ERVE

RESERVE
KFM
9061
.M762

MONTANA ADMINISTRATIVE REGISTER

STATE LAW LIBRARY

JAN 2 9 1987

OF MONTANA

DOES NOT CIRCU

1987 ISSUE NO. 2
JANUARY 29, 1987
PAGES 53-127

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the amendment of rule 4.12.1012 increasing the fees charged for sampling, inspection and testing of grains at the state grain laboratories and repealing rule 4.12.1013	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 4.12.1012 CONCERNING GRAIN FEES AND REPEALING RULE 4.12.1013 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 2, 1987 the Department of Agriculture proposes to amend rule 4.12.1012 and repeal rule 4.12.1013 ARM concerning fees for grain sampling.

2. The proposed rule reads as follows:

4.12.1012 GRAIN FEE SCHEDULE (1) The department has adopted a revised schedule of fees to be charged by the State Laboratories at Great Falls, Montana.

SCHEDULE OF FEES AND CHARGES

Official Lot Inspection - bulk, boxcar , hopper car, or truck (all grains)	~~$10.00~~	$15.00
~~Official Lot Inspection---hopper car per car, sampling and grade only, less than 26 car unit train~~	~~13.50~~	
~~Hopper car, per car, sampling and grade only, 26 car or more unit train~~	~~11.00~~	
Submitted Sample Inspection	~~5.00~~	5.50
Factor Determinations (per factor)	~~2.25~~	2.50
Sampling only - all lots, bulk, boxcar or truck (all grains)	~~8.00~~	13.00
~~Sampling only---hopper car~~	~~10.00~~	
Protein Tests	~~4.00~~	5.00
Dry Basis	~~4.50~~	5.50
Moisture Tests - (oven)	~~3.00~~	4.00
*Malting Barley Analysis	~~3.00~~	4.00
Copies of Certificates	~~2.00~~	2.50
Special Service Fee (immediate handling per sample, telephone reports, etc.)	~~2.00~~	2.50
Mailing of Samples - (per sample - plus postage)	~~2.00~~	2.50
Inspector - Sampler (per man hour, straight time)	~~15.00~~	20.00
(overtime)	~~20.00~~	30.00
Storage Examination (minimum 1 hour)	~~10.00~~	20.00
~~Mileage (rate per mile)~~	~~.20~~	
~~Special Trip (per hour)~~	~~10.00~~	
FGIS Survey-Minimum (dockage, moisture, etc.)..		200.00

* Includes actual percent of plump barley, skinned and broken kernels, and thin barley.

Special inspection of grain - charged by hourly rates and mileage.

Re-inspection (original grade sustained) - regular fee during routine inspection.

Re-inspection (original grade changed) - regular sampling fee during routine inspection tour.

Retest - (original protein test sustained) - regular protein fee plus sampling fee during regular inspection tour.

Retest - (original protein test changed) - differences of more than 0.2% - regular sampling fee during routine inspection tour.

In case of a material error in grade or protein, a corrected certificate will be issued without a fee.

REGULAR HOURS: 8:00 a.m. to 5:00 p.m. Monday through Friday EXCEPT holidays.

OVERTIME HOURLY RATE: ~~$20.00~~ $30.00 per hour per individual assessed in half hour intervals with a minimum 1 hour charge. The overtime hourly rate will be assessed for sampling and for inspectors when requested to work other than regular weekly hours.

HOLIDAYS: Regular State Holidays.

MILEAGE, TRAVEL TIME AND TRAVEL EXPENSES:

1. Mileage charges based on current Montana State Schedule.

   A. Local Trip: The regular fees apply for one trip per day to each railroad yard or elevator. When a second trip in a day is requested, the applicant will be assessed ~~$10.00~~ $20.00 per trip.

   B. Out-of-Town Trips: There will be a ~~$10.00~~ $30.00 assessment for all out of town trips.

2. When additional expenses are incurred, i.e. mileage, meals or lodging, those expenses in addition to other fees and charges will be assessed the applicant.

AUTH: 80-4-403, MCA IMP: 80-4-721, MCA

Rule 4.12.1013 is proposed to be repealed and can be found on page 4-403 of the Administrative Rules of Montana.

AUTH: 80-4-403, MCA IMP: 80-4-721, MCA

3. The change is being made to adjust to the anticipated costs of providing the services. The department has deemed this rule change necessary in order to adequately generate the needed revenue to compensate for the costs of conducting the grain inspection and sampling services. The

department has further determined that rule 4.12.1013 is superfluous and it is contained within rule 4.12.1012, therefore it is proposed to be repealed.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than February 27, 1987.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than February 27, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 32 persons based on 320 grain elevator facilities.

KEITH KELLY, DIRECTOR
DEPARTMENT OF AGRICULTURE

BY: 
W. Ralph Peck, Deputy Director

Certified to the Secretary of State January 19, 1987

DEPARTMENT OF COMMERCE
STATE OF MONTANA
BEFORE THE MILK CONTROL BUREAU

In the matter of the amendment of rule 8.79.301 regarding licensee assessments	) NOTICE OF PROPOSED AMENDMENT) OF RULE 8.79.301 LICENSEE) ASSESSMENTS)) NO PUBLIC HEARING COMTEMPLATED)) DOCKET #77-87

TO: All Interested Persons:

1. On March 27, 1987 the Department of Commerce proposes to amend Rule 8.79.301 relating to an assessment to be levied upon licensees subject to 81-23-202, MCA. The proposed amendment will become effective July 1, 1987.

2. The purpose of the amendment is to change the effective date of the rule as it applies to the assessments. There is no change in the amount of the assessments. The rule as proposed to be amended would read as follows:

"8.79.301 LICENSEE ASSESSMENTS

(1) Pursuant to section 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the fiscal year beginning July 1, ~~1986~~ 1987, and ending June 30, ~~1987~~ 1988, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of nine cents ($0.09) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of nine cents ($0.09) per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of four and one half cents ($0.045) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of four and one half cents ($0.045) per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

3. Interested persons are asked to note that there is no change in the amount of the assessment proposed for fiscal year 1988. The purpose of the amendment is merely to change the effective dates from July 1, 1986 through June 30, 1987 to July 1, 1987 through June 30, 1988.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Commerce, 1520 East Sixth Avenue, Helena, Montana, no later than March 15, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit along with any written comments he has to the above address no later than March 15, 1987.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendment from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be 29 persons based on an estimate of 286 resident and not-resident producers, producer-distributors, and jobbers subject to this assessment.

7. The authority of the agency to make the proposed amendment is based on Section 81-23-202, MCA, and implements section 81-23-104, MCA.

KEITH COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

By: William E Ross
WILLIAM E. ROSS, CHIEF
MILK CONTROL BUREAU

Certified to the Secretary of State January 19, 1987.

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

In the matter of the amendment of rule 16.20.210 relating to frequency of bacteriological sampling	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE (Drinking Water)

To: All Interested Persons

1. On March 13, 1987, at 9:00 a.m. or as soon thereafter as may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.20.210, sections (1) and (2), concerning the frequency of sampling for bacteriological quality in public water supply systems serving a population of fewer than 25 persons.

2. The rule as proposed to be amended provides as follows (stricken material is interlined, new material is underlined):

16.20.210 BACTERIOLOGICAL QUALITY SAMPLES (1) The minimum number of samples to be collected from a public water supply system and submitted for examination must be in accordance with the following table:

Population served:	Minimum number of samples per month
25 1 to 1,000	1

[no change to rest of table]

(2) Based on a history of no coliform bacterial contamination and on a sanitary survey by the department showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a community water system serving 25 1 to 500 persons, with written permission from the department, may reduce the sampling frequency required in section (1) of this rule except that in no case may the sampling frequency be reduced to less than one sample per quarter.

(3) Same as existing rule.

AUTHORITY: 75-6-103(2), MCA
IMPLEMENTING: 75-6-103(2)(c), MCA

3. The Board is proposing the amendments to clarify that even though a system does not serve 25 persons, if the system is public under either of the other definitions in Section 75-6-102(10) (i.e., has ten or more connections 60 days out of the year or serves 10 or more families daily), then the bacteriological sampling requirements in ARM 16.20.210 do apply to such system.

4. Interested persons may present their data, views, or

arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 12, 1987.

5. Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

JOHN J. McGREGOR, M.D., Chairman
BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

by _____
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1987.

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

In the matter of the amendment rules 16.44.103, 16.44.104, 16.44.105, 16.44.109, 16.44.110, 16.44.121, 16.44.123, 16.44.126, 16.44.202, 16.44.302, 16.44.305, 16.44.306, 16.44.311, 16.44.324, 16.44.330, 16.44.333, 16.44.334, 16.44.351, 16.44.352, 16.44.401, 16.44.402, 16.44.403, 16.44.404, 16.44.405, 16.44.415, 16.44.505, 16.44.609, 16.44.612, 16.44.701, 16.44.702, 16.44.801, 16.44.803, and 16.44.823, and the adoption of new rules I, II, and III regarding hazardous waste management	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENTS OF RULES (Hazardous Waste Management)

To: All Interested Persons

1. On February 18, 1987, at 9:00 a.m., or as soon thereafter as may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the rules listed above and the adoption of three new rules.

2. The proposed amendments and new rules effect minor clerical or other changes in permitting, counting hazardous wastes, following requirements for recycled materials, incorporating appendices, redefining generator categories, creating requirements for conditionally exempt small quantity generators, registration and fee requirements for generators and transporters, accumulating hazardous wastes, and annual reporting.

3. The new rules and the rules as proposed to be amended provide as follows (in the proposed amendments, matter to be stricken is interlined, new material is underlined):

16.44.103 SCOPE OF PERMIT REQUIREMENTS

(1)-(3) Same as existing rule.

(4) Specific exclusions. The following persons are among those who are not required to obtain a HWM permit:

(a) Generators who accumulate hazardous waste on-site for less than ~~90--days,--as~~ the time periods provided in ARM 16.44.415.

(b) Same as existing rule.

(c) Persons who own or operate facilities ~~solely~~ for the treatment, storage, or disposal of hazardous waste ~~excluded~~

~~from these rules under ARM 16.44.305~~ received solely from conditionally exempt small quantity generators pursuant to ARM 16.44.402(5)(b).

(d)-(g) Same as existing rule.

(5)-(8) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.104 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES (1) Same as existing rule.

(2) At any time after adoption of final facility standards, the owner and operator of an existing HWM facility may be required to submit Part B of the permit application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application any time after adoption of final facility standards. Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in ARM ~~16.44.305(3)~~ 16.44.105(5). Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under RCRA defined in ARM 16.44.202 that render the facility subject to the requirement to have a permit must submit a Part B application in accordance with the dates specified in ARM ~~16.44.305(3)~~ 16.44.105(5).

(3) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of a temporary permit (interim status) under ~~ARM 16.44.304~~ subchapter 9 of this chapter.

(4)-(8) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.105 TEMPORARY PERMITS (INTERIM STATUS)

(1) Same as existing rule.

(2) Small generators of hazardous waste (as defined under ARM 16.44.401) who currently treat, store, or dispose of their wastes on site must submit Part A of their permit application no later than March 24, 1987.

(2)-(6) (current numbering) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.109 CONDITIONS OF PERMITS The following conditions apply to all HWM permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference a specific citation to these rules must be given in the permit.

(1)-(21) Same as existing rule.

(22) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.72, 264.73(b)(9) ~~(7/1/85~~ 7/1/86 edition), and 264.76. 40 CFR sections 264.72,

264.73(b)(9), and 264.76 are federal agency rules setting forth requirements for owners and operators of HWM facilities concerning, respectively, manifest discrepancies, operating records, and unmanifested waste reports.

(23) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.110 ESTABLISHING PERMIT CONDITIONS

(1) Same as existing rule.

(2) Each HWM permit shall include permit conditions necessary to achieve compliance with the Act and applicable rules including each of the applicable requirements specified in 40 CFR Parts 264 and 266 (~~7/1/85~~ 7/1/86 edition). In satisfying this provision, the department may incorporate applicable requirements of 40 CFR Parts 264 and 266 directly into the permit or establish other permit conditions that are based on these parts.

(3)-(5) Same as existing rule.

(6) The department hereby adopts and incorporates by reference 40 CFR Parts 264 and 266 (~~7/1/85~~ 7/1/86 edition). 40 CFR Parts 264 and 266 are federal agency rules setting forth requirements, for owners and operators of HWM facilities, concerning respectively, standards for operation and maintenance of facilities and standards for specific hazardous wastes such as recyclable wastes and specific types of facilities.

(7) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.121 PERMITS BY RULE (1) Notwithstanding any other provision of this subchapter or subchapter 9, the following persons shall be deemed to have a HWM permit if the conditions listed are met:

(a) the owner or operator of a publicly owned treatment works which accepts for treatment hazardous waste, if the owner or operator:

(i)-(ii) Same as existing rule.

(iii) complies with the appropriate subsections of these rules with respect to:

(A)-(D) Same as existing rule.

(E) ~~biennial~~ annual report;

(F)-(G) Same as existing rule.

(iv) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.123 PERMITS FOR HAZARDOUS WASTE INCINERATORS

(1)-(2)(b)(i)(B) Same as existing rule.

(C) an identification of any hazardous organic constituents listed in ARM ~~16.44.352(4)~~ 16.44.352 which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in ARM ~~16.44.352(4)~~ 16.44.352

which would reasonably not be expected to be found in the waste. The constituents excluded from the analysis must be identified, and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in ARM ~~16.44.352(2)~~ 16.44.351 or their equivalent.

(D) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in ARM ~~16.44.352(2)~~ 16.44.351 or their equivalent.

(ii)-(viii) Same as existing rule.

(c) Same as existing rule.

(d) Based on the waste analysis data in the trial burn plan, the department will specify as trial Principal Organic Hazardous Constituents (POHC's), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the department based on its estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration of mass in the waste feed, and, for wastes listed in ARM 16.44.330 through 16.44.333, the hazardous waste organic constituent or constituents identified in ARM ~~16.44.352(8)~~ 16.44.362 as the basis for listing.

(e)-(j) Same as existing rule.

(3)-(6) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.126 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS (1) The department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 CFR Part 264 or 266 (~~7/1/85~~ 7/1/86 edition). Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(a)-(c) Same as existing rule.

(2)-(4) Same as existing rule.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Parts 264 and 266 (both parts are contained in the ~~7/1/85~~ 7/1/86 edition), which pertain to standards for owners and operators of hazardous waste management facilities and to standards for the management of specific hazardous wastes such as recyclable materials. Copies of 40 CFR Parts 264 and 266 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1)-(15) Same as existing rule.

(16)(a) Same as existing rule.

(b) The department hereby adopts and incorporates by reference herein 40 CFR Part 266 ~~(7/1/85~~ 7/1/86 edition), which is a federal agency rule pertaining to standards for the management of specific hazardous wastes such as recyclable materials and specific types of hazardous waste management facilities. A copy of 40 CFR Part 266 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(17)-(36) Same as existing rule.

(37) "Hazardous constituents" means constituents identified in ARM ~~16.44.352(4)~~ 16.44.352 that are reasonably expected to be in or derived from a hazardous waste; for the purposes of subpart M (land treatment) of 40 CFR Part 264 incorporated by reference into ARM 16.44.702, hazardous constituents are limited to those constituents reasonably expected to be in or derived from waste placed in or on the treatment zone of a land treatment unit; for the purposes of subpart F (ground water protection) of 40 CFR Part 264 incorporated by reference into ARM 16.44.702, hazardous constituents are limited to those waste constituents detected in ground water in the uppermost aquifer underlying a regulated unit.

(38)-(106) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-403, 75-10-405 and 75-10-406, MCA

16.44.302 DEFINITION OF WASTE

(1)-(4)(b)(i)(A) Same as existing rule.

(B) the materials which contain toxic constituents listed in ARM ~~16.44.352(4)~~ 16.44.352 and that are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and which are not used or reused during the recycling process; and

(ii) Same as existing rule.

(5)-(6) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.305 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES GENERATED BY SMALL-QUANTITY GENERATORS

~~(1) A generator is a small-quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.~~

~~(2) Except for those wastes identified in sections (5) and (6) of this rule, a small-quantity generator's hazardous wastes are not subject to regulation under this chapter, provided the generator complies with the requirements of section (7) of this rule.~~

~~(3) Hazardous waste that is recycled and that is excluded from regulation under ARM 16.44.306(1)(b)(iii) and (v), 16.44.306(1)(c), or 40 CFR Part 266 (7/1/85 edition), is not included in the quantity determinations of this rule and is not~~

subject to any requirements of this rule. Hazardous waste that is subject to the requirements of ARM 16.44.306(2) and (3) and subparts G, D, and F of 40 CFR Part 266 (7/1/85 edition) is included in the quantity determination of this rule and is subject to the requirements of this rule.

(4) In determining the quantity of hazardous waste he generates, a generator need not include:

(a) his hazardous waste when it is removed from on site storage; or

(b) hazardous waste produced by on site treatment of his hazardous waste.

(5) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under this chapter.

(a) a total of one kilogram of acute hazardous wastes listed in ARM 16.44.331, 16.44.332, or 16.44.333(1)(e); or

(b) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the discharge into or on any land or water, of any acute hazardous wastes listed in ARM 16.44.331, 16.44.332, or commercial chemical product listed in ARM 16.44.333(1)(e).

(6) A small quantity generator may accumulate hazardous waste on site if he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in subsections (5)(a) or (5)(b) of this rule, all of these accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter. The time period of ARM 16.44.345 for accumulation of wastes on site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this rule, the generator must:

(a) comply with ARM 16.44.402;

(b) if he stores his hazardous waste on site, store it in compliance with the requirements of section (6) of this rule; and

(c) either treat or dispose of his hazardous waste in an on site facility, or ensure delivery to an off site storage, treatment or disposal facility either of which is:

(i) permitted under subchapters 3 or 6 of this chapter;

(ii) authorized by EPA to manage hazardous waste;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved by EPA;

(iv) licensed by the department to operate a refuse disposal facility pursuant to subchapter 5, chapter 14, title 16, ARM; or

(v) a facility which:

(A) beneficially uses or re uses, or legitimately recycles or reclaims his waste; or

(B) treats his waste prior to beneficial use or re use, or legitimate recycling or reclamation;

~~(8) Hazardous waste subject to the reduced requirements of this rule may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitation in this rule, unless the mixture meets any of the characteristics of hazardous wastes identified in ARM 16.44.320 through 16.44.324.~~

~~(9) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this rule, the mixture is subject to full regulation.~~

~~(10) The department hereby adopts and incorporates by reference herein subparts G, D, and F of 40 CFR Part 266 (7/1/85 edition) which pertains to the handling of recycled materials. A copy of subparts G, D, and F of 40 CFR Part 266 or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.~~

(1) In accounting for the quantity of hazardous waste generated for the purpose of determining his proper category, a generator:

(a) need not include hazardous waste that is excluded from regulation under this chapter (e.g., wastes excluded under ARM 16.44.103, 16.44.304, 16.44.612, or 16.44.701, recyclable materials which are excluded under ARM 16.44.306(1)(c) or which are directly reclaimed on site without prior storage, and used oil which has not been mixed with any listed hazardous waste);

(b) must include all hazardous waste that is subject to regulation under this chapter, including wastes regulated under ARM 16.44.306(2) and (3) and 40 CFR Part 266, Subparts C, D, and F (incorporated by reference in ARM 16.44.306(4));

(c) need not include hazardous waste when it is removed from storage, if the waste was counted before it was placed in storage;

(d) need not include hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, if the hazardous waste was already counted once; and

(e) need not include spent materials that are generated, reclaimed, and subsequently reused on site, if such spent materials have already been counted once.

AUTHORITY: 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

~~(1)(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of sections (2) and (3) of this rule, except for the materials listed in subsections (1)(b) and (1)(c) of this rule.~~ Hazardous wastes that are recycled will be known as "recyclable materials".

(b) The following recyclable materials are not subject to the requirements of this rule but are regulated under subparts C through G of 40 CFR Part 266 (~~7/1/85~~ 7/1/86 edition) and all applicable provisions in subchapters 1, 8, and 9 of this chapter:

(i) recyclable materials used in a manner constituting

disposal (subpart C, 40 CFR Part 266 (7/1/85 7/1/86 edition));

(ii) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 40 CFR Part 264 or subpart O of 40 CFR Part 265 (subpart D, 40 CFR Part 266) (7/1/85 7/1/86 edition);

(iii) used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart Q of 40 CFR Part 264 or subpart O of 40 CFR Part 265 (subpart E, 40 CFR Part 266);

(iv) recyclable materials from which precious metals are reclaimed (subpart F, 40 CFR Part 266 (7/1/85 7/1/86 edition));

(v) spent lead-acid batteries that are being reclaimed (subpart G, 40 CFR Part 266 (7/1/85 7/1/86 edition));

(c) The following recyclable materials are not subject to regulation under this chapter:

(i) industrial ethyl alcohol that is reclaimed;

(ii) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(iii) used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery; or

(iv) scrap metal;

(v) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(vi) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(vii) coke and coal tar from iron and steel industry that contains hazardous waste from the iron and steel production process;

(vii)(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR 266.40(e) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR 266.40(e);

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR 266.40(e); or

(ix) petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in subchapter 3 of this chapter.

(2) Unless exempted in (1)(b) and (1)(c) above, ~~G~~generators and transporters of recyclable materials are subject to the applicable requirements of subchapters 4 and 5 of this chapter~~,~~ ~~except as provided in section (3) of this rule~~.

(3)(a) Unless exempted in (1)(b) and (1)(c) above, ~~O~~owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A ~~B~~ through L of 40 CFR Parts 264 and 265 (except subpart H of each Part and except for 40 CFR 264.75 and 40 CFR 265.75) (~~7/1/85~~ 7/1/86 edition) and subchapters 1, 6, 7, and ~~8~~ ~~and 9~~ of this chapter, except as provided in section (1) of this rule. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are ~~subject to the notification requirements of section 3010 of RCRA, as amended,~~ required to notify the department of their recycling activities by filing a completed form 8700-12 with the department and are subject to the requirements of 40 CFR 265.71 and 265.72 (~~7/1/85~~ 7/1/86 edition) (dealing with the use of the manifest and manifest discrepancies), except as provided in section (1) of this rule.

(4) The department hereby adopts and incorporates by reference subpart O of 40 CFR Part 264, subpart O of 40 CFR Part 265, 40 CFR 265.71, 265.72, and subparts C through G of 40 CFR Part 266. (All CFR sections and parts referred to herein are contained in the ~~7/1/85~~ 7/1/86 edition.) These federal agency rules refer, respectively, to: standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 264, subpart O); interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 265, subpart O); use of a manifest system for interim status facility owners and operators (40 CFR 265.71), ~~requirements pertaining to a biennial report~~ manifest discrepancies (40 CFR 265.72), and recyclable materials (40 CFR Part 266). ~~The department hereby adopts and incorporates by reference herein section 3010 of RCRA (Resource Recovery and Conservation Act of 1976, as amended), 42 U.S.C. 3010.~~ Subparts B through L of 40 CFR Parts 264 and 265 are incorporated by reference in ARM 16.44.702 and 16.44.609. The equivalent of 40 CFR 264.75 and 40 CFR 265.75 are set forth in ARM 16.44.613. A copy of these provisions or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.311 CRITERIA FOR LISTING HAZARDOUS WASTE

(1)(a)-(b) Same as existing rule.

(c) it contains any of the hazardous constituents listed in ARM ~~16.44.352(4)~~ 16.44.352 unless, after considering any of the following factors, the department concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(3) The department will use the criteria for listing specified in this rule to establish the ~~exclusion~~ waste quantity limits referred to in ARM ~~16.44.305(5)~~ 16.44.401 for categorizing generators.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.324 CHARACTERISTIC OF EP TOXICITY (1) A waste exhibits the characteristic of EP toxicity if, using the test methods described in ARM ~~16.44.352~~ 16.44.351, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this rule.

(2) Same as existing rule.

AUTHORITY: 75-10-204 and 75-10-405, MCA
IMPLEMENTING: 75-10-203 and 75-10-204, MCA

16.44.330 LISTS OF HAZARDOUS WASTES -- GENERAL

(1)-(2)(a) Same as existing rule.

(b) ARM ~~16.44.352(3)~~ 16.44.351 identifies the constituent which caused the waste to be listed as an EP toxic waste (E) or toxic waste (T) in ARM 16.44.331 and 16.44.332.

(4) The following hazardous wastes listed in ARM 16.44.331 are subject to the ~~exclusion~~ waste quantity limits for acutely hazardous wastes established in ARM ~~16.44.305~~ 16.44.401: EPA hazardous wastes nos. FO20, FO21, FO22, FO23, FO26, and FO27.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SPILL RESIDUES THEREOF (1)(a)-(d) Same as existing rule

(e) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (1)(a) through (d) of this rule are identified as acute hazardous wastes (H)~~--and are subject to the small quantity exclusion defined in ARM 16.44.305(5)~~. These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(e).

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (1)(a) through (d) of this rule are identified as toxic wastes (T) unless otherwise designated ~~and are subject to the emergency exemption adopted in ARM 16.44.205(4) and (6)~~. These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(f).

~~(4)~~(g) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.334 ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES ON A CASE-BY-CASE BASIS

(1)-(2) Same as existing rule.

(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Appendix V (~~7/1/85~~ 7/1/86 edition), which sets forth examples of incompatible wastes. A copy of 40 CFR Part 265, Appendix V, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.361 REPRESENTATIVE SAMPLING METHODS; EP TOXICITY TEST PROCEDURES; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS (1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following:

(a) Appendix I of 40 CFR Part 261~~--Appendix--I--of--40--CFR Part--261--is--an--appendix--to--a--federal--agency--rule~~ setting forth the sampling protocols for the collection of samples of hazardous waste which will be considered by the department to be representative of the waste;

(b) Appendix II of 40 CFR Part 261 pertaining to the test procedure for EP toxicity;

(c) Appendix III of 40 CFR Part 261 pertaining to analytical procedures to be used in determining whether a waste contains a particular hazardous constituent;

(d) Appendix X of 40 CFR Part 261 which sets forth analytical procedures for chlorinated dibenzo-p-dioxins and dibenzofurans; and

(e) "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" which is an EPA publication setting forth standard sampling, extraction, and analytical test methods for the national hazardous waste program.

(2) A copy of Appendix I, Appendix II, Appendix III, and Appendix X of 40 CFR Part 261 and "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

~~(2)~~(3) A person desiring to use an alternative sampling

method shall submit to the department a written request for approval of the proposed method.
AUTHORITY: 75-10-204, MCA
IMPLEMENTING: 75-10-102 and 75-10-204, MCA

16.44.352 EP-TOXICITY-TEST-PROCEDURES----CHEMICAL-ANALYSIS-TEST-METHODS----BASIS FOR LISTING -- HAZARDOUS CONSTITUENTS

(1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following:

~~(1) Appendix II of 40 CFR Part 261 is an appendix to a federal agency rule setting forth the test procedure for EP toxicity.~~

~~(2) Appendix III of 40 CFR Part 261 is an appendix to a federal agency rule setting forth the appropriate analytical procedures to be used in determining whether a waste contains a particular hazardous constituent.~~

~~(3)~~(a) Appendix VII of 40 CFR Part 261 which is an appendix to a federal agency rule setting forth the basis for listing hazardous waste.

~~(4)~~(b) Appendix VIII of 40 CFR Part 261 which is an appendix to a federal agency rule setting forth a list of hazardous constituents.

~~(a)~~(2) A copy of Appendices II, III, VII, and VIII of 40 CFR Part 261 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.401 GENERAL PROVISIONS; GENERATOR CATEGORIES

(1)-(2) Same as existing rule.

~~(3) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of ARM 16.44.480 is not required to comply with other standards in this subchapter or subchapters 6, 7, or 8 of this chapter with respect to such pesticides.~~

~~(4) A person who generates a hazardous waste as defined by subchapter 3 of this chapter is subject to the penalties provided in the act if he does not comply with the requirements of this subchapter.~~

~~(5)~~(3) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this subchapter.

(4) The following three categories of generators are defined by their monthly rates of hazardous waste generation and by the amounts of hazardous waste held in accumulation ("accumulation" means temporary on-site storage of hazardous waste(s)). For counting requirements see ARM 16.44.305.

(a) A "large generator" is a generator who generates in a calendar month:

(i) greater than 1000 kilograms (2200 pounds) of hazard-

ous waste;

(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or

(iii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

(b) A "large generator" may be a generator who accumulates at any time in a calendar month:

(i) greater than 6000 kilograms (13,200 pounds) of hazardous waste;

(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or

(iii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

(c) A "small generator" is a generator who generates in a calendar month:

(i) between 100 kilograms (220 pounds) and 1000 kilograms (2200 pounds) of hazardous waste;

(ii) less than 1 kilogram (2.2 pounds) of acute hazardous waste; or

(iii) less than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

(d) To be deemed a "small generator" the generator must never accumulate at any time in a calendar month:

(i) greater than 6000 kilograms (13,200 pounds) of hazardous waste;

(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or

(iii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

(e) A "conditionally exempt small quantity generator" or "conditionally exempt generator" is a generator who generates in a calendar month:

(i) less than 100 kilograms (220 pounds) of hazardous waste, including any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste; and

(ii) less than 1 kilogram (2.2 pounds) of acute hazardous waste.

(f) To be deemed a "conditionally exempt small quantity generator" the generator must never accumulate at any time in a calendar month:

(i) greater than 1000 kilograms (2200 pounds) of hazardous waste;

(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or

(iii) greater than 100 kilograms (220 pounds) of any

residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (1) A person who generates a waste, as defined in ARM 16.44.302, must determine if that waste is a hazardous waste using the following method:

~~(1)~~(a) he should first determine if the waste is excluded from regulation under ARM 16.44.304;

~~(2)~~(b) he must then determine if the waste is listed as a hazardous waste in ARM 16.44.330 through 16.44.333;

~~(3)~~(c) if the waste is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, he must determine whether the waste is identified in ARM 16.44.320 through 16.44.324 by either:

~~(a)~~(i) testing the waste according to the methods set forth in ARM 16.44.320 through 16.44.324; or

~~(b)~~(ii) applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(2) Conditionally exempt small quantity generators are subject only to the following requirements in this subchapter:

(a) section (1) above -- hazardous waste determination;

(b) section (5) below -- special requirements for conditionally exempt generators;

(c) 16.44.404(3) -- optional generator registration;

(d) 16.44.416(3) -- records of waste analyses; and

(e) 16.44.430 -- pesticide disposal by farmers.

(3) Small generators are subject to the following requirements in this subchapter:

(a) section (1) above -- hazardous waste determination;

(b) 16.44.403 -- registration and EPA identification numbers;

(c) 16.44.404 -- maintenance of registration and registration fees;

(d) 16.44.405 -- manifest general requirements;

(e) 16.44.406 -- acquisition of manifest forms;

(f) 16.44.407 -- manifest copies;

(g) 16.44.408 -- use of manifest;

(h) 16.44.410 through 16.44.413 -- pre-transport requirements;

(i) 16.44.415 -- requirements for accumulation of wastes and accumulation in satellite locations;

(j) 16.44.416 -- recordkeeping;

(k) 16.44.417 -- annual reporting;

(l) 16.44.425 -- international shipments; and

(m) 16.44.430 -- pesticide disposal by farmers.

(4) Large generators are subject to the following requirements in this subchapter:

(a) section (1) above -- hazardous waste determination;

(b) 16.44.403 -- registration and EPA identification num-

bers:

(c) 16.44.404 -- maintenance of registration and registration fees;

(d) 16.44.405 -- manifest general requirements (except 16.44.405(5));

(e) 16.44.406 -- acquisition of manifest forms;

(f) 16.44.407 -- manifest copies;

(g) 16.44.408 -- use of manifest;

(h) 16.44.410 through 16.44.413 -- pre-transport requirements;

(i) 16.44.415 -- requirements for accumulation of wastes and accumulation in satellite locations;

(j) 16.44.416 -- recordkeeping;

(k) 16.44.417 -- annual reporting;

(l) 16.44.418 -- exception reporting;

(m) 16.44.425 -- international shipments; and

(n) 16.44.430 -- pesticide disposal by farmers.

(5) The following special requirements apply to a conditionally exempt small quantity generator:

(a) A conditionally exempt generator may accumulate hazardous wastes on site in quantities up to the limits specified in ARM 16.44.401(4)(f). If he exceeds these quantity limits, the time period of ARM 16.44.415 for accumulation of wastes on site applies and the conditionally exempt generator becomes subject to the requirements for small generators or large generators, as applicable.

(b) A conditionally exempt generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility. Either facility must meet one of the following conditions, as applicable. It must:

(i) be permitted under subchapters 1 or 6 of this chapter;

(ii) be authorized by EPA to manage hazardous waste;

(iii) be authorized to manage hazardous waste by a state with a hazardous waste management program approved by EPA;

(iv) be licensed by the department to operate a refuse disposal facility pursuant to ARM Title 16, chapter 14, subchapter 5 (subject to any applicable restrictions of that subchapter and any applicable solid waste management license restrictions);

(v) beneficially use or re-use, or legitimately recycle or reclaim waste; or

(vi) treat waste prior to beneficial use or re-use, or legitimately recycle or reclaim the waste.

(c) A conditionally exempt generator's hazardous waste may be mixed with a solid waste (non-hazardous waste) and remain subject to these limited requirements even though the resultant mixture exceeds the quantity limitations identified in ARM 16.44.401(4)(e) and (f) unless the mixture meets any of the characteristics of hazardous wastes identified in ARM 16.44.320 through 16.44.324.

(d) If a conditionally exempt generator's hazardous wastes are mixed with used oil and if the mixture is destined

to be burned for energy recovery or further blended for eventual energy recovery, the mixture is subject to subpart E of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306(4)).
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.403 REGISTRATION AND EPA IDENTIFICATION NUMBERS (1) Except as otherwise provided in ARM 16.44.306, a generator must not Neither small generators nor large generators, as defined under ARM 16.44.401, may accumulate, treat, store, dispose of, transport, or offer for transportation hazardous waste without having current registration with the department.

(2) A generator who is not currently registered may become registered by applying to the department. The department will provide registration forms upon request. Upon receiving the completed form (form 8700-12) and payment of any the registration fee as required by ARM 16.44.404, the department will register the generator for the current registration year, and will assign an EPA identification number to the generator if one has not yet been assigned.

(3) A generator must not offer his hazardous waste to transporters that have not received an EPA identification number or nor may a generator offer his hazardous wastes to treatment, storage, or disposal facilities which are not "designated facilities" as defined in ARM 16.44.202. Insofar as generator liability herein, the generator has responsibility for inquiring about an EPA identification number or whether, if applicable, a facility is a "designated facility."
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.404 MAINTENANCE OF REGISTRATION AND REGISTRATION FEES (1) When used in this rule the terms listed in this section shall have the following meaning:

(a) "Base year" means the calendar year immediately preceding a given registration year.

(b) "Calendar year" means a year beginning on January 1st and ending on December 31st.

(c) "Inactive generator" means a generator who either produced no hazardous wastes during the most recent base year or whose only hazardous wastes were wastes identified in subsection (2)(b), (c), or (d) of this rule.

(d) "Registration fee" means the annual fee assessed to generators by the department pursuant to the Act and this rule.

(e) "Registration year" means a calendar year for which generator registration is required and for which a registration fee is assessed.

(2)(1) The following categories of persons shall not be required to maintain registration as generators nor or to pay the annual registration fee:

(a) conditionally exempt small quantity generators who are subject to the special provisions of ARM 16.44.306 16.44.402(5);

(b)-(d) Same as existing rule.

~~(3)~~(2) To be exempted from the payment of a fee under this rule, a generator must qualify for the exclusions of section ~~(2)~~(1) for the ~~entire base year and the entire registration~~ year.

~~(4)~~(3) Any generator who would be excluded from registration requirements by section ~~(2)~~(1) of this rule, but who wishes to maintain his or her annual registration, may do so by paying the applicable fee.

~~(5)~~(4) The department ~~shall base its determination of generator registration fee amounts upon the following~~ shall, by utilizing one of the following methods, assign each generator who is subject to registration to one of six size classes for the purpose of fee assessments:

~~(a) The registration fee shall be based upon the anticipated amount of hazardous waste that will be produced by a generator in a registration year.~~

~~(b) For the purposes of this rule, the anticipated hazardous waste generation rate for a registration year shall be equal to the actual amount of hazardous waste produced by that generator in the base year.~~

~~(c) In even-numbered years the department shall use the biennial reports required under ARM 16.44.417, ARM 16.44.609 and ARM 16.44.702, to determine fee amounts.~~

~~(d) In odd-numbered years, a generator must report to the department by March 1st the amount of hazardous waste it generated in the previous calendar year, by waste description and hazardous waste number. This information shall be submitted on forms provided to generators by the department.~~

~~(e) The department will use Table 1 in subsection (4) below to determine the registration fee applicable to a generator.~~

(a) for generators who have been registered in previous years, the department will utilize the annual reports submitted pursuant to ARM 16.44.417, for up to a maximum of the three most recent reporting years, to determine an average (mean) annual hazardous waste generation rate;

(b) for new generators who have not been registered in previous years, the department, after consultation with the generator, shall determine the generator's projected annual hazardous waste generation rate.

(5) The size classes for determining the annual registration fee amount are defined in Table 1 below:

Size Class	Annual Generation Rate (in tons)	Annual Reg. Fee	Relationship to the Three Generator Categories Defined in ARM 16.44.401
I	X ≤ 1.3	$ 10	Conditionally exempt generators who choose to be registered

II	1.3 < X ≤ 13	$ 75	Small generators
III	13 < X ≤ 100	$ 200	Large generators
IV	100 < X ≤ 1000	$ 600	Large generators
V	1000 < X ≤ 2500	$1000	Large generators
VI	2500 < X	$1500	Large generators

(6) Generators once assigned to a size class for registration fee assessment purposes will remain in that size class each registration year until the department determines that assignment to a new class is appropriate based upon:

(a) an evaluation of recent annual reports per subsection (4)(a) of this rule; or

(b) the review of a petition by a registered generator which documents that waste generation rates have changed and that the changes are projected to be long-term in effect.

~~(4)~~(7) Where a generator has allowed its registration to lapse, through the operation of section ~~(2)~~(1) of this rule, it may reinstate its generator registration for the current registration year by paying a $50 reinstatement fee in ~~lieu of~~ addition to any other generator registration fee.

(8) Re-registration of generators shall occur at the beginning of each registration year. The department shall prepare and will normally mail re-registration invoices by February 1st.

(9) Registration fees are due and payable thirty (30) days after the billing date. A late payment charge of 10% per month, or a minimum charge of $10, whichever is greater, will be assessed for all fee payments received later than sixty (60) days after the billing date.

~~TABLE 1~~

~~Annual Generator Registration Fee Assessment~~

~~Amount of Hazardous Waste Produced in Base Year (X, in tons)~~	~~Amount of Fee~~
~~0 < X ≤ 6 (inactive generator)~~	~~$ 10~~
~~6 < X ≤ 12~~	~~40~~
~~12 < X ≤ 25~~	~~75~~
~~25 < X ≤ 50~~	~~125~~
~~50 < X ≤ 100~~	~~200~~
~~100 < X ≤ 500~~	~~300~~
~~500 < X ≤ 1,000~~	~~450~~
~~1,000 < X ≤ 2,500~~	~~600~~
~~2,500 < X ≤ 5,000~~	~~800~~
~~5,000 < X~~	~~1,000~~
	~~1,500~~

~~(6) Beginning with the registration year 1984, the department will prepare statements showing each generator's fee assessment each year and shall mail the statements to generators by July 1st of the registration year.~~

~~(a) Beginning with the registration year 1984, registration fee payments shall be due and payable by August 1st and shall be subject to late payment charges if not made by September 1st in the year assessed.~~

~~(b) Beginning with registration year 1984, a late payment charge of 10% per month will be assessed for fee payments not received by September 1st in the year assessed.~~

~~(c) For registration year 1985, the department shall send statements by October 1st. Fee payments shall be due on November 1st and late payment charges shall be assessed after December 1st.~~

~~(7) The legal owner of multiple individual generators who qualifies as an inactive generator as defined in section (1)(f) of this rule shall not be assessed total generator registration fees exceeding $2,000.~~

~~(8) No person shown as the legal owner of multiple individual generators will be assessed total generator registration fees exceeding $5,000.~~

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.405 MANIFEST GENERAL REQUIREMENTS

(1)-(4) Same as existing rule.

(5) The requirements of ARM 16.44.405(1) through (4) and ARM 16.44.406 through 16.44.408 do not apply to small generators where:

(a) the generator's hazardous waste is reclaimed under a contractual agreement pursuant to which:

(i) the type of waste and frequency of shipments are specified in the agreement;

(ii) the vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(b) where the generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

~~(5)~~(6) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.415 ~~ACCUMULATION TIME~~ REQUIREMENTS FOR ACCUMULATION OF WASTES AND ACCUMULATION IN SATELLITE LOCATIONS

~~(1) A generator may accumulate hazardous waste on site without permit for 90 days or less, provided that the following requirements are met:~~

~~(a) the waste is placed in containers and the generator complies with Subpart I of 40 CFR Part 265, or the waste is~~

placed in tanks and the generator complies with subpart J of 40 CFR Part 265 except 40 CFR 265.193;

(b) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container or tank;

(c) while being accumulated on site each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(d) the generator complies with the requirements for facility owners or operators in 40 CFR Part 265 Subparts C and D and with 40 CFR 265.16.

(1) Large or small generators may accumulate hazardous waste on site for up to 90 days without a permit, irrespective of the quantity of hazardous waste accumulated.

(2) Provided that the total amount of hazardous waste accumulated on site does not exceed 6000 kilograms, both large generators and small generators may accumulate hazardous waste for up to 180 days or, if the waste must be transported a distance of greater than 200 miles to a designated facility, up to 270 days, without a permit.

(3) A large or small generator who exceeds the applicable 180- or 270-day accumulation limit or who simultaneously exceeds both the 90-day time limit and the 6000-kilogram quantity limit is an operator of a storage facility and is subject to the requirements of subchapters 1, 6, 7, and 8 of Title 16, chapter 44, unless the generator is granted an extension by the department. Upon a written request, an extension of up to 30 days may be granted by the department on a case-by-case basis where hazardous wastes must remain on site due to unforeseen, temporary, and uncontrollable circumstances.

(4) During the time that small generators and large generators accumulate hazardous wastes on site, the following requirements apply:

(a) The waste must be placed in either containers or tanks;

(b) The date upon which each period of accumulation begins must be clearly marked and be visible for inspection on each container or tank;

(c) Each container or tank used for accumulation must be labeled or marked clearly with the words "HAZARDOUS WASTE";

(d) For wastes which the generator chooses to store in containers, the generator must comply with subpart I of 40 CFR Part 265 (except that small generators need not comply with 40 CFR 265.176), and for wastes stored in tanks, the generator must comply with subpart J of 40 CFR Part 265, except 40 CFR 265.193 (these subparts are both incorporated by reference in ARM 16.44.609); and

(e) The generator must comply with the emergency preparedness and prevention requirements set forth in subpart C of 40 CFR Part 265 (incorporated by reference in ARM 16.44.609).

(5) Large generators must further comply with the contingency planning and emergency response requirements in subpart D of 40 CFR Part 265 and with 40 CFR 265.16, regarding personnel training (both incorporated by reference in ARM 16.44.609).

(6) Small generators must further comply with the following:

(a) At all times there must be at least one emergency coordinator on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) who shall coordinate all emergency response measures specified in subsection (6)(d) of this rule. This employee is the emergency coordinator.

(b) The small generator must post the following information next to the telephone:

(i) the name and telephone number of the emergency coordinator;

(ii) the location of fire extinguishers and spill control material and, if present, fire alarm; and

(iii) the telephone number of the local fire department, unless the small generator location has a direct alarm.

(c) The small generator must ensure that all employees are thoroughly familiar with proper waste-handling and emergency procedures relevant to their responsibilities during normal operations and emergencies.

(d) The emergency coordinator or his designee must respond to any emergencies that arise. The appropriate responses are as follows:

(i) In the event of a fire, the emergency coordinator must call the fire department or attempt to extinguish the fire using a fire extinguisher;

(ii) In the event of a spill, the emergency coordinator must contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the emergency coordinator has knowledge that a spill has reached surface water, the emergency coordinator must immediately notify the National Response Center (using the 24-hour toll free number 800-424-8802). The report must include the following information:

(A) the name, address, and U.S. EPA identification number of the generator;

(B) the date, time, and type of incident (e.g., spill or fire);

(C) the quantity and type of hazardous waste involved in the incident;

(D) the extent of injuries, if any; and

(E) the estimated quantity and disposition of recovered materials, if any.

(7) Large generators and small generators may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without being subject to the time and waste quantity limits or the accumulation requirements of sections (1) through (6) of this rule, provided the generator:

(a) complies with 40 CFR 265.171, 265.172, and 265.173(a) (incorporated by reference in ARM 16.44.609); and

(b) marks his containers either with the words "HAZARDOUS WASTE" or "ACUTELY HAZARDOUS WASTE", as applicable, or with other words that identify the contents of the containers.

(8) A generator who accumulates either hazardous waste or acutely hazardous waste in excess of the amounts listed in section (7) of this rule at or near any point of generation must, with respect to that amount of excess waste, comply within three days with sections (1) through (6) of this rule, or other applicable provisions of this subchapter. During the three-day period the generator must continue to comply with subsections (7)(a) and (b) of this rule. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

~~(2) The department hereby adopts and incorporates by reference 40 CFR Part 265, Subparts G and B, 40 CFR 265.16, and 40 CFR Part 265, Subparts I and J except 40 CFR 265.193.~~

~~(a) 40 CFR Part 265, Subparts G and B are federal agency rules setting forth requirements for handling emergencies including preparedness, prevention, contingency plans, and emergency procedures for facilities that treat, store, or dispose of hazardous wastes.~~

~~(b) 40 CFR 265.16 is a federal agency rule setting forth requirements for hazardous waste personnel training.~~

~~(c) 40 CFR Part 265, Subparts I and J are federal agency rules setting forth respectively requirements for owners of operators of facilities that use containers or tanks to treat or store hazardous wastes including general operating requirements, inspections, closure, and special requirements for ignitable, reactive and incompatible wastes.~~

~~(d) A copy of 40 CFR 265.16, 40 CFR Part 265, Subparts G, B, I, and J or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.~~

~~(3) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of subchapters 1, 6, 7, and 8 of this chapter unless he has been granted an extension to the 90 day period. An extension of up to 30 days may be granted by the department on a case by case basis where hazardous wastes must remain on site due to unforeseen, temporary and uncontrollable circumstances.~~

~~(4)(a) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in ARM 16.44.302, 16.44.303, or 16.44.303(1)(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with section (1) of this rule provided he~~

~~(i) complies with 40 CFR 265.171, 265.172, and 265.173(a) (1985 edition), and~~

~~(iii) marks the containers either with the words "Hazardous Waste" or "Acutely Hazardous Waste" as appropriate or with other words that identify the contents of the containers.~~

~~(b) A generator who accumulates either hazardous waste or acutely hazardous waste in excess of the amounts listed in subsection (4)(a) of this rule at or near any point of generation must, with respect to that amount of excess waste, comply within three days with section (4) of this rule or other appropriate provisions of this chapter. During the three day period the generator must continue to comply with subsections (4)(a)(iii) and (iv) of this rule. The generator must mark the container or holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.~~

~~(c) The department hereby adopts and incorporates by reference here in 40 CFR 265.171 pertaining to condition of containers, 40 CFR 265.172 pertaining to compatibility of waste with containers, and 40 CFR 265.173(a) pertaining to closure of containers during storage, (A)(i) CFR sections referred to herein are contained in the 7/1/85 ed. ition.) A copy of 40 CFR 265.171, 265.172, and 265.173(a), or any portion thereof, may be obtained from the State and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.~~

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

NEW RULE I [SUBCHAPTER 5] TRANSPORTER REGISTRATION

(1) In addition to the requirements of ARM 16.44.502 for obtaining an EPA identification number, transporters who maintain offices, terminals, depots, or transfer facilities within Montana related to their hazardous waste transportation activities must register with the department. Montana registration is not required for out-of-state transporters whose activities are limited to passing through Montana with hazardous waste loads or to picking up loads from Montana generators or delivering loads to designated facilities in Montana.

(2) Transporter registration is not subject to any fee.

(3) In order to obtain registration, a transporter must provide, at a minimum, the following information on forms provided by the department:

(a) business name and mailing address;

(b) EPA identification number (if one has already been assigned);

(c) contact person(s) and contact phone number(s);

(d) the locations of all of the transporter's hazardous waste transportation-related offices, terminals, depots, and/or transfer facilities situated within Montana;

(e) the mode(s) of hazardous waste transportation employed; and

(f) whether the transportation activity is conducted by the transporter when the transporter and generator are the same or whether the transportation activity is done on a commercial for-hire basis.

(4) Registration remains in effect for a period of three

(3) years. Upon expiration, the department will notify the transporter and provide appropriate forms for processing renewal of the expiring registration. Registration is transferable to a new owner or operator upon written notice to the department and proper updating of all pertinent registration information on file with the department.
AUTHORITY: 75-10-204 and 75-10-405, MCA
IMPLEMENTING: 75-10-204, MCA

16.44.505 MANIFEST SYSTEM
(1)-(7) Same as existing rule.
(8) A transporter transporting hazardous waste from a small generator need not comply with the requirements of this rule or those of ARM 16.44.508, provided that:
(a) the waste is being transported pursuant to a reclamation agreement as provided for in ARM 16.44.405(5).
(b) the transporter records, on a log or shipping paper, the following information for each shipment:
(i) the name, address, and U.S. EPA identification number of the generator of the waste;
(ii) the quantity of waste accepted;
(iii) all DOT-required shipping information;
(iv) the date the waste is accepted; and
(c) the transporter carries this record when transporting waste to the reclamation facility; and
(d) the transporter retains these records for a period of at least three years after termination or expiration of the agreement.
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

NEW RULE II [SUBCHAPTER 6] RESTRICTIONS ON CERTAIN HAZARDOUS WASTES (1) Those hazardous wastes identified under subchapter 3 of this chapter which have the EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 must not be managed at facilities with temporary permits (interim status) unless:
(a) the waste is a wastewater treatment sludge which is generated and stored in a surface impoundment as part of a plant's wastewater treatment system;
(b) the waste is stored in tanks or containers;
(c) the waste is stored or treated in a waste pile which has been designed and is operated within the limits set forth in 40 CFR 264.250(c);
(d) the waste is burned in an incinerator which has been certified pursuant to the standards and procedures set forth in 40 CFR 265.352; or
(e) the waste is burned in a thermal treatment device other than an incinerator, which device has been certified pursuant to the standards and procedures set forth in 40 CFR 265.383.
(2) The department hereby adopts and incorporates by reference herein 40 CFR 264.250(c) pertaining to applicability of rules to owners and operators of facilities that store or

treat hazardous waste in piles, 40 CFR 265.352 pertaining to interim status incinerators burning particular hazardous wastes, and 40 CFR 265.383, pertaining to interim status thermal treatment devices burning particular hazardous wastes. A copy of 40 CFR 264.250(c), 265.352, and 265.383, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, subparts B through and including Q, and excluding subpart H and 40 CFR 265.75 (~~7/1/85~~ 7/1/86 edition). The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 265.75 is set forth in ARM 16.44.613. Subparts B through Q of 40 CFR Part 265 are federal agency rules setting forth general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I) and requirements for tanks (J), surface impoundments (K), waste piles (L), land treatment (M), landfills (N), incinerators (O), thermal treatment (P), and chemical, physical and biological treatment (Q). A copy of 40 CFR Part 265, subparts B through and including Q, excluding subpart H, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.612 EXCLUSIONS (1)-(2) Same as existing rule.

(3) ~~the owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in ARM 16.44.306(4), except to the extent that ARM 16.44.306(2) provides otherwise~~ managing recyclable materials described in ARM 16.44.306(1)(b) and (c), except to the extent that requirements of this subchapter are referred to in subparts C, D, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306(4));

(4)-(11) Same as existing rule.
AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.701 PURPOSE (1)-(2) Same as existing rule.

(3) The standards set forth in this subchapter do not apply to:

(a) Same as existing rule.

(b) owners or operators of refuse disposal facilities li-

censed by the department pursuant to subchapter 5, chapter 14, Title 16, ARM, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulations by ARM ~~16.44.305~~ 16.44.402(5) (special requirements for conditionally exempt generators); and

(c) owners or operators of facilities ~~which--treat-or-store-hazardous--waste,-if--such-treatment-or-storage-meets-the-criteria-in--ARM--16.44.306,--except--to--the--extent--that-ARM-16.44.306(2)--provides--otherwise~~ managing recyclable materials described in ARM 16.44.306(1)(b) and (c), except to the extent that requirements of this subchapter are referred to in subparts C, D, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306(4)).

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including O, excluding subpart H and 40 CFR 264.75 (~~7/1/85~~ 7/1/86 edition). The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM ~~16.44.618~~ NEW RULE II. Subparts B through O, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I); and requirements for tanks (J); surface impoundments (K); waste piles (L); land treatment (M); landfills (N); and incinerators (O). A copy of 40 CFR Part 264, subparts B through and including O, excluding subpart H, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404, 75-10-405, and 75-10-406, MCA
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

NEW RULE III [SUBCHAPTER 7] ANNUAL REPORT (1) The owner or operator of a permitted hazardous waste management facility must prepare and submit an annual report to the department by March 1 of each year. The annual report must be submitted on forms obtained from the department. The report must cover facility activities during the previous calendar year and must include the following information:

(a) the EPA identification number, name, and address of the facility;

(b) the calendar year covered by the report;

(c) for off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported ship-

ments, the report must give the name and address of the foreign generator;

(d) a description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) the method of treatment, storage, or disposal for each hazardous waste;

(f) the most recent closure cost estimate under ARM 16.44.804 and, for disposal facilities, the most recent post-closure cost estimate under ARM 16.44.805; and

(g) the certification signed by the owner or operator of the facility or his authorized representative.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.801 PURPOSE An owner or operator of each facility, ~~within 30 days after the effective date of these rules,~~ must provide for financial assurance for closure of the facility, and if applicable, post-closure financial assurance. The owner or operator must select from the financial assurance mechanisms set forth in ARM 16.44.806 through 16.44.813 of this subchapter.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.803 DEFINITIONS (1) Same as existing rule.

(2) The following terms are used in the specification for the financial tests for closure, post-closure care, and liability coverage as provided in ARM 16.44.811 and 16.44.817. The definitions are intended to assist in the understanding of these rules and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

(a)-(c) Same as existing rule.

(d) "Independently audited" refers to an audit performed by an independent certified public account accountant in accordance with generally accepted auditing standards.

(e)-(h) Same as existing rule.

(3)-(4) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

16.44.823 WORDING OF THE INSTRUMENTS

(1)-(5) Same as existing rule.

(6) A liability endorsement, as specified in ARM 16.44.818 and 16.44.819, must be worded in strict accordance with 40 CFR 264.151(j).

(7)-(8) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

4. The above amendments and new rules are proposed in order to effect changes in the state regulatory program consis-

tent with federal regulatory changes.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than February 26, 1987.

6. Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 32.8.202 and 32.8.203 for the propose of clarifying Responsibilities under the rules.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES 32.8.202 and 32.2.203 MILK FRESHNESS DATING NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 28, 1987 the Board of Livestock proposes to amend Rules 32.8.202 and 32.8.203 by redefining the 12 day period for the shelflife of milk and by adding language to clarify responsiblilty for marking pull dates.

2. The proposed amendments provide as follows:

32.8.202 TIME FROM PROCESSING THAT FLUID MILK MAY BE SOLD FOR HUMAN CONSUMPTION (1) No grade A pasteurized milk may be sold, or otherwise disposed of for human consumption at retail or wholesale more than 12 days after pasteurization is completed.

(2) No grade A raw milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than 12 days after ~~the milk is bottled~~ bottling is completed.

(3) For the purposes of this rule, ~~12 days after pasteurization of bottling means the midnight closest to 288 hours following the hour that pasteurization or bottling of the milk is completed~~ the 12 day period ends on the first midnight following 12 consecutive 24 hour days. In no instance may the period be less than 288 hours.

(4) remains the same

(5) remains the same

(6) Unless otherwise agreed upon, the person who offers the milk for sale to the public is responsible for removing the milk at the expiration of the 12 days.

32.8.203 LABELING OF MILK CONTAINERS TO SHOW LAST DAY OF LEGAL SALE

(1) remains the same
(2) remains the same
(3) No person, other than the packager of the milk, may mark the package with a pull date without permission of the department of livestock.

3. The reason for the amendment is to remove the possibility of differing interpretations of the rules. The proposed language was developed by all affected parties with representatives of all bottling plant present.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than February 26, 1987.

5. If a person is directly affected by the proposed rules 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 Les Graham, Executive Secretary to the Board of Livestock, no later than February 26, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption 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 not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (250) persons, based on a survey by the Montana Stockgrowers Association.

7. The authority to adopt the proposed amendments is based on Section 81-2-102 MCA. They implement Section 81-2-102 MCA.

NANCY ESPY
Chairman, Board of Livestock

LES GRAHAM, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State January 19, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED ADOPTION of New Rules I through XIV relating to administrative income withholding for child support.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of New Rules I through XIV relating to administrative income withholding for child support.

TO: All Interested Persons:

1. On February 20, 1987, at 9:00 a.m., a public hearing will be held in the Third Floor Conference Room, Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the adoption of new rules I through XIV relating to administrative income withholding for child support.

2. The proposed new rules I through XIV 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 DEFINITIONS For the purposes of Rules I through XIV, the following definitions apply:

(1) Insofar as they are not inconsistent with, or clarified by the more specific definitions set forth in Rules I through XIV, the definitions set forth in 40-5-403, MCA, are adopted and incorporated by reference.

(2) "Act" means the Child Support Enforcement Act of 1985 (40-5-401 through 40-5-434, MCA).

(3) "Department" means the department of revenue and all county and local agencies which have been designated independent support enforcement contractors.

(4) "Hé" or "his" shall include "her" or "hers".

(5) "Notice" means a notice of intent to withhold issued pursuant to 40-5-413, MCA.

(6) "Order" means an order to withhold income issued pursuant to 40-5-415, MCA, and where the context requires, means also an order to modify issued pursuant to 40-5-417, MCA.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 2-15-112, 40-5-401 through 40-5-434 MCA.

RULE II INDEPENDENT SUPPORT ENFORCEMENT CONTRACTORS

(1) The department of revenue is authorized to enter into agreements with county and local government agencies whereby such agencies may be designated independent support enforcement contractors. Under such an agreement, the designated agency shall establish and enforce support obligations for children with respect to whom an assignment under 53-2-613, MCA, is in effect, and who are residing within the jurisdictional boundaries of the agency. Whenever applicable, the agency shall also enforce spousal support for the custodial relative. In so doing, the agency is authorized to pursue any administrative

remedy available to the department of revenue under the provisions of Title 40, ch. 5, parts 2 and 4, MCA. The agency shall be publicly accountable, and shall comply with all applicable federal and state laws, regulations, and rules, including the policies and procedures established by the department of revenue for processing cases. In utilizing forms or other written materials originated by the department of revenue, which bear the department's name, the agency shall include on the forms a statement in bold type that the case is being enforced by the agency as an independent contractor to the department of revenue.
AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 2-15-112, 40-5-401 through 40-5-434, MCA

RULE III WITHHOLDING ENTITY (1) The department is hereby designated the "income withholding entity" pursuant to Public Law 98-378.
AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 2-15-112, 40-5-401 through 40-5-434 MCA.

RULE IV VOLUNTARY (1) Notwithstanding the provisions of 40-5-412, MCA, the department may, at the request of the obligor, take steps to implement income withholding at any earlier time, in an amount which takes into consideration the terms of 40-5-416, MCA.
AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 2-15-112, 40-5-401 through 40-5-434 MCA

RULE V HEARING PROCEDURES In all hearings conducted pursuant to the act, the following procedures apply:

(1) Service of all notices, motions, final decisions, and other legal papers subsequent to the notice of intent to withhold income may be accomplished by regular United States mail, postage prepaid, addressed to the obligor at his last known address. Service shall be deemed complete upon mailing. The obligor is responsible for providing the department with his current address and any subsequent changes.

(2) To conduct telephone hearings under the act, the obligor is required to provide a telephone number at which he can be reached at the date and time set for the hearing. Failure to provide a telephone number or to be present at the number provided may result in the hearing being conducted in the obligor's absence, and a decision may be rendered on the available evidence.

(3) The exchange of exhibits or other documentary evidence to be considered at the hearing shall be accomplished in sufficient time to allow copies to be mailed to all interested parties prior to the hearing. If a hearing decision is delayed as a result of a failure by the obligor to provide necessary exhibits or documentary evidence in time to be considered at the hearing, such failure shall be deemed a waiver by the obligor of the right to a timely decision.

(4) At any time after an income withholding hearing has been requested and scheduled, but before it is held, the obligor may, for good and sufficient cause, request an order postponing the hearing to a later date. The request must be in writing, include a short, plain statement specifying that a continuance is necessary, include a waiver of the obligor's right to have a hearing prior to entry of an income withholding order, and specify a material reason beyond the obligor's control why a hearing cannot be conducted at the scheduled time.

(5) If, due to a request for a continuance or upon a waiver by the obligor, a hearing decision cannot be rendered within the time allowed by the act, income withholding for the amount of current support shown in the notice shall nevertheless commence under the terms of the act. In such cases, income withholding for the alleged delinquent portion will not commence until after the hearing has been conducted and it has been determined that the amounts are properly due and owing. Pursuant to the hearing decision, adjustments in the amount withheld shall be made as appropriate.

(6) The department shall serve with every notice a request for hearing form which contains a short, plain statement that a hearing is requested, provides the obligor with an opportunity to state a claim upon which a hearing can be granted, advises the obligor of his hearing rights, and requires him to acknowledge that he understands those rights. In order to request a hearing, the obligor must complete the request for hearing form or other written instrument which is substantially similar.

(7) For purposes of 40-4-414(1), MCA, "file with the department" means that the request for hearing must be delivered to and received by the department regional office or independent support enforcement contractor which issued the notice or at the Helena child support enforcement program address. Requests received at any other address or location will be treated as if it were not filed.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-414 MCA.

RULE VI ISSUES DETERMINABLE AT HEARING (1) The administrative hearing provided for in the act is limited to the determination of whether income withholding, including the amounts to be withheld, is improper because of a mistake of fact. To accomplish this purpose, and to facilitate the speedy resolution of disputes relating to income withholding, the obligor must state in his hearing request a mistake of fact which constitutes grounds upon which the request is based. If the obligor fails to state such grounds, the department may deny the hearing because there is no issue upon which a hearing may be granted.

(2) For purposes of this section, a "mistake of fact" shall be defined to include the following:

(a) mistakes concerning the identity of the obligor;

(b) mistakes concerning the existence or amount of the support obligation;

(c) mistakes in the determination that delinquent support amounts owed are equal to or greater than one month's support; and,

(d) mistakes in the computation of delinquent support amounts owed.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-414 MCA.

RULE VII MODIFICATION OR TERMINATION OF WITHHOLDING ORDERS (1) Once an income withholding order has been issued with respect to an obligor, the department may increase, decrease, or terminate such order, as may be necessary, as provided in 40-5-417, MCA, without further notice to the obligor.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-417, MCA.

RULE VIII RECEIPT OF PAYMENTS REQUIRED (1) Whenever an obligor is paying support through the department after notice pursuant to 40-5-412(2), MCA, or whenever a payor is delivering withheld income pursuant to an order:

(a) such payments will not be credited until actually received by the department;

(b) checks presented to the department as payment which are dishonored by the issuing bank will not be credited although received by the department;

(c) payments to any person or agency other than the department shall not be credited.

(2) The withholding of income by a payor shall not alone be sufficient to meet the requirements of 40-5-421, MCA. The department shall not be liable for amounts withheld by a payor which are not received by the department.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-412 and 40-5-421 MCA.

RULE IX PROMPT DELIVERY OF WITHHELD AMOUNT (1) For purposes of 40-5-421(1), MCA, the term "promptly" as it relates to the delivery of withheld amounts shall be defined as being no more than 10 days after the obligor is paid.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-421 MCA.

RULE X ALLOCATION OF PAYMENTS (1) Notwithstanding the provisions for allocation set forth in the notice, the department will allocate payments first to current support, then to interest and delinquent support amounts owed.

(2) In situations where there are multiple withholdings against the income of the same obligor, current support must be paid first and allocated among all the families on a first come, first served basis, except that families receiving AFDC shall

receive preference over NAFDC families, and all Montana families shall receive preference over out-of-state families. If there are sufficient remaining funds available after the payment of current support, they shall be applied toward interest, delinquent support amounts owed, and fees, allocated among the families in the same manner as current support.

(3) In all NAFDC cases, costs and fees will be allocated along with NAFDC current support in the manner provided for in 40-5-203(3), MCA.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-415 and 40-5-203(3) MCA.

RULE XI AVAILABILITY OF HARDSHIP ADJUSTMENTS (1) In certain circumstances, the amount of money required to be withheld to defray delinquent support amounts owed under the terms of the act may be temporarily reduced at the discretion of the department. Such a "hardship adjustment" may be made upon a showing that extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; that these costs are actually being paid by the obligor; and that the obligor is not being reimbursed by insurance. A hardship adjustment may also be based upon special costs or expenses which are directly related to the obligor's ability to earn income available for withholding, and which, if not paid by the obligor, would result in a major loss of income. Further, a hardship adjustment may be considered if the total income of the obligor's household only minimally meets the subsistence level for food, housing, clothing, and other necessities as established by the United States poverty guidelines.

(2) Such exercise of discretion does not constitute a "contested case" under the terms of the Montana Administrative Procedure Act, nor does it represent a "mistake of fact" upon which a hearing may be granted.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-416 MCA.

RULE XII AFFECT OF HARDSHIP DETERMINATION (1) A pending hardship determination does not stay or delay hearings on, or implementation of, income withholding.

(2) A request for hardship determination may be made at any time, without regard to whether income withholding is pending or has been previously implemented.

(3) A hardship adjustment applies only to the amount to be withheld to defray accumulated interest and delinquent support amounts owed. It does not affect the amount of the obligor's current support obligation.

(4) Whenever the department has determined that a hardship adjustment is appropriate, it shall issue an order, or a modification of an existing order, which reflects the hardship adjustment. No order may be issued for the withholding of less than:

(a) the amount of current support plus one dollar per month if the obligor owes an ongoing current support obligation; or,

(b) $25.00 per month if the obligor's current support obligation has terminated.

(5) When the hardship adjustment ceases, the department may, without further notice to the obligor, issue an amended order in the amount provided for in the act with reference to the delinquent support amounts owed at that time.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-416 MCA.

RULE XIII PROCEDURES FOR DETERMINING HARDSHIP ADJUSTMENTS

(1) The department will use the following procedures as a guideline for the exercise of its discretion in determining hardship adjustments:

(a) The obligor must request a review of his case in writing. Such review will determine if the obligor is eligible for a reduction of the amount which would normally be withheld to defray the support delinquency and interest, if any.

(b) The review will be conducted **ex parte** by the department's regional office or independent support enforcement contractor, based solely upon the financial affidavit and supporting documents, if any, provided by the obligor. Since financial hardship may affect all members of the obligor's current household, the financial affidavit must include information pertaining to everyone residing with the obligor.

(c) The standard for review will be the application of a formula developed by the department, which takes into consideration the total net income and assets of the obligor and his current household, the United States poverty index promulgated each year by the United States department of health and human services, the actual amount of allowable special expenses described in rule XI, and other support obligations actually being paid by the obligor. The department will, upon request, make available copies of the formula to all interested persons.

(d) The department will determine the length of time the hardship adjustment will continue, based on the information provided by the obligor. The hardship adjustment will terminate at the end of the determined period, or cessation of the hardship condition, whichever occurs first. In the event the hardship condition continues after the end of such period, it shall be the obligor's duty to request further review at that time.

(e) If the obligor disagrees with the regional office's determination, a request may be made in writing for further review by the department's investigations and enforcement bureau chief.

(f) If a request for further review is received, the bureau chief or his designee will review the previous determination and make an independent determination based on the documents and affidavits provided by the obligor, and upon all

other relevant considerations. The decision of the bureau chief or his designee will be final for all purposes.

(g) Only one request for a hardship review is available to the obligor for each claimed incident of hardship. Further review will not be granted except upon a showing of circumstances not existing at the time of the original determination.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-416 MCA.

RULE XIV INTERSTATE INCOME WITHHOLDING (1) Whenever the department receives an application for interstate income withholding in accordance with 40-5-432, MCA, it will proceed in accordance with the provisions of the foregoing sections.

AUTH: 40-5-202, 40-5-405 MCA, and § 21, Ch. 571, L. 1985; IMP: 40-5-432 MCA.

4. The Department is proposing new rules I through XIV in order to implement the Child Support Enforcement Act of 1985 (House Bill No. 443) passed by the 1985 Legislature. House Bill No. 443 provides for mandatory withholding of child or spousal support, or both, from the income of persons whose total unpaid support exceeds one month's payments whenever such obligations are being enforced by the Department of Revenue pursuant to Title IV-D of the Social Security Act and requirements promulgated pursuant to 45 C.F.R. § 303.100.

Rule I is reasonably necessary to define the terms used in the proposed rule, to avoid unnecessary duplication of statutory language, and to expand the term "department" to allow "independent support enforcement contractors" to utilize income withholding as an enforcement tool.

Rule II is necessary to allow the Department to designate county and local agencies as "independent support enforcement contractors", in order to meet the requirement of P. L. 98-378 that income withholding be implemented in all eligible cases statewide.

Rule III is necessary to designate the Department as the state "income withholding entity", as required by P. L. 98-378 and 45 C.F.R. § 303.100(e)(1).

Rule IV is necessary to allow income withholding to be implemented at the request of the obligor, without need for notice, answer, or hearing.

Rule V is necessary to clarify procedures by which obligors may dispute questions of fact, by which legal documents and exhibits may be exchanged, and by which the requirement of 45 C.F.R. § 303.100(c)(4) that income withholding commence within 45 days after service of notice may be implemented while questions of fact are being adjudicated.

Rule VI is necessary to assist obligors in determining what constitutes a "mistake of fact" necessary for the hearing provided in 40-5-414, MCA.

Rule VII is reasonably necessary to allow periodic modification or termination of orders to withhold based on changes of circumstance not foreseeable at the time of the original order.

Rule VIII is reasonably necessary to clarify employers' duty to pay withheld amounts.

Rule IX is reasonably necessary to advise employers that withheld amounts must be paid to the Department within 10 days as required by 45 C.F.R. § 303.100(d)(1)(ii).

Rule X is reasonably necessary to advise obligors, their dependents, and attorneys of the method of allocation of withheld amounts in cases in which the obligor owes more than one support obligation.

Rule XI is reasonably necessary to advise the obligors of the right to receive relief in cases in which a substantial hardship would result from withholding at the statutory rate. This relief is authorized by 40-5-416(3), MCA.

Rule XII is reasonably necessary to advise obligors of the affect of a "hardship determination" authorized in 40-5-416(3), MCA.

Rule XIII is reasonably necessary to advise obligors of the procedures used by the Department in making "hardship determinations" and of their right to further review of hardship determinations with which they are dissatisfied.

Rule XIV is reasonably necessary to advise persons in other states that income withholding is available to them pursuant to 40-5-432, MCA, in the same manner as citizens of the State of Montana.

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 February 26, 1987.

6. R. Bruce McGinnis, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoptions is based on §§ 40-5-202, 40-5-405, MCA, and § 21, Ch. 571, L. 1985 and implement §§ 2-15-112, 40-5-203(3), 40-5-401 through 40-5-434, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 01/19/87

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of Rule 42.17.113 relating to) reporting requirements for) withholding taxes.)	NOTICE OF PUBLIC HEARING on the Proposed Amendment of Rule 42.17.113 relating to reporting requirements for withholding taxes.

TO: All Interested Persons:

1. On February 20, 1987, at 1:30 p.m., a public hearing will be held in the Third Floor Conference Room, Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the amendment of 42.17.113 relating to reporting requirements for withholding taxes.

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

42.17.113 QUARTERLY REPORTS AND PAYMENTS (1) Every employer is required to make, for each calendar quarter, a report to the Department of Revenue, Helena, Montana, ~~of~~ summarizing the amounts withheld from employee's wages during the quarter. ~~and to pay therewith the amount withheld~~ The reports will cover the weekly or quarterly periods ending March 31, June 30, September 30, and December 31 and must be ~~filed not~~ postmarked no later than the last day of the month following the close of the quarter. The form to be used in making the quarterly report is MW-5 for quarterly remitters or WK-1 for weekly remitters described in (2)(b).

(2)(a) Employers whose total liability for withholding is less than $300,000 in the preceding calendar year shall remit the amounts withheld with the quarterly reports made for the period ending March 31, June 30, September 30, and December 31. The payments must be postmarked no later than the last day of the month following the end of the quarter.

(b) Employers whose total liability for withholding equaled or exceeded $300,000 in the preceding calendar year must remit the amounts withheld weekly. Any withheld wage amount during the week must be reported, remitted, and postmarked in accordance with payment dates for federal income tax withholding purposes. Legal state holidays, Saturdays, and Sundays are not working days. When the employer's pay period is other than weekly, e.g., semimonthly or biweekly, a payment is not required for those weeks in which no employees have been paid. When employees are paid by employers with other than weekly pay periods, the employer shall remit the amount withheld for the period to the state of Montana on the same date immediately following the payment of wages, on which the employer remits withholding to the federal government.

(c) After the end of each calendar year, the department shall notify each employer whose withholding equaled or exceeded $300,000 in the preceding calendar year. Forms for remitting weekly withholdings will be provided by the department.

(d) If no tax was withheld, the quarterly report should so state. It is not necessary to furnish a list of employees with the quarterly report.

(e) No extension of time for remittance of withheld wage amounts can be granted by the department.

~~(2)~~ (3) A registered employer must submit a report for each reporting period unless withholdings are not expected to exceed $10 for any period during the year.

~~(3)~~ (4) Failure to pay withheld amounts within the time provided and the use thereof by the employer in forwarding his own business, is considered to be an illegal conversion of trust money. The employer may not regard withheld wages as being equivalent to his own personal income tax indebtedness. Penalties provided in 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages.

~~(4)~~ (5) The department may require immediate return of any tax it has reason to believe is in jeopardy, as provided by 15-30-312, MCA.

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

3. Rule 42.17.113 is proposed to be amended to clarify the language of 15-30-204, MCA, as amended by Senate Bill No. 17. The new weekly withholding requirement for Montana employers may create uncertainties which the rule addresses. The rule is necessary because the law requires certain employers to pay state withholdings weekly when federal withholdings are deposited. However, it does not specify when the payments are due if the employer's pay period is other than weekly. This rule clarifies the payment dates in those cases.

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:

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

no later than February 26, 1987.

5. R. Bruce McGinnis, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendments is based on § 15-30-305, MCA, and implements § 15-30-204, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 01/19/87

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

In the matter of the 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 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 I. (8.22.1804) TWIN TRIFECTA, II. (8.22.1503) ALCOHOL AND DRUG TESTING RULE and III. (8.22.1805) PICK (N) WAGERING

TO: All Interested Persons:

1. On October 30, 1986, the Board of Horse Racing published a notice of public hearing on the amendments and adoptions of the above-stated rules at page 1732, 1986 Montana Administrative Register, issue number 20. The hearing was held on Saturday, December 6, 1986, at 9:00 a.m., in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

2. The Board has amended ARM 8.22.610 Stewards exactly as proposed.

3. The Board voted to take no action on the amendment of ARM 8.22.710 Trainers.

4. The Board has amended ARM 8.22.711 Veterinarians exactly as proposed.

5. The Board has amended ARM 8.22.801 as proposed with the following changes:

"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 shall be opened with Montana breds being preferred.

(8) 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 calendar 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

COMMENT: Opponents to this rule as proposed contended that the permissive word "may" in the rule was not sufficient to implement the legislative policy of encouraging the breeding

in this state of valuable registered horses contained in section 23-4-204(1), MCA.

RESPONSE: The Board felt that the concerns expressed were meritorious and decided to change the rule to require that the races be run with Montana breds being preferred.

COMMENT: The amendment of subsection (51) was opposed by substantive elements of the industry because it would be disadvantageous to the large race tracks in Montana.

RESPONSE: The Board concurred and the amendment was not adopted.

7. The Board amended ARM 8.22.1606 Types of Bets exactly as proposed.

8. The Board adopted new rule I. (8.22.1804) Twin Trifecta exactly as proposed.

9. The Board adopted new rule II. (8.22.1503) Alcohol and Drug Testing Rule as proposed with the following changes:

"8.22.1503 ALCOHOL AND DRUG TESTING RULE (1) through (8) will remain the same.

(9) All testing shall be at the expense of the board of horse racing or and the racing association on a 50-50 basis.

(10) and (11) will remain the same."

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

COMMENT: Participants argued that subrule (9) was not specific enough on the question of who should bear the expenses of testing..

RESPONSE: The Board felt that the point was well taken. It adopted a rule splitting the costs of testing between the Board and the racing association. It was felt that this treatment was fair because both entities are concerned with abuses.

10. The Board adopted new rule III. (8.22.1805) Pick (N) Wagering exactly as proposed.

11. No other comments or testimony were received.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, January 19, 1987.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.55.203, District Superintendent, ARM 10.55.205, Professional Development, ARM 10.65.101, Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations	NOTICE OF AMENDMENT OF ARM 10.55.203, DISTRICT SUPERINTENDENT, ARM 10.55.205, PROFESSIONAL DEVELOPMENT, ARM 10.65.101, POLICY GOVERNING PUPIL INSTRUCTION RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS

TO: All Interested Persons

1. On November 14, 1986, the Board of Public Education published notice of proposed amendments concerning District Superintendent, Professional Development and Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations on pages 1859, 1860 and 1863 respectively of the 1986 Montana Administrative Register, issue number 21.

2. The Board has amended the rules as proposed.

3. At the public hearing which was held December 4, 1986, no persons testified on ARM 10.55.203 or 10.55.205; two persons testified as proponents and no one testified as opponents of ARM 10.65.101. No written comments were received prior to December 12, 1986, the date on which the Board closed the hearing record, on ARM 10.55.203, 10.55.205 or 10.65.601.

4. The board proposed the amendment of ARM 10.55.205 in order to clarify the rule's intent by inserting more appropriate language.

5. The amendment of ARM 10.65.101, Policy Governing Pupil Instruction Related Days Approved For Foundation Program Calculations, was proposed to delete language which is more appropriately placed in ARM 10.55.205 and to use correct terminology.

In the matter of the adoption of ARM 10.55.402, Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates	NOTICE OF AMENDMENT OF ARM 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 October 30, 1986, the Board of Public Education published notice of a proposed amendment concerning Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates on pages 1750-1751 of the 1986 Montana Administrative Register, issue number 20.

2. The Board has amended the rule as proposed with the following change:

10.55.402 BASIC INSTRUCTIONAL PROGRAM: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) through (11)(c)(v) remain the same

(vi) Music: general ~~music~~, instrumental and vocal ~~chorus and band~~ (emphasizing comprehensive music elements, music history, criticism, aesthetic perception and musical production).

(11)(c)(vii) - (ix) remain the same

3. At the public hearing which was held December 4, 1986, four persons testified as proponents and one testified with a concern about application after the rule is adopted. Twenty-nine written comments were received prior to December 12, 1986, the date on which the Board closed the hearing record: twenty-eight as proponents and one as an opponent who wanted a more activity centered curriculum. The board considered all statements and felt the rule as written sufficiently addressed this.

In the matter of the adoption of ARM 10.57.102, Definitions) NOTICE OF AMENDMENT OF ARM 10.57.102, DEFINITIONS

TO: All Interested Persons

1. On November 14, 1986, the Board of Public Education published notice of a proposed amendment concerning Definitions on page 1861 of the 1986 Montana Administrative Register, issue number 21.

2. The Board has amended the rule as proposed.

3. There was no hearing on ARM 10.57.102. No written comments were received prior to December 12, 1986, the date on which the Board closed the hearing record.

4. The amendment of ARM 10.57.102, Definitions, was proposed to make clear that only associations named in the rule are acceptable accreditation agencies.

In the matter of the adoption of ARM 10.64.601, General) NOTICE OF AMENDMENT OF ARM 10.64.601, GENERAL

TO: All Interested Persons

1. On October 30, 1986, the Board of Public Education published notice of a proposed amendment concerning General on page 1756 of the 1986 Administrative Register, issue number 20.

2. The Board has amended the rule as proposed with the following changes:

10.64.601 GENERAL (1) through (6) remain the same.
~~(6)~~(7) Effective ~~January~~ FEBRUARY 1, 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 minimum standards for school buses.
~~(6)(7) Remains the same~~

3, At the public hearing which was held December 4, 1986, five people testified as proponents and five people testified as opponents. One written comment as an opponent was received prior to December 12, 1986, the date on which the Board closed the hearing record. All opponents stated occasional problems in the winter with buses safely getting through snow. An opinion from legal counsel on emergency use of four-wheel drives answered the concerns of the opponents.

4. The purpose of this amendment is to bring Montana's standards into compliance with the current national standards. Allowing a variance is no longer a safe practice since real four-wheel drive school buses are now available.

5. The effective date of this proposed amendment will be February 1, 1987.

In the matter of the adoption of ARM 10.64.354-10.64.357, Minimum Standards for School Buses	)))	NOTICE OF ADOPTION OF ARM 10.64.354-10.64.357, AND REPEAL OF 10.64.302 - 10.64.516, MINIMUM STANDARDS FOR SCHOOL BUSES

TO: All Interested Persons

1. On October 30, 1986, the Board of Public Education published notice of a proposed adoption concerning Minimum Standards for School Buses, on pages 1752-1755 of the 1986 Montana Administrative Register, issue number 20.

2. The Board has adopted the rules as proposed with the following exceptions: ARM 10.64.301, Definitions, will not be repealed as noticed. ARM 10.64.302-10.64.516 will be repealed as noticed. At the public hearing it was determined that ARM 10.64.301, Definitions, remains a viable part of the rules and should be retained.

3. At the public hearing which was held December 4, 1986, no persons testified and no written comment was received prior to December 12, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker
Ted Hazelbaker, Chairman
Board of Public Education

BY: Claudette Morton

Certified to the Secretary of State January 14, 1987

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 32.2.401, Updating Fees and Licenses to Reflect Cost to the Department	))))	NOTICE OF AMENDMENT OF RULE 32.2.401 DEPARTMENT OF LIVESTOCK FEES AND LICENSES

TO: All Interested Persons.

1. On November 28, 1986 at Page 1950, issue no. 22 of the Montana Administrative Register, the Board of Livestock published notice of the proposed amendment of Rule 32.2.401 regarding livestock department fees and licenses and their cost.

2. The Board has adopted the amendment as proposed.

3. No comments or testimony were received.

Nancy Espy
Chairman, Board of Livestock

BY: Les Graham
Les Graham, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State January 19, 1987

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I through VII (42.21.201 through 42.21.207) relating to classification requirements for class 18 property for nonproductive, patented mining claims and Rules VIII through XI (42.21.208 through 42.21.211) relating to classification requirements for class 19 property.	NOTICE OF THE ADOPTION of Rules I through VII (42.21.201 through 42.21.207) relating to classification requirements for class 18 property for nonproductive, patented mining claims and rules VIII through XI (42.21.208 through 42.21.211) relating to classification requirements for class 19 property.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed adoption of Rules I through VII (42.21.201 through 42.21.207) relating to classification requirements for class 18 property for nonproductive, patented mining claims and rules VIII through XI (42.21.208 through 42.21.211) relating to classification requirements for class 19 property.

2. The Department has adopted Rules IV, V, VII, VIII, IX, and X (42.21.204, 42.21.205, 42.21.207, 42.21.208, 42.21.209, and 42.21.210 as proposed.

The Department has adopted Rules I (42.21.201), II (42.21.202), III (42.21.203), VI (42.21.206), and XI (42.21.211) with the following changes:

RULE I (42.21.201) APPLICATION FOR CLASSIFICATION AS NONPRODUCTIVE, PATENTED MINING CLAIM (1) and (2) remain the same.

(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 (42.21.202) DEFINITION OF TERMS (1) Remains the same.

(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), (4), and (5) remain the same.

(6) The requirements of subsections (5)(b) and (d) above

may be waived when the topography of the property is so severe that it precludes development for any purpose other than mining.

~~(6)~~ (7) "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~~ are 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 (42.21.203) 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, or in the case of a county-municipal consolidation, outside the limits of the municipalities prior to the date of consolidation;

(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) The applicant for class 18 property tax treatment is required to demonstrate that he is the owner of the patented mining claim for which classification is sought. If, on the date of application, the applicant is presently carried on the tax rolls of the county as the owner of the mining claim, the department will presume that the applicant is the record owner of the mining claim.

(3) If, on the date of application, the applicant is not carried as the record owner of the mining claim on the tax rolls of the county, the applicant will be required to fulfill criteria set forth in subsection (4)(a), (b), and (c) below.

~~(2)~~ (4) 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 10 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 10 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)~~ (a) submission of a copy of the United States patent issued in the name of the owner of record or a written certificate from the bureau of land management certifying the ownership of the patented mining claim;

~~(d)~~ (b) 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)~~ (c) ~~submission of evidence that the property is nonproductive as defined in rule II(1);~~ submission of copies of the most recent deeds or security agreements evidencing ownership and a copy of the last assessment on the patented mining claim; and

~~(f)~~ (d) 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);~~ a completed application on a form provided free of charge by the department of revenue.

(5) In the event that class 18 property tax treatment is sought for a patented mining claim which is owned by multiple parties, the criteria set forth in subsections (2) and (3) above must be fulfilled by a majority of the parties or entities currently paying the taxes on the patented mining claim or by the single party or entity paying taxes on the patented mining claim.

(6) If the department of revenue denies the application for class 18 property tax treatment, and if the applicant/taxpayer disagrees with the department of revenue's determination, the taxpayer shall be entitled to exercise the rights set forth in 15-7-102, MCA.

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 (42.21.206) VALUATION OF IMPROVEMENTS LOCATED ON ELIGIBLE MINING CLAIMS (1) All improvements located on eligible mining claims shall be classified and valued in the appropriate tax class. The improvements will normally be classified and valued as class 4 property. The improvements will not be classified and valued as class 18 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 XI (42.21.211) PORTIONS OF PARCELS ELIGIBLE FOR CLASSIFICATION AS CLASS 4 (1) The land beneath all residential improvements and ancillary 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 improved for any residential use or 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** in the appropriate tax class. That tax class will normally be class 4.
AUTH: 15-1-201, 15-6-101 MCA, and § 9, Ch. 35, L. 1986 Sp. Sess.; IMP: 15-6-149 MCA.

3. A public hearing was held on November 20, 1986, to consider the proposed adoption of these rules. Gregg Groepper and Randolph Wilke appeared on behalf of the Department. Several parties appeared at the hearing and several persons submitted written comments after the hearing was concluded. The Department of Revenue has taken all oral testimony and all written comments into account in adopting the rules.

The Montana Mining Association submitted written comments with respect to the new rules pertaining to class 18 property tax classification. The Association suggested that the Department of Revenue's requirements for proof of ownership and proof of use in proposed Rule III (42.21.203) were inappropriate. The department has amended the rule to provide that the significance of a United States patent issued under the 1872 mining law would be fully recognized for purposes of the application of the rule. In addition, the Department has simplified the application process and reduced the criteria which must be fulfilled by holders of patented mining claims if they have been treated as taxpayers of record upon the county assessment rolls.

The Association also argued that the Department of Revenue was attempting to place an undue burden of proof upon the applicant for property tax treatment. The Department believes that the Legislature, in enacting House Bill No. 35 sought to afford a property tax classification to those mining claim owners who were within the ambit and the spirit of the legislation. The Legislature did not afford a blanket property tax benefit to all mining claims. As a consequence, the Legislature afforded the Department administrative rulemaking authority to ensure that only those mining claims intended to be benefited by the legislation are in fact qualifying for class 18 tax treatment. However, as part of the simplification of the application process, and as a response to the Association's concern, the Department has reduced the extent of materials to be required of an owner and has substituted a department form for the written statement originally proposed in ARM 42.21.203(d).

The Department also received written comments from Peter Antonioli concerning the implementation of House Bill No. 35. He was concerned that the Department was requiring an affidavit of annual work for patented mining claims. As noted above, that requirement has been removed from the eligibility criteria. Mr. Antonioli was also concerned about the definition of

unproductive land. House Bill No. 35 specifically included a qualifying phrase limiting the tax benefit to all nonproductive claims. As a consequence, it is necessary to distinguish nonproductive land for purposes of class 18 tax treatment from land which would be eligible for classification as agricultural land. For that reason, the Department has adopted the definition of nonproductive land as proposed. Mr. Antonioli was also concerned about the definition of the word "patented". The Department revised the definition of the word "patented" to a simple, more general terminology, and removed the restrictive parts of the definition. Since the comment failed to suggest a more workable definition, the Department will rely upon the new definition as proposed. Mr. Antonioli was also concerned about the exclusion of mining claims from incorporated cities and towns. The language of House Bill No. 35 appeared to exclude mining claims within those areas and, consequently, the Department excluded them when preparing the rules to implement the law. The Department agrees, though, that the special circumstances of mining claims in areas outside of former municipalities, but within a consolidated city-county government needs to be clarified. Such claims will be given the same treatment as claims outside a current city or municipality, because both of these categories of claims are in substantially the same circumstances with respect to the factors that determine whether or not the claims have a value separate and independent from mining.

Mr. Antonioli was also concerned about the definition of the phrase "the mineral interests in the mining claim have not been depleted". For purposes of determining whether class 18 tax treatment is available, the Department is now relying on the fact that if a patent has been issued, then the Federal Government previously determined the claim was not depleted of minerals. A complete consideration of all factors suggested by the commentator would require extensive and expensive research and inquiry. Mr. Antonioli was also concerned about the criteria required for valuation as a mining claim. As noted above, the Department has simplified the criteria to be demonstrated by an applicant, if the applicant holds a patented mining claim and has been carried on the tax rolls of a county as the owner of record. The commentator was also concerned with the rule addressing additional restrictions that curtail preferential treatment. The Department suggests that once mining activity has been completed or ceased, it is incumbent upon the owner of the mining claims to resubmit an application in order to secure class 18 tax treatment. The commentator was also concerned with the rule addressing valuation of acreage beneath improvements on eligible mining claims. It is clear that the Legislature did not contemplate class 18 tax treatment for land which was devoted to any use other than that as a nonproductive mining claim. As a consequence, any land under an improvement utilized for any other purpose must be classified according to the laws of Montana. For that reason, the rule will be adopted as proposed.

The Department also received comments from Ward A. Shanahan, d/b/a Esmeralda Mining. Mr. Shanahan was concerned that the Department was imposing an undue burden upon the owner of a patented mining claim. As noted above, the Department has substantially simplified the application process for the owner of a patented mining claim if the individual is treated as the current owner of the property on the county assessment rolls. Mr. Shanahan was also concerned about the definition of the word "nonproductive" in the rule titled "definition of terms". As noted above, the Department has defined the concept of nonproductive land in order to distinguish it from land which might be eligible for another property tax classification. The commentator was also concerned about the definition of the word "patented". He suggests that the Department's definition could result in an ultimate forfeiture of the taxpayer's property if they had not been fulfilled. The Department respectfully asserts that it has no interest in working the forfeiture of any property by the owner of a nonproductive mining claim. Its only interest is in developing workable criteria in order to determine whether the applicant comes within the ambit for House Bill No. 35 for property tax classification purposes. The commentator was also concerned about the requirement of an assay in order to determine whether the mineral interest in the mining claim have not been depleted. As noted earlier, the Department will acknowledge that if a patent was issued, the Federal Government has previously determined that the acreage contained minerals that were not depleted. Additionally, the commentator failed to suggest any form of workable test. For that reason, the Department will adopt the rule as proposed. The commentator goes on to argue that class 18 property tax treatment should be afforded to improvements as well. The Department disagrees. There is nothing within the language or legislative history of House Bill No. 35 to suggest that the Legislature had any intention to benefit improvements upon a mining claim. The commentator next suggests that the Department is in error in requiring proof that the property has no separate and independent value other than as a mining claim. The Department would respectfully invite the commentator's attention to Section 2(3) of House Bill No. 35. It is clear by virtue of employing the language set forth therein that the Legislature was removing property from class 18 tax treatment if the surface has a separate and independent value for other purposes.

Finally, the commentator suggests that subsection 3 within the rule addressing eligibility criteria for classification and valuation of class 19 property is not broad enough. The commentator suggests that restrictions on development stemming from contractual relationships should also be recognized within the rule. The Department disagrees. A reference to the title of Senate Bill No. 20 reflects that the Legislature intended to provide a benefit only for real property containing less than 20 acres and that is rendered nonproductive by land use. As a

consequence, the Legislature did not contemplate the type of restriction envisioned by the commentator.

The Department received written comments from Mr. James A. Poore, Jr. Mr. Poore was concerned about four portions of the Department's proposed rules. First, he suggested that the Department was placing an undue burden upon the mining claim owner by requiring a United States patent which had been issued in the name of the owner of record. The Department of Revenue has acknowledged his comment as being well taken. It has accordingly modified subsection 4(a) of rule III (42.21.203) to provide that a written certification from the Bureau of Land Management regarding ownership shall be sufficient for purposes of meeting the ownership criterion.

Second, Mr. Poore was concerned about the requirement of an accompanying Realty Transfer Certificate in the application process. The Department of Revenue has considered his comments. It will continue to require submission of a Realty Transfer Certificate as proposed in order to assure that the Department has all relevant information pertaining to the mining claim and to ensure that the property is in fact assessed to the proper owner.

Third, Mr. Poore suggested that the requirement for all deeds or security agreements evidencing ownership changes was an undue burden. As noted above, the Department of Revenue has substantially modified the application process in favor of the taxpayer if the taxpayer can demonstrate that he is the owner of a patented mining claim and that he has been carried upon the tax rolls of the county as the owner of the mining claim.

Fourth, Mr. Poore was concerned about the submission of a written statement explaining why the property and the application qualifies as a nonproductive patented mining claim. House Bill No. 35 as enacted by the Legislature was not a blanket tax benefit to be afforded to all owners of mining claims. The restrictive language in the law clearly evidences an intention of the Legislature to restrict the tax benefit to those mining claims which qualify under the criteria of the law. As a consequence, the Department of Revenue's requiring an explanation from the applicant in order to assure that the mining claim, for which a preferential tax classification is sought, qualifies within the meaning of the law. However, as noted earlier, the Department has eased the burden of compliance by agreeing to substituting a department form that by definition will help guide owners in submitting information for the previously proposed general statement of evidence from owners.

4. The authority for the adoption of these rules is based on 15-1-201, 15-6-101, MCA, and §§ 5 and 9, Ch. 35, L. 1986, and implement 15-6-101, 15-6-140, 15-6-149, 15-6-153, and 15-8-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 01/19/87

VOLUME NO. 42 OPINION NO. 1

AUDIOLOGISTS - "Certified hearing aid audiologist" must meet requirements of Board of Speech Pathologists and Audiologists;
BOARD OF HEARING AID DISPENSERS - "Certified hearing aid audiologist" rule invalid;
BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS - Definition of "audiologist";
LICENSES, OCCUPATIONAL AND PROFESSIONAL - "Certified hearing aid audiologist" rule invalid;
ADMINISTRATIVE RULES OF MONTANA - Section 8.20.406;
MONTANA CODE ANNOTATED - Title 37, chapters 15, 16; sections 37-15-101, 37-15-102(5), 37-15-103, 37-16-411(7);
MONTANA LAWS OF 1975 - Chapter 543.

HELD: 1. By enacting a licensure act for audiologists and defining the term "audiologist" to include similar terms, the Legislature intended that anyone using the term "audiologist" in whatever manner as a professional title or description of services must be licensed by the Board of Speech Pathologists and Audiologists.

2. An administrative rule by the Board of Hearing Aid Dispensers in direct conflict with this statute and purporting to authorize "certified hearing aid audiologists" is invalid.

13 January 1987

Patti Dubray, Chairman
Board of Speech Pathologists
and Audiologists
Division of Business Regulation
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0407

Dear Ms. Dubray:

On behalf of the Board of Speech Pathologists and Audiologists of the State of Montana, you have requested my opinion on the following questions:

1. Is the use of the term "certified hearing aid audiologist" by persons not properly licensed as audiologists by the Board of Speech Pathologists and Audiologists a violation of the statute which prohibits persons from practicing or representing themselves as audiologists unless licensed under Title 37, chapter 15, Montana Code Annotated?

2. Is section 8.20.406, ARM, adopted by the Board of Hearing Aid Dispensers and purporting to authorize "certified hearing aid audiologists" a valid extension of legislative authority?

I have concluded that only a person licensed by the Board of Speech Pathologists and Audiologists may use the term "audiologist" in his professional title or description of services. Consequently, the rule adopted by the Board of Hearing Aid Dispensers recognizing the title of "certified hearing aid audiologist" is invalid.

In 1975 the Montana Legislature established a procedure for the professional licensing of audiologists and established the Board of Speech Pathologists and Audiologists. 1975 Mont. Laws, ch. 543. It is now codified, together with later amendments, in chapter 15 of Title 37, Montana Code Annotated. The stated purpose of the legislation is to "provide regulation authority over persons offering speech pathology or audiology services to the public." § 37-15-101, MCA. The definition of "audiologist," which appeared in the original act and has remained unchanged, is now found at section 37-15-102(5), MCA:

> "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of services.

The clear intent of the Legislature was that anyone who holds himself out to the public as an audiologist must be licensed as provided in chapter 15.

The Board of Hearing Aid Dispensers exists pursuant to Title 37, chapter 16, MCA. In 1976, a year after the Legislature had acted as outlined above, the Board of Hearing Aid Dispensers adopted an administrative rule which is now section 8.20.406, ARM:

> CERTIFIED HEARING AID AUDIOLOGIST. (1) The use of the title "Certified Hearing Aid Audiologist" shall be used only by those persons who have been certified as such by the National Hearing Aid Society. Any such uncertified use of the title shall constitute cause for suspension or revocation of license as "misleading, deceptive, or untruthful," advertising within the intent and meaning of section 37-16-411 (7), MCA.

While this rule purported to be restrictive, it actually had the effect of sanctioning the use of the title "certified hearing aid audiologist" for those who obtained the certification of the National Hearing Aid Society. Nowhere in the law establishing the Board of Hearing Aid Dispensers does the term "certified hearing aid audiologist" exist.

The rule is in direct conflict with the licensure statute for audiologists. Within the limitations of human language, the Legislature could not have made it more clear that it intended that anyone using the term "audiologist" in any manner must be licensed and meet the qualifications set forth in the Act. § 37-15-102(5), MCA. Faced with such a direct conflict, the regulation must give way to the statute. See McPhail v. Board of Psychologists, 640 P.2d 906 (Mont. 1982); Board of Barbers v. Big Sky College, 626 P.2d 1269 (Mont. 1981); Bell v. Dept. of Licensing, 594 P.2d 331 (Mont. 1979).

Section 37-15-103, MCA, provides that "[n]othing in this chapter shall prevent a person licensed in this state under any other law from engaging in the profession or business for which he is licensed." An argument can be made that this language would exempt anyone licensed under the Hearing Aid Dispensers Act as a "certified hearing aid audiologist" from the licensure requirements of the Board of Speech Pathologists and Audiologists.

However, I find that the exemption does not apply where, as here, the initial licensure is defective by reason of the licensing board's lack of authority and the direct conflict with another statute. It is obvious that the exemption statute contemplates that the original licensure be without legal defect. Otherwise the exemption statute would become a grant of total power to each licensing board. That was surely not the intent of the Legislature.

THEREFORE, IT IS MY OPINION:

1. By enacting a licensure act for audiologists and defining the term "audiologist" to include similar terms, the Legislature intended that anyone using the term "audiologist" in whatever manner as a professional title or description of services must be licensed by the Board of Speech Pathologists and Audiologists.

2. An administrative rule by the Board of Hearing Aid Dispensers in direct conflict with this statute and purporting to authorize "certified hearing aid audiologists" is invalid.

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 September 30, 1986. This table includes those rules adopted during the period September 30, 1986 through December 31, 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 September 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	Blind Vendors' Bidding Preference, p. 1730
I-IX	Emergency Telephone Service, p. 1523, 1889
I-X	Leaves of Absence Due to Disability, p. 1423, 1815
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
(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

AGRICULTURE, Department of, Title 4

I-VI	Emergency Rules - Cropland Insect Detection and Spraying Program, p. 1175
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, 1825

I-XLIII Establishing Standards for Anhydrous Ammonia Facilities, p. 1231, 1820
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

STATE AUDITOR, Title 6

I-IX Montana Insurance Assistance Plan, Commercial Liability, p. 879, 1460

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
(Board of Chiropractors)
8.12.601 Applications, Educational Requirements - Renewals - Continuing Education Requirements, p. 730, 1182
(Board of Cosmetologists)
8.14.603 and other rule - School Requirements - Application - Out-of-state Cosmetologists/Manicurists, p. 1132
(Board of Dentistry)
8.16.602 and other rules - Allowable Functions for Dental Hygienists and Dental Auxiliaries - Prohibition - Permit Required for Administration of Facility - Minimum Qualifying Standards - Facility Standards, p. 1654
(Board of Denturity)
I-XVIII Licensing - Procedure - Unprofessional Conduct - Inspections - Disciplinary Issues - Complaint Procedures, p. 732, 1498
8.17.404 and other rules - Examination - Fee Schedule - Renewal-Continuing Education, p. 1532, 1897
(Board of Horse Racing)
8.22.610 and other rules - Stewards - Trainers - Veterinarians - General Requirements - Types of Bets - Twin Trifecta - Alcohol and Drug Testing - Pick (N) Wagering, p. 1732
(Board of Landscape Architects)
8.24.405 and other rule - Examinations - Fee Schedule, p. 1856, 2059
(Board of Medical Examiners)
8.28.904 and other rules - Implementation of an EMT Defibrillation Training and Certification Program for EMT - Basic Personnel, p. 626, 1073
(Board of Morticians)
I Disciplinary Actions, p. 740, 1304
8.30.606 Pre-arranged, Pre-financed or Prepaid Funerals, p. 1358
8.30.707 Disciplinary Actions, p. 1994

(Board of Occupational Therapists)
I-XVI Procedures - Licensing and Discipline, p. 412, 943
(Board of Optometrists)
8.36.403 and other rules - Application for Examination - General Practice Requirements - Unprofessional Conduct - Violations - Disciplinary Actions - Requirements, p. 1269, 1582
(Board of Pharmacy)
8.40.403 and other rule - Examination for Licensure - Approved Programs, p. 305, 945
8.40.1215 Additions, Deletions and Rescheduling of Dangerous Drugs, p. 1534, 1957
(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, 1958, 2006
(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, 1898
(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, 1899
(Board of Realty Regulation)
I Continuing Education, p. 1545
8.58.414 Trust Account Requirements, p. 1492, 1858
(Board of Speech Pathologists and Audiologists)
8.62.702 and other rules - Definitions - Continuing Education Required - When - Education Activities Acceptable for Credit, p. 1996
(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
(Board of Milk Control)
8.86.301 Class I Price Formula to Establish a Special Wholesale Price for Retail Grocery Stores, p. 495, 1016

Conformance with the Federal Hazardous Waste Program, p. 890, 1309

JUSTICE, Department of, Title 23

23.4.101 and other rules - Alcohol Analysis, p. 1945, 16
(Board of Crime Control)
23.14.407 and other rules - Requirements for the Advance Certificate - The Basic Course - The Intermediate Course - The Advance Course, p. 507, 1023
23.14.416 and other rules - Basic Course - Intermediate Course - Advance Course, p. 1434

LABOR AND INDUSTRY, Department of, Title 24

24.16.9007 Changing the Annual Effective Date of the Standard Rate of Wages Applicable to Public Works from October 1st to December 1st, p. 1141, 1466
24.16.9007 Adoption by Reference of Standard Prevailing Rates of Wages Effective December 1, 1986 through November 30, 1987, p. 1669, 1960
(Human Rights Commission)
Public Hearing and Petition for Declaratory Ruling as to whether Montana Department of Institutions, a State Governmental Agency may Employ only Female Cottage Life Attendants at its Correctional Facility for Female Youth under Certain Circumstances, p. 1495, 2107
Public Hearing and Petition for Declaratory Ruling as to whether the Reasonable Demands of the Screening and Selection of Adoptive Parents Requires Consideration of the Race, Sex, Religion, Age, Marital Status and Physical and Mental Handicap of the Applicant Parents without Violating Section 49-3-205, MCA, p. 2047
I-IX Sex Equity in Education under the Montana Human Rights Act, p. 1663
(Workers' Compensation Division)
24.29.702 Self-Insurers, p. 1273, 1903
24.29.803 Payment of Compensation, p. 1671, 2060
24.29.3801 Attorney Fee Regulation, p. 2050

STATE LANDS, Department of, Title 26

I Shut-in Oil Royalties for Oil and Gas Leases on State Land, p. 1144, 2010
I-XI Consultation of the Department of State Lands with the State Historic Preservation Office Under the Antiquities Act, p. 1849, 953
26.3.101 and other rules - Surface Leasing of State Land, p. 1547, 17

LIEUTENANT GOVERNOR, Title 30
(Montana Statehood Centennial Commission)
I-IX Sanctioning Official Centennial Commemorative Products and Projects, p. 1437, 2062

LIVESTOCK, Department of, Title 32

32.2.401 Department of Livestock Fees and Licenses, p. 1950

MILITARY AFFAIRS, Department of, Title 34
I-XXII Montana State Veterans Cemetery, p. 2053

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)
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

REVENUE, Department of, Title 42

I Gasoline Distributor's License Tax, p. 1673, 2012
I Commercial Personal Property Audits, p. 1784, 2067
I-II Industrial Machinery and Equipment Trend Factors - Industrial Machinery and Equipment Depreciation Schedules, p. 1779, 1956, 2074
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-IV Child Support Debt Tax Offsets, p. 1864, 2065
I-V Emergency Telephone Service, p. 1574, 1963
I-IX Disclosure of Child Support Information, p. 1065, 1832
I-XI Classification Requirements for Class 18 Property for Nonproductive, Patented Mining Claims - Classification Requirements for Class 19 Property, p. 1806
42.11.104 Retail Liquor/Wine Price Restructuring, p. 1952
42.15.511 Energy Related Tax Incentives, p. 1675, 2011
42.17.105 Computation of Withholding Taxes, p. 1867, 2066
42.17.120 Individual Liability for State Withholding Taxes, p. 1443, 1835

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46.12.575 Family Planning Services, p. 449, 970
46.12.801 Prosthetic Devices, Durable Medical Equipment and Medical Supplies, p. 755, 1911
46.12.1005 Transportation and Per Diem, Reimbursement, p. 2057
46.12.1434 and other rules - Home and Community Services Program, p. 1870, 2094
46.12.3601 and other rule - Non-institutionalized SSI-related Individuals and Couples, p. 6
46.12.3803 Medically Needy Income Standards, p. 2004
46.13.302 and other rules - Low Income Energy Assistance, p. 1365, 1606
46.13.403 Low Income Energy Assistance Program Method of Payment, p. 1812, 2021
46.25.101 and other rules - Structured Job Search and Training Program - Workfare, p. 746, 1084
46.25.711 and other rules - General Relief Assistance and General Relief Medical Programs, p. 1292, 1615