local government units, and the contents of petitions for plan amendments	)	NOTICE OF AMENDMENT OF 8.104.203 FORMAT AND CONTENT OF PLAN, 8.104.207 CONTENT OF OBJECTION TO PLAN, and 8.104.211 IMPLEMENTATION OF AN APPROVED PLAN, and ADOPTION OF NEW RULES 8.104.203A DEFINITIONS, 8.104.211A EVIDENCE OF THE PROVISION OF SERVICES AND FACILITIES, 8.104.213 MODIFICATION OF PLAN, 8.104.214 FINANCIAL GUARANTEE OF TAX PREPAYMENT, 8.104.216 CONTENT OF PETITION FOR PLAN AMENDMENT, 8.104.217 WAIVER OF IMPACT PLAN REQUIREMENT

TO: All Interested Persons:

1. On June 26, 1986, the Hard-Rock Mining Impact Board published a notice of amendments and adoption of the above-stated rules at page 1052, 1986 Montana Administrative Register, issue number 12.

2. The hearing was held on July 16, 1986, at 9:00 a.m., in Room C-209 of the Cogswell Building in Helena, Montana.

3. Four people appeared at the hearing to offer oral testimony and written comments. Five others submitted written comments.

4. The Board has amended rules 8.104.203, 8.104.207 and 8.104.211 and has adopted rules 8.104.213, 8.104.215, 8.104.216, 8.104.217, and 8.104.218 exactly as proposed. The Board has adopted rule 8.104.203A with the following changes (new matter underlined, deleted matter interlined):

"8.104.203A DEFINITIONS For purposes of these rules, the following definitions apply:

(1) The 'estimated number of persons coming into the impact area as a result of the development' means: ~~those who will be employed in the construction and operation of a large scale mineral development and their families and other persons expected to move into the area as a result of the large scale mineral development.~~

(a) those inmigrating persons who are or will be employed in the construction or operation of the development and their inmigrating family members,

(b) those inmigrating persons who will provide service or support to the development or to those persons encompassed by (a) and their inmigrating family members, and

(c) any other persons identified in an approved impact plan as being expected to move into the impact area as a result of the development.

(2) will remain the same."

5. The board received comments concerning only new rule 8.104.203A and the amendment of ARM 8.104.203. These comments and the board's responses follow:

A. Amendment to rule 8.104.203:

COMMENT: The board exceeds its authority in adopting the amendments to ARM 8.104.203.

RESPONSE: Although ARM 8.104.203 is cited in the comment, the substance of the testimony appears to relate to a draft rule that was not part of the body of proposed rules. The amended portion of ARM 8.104.203 is essentially a reiteration of scattered provisions of statute and is clearly within the administrative rulemaking authority of the board.

B. New rule 8.104.203A:

COMMENT: The proposed rule would require the impact plan to include in the "estimated number of persons coming into the area as a result of the mineral development" persons other than mineral development employees and their families. This is a new requirement and exceeds the statutory authority of the board.

RESPONSE: The rule imposes no new requirement.

The language of the statute and the express purpose of the Act clearly encompass more than just employees and their families. The Act speaks of "the estimated number of persons coming into the impacted area as a result of the development" and of "an influx of people into the area of the development many times larger than the number of people directly involved in the mining operation."

The rule is consistent with statutory language and with the express purpose of the Act. The rule expresses an understanding of the Act that has prevailed since 1981, through three legislative sessions. If the Legislature had intended the Act to apply to a limited category of inmigrating people, the statute would have provided a more specific definition, rather than utilizing language that is obviously inclusive.

The objection appears to focus on the substance of the statutory requirement, which is outside the authority of the board. Persons involved in the original legislation

(including the sponsor of the bill); in the 1981-1983 legislative interim study; and in the preparation, review, and implementation of impact plans testified before the board to support both the statutory requirements and the proposed rule as an accurate reflection of statute.

COMMENT: The companion Tax Base Sharing Act identifies "mineral development employees" and "mineral development students" as the key ingredients of the formula-based allocation of the taxable valuation of the mineral development. This shows that the Legislature does not intend the Impact Act to include persons other than those defined in the Tax Base Sharing Act.

RESPONSE: On the contrary, the separate definitions serve different purposes in the two Acts. That they are different only emphasizes that the Legislature would have used more restrictive language in the Impact Act had it intended a more restrictive definition to apply.

COMMENT: The Act does not require the developer to take care of population other than those involved in construction and operation of the development. The mineral developer should not have to pay for impacts from persons over which the developer has no decision-making control. The proposed rule exceeds the board's statutory authority.

RESPONSE: The rule reiterates an interpretation of statute that has prevailed since 1981. The board has consistently expected and required all impact plans to identify "the estimated number of persons coming into the impact area as a result of the development," as is required by section 90-6-307, MCA.

The Impact Act imposes no broad responsibility to "take care of" people moving into the area. The Impact Act relates only to increased local government costs resulting from the mineral development. The Act requires that in the impact plan the developer is to identify and commit to pay "all of the increased capital and net operating costs to local government units for providing services which can be expected as a result of the development." This requirement is unchanged by the new rule.

COMMENT: The number of other persons coming into an area as a result of the development, except for employees, is undefinable. The developer should not have to pay for the decisions made by others over which the developer has no control. The number and the costs are too unpredictable.

RESPONSE: Again, the objection appears to be addressed to the statute rather than to the rule which reflects the statute.

Concerning the substance of the objection: (1) Such population projections are commonly made, for example, in environmental impact statements by considering both population inmigration patterns in similar situations and the specific area and communities involved; (2) The Act requires the plan to identify the "estimated" not "actual" number of persons coming into the area as a result of the development. The purpose of the requirement is to enable local government units to identify the consequent impacts on local government services and facilities in order to plan for and provide services and facilities needed as a result of the development.

Concerning the unpredictability of costs: When the impact plan is approved, the estimated number of people coming into the area and the financial or other commitments of the developer are established, regardless of any difference in actual population inmigration. Unless the plan is formally amended through the amendment procedure established by statute, the difference between the "estimated" and the "actual" number of inmigrants does not affect the commitments made by the developer in the approved impact plan. To affect the developer's financial obligations, an amendment would have to demonstrate not just that actual population inmigration resulting from the mineral development differed from estimated inmigration, but also that this population difference resulted in an increase or decrease in local government costs compared to what was identified in the approved plan and compared to the actual increased revenues resulting from the development. The extent to which inmigration affects local government costs depends largely on the existing level and capacity of services and facilities.

COMMENT: Impact plans approved by county government and the Hard-Rock Mining Impact Board to date have not considered "secondary impact." The rule will bias the developer's negotiations with local government units and will obstruct development indefinitely because the developer will be forced to pay for impacts for which he does not consider himself responsible.

RESPONSE: On the contrary, the board has consistently expected and required all impact plans to identify "the estimated number of persons coming into the impacted area as a result of the development," as required by section 90-6-307, MCA. No mining project has been delayed as a consequence of this statutory requirement.

The Act does not allow the developer to refuse to identify the "estimated" number of persons coming into the area nor to refuse to identify or pay all of the increased capital and net operating costs resulting from the development.

No development has been delayed or obstructed under the current law or under the interpretation embodied in the rule. The law provides specific time-frames for the review and approval of an impact plan and requires the Hard Rock-Mining Impact Board to arbitrate any disputes about the plan within 60 days of a public hearing on the issues. The Act itself specifically precludes the possibility that an indefinite delay of a mineral development might result from its requirements.

COMMENT: The rule has an anti-development connotation. It ignores the economic benefit of the development. It is unfair to the developer, is beyond the scope of the law and is an onerous burden to the developer.

RESPONSE: Again, the objection appears to address the statute rather than the rule. The rule reflects the statute. The statute embodies a public policy decision of the Legislature which says, in effect, that increased local government capital and net operating costs resulting from the development will be paid by the developer rather than by the existing residential, business and agricultural property taxpayers.

With regard to operating costs, the impact plan must identify the increased operating costs resulting from the development, but the developer pays only the "net" operating costs, that is, those increased costs that exceed increased revenues resulting from the development, including revenues from the inmigrating population. The statute further enables the developer to pay these increased costs primarily through the prepayment of property taxes for which the developer later receives a tax credit. In this way the statute does acknowledge the economic benefit of the development. When increased development-generated revenues equal increased development-generated operating costs, no additional prepayment is required. When the increased revenue potential would exceed increased costs resulting from the development, the developer receives a tax credit for the prepaid taxes.

COMMENT: The Administrative Code Committee asked the board to delay adoption of the proposed rule until after the 1987 Legislative Session.

RESPONSE: The board considered both the Code Committee's request and its own responsibility to continue to implement the existing law in a manner that is impartial and consistent.

The Code Committee did not question whether the board has authority to adopt the proposed rule nor whether the rule is consistent with statute.

The board believes that the rule is clearly consistent with existing statutory language, with the express purpose of the Act, and with instructions contained in the statement of intent that accompanied the Legislature's grant of administrative rule-making authority to the board. The interpretation embodied in the rule is not new. The rule reflects an understanding of the statute which has prevailed since the law was enacted in 1981 and which was not questioned when the Act was amended in 1983 and 1985.

The board recognizes that its authority and responsibility is defined and circumscribed by the existing law and that its action cannot be predicated on potential actions of a future Legislative Assembly. The board concluded that the issue under debate is a public policy decision reached by the Legislature in 1981, that modification of that public policy is the prerogative of the Legislature only, and that to postpone adoption of the rule would encourage confusion about the existing law and would serve no beneficial purpose, either for the proponents or opponents of the rule nor for the Legislature itself.

6. No other comments or testimony were received.

7. The reason for and against adopting the rule are embodied in the comments and responses in item 5 above.

HARD-ROCK MINING IMPACT
BOARD
KOEHLER STOUT, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, October 20, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through IX (42.6.141 through 42.6.149) relating to the disclosure of child support information.	NOTICE OF THE ADOPTION of Rules I through IX (42.6.141 through 42.6.149) relating to the disclosure of child support information.

TO: All Interested Persons:

1. On June 26, 1986, the Department published notice of the proposed adoption of rules I through IX (42.6.141 through 42.6.149) relating to the disclosure of child support information at pages 1065 through 1070 of the 1986 Montana Administrative Register, issue no. 12.

2. The Department has adopted these rules with the following changes:

42.6.141 DEFINITIONS For 42.6.141 through 42.6.149: (1) through (5) remain the same.

42.6.142 RELEASING INFORMATION ABOUT AN INDIVIDUAL'S CHILD SUPPORT DEBT (1) ~~A credit agency may request and receive information concerning an individual's overdue child support debt by presenting a request to the department. (Request procedure - see rule VII.)~~ The department will release information concerning an individual's overdue child support debt upon the request of a credit agency (request procedure - see 42.6.147), after:

~~(2)--Requests may not be submitted until 30 days after notifying the individual. (Notifying procedure - see rule III.)~~

~~(3)--After being notified, the individual may inspect the department's records for accuracy (inspection procedure - see rule IV), and may request a hearing on the information (hearing procedure - see rule V).~~

~~(4)--The individual has 30 days to request an inspection of the information (and to contest the accuracy of the information).~~

~~(5)--The individual may waive rights and authorize release of the information (waiver procedure - see rule VI).~~

~~(6)--After receiving a credit agency request (30-120 days after notifying the individual, or upon a waiver of rights) and if the accuracy of the information is not contested, the department:~~

(a) ~~must report child support debts of $1,000 or greater, and~~ notice (notifying procedure - see 42.6.143), opportunity to inspect (inspection procedure - see 42.6.144), and opportunity for hearing (hearing procedure - see rule 42.6.145), or

(b) ~~will not report child support debts under $1,000 (department procedures - see rule VIII)~~ waiver of rights (to notice, to inspection, and to hearing) by the individual (waiver

procedure - see 42.6.146).
AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

42.6.143 NOTICE OF CREDIT AGENCY'S INTENT TO REQUEST INFORMATION (1) ~~Before requesting information concerning an individual's child support debt, the credit agency must notify the individual, either in person or by certified mail (except when a waiver has been signed by the individual)~~ Unless a waiver has been signed, the credit agency must serve, along with the notice required and described in 31-3-127(3), MCA, a request for inspection form described in 42.6.144.

(2) ~~The notice must state:~~

~~(a)--what information is to be requested from the department;~~

~~(b)--the name and address of the department;~~

~~(c)--a statement explaining how the individual may inspect the department's records; (a request for inspection form should be included); and~~

~~(d)--a statement explaining:~~

~~(i)---that the individual has 30 days to respond (inspect records or ask for a hearing); and~~

~~(ii)--that after 30 days the department will forward the requested information to the credit agency (if steps have not been taken to contest the information).~~ A model form for use as a notice of a credit agency's intent to request information will be made available by the department.

(3) No notice is required if a waiver complying with 42.6.144 is signed by the individual.
AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

42.6.144 INDIVIDUAL'S REQUEST FOR INSPECTION (1) through (4) remain the same.

(5) A model form for use as a request for inspection will be made available by the department.

(6) Remains the same.
AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

42.6.146 WAIVER OF RIGHTS FOR THE RELEASE OF INFORMATION (1), (2), and (3) remain the same.

(4) Within 30 days (after disclosure of the information contained in the department's records), the individual may request a hearing on the accuracy of such information. (Hearing procedure - see 42.6.145.)

(5) Remains the same.
AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

42.6.147 CREDIT AGENCY'S REQUEST FOR INFORMATION (1) A credit ~~agency~~ agency's ~~may submit~~ a request for information concerning ~~the~~ an individual's child support debt must be in writing.

(2) ~~Such~~ A request for information may be made:

(a) no sooner than 30 and no later than 120 days after a notice has been given to (or served upon) the individual, or;

(b) ~~when~~ after a waiver has been signed by the individual and before its date of expiration.

(3), (4), and (5) remain the same.

(6) A model form for use as a credit agency's request for information will be made available by the department.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

42.6.148 RESPONSE TO CREDIT AGENCY'S REQUEST FOR INFORMATION (1), (2), and (2)(a) remain the same.

(b) the individual has taken no steps ~~have begun~~ to contest the accuracy of the information; or

(c) Remains the same.

(3) Remains the same.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

3. The Administrative Code Committee requested the Department revise the language of some of the rules in order to avoid repeating statutory language. These changes were made in rules 42.6.142, 42.6.143, and 42.6.147.

The changes in 42.6.143(2), 42.6.144, and 42.6.147(3) were made because the Department will not provide large quantities of forms under these rules but will make a model form available.

The language of rule 42.6.143(3) was changed to clarify that no notice is required under the waiver procedure.

Rule 42.6.147(2) was changed to indicate that the waiver eliminated the 30-day waiting period and rule 42.6.148 was changed because it was not clear from the language that the individual was the only one who could take steps to contest the accuracy of the information.

4. The authority of the Department to make the proposed adoptions is based on §§ 31-3-127(5) and 40-5-202, MCA, and Ch. 543, L. 1985, and the rules implement §§ 31-3-127 and 53-2-504, MCA.

John D. LaFaver, Director
Department of Revenue

Certified to Secretary of State 10/20/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42.17.120 and the ADOPTION of Rule I (42.17.121) relating to individual liability for state withholding taxes.	NOTICE OF THE AMENDMENT of Rule 42.17.120 and the ADOPTION of Rule I (42.17.121) relating to individual liability for state withholding taxes.

TO: All Interested Persons:

1. On August 28, 1986, the Department published notice of the proposed amendment of rule 42.17.120 and the adoption of rule I (42.17.121) relating to individual liability for state withholding taxes at pages 1443 and 1444 of the 1986 Montana Administrative Register, issue no. 16.

2. The Department has adopted these rules as proposed.

3. A public hearing was held on September 23, 1986, to consider the proposed amendment and adoption of these rules. No persons appeared to oppose the proposed amendment or adoption. Patty Pyeatt and Chuck Wowereit, Income Tax Division, and R. Bruce McGinnis, Office of Legal Affairs, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes submitted as drafted.

4. The authority for the rules is 15-30-305, MCA, and the rules implement 15-30-203, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/20/86

VOLUME NO. 41 OPINION NO. 87

CRIMINAL LAW AND PROCEDURE - Charging minors who violate traffic laws;
MOTOR VEHICLES - Charging minors who violate traffic laws;
PEACE OFFICERS - Charging minors who violate traffic laws;
POLICE - Charging minors who violate traffic laws;
TRAFFIC - Charging minors who violate traffic laws;
MONTANA CODE ANNOTATED - Sections 46-11-401(1), 61-8-401(1)(a), 61-12-601, 61-12-602.

HELD: An officer who sees a minor commit a traffic offense should issue the minor a ticket charging him with unlawful operation of a motor vehicle, a violation of section 61-12-601, MCA. In stating the facts of the offense, the officer should also describe the underlying traffic offense and cite the statute which sets forth the underlying offense.

16 October 1986

Richard L. Burns
Deputy City Attorney
City of Glendive
300 South Merrill
Glendive MT 59330

Dear Mr. Burns:

You have requested my opinion on the manner in which police officers should charge minors who violate traffic laws in light of the recent Montana Supreme Court decision in State v. Gee, 43 St. Rptr. 1452 (1986). Prior to Gee, no distinction was made between vehicular offense charges brought against minors and those brought against adult drivers. However, in Gee, the Court held that a minor who commits a vehicular offense is guilty of unlawful operation of a motor vehicle under section 61-12-601, MCA, not the underlying offense. 43 St. Rptr. at 1455.

Pursuant to section 61-12-602, MCA, a peace officer may deliver a form of summons describing the nature of the offense to any child under the age of 18 years who unlawfully operates a motor vehicle in the presence of the officer. Additionally, section 46-11-401(1), MCA, provides in part that a charge shall:

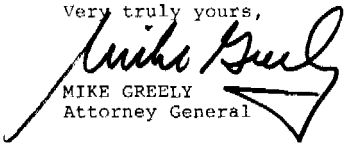
> (c) charge the commission of an offense by:
>
> (i) stating the name of the offense;
>
> (ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;
>
> (iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;
>
> (iv) stating the time and place of the offense as definitely as can be done; and
>
> (v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty.

Because the Montana Supreme Court held a minor can only be convicted of a vehicular offense under section 61-12-601, MCA, I conclude that an officer who sees a minor commit a traffic offense should issue the minor a ticket charging him with a violation of section 61-12-601, MCA. In stating the facts of the offense, the officer should state that the minor unlawfully operated a motor vehicle by committing a specified offense. The officer should also cite the statute which sets forth the underlying offense. For example, if an officer stops a minor for driving under the influence of alcohol, he should charge the minor with violating section 61-12-601, MCA. In the body of the ticket, the officer should then state the facts of the offense as "unlawfully operated a motor vehicle by driving under the influence of alcohol. § 61-8-401(1)(a), MCA." This method of ticketing recognizes that a minor can only be found guilty of unlawful operation of a motor vehicle, while also giving notice of the underlying offense which must be proven to convict the minor.

THEREFORE, IT IS MY OPINION:

An officer who sees a minor commit a traffic offense should issue the minor a ticket charging him with unlawful operation of a motor vehicle, a violation of section 61-12-601, MCA. In stating the facts of the offense, the officer should also describe the underlying traffic offense and cite the statute which sets forth the underlying offense.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 88

CITIES AND TOWNS - Adoption of new plan of city government;
LOCAL GOVERNMENT - Adoption of new plan of city government;
MONTANA CODE ANNOTATED - Sections 7-3-113(1), 7-3-150(2), 7-3-158(1) and (3), 7-3-160, 7-3-201 to 7-3-224, 7-3-219, 7-3-220, 13-3-101;
MONTANA CONSTITUTION - Article XI, sections 3(1), 9(1);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 37 (1985), 41 Op. Att'y Gen. No. 70 (1986).

HELD: 1. A proposed municipal commission-executive form of government is not restricted by the structural characteristics listed in section 7-3-113(1), MCA.

2. The ballot division required by section 7-3-150(2), MCA, must be done according to precinct boundaries.

3. Where the existing office of city treasurer is a nonelected position, and the proposed plan of local government calls for an elected city treasurer, the election schedule required by section 7-3-160, MCA, must be followed for that office.

17 October 1986

Leo W. Tracy
Whitefish City Attorney
6336 Highway 93 South
Whitefish MT 59937

Dear Mr. Tracy:

You have requested my opinion on the following questions:

1. Does section 7-3-113(1), MCA, set forth mandatory characteristics of a proposed municipal council-mayor form of government?

2. Do the general ballot requirements of section 7-3-150(2), MCA, apply to precincts or to wards when dealing with proposed alterations to a municipal government?

3. Where the existing office of city treasurer is a nonelected position, and the proposed plan of government calls for an elected city treasurer, must the election schedule required by section 7-3-160, MCA, be followed?

Your first question involves an interpretation of section 7-3-113(1), MCA. This statute is discussed at length in 41 Op. Att'y Gen. No. 37 (1985). In 1975, the Legislature enacted various local government statutes which defined existing governmental forms and provided for alternative forms for voter review, pursuant to sections 3(1) and 9(1) of article XI of the Montana Constitution. Section 7-3-113(1), MCA (formerly codified as section 16-5115.1(1), R.C.M. 1947), described the structural characteristics of an existing council-mayor form of government in a municipality that did not adopt an alternative form of government.

You note in your opinion request that the city of Whitefish had a council-mayor form of government until 1981. In 1981 a voter-approved charter form of government took effect. Presently, voters will have an opportunity to vote on a plan of government proposed by petition of the electorate. The proposed plan is the commission-executive form of government described in sections 7-3-201 to 224, MCA. As you note, under this form of government, various options are offered as to the details or structural characteristics of the form, such as whether the elections shall be partisan or nonpartisan and whether the city commission chairman shall be elected by other commission members or selected as provided by ordinance. See §§ 7-3-219, 7-3-220, MCA. You have asked whether any of these options set forth for the statutory commission-executive form of government may be proposed, or whether, instead, the options contained in section 7-3-113(1), MCA, are mandated.

Section 7-3-113(1), MCA, as already noted, was enacted to define a form of government in existence when the

local government statutes were first adopted. The structural characteristics of government required by this statute were intended to apply if voters did not adopt an alternative form of local government. See discussion in 41 Op. Att'y Gen. No. 37 (1985). The statute does not apply to proposed alternative forms of government, which may recommend any of the structural characteristics of government permitted in the local government statutes.

Of course, the Whitefish electors must vote on those options proposed in the plan that is contained in the petition. However, the plan proposed by petition need not include only the options set forth in section 7-3-113(1), MCA.

Your next question requires an interpretation of the term "precinct" as used in section 7-3-150, MCA. That section provides general ballot requirements for adoption of an alternative form of government proposed by petition. Subsection (2) requires that the ballots be divided into two sets.

> (2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

You note that there are three precincts located exclusively within the city of Whitefish. However, because precincts are established by the county, you ask whether section 7-3-150(2), MCA, implicitly refers to "wards" rather than "precincts" where the ballot issue involves proposed changes in municipal government only.

Section 13-3-101, MCA, defines "precincts" as the territorial unit for elections. Since section 7-3-150(2), MCA, refers to "precinct" and since the city

of Whitefish is divided into precincts, I conclude that the ballot division required in section 7-3-150(2), MCA, should be done according to precinct boundaries. However, because of the odd number of precincts in Whitefish, it is impossible to meet all of the requirements of section 7-3-150(2), MCA. In an effort to substantially comply, I suggest that on the ballots in two precincts the existing plan of government be printed as the first item, and on the ballots in the third precinct the proposed form of government be printed as the first item. Although this does not result in two "equal" sets of ballots, as is required by the first sentence of section 7-3-150(2), MCA, it is consistent with the intent of the last sentence, which requires a local government with only one precinct to list the existing plan first on all ballots.

Your third question concerns the status of the incumbent city treasurer who is a nonelected city employee under the existing form of government. Section 7-3-158(1), MCA, sets forth the general rule that "holdover" members of the governing body continue in office only until the new officers are elected and qualified. Two exceptions to this general rule are permitted under subsection (3), which provides that a petition proposing an alternative form of government may provide that an elected officer either continue to serve out his full term of office or that he be retained for his full term as a local government employee. If the first of these exceptions is adopted as a part of the new plan of government, then the election required by section 7-3-160, MCA, would be postponed for those holdover officers affected by the exception.

No other exceptions are authorized for members of the existing governing body, as I concluded in 41 Op. Att'y Gen. No. 70 (1986). The exceptions in section 7-3-158(3), MCA, apply only to elected officers. Since the incumbent city treasurer is not an elected officer, the exceptions do not apply, and the general rule found in section 7-3-158(1), MCA, would operate to discontinue the incumbent city treasurer's term of office at the time the new governing body is elected and qualified. Section 7-3-158(1), MCA, contemplates an election scheduled pursuant to the requirements of section 7-3-160, MCA. Those provisions should be followed for the new position of elected city treasurer.

THEREFORE, IT IS MY OPINION:

1. A proposed municipal commission-executive form of government is not restricted by the structural characteristics listed in section 7-3-113(1), MCA.

2. The ballot division required by section 7-3-150(2), MCA, must be done according to precinct boundaries.

3. Where the existing office of city treasurer is a nonelected position, and the proposed plan of local government calls for an elected city treasurer, the election schedule required by section 7-3-160, MCA, must be followed for that office.

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1986. This table includes those rules adopted during the period June 30, 1986 through September 30, 1986 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, 1986, 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 1986 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I-IX	Emergency Telephone Service, p. 1523
I-X	Leaves of Absence Due to Disability, p. 1423
I-XII	Administration of a Sick Leave Fund for State Employees, p. 864, 1297
2.4.101	and other rules - Regulating Travel Expenses of State Employees While on Official Business, p. 1124, 1581
2.5.301	and other rules - Procurement of Used Equipment - Procurement from Sheltered Workshops and Work Activity Centers - Delegation of Purchasing Authority - Bid and Performance Security - Competitive Sealed Bids - Small Purchases of Supplies and Services, p. 1900, 242
(Public Employees' Retirement Board)	
2.43.301	and other rules - Administration of Public Retirement Systems and the State Social Security Program, p. 702, 1454
(State Tax Appeal Board)	
2.51.307	and other rules - Operation of and Public Participation in the County and State Tax Appeals Process, p. 862, 1174
(Workers' Compensation Judge)	
2.52.343	and other rule - Attorney Fees - Petition for New Trial or Reconsideration of Attorney Fee Award, p. 302, 774

AGRICULTURE, Department of, Title 4

I-III Designation of Noxious Weeds Pursuant to the County Weed Control Act, p. 88, 337
I-VI Emergency Rules - Cropland Insect Detection and Spraying Program, p. 1175
I-VIII Establishing 1080 Livestock Protection Collar Regulations, p. 396, 775
I-VIII Establishing Civil Penalties for Pesticide Act Violations, p. 618, 1013
I-X and other rules - Commodity Dealers and Public Warehousemen - Grain Rules - Dry Beans, p. 872, 1178
I-XII Noxious Weed Trust Fund, p. 1, 651
I-XLIII Establishing Standards for Anhydrous Ammonia Facilities, p. 1231
4.10.101 and other rules - Pesticide Sale and Use, p. 589, 1007
4.10.1501 Definition of Terms in the Pesticide Act, p. 725, 1071
4.12.1205 and other rule - Importation of Alfalfa Leafcutting Bees, p. 6, 336
4.12.3503 and other rules - Permitting Purple Internal Discoloration in Nooksack Seed Potatoes for Blue or Red Tag Grades, p. 536
4.12.3503 and other rule - Grading of Certified Seed Potatoes, p. 8, 245

STATE AUDITOR, Title 6

I-III Montana Title Insurance Act, p. 12, 783
I-VIII Voluntary Payroll Deductions - Automatic Deductions from Payroll Warrants Other than those Mandated by Law, p. 1941, 246
I-IX Emergency Rules Relating to Montana Insurance Assistance Plan, p. 655, 781
I-IX Montana Insurance Assistance Plan, Commercial Liability, p. 879, 1460
6.6.2003 Unfair Trade Practices on Mid-term Cancellations of Casualty or Property Insurance, p. 10, 538

COMMERCE, Department of, Title 8

(Board of Architects)
8.6.405 and other rules - Reciprocity - Individual Seal-Standards of Professional Conduct and Activities Constituting Misconduct, p. 1648
8.6.406 and other rules - Qualifications Required of Architects Licensed Outside Montana - Examination - Individual Seal - Disciplinary Actions, and Partnerships, p. 404, 789

(Board of Professional Engineers and Land Surveyors)
8.48.501 and other rules - Applications - Licensing - Comity - Disciplinary Action - Emeritus Status - Applications by Partnerships and Corporations, p. 1536
(Board of Private Security Patrolmen and Investigators)
8.50.423 and other rules - Definitions - Temporary Employment - Experience Requirements - Insurance Requirements - Fees - Probationary Investigators - Assessments, p. 419, 946
8.50.423 and other rule - Definitions - Fee Schedule, p. 1428, 1697
8.50.431 and other rule - Insurance Requirements - Fee Schedule, p. 1488
(Board of Public Accountants)
8.54.612 and other rules - Confidential Client Information - Enforcement Against Permit Holders - Enforcement Procedures - Investigators - Credit for Service as Lecturer, Discussion Leader, or Speaker - Reviewers Under the Positive Enforcement Program - Profession Monitoring, p. 998, 1500
(Board of Radiologic Technologists)
8.56.409 and other rule - Fee Schedule - Permit Fees, p. 1490
(Board of Realty Regulation)
I Continuing Education, p. 1545
8.58.401 Purpose of Board, p. 307, 661
8.58.414 Trust Account Requirements, p. 1492
(Social Work Examiners and Professional Counselors)
I-IV Continuing Education Requirements, p. 309, 662
I-IV Licensure Requirements - Application Procedure - Fee Schedule - Ethical Standards, p. 312, 663
(Board of Veterinary Medicine)
8.64.501 and other rules - Applications - Examinations - Disciplinary Actions, p. 316, 948
(Milk Control Bureau)
8.79.101 Transactions Involving Purchase and Resale of Milk Within the State, p. 883, 1183
8.79.301 Licensee Assessments, p. 152, 452
(Financial Division)
I Examination Fees for Consumer Loan Licensees, p. 494
8.80.301 Advertising by Consumer Loan Licensees, p. 321, 793
(Board of Milk Control)
I Emergency Rule - Limited Service Wholesale Allowance - Temporary Wholesale Prices, p. 251, 539
I Emergency Rule - Limited Service Minimum Jobber Price, p. 539
8.86.301 Class I Price Formula to Establish a Special Wholesale Price for Retail Grocery Stores, p. 495, 1016
8.86.301 Pricing Rules - Class I Price Formula to Change On-the-farm Retail Prices, p. 1134, 1504

INSTITUTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

LABOR AND INDUSTRY, Department of, Title 24

STATE LANDS, Department of, Title 26

26.3.101 and other rules - Surface Leasing of State Land, p. 1547

LIEUTENANT GOVERNOR, Title 30
(Montana Statehood Centennial Commission)
I-IX Sanctioning Official Centennial Commemorative Products and Projects, p. 1437

LIVESTOCK, Department of, Title 32

32.3.212 Changing the Requirements for Import of Cattle from States Classified Brucellosis A, B, and C, p. 432, 794
32.3.213 Allowing Movement of Cats into State Under Health Certificate, p. 437, 795
32.3.407A Permanent Waiver in All Counties the Change of Ownership Brucellosis Test, p. 435, 796

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)
36.16.101 and other rules - Water Reservations - Applications in the Yellowstone River Basin - Applications in the Missouri River Basin - Reservation Changes and Transfers, p. 920, 1584
(Board of Water Well Contractors)
I-VII Definitions - Disciplinary Action, p. 235, 671, 797
36.21.410 Examinations, p. 1146, 1601
36.21.601 and other rules - Current Construction Standards - Minimum Construction Standards for Water Wells in Montana, p. 1148, 1699
(Board of Oil & Gas Conservation)
36.22.1242 Increasing the Oil and Gas Privilege and License Tax, p. 742, 1063, 1384

PUBLIC SERVICE REGULATION, Department of, Title 38

I-XXXIX Telecommunications Act - Minimum Rate Case Filing Requirements for Telephone Utilities, p. 166, 799

REVENUE, Department of, Title 42

I SRS Inspection of Income Tax Returns, p. 1318, 51, 261
I Gasoline Distributor's License Tax, p. 1673
I-III Adjusting a Jointly Filed Tax Return, p. 509, 1026
I-IV Seven Day Credit Limit of Cigarette and Tobacco Products, p. 940, 1320
I-V Emergency Telephone Service, p. 1574
I-VI Reporting Requirements for New Production of Oil and Gas, p. 1974, 817
I-IX Disclosure of Child Support Information, p. 1065
42.15.511 Energy Related Tax Incentives, p. 1675