RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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NOTICE SECTION

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

In the matter of the proposed amendment of rules pertaining to licenses, general provisions, general requirements, general rules, and definition of detrimental conduct	NOTICE OF PUBLIC HEARING ON AMENDMENT OF 8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING, 8.22.601 GENERAL PROVISIONS, 8.22.801 GENERAL REQUIREMENTS, 8.22.1401 GENERAL RULES, 8.22.1502 DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTERESTS OF RACING

TO: All Interested Persons:

1. On March 8, 1988, at 9:00 a.m., a public hearing will be held in the downstairs conference room, 1424 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The proposed amendment of 8.22.502 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-635 through 8-641, Administrative Rules of Montana)

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (6) will remain the same.

(7) If there shall be two or more applications requesting licenses to conduct race meetings on one or more identical dates the applicant shall be notified and a hearing will be held in conformity with ~~the rules of chapter 22 hereof~~ sub chapter 3 hereof. If the board refuses to allot dates or issue a license for a race meeting for any reason other than conflicting dates, the applicant refused dates or a license may appeal to the board and then a hearing will be held in conformity with ~~the rules of chapter 22~~ sub chapter 3 hereof. Criteria for the award of race meetings and race dates when there are two or more applications for identical dates shall include, but not be limited to, the following:

(a) through (42) will remain the same."

Auth: 23-4-104, 23-4-201, 37-1-131, MCA Imp: 23-4-104, 23-4-201, MCA

REASON: This rule is being amended to remove an incorrect rule reference and replace it with a correct one.

3. The proposed amendment of 8.22.601 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-647, Administrative Rules of Montana)

"8.22.601 GENERAL PROVISIONS (1) will remain the same.

(2) Classified as officials are the following:

(a) through (u) will remain the same.

(v) outrider

(3) will remain the same.

(4) No ~~steward,-racing--secretary,--director--of--racing,-patrol--judge,--security-officer-or-starter-shall-serve-in-his-capacity~~-official specified in section 8.22.601 (2) (a through v) may serve in his official capacity in regard to any race meet, at which a horse owned by him, his spouse or, his child living in the same household, ~~or-a-member-of-his-immediate-family~~-or in which he has a financial interest, is entered in a race at such meeting.

(5) No official shall participate in the sale, purchase or ownership of any horse racing at any race meet at which he is serving in an official capacity.

(6) No racing official shall directly or indirectly buy or sell any contract with any jockey or apprentice jockey for himself or another, nor shall he write or solicit horse insurance.

(7) No racing official shall directly or indirectly wager money or anything of value on the result of any race at any licensed race meeting."

Auth: 37-1-131, 23-4-104, 23-4-202, MCA Imp: 23-4-104, 23-4-201, 23-4-202, MCA

REASON: This amendment clarifies under what conditions racing officials are permitted to have an interest in a race horse, and expressly prohibits wagering by racing officials.

It also adds the position "outrider" to the list of licensed officials in racing because these occupations are now classified as officials for insurance purposes.

4. The proposed amendment of 8.22.801 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located 8-679 through 8-685, Administrative Rules of Montana)

"8.22.801 GENERAL REQUIREMENTS

(1) through (18) will remain the same.

(19) No horse shall be allowed to start in any race unless it has been tattooed and fully identified. ~~The-stewards-may-waive-the-tattoo-requirement-provided--the--horse-is-otherwise-fully-identified.~~

(20) through (28) will remain the same.

(a) No Arabian shall run on any track in the State of Montana until it is a three year old. After January 1, 1991, no Arabian maiden seven years old or older shall be eligible to enter or start in any race. For purposes of this rule only, a maiden is a horse which at the time of starting has never won a race on the flat in any country.

(29) through (64)(a) will remain the same.

(b) The entrance money, starting and subscription fees in every race shall go to the winner unless otherwise provided in its conditions, but if for any reason a race is not run, all stakes or entrance money shall be refunded to those entries

remaining eligible at time of decision to cancel or postpone. If the trials of said race have been run and the finals are cancelled due to unforeseeable circumstances, the remaining qualifiers will equally divide the entrance, starting and subscription fees."

Auth: 37-1-131, 23-4-104, 23-4-202, MCA Imp: 23-4-104, MCA

REASON: Subsection (28)(a) is being added to permit recognition and entry of a new breed of race horses in regulated horse racing in Montana.

Subsection (19) is being amended to make the rule consistent with how the rule is currently enforced.

Subsection (64)(a) is being added at the suggestion of stewards as a result of experience in administering the law. It makes clear who qualifies for refunds of entrance money when stakes races are cancelled or postponed.

5. The proposed amendment of 8.22.1401 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-728 and 8-729, Administrative Rules of Montana)

"8.22.1401 GENERAL RULES (1) through (10) will remain the same.

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

(12) through (23) will remain the same."

Auth: 37-1-131, 23-4-104, 23-4-202, MCA Imp: 23-4-104, MCA

REASON: This rule is being amended to conform with recent amendments of ARM 8.22.711.

6. The proposed amendment of 8.22.1502 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-728 and 8-729, Administrative Rules of Montana)

"8.22.1502 DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTEREST OF RACING For the purpose of implementing section

23-4-202 (2), MCA, as amended, the board rules that the following conduct is detrimental to the best interest of racing but without limitation:

(1) through (13) will remain the same.

(14) Directly or indirectly buying or selling any contract upon any jockey or apprentice jockey for himself or another, or writing or soliciting horse insurance by any licensed official.

(15) Wagering money or anything of value either directly or indirectly, on the result of any race at any licensed race meet in this state, by any licensed official."

Auth: 37-1-131, 23-4-104, 23-4-202, MCA Imp: 23-4-202, MCA

REASON: These subsections are being added to expand types of inappropriate conduct recognized as conduct on the part of racing officials that will be treated as detrimental to the best interests of racing. This will make new amendments to ARM 8.22.601 enforceable.

7. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Horse Racing, 1225 Eighth, Helena, Montana 59620, no later than March 10, 1988.

BOARD OF HORSE RACING

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1988.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

In the matter of the proposed adoption of rules concerning Definitions and Tuition Rates for Special Education	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES CONCERNING DEFINITIONS AND TUITION RATES FOR SPECIAL EDUCATION

TO: All Interested Persons.

1. On Monday, March 14, 1988, at 10:00 a.m. a public hearing will be held in the conference room at 1300 11th Avenue, Office of Public Instruction, in Helena, Montana to consider the adoption of new rules concerning Definitions and Tuition Rates for Special Education.

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

RULE I ELIGIBLE TUITION CATEGORIES

(1) To be eligible to receive tuition, special education programs must be in compliance with board of public education policies and approved by the superintendent of public instruction.

(2) The child study team required in 10.16.1203, ARM shall use the definitions provided below to determine categories eligible for tuition.

(3) Tuition may be charged for services provided by a receiving public school district for full-time handicapped students in three (3) categories defined as: (a) moderately handicapped; (b) severely handicapped; or (c) profoundly handicapped.

(a) Moderately handicapped students are defined as students requiring more than half-time services in special education programs.

(i) Students within this category receive mainstreaming opportunities generally in nonacademic areas. Students receive 15-25 hours per week of special education services.

(ii) Moderately handicapped students may receive related services of speech therapy, occupation and/or physical therapy and psychological services. Such related services generally total not more than 30 minutes of the school day.

(iii) Individual programming for moderately handicapped students may include instruction in basic academic skills.

(b) Severely handicapped students are defined as students receiving limited mainstreaming opportunities and whose special education services range between 20-30 hours per week.

(i) A variety of related services are often necessary to address the program and service needs of the severely handicapped student. Educational needs of these students generally require a ratio of one (1) adult teacher or aide, under supervision of a teacher, to five (5) students.

(ii) Individual programming for severely handicapped students generally will reflect limited academic programming and will focus upon self-help and/or prevocational and/or vocational skills. Students whose social skill development or behavior require a highly structured environment characterized by close supervision and management are included in this group.

(c) Profoundly handicapped students are defined as students whose handicapping condition is so severe that they are generally limited to reverse mainstreaming or mainstreaming with direct assistance of special education personnel.

(i) Related services of occupational therapy, physical therapy, transportation, and psychological services comprise one (1) hour or more of the school day.

(ii) Individual programming for the profoundly handicapped often addresses basic self-help activities such as mobility training for the nonambulatory, feeding programs, toileting and prevocational programs.

(iii) Dependency of the profoundly handicapped requires continuous, direct supervision which may require a ratio of one (1) adult teacher or aide, under the supervision of a teacher, to three (3) students.

Auth: 20-5-305, 20-5-312 Imp: 20-5-305, 20-5-312

RULE II TUITION CALCULATIONS

(1) The calculation of elementary and high school tuition rates for regular tuition shall be the base for special education tuition calculations. Special education tuition shall be a modified regular tuition based upon the three categories of severity defined in Rule 1.

Auth: 20-5-305, 20-5-312 Imp: 20-5-305, 20-5-312

RULE III FORMULA FOR SPECIAL EDUCATION TUITION RATES

(1) The following formula shall be used by school districts in calculating maximum tuition. The source of data shall be the immediate past year derived from the trustees' annual financial report and current year budgeted ANB.

(a) The calculation of special education tuition at the kindergarten, elementary and high school levels shall not exceed the actual costs incurred.

(b) In the event that the school district has 100% special education enrollment, then ADA (average daily attendance) shall be used in place of ANB and Rule 1 does not apply. The calculation procedure shall be the same as for nonhandicapped students.

(c) Formula:

		In County	Out of County
(i)	Elementary tuition--Regular		
1.	Fund 101 Expenditure (last FY)		
2.	Fund 114 Expenditure (last FY)	XXXXXXX	
3.	Fund 150 Expenditure (last FY)		
4.	Total (line 1 + 2 + 3)		
5.	ANB (current FY budgeted)		
6.	Line 4 divided by line 5		

7.	Fund 101-2110 Co. Equal. (last FY)		
8.	Fund 101-3119 St. Equal. (last FY)		
9.	Fund 101-3120 St. Perm. (last FY)		
10.	Total (line 7 + 8 + 9)		
11.	Line 10 divided by line 5		
12.	Line 6 minus line 11 (reg. rate)		
	Special Education Tuition Rate		
13.	Mod. handic. rate (line 12 x 2)		
14.	Plus EHA Part B flow through per student rate (current year)		
15.	Mod. handic. rate (line 13 + 14)		
16.	Severe handic. rate (line 12 x 3)		
17.	Plus EHA Part B flow through per student rate (current year)		
18.	Severe handic. rate (line 16 + 17)		
19.	Prof. handic. rate (line 12 x 4)		
20.	Plus EHA Part B flow through per student rate (current year)		
21.	Prof. handic. rate (line 19 + 20)		
	Kindergarten (½ day program)		
22.	Regular tuition (½ line 12)		
23.	Mod. handic. rate (½ line 15)		
24.	Severe handic. rate (½ line 18)		
25.	Prof. handic. rate (½ line 21)		
	(ii) High School Tuition--Regular		
1.	Fund 201 Expenditure (last FY)		
2.	Fund 214 Expenditure (last FY)		
3.	Fund 250 Expenditure (last FY)		
4.	Total (line 1 + 2 + 3)		
5.	ANB (current FY budgeted)		
6.	Line 4 divided by line 5		
7.	Fund 201-2110 Co. Equal. (last FY)		
8.	Fund 201-3119 St. Equal. (last FY)		
9.	Fund 201-3120 St. Perm. (last FY)		
10.	Total (line 7 + 8 + 9)		
11.	Line 10 divided by line 5		
12.	Line 6 minus line 11 (reg. rate)		
	Special Education Tuition Rate		
13.	Mod. handic. rate (line 12 x 2)		
14.	Plus EHA Part B f through per student rate (current year)		
15.	Mod. handic. rate (line 13 + 14)		
16.	Severe handic. rate (line 12 x 3)		
17.	Plus EHA Part B flow through per student rate (current year)		
18.	Severe handic. rate (line 16 + 17)		
19.	Prof. handic. rate (line 12 x 4)		
20.	Plus EHA Part B flow through per student rate (current year)		
21.	Prof. handic. rate (line 19 + 20)		

(d) Nothing within the rules for calculating the maximum regular special education tuition rates shall prevent districts from agreeing to lesser rates.
Auth: 20-5-305, 20-5-312 Imp: 20-5-305, 20-5-312

RULE IV CONTESTED CASES
(1) Contested cases regarding tuition calculation will be addressed through the procedures outlined in Title 10, Chapter 6, ARM, Rules of Procedure for All School Controversy Contested Cases Before the County Superintendents of the State of Montana.
Auth: 20-3-107(b)(3) Imp: 20-3-210(a)

3. The Office of Public Instruction is proposing these adoptions because handicapped students cost more to educate than do nonhandicapped students. This is particularly true for students who are considered full-time special education students. Due to sparsity of population and specialized needs of handicapped students, some districts find it more appropriate in terms of program and cost efficiency to place handicapped students in districts other than their own. As a result of recent legislation, the Superintendent of Public Instruction is allowed the authority to promulgate rules for the calculation of elementary and high school tuition for full-time elementary and high school special education students. These formulas are the sum of the regular tuition and the excess costs of educating the students in the proposed district of service. The excess costs are those costs not paid by state or federal special education funds.

4. Interested parties may submit their data, views or arguments, either orally or in writing at the public hearing. Written data, views or arguments also may be submitted to Bob Runkel, Director of Special Education, Office of Public Instruction, State Capitol, Room 106, Helena, Montana 59620 no later than March 18, 1988. Bob Runkel, Director of Special Education, has been designated to preside over and conduct the public hearing.

ED ARGENBRIGHT, State Superintendent

Certified to the Secretary of State February 1, 1988

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a new rule pertaining to elk permits	NOTICE OF PROPOSED ADOPTION OF NEW RULE RULE I. PREREQUISITES FOR SPECIAL ELK PERMIT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 21, 1988, the Montana Fish and Game Commission proposes to adopt the rule noted above.

2. The proposed new rule will read as follows:

RULE I PREREQUISITES FOR SPECIAL ELK PERMIT Any person who is the holder of a valid A-5 resident elk license or a valid B-10 nonresident big game combination license may apply for a special elk permit.

AUTH: 87-1-304, MCA
AUTH. EXT: Sec. 2, Ch. 241, L. 1987
IMP: 87-2-702(3), MCA

3. The rule is being proposed to implement Section 87-2-702(3), which was enacted by the 1987 Legislature. The statute is permissive. A 1986 survey revealed that most sportsmen believe that those applying for special elk permits should be required to have either a valid resident or nonresident elk license.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Jim Herman, License Bureau Chief, Centralized Services, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620, no later than March 18, 1988.

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 Jim Herman, address in paragraph 4, no later than March 18, 1988.

6. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; 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 and notice will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of license holders.

James W. Flynn, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State February 1, 1988.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal, transfer and adoption of rules pertaining to licenses and license agents	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULE I ANTELOPE LICENSE FOR DISABLED PERSONS, II FOR FEE FOR DUPLICATE LICENSES, PROPOSED REPEAL OF ARM 12.3.103 AND ARM 12.3.301 AND PROPOSED TRANSFER OF ARM 12.3.101 AND ARM 12.2.102 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 15, 1988, the Montana Department of Fish, Wildlife and Parks proposes to repeal, transfer and adopt the rules noted above.

2. The proposed new rules will read as follows:

RULE I ANTELOPE LICENSES FOR DISABLED PERSONS A permanently physically handicapped and nonambulatory person, as defined by 12.3.106, may apply for a special antelope license. Twenty five licenses each year will be issued in districts that have quotas in excess of 50 as published in the hunting regulations. The successful applicant shall receive their choice of districts.

AUTH: 87-1-201, MCA
AUTH. EXT: Sec. 2, Ch. 326, L. 1987
IMP: 87-2-706, MCA

RULE II FEE FOR DUPLICATE LICENSES For the purposes of 87-2-104(1), MCA, a payment of $5 is required for each application for a duplicate license. Each application form for a duplicate license includes all classes of licenses, special licenses and any other type of license determined to be appropriate by the department.

AUTH: 87-2-104(1), MCA
IMP: 87-2-104(1), MCA

3. Two rules are proposed to be repealed. ARM 12.3.103 is on pages 12-103, 12-104 and 12-105 of the Administrative Rules of Montana. ARM 12.3.301 is on page 12-113 of the Administrative Rules of Montana.

AUTH: 87-1-304, MCA
IMP: 87-1-304, MCA

4. The department proposes to transfer ARM 12.3.101 and ARM 12.3.102 to ARM 12.3.209 and ARM 12.3.210, respectively.
AUTH: 87-1-201, MCA
IMP: 87-2-901, MCA

5. Antelope decision. The 1987 legislature mandated a provision for licenses to be made available to disabled persons.

Duplicate license fee. The statutory language is somewhat confusing and has been subject to different interpretations. The department is proposing this rule to establish a uniform application of required fees to be paid for duplicate licenses.

Rules to be repealed. ARM 12.3.103 is being proposed for repeal because, by its own terms, it became ineffective at the end of the 1983 license year. ARM 12.3.301 is being proposed for repeal because it deals with the sale of 1978 and 1979 bird licenses and bird art stamps that are no longer available.

Rules to be transferred. Both rules relate to license agents. The transfer will place them in the same sub-chapter as other rules relating to license agents.

6. Interested parties may submit their data, views or arguments concerning the proposed repeal, amendment, transfer and adoption, in writing to Jim Herman, License Bureau Chief, Centralized Services, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620, no later than March 14, 1988.

7. If a person who is directly affected by the proposed adoption, repeal, amendment and transfer wishes to express his data, views and arguments orally or in writing a a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jim Herman, address in paragraph 6, no later than March 14, 1988.

8. If the agency receives requests for a public hearing on the proposal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal, amendment, transfer and 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 and notice will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of license agents, disabled persons and persons who require duplicate licenses each year.

James W. Flynn, Director
Montana Department of
Fish, Wildlife and Parks

Certified to the Secretary of State February 1, 1988.

3-2/11/88

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.101 and 42.22.112 relating to taxation of airlines.	NOTICE OF PROPOSED AMENDMENT of ARM 42.22.101 and 42.22.112 relating to taxation of airlines.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1988, the Department of Revenue proposes to amend ARM 42.22.101 and 42.22.112 relating to taxation of airlines.

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

42.22.101 DEFINITIONS (1) through (10) remain the same.

(11) "New aircraft" means aircraft manufactured in the preceding calendar year, or aircraft which have not been previously registered except by the manufacturer of the aircraft.

~~(11)~~ (12) "Nonoperating property" is all property owned or leased from others which is not necessary for the conduct of a centrally assessed company's intercounty or interstate business.

~~(12)~~ (13) "Operating property" is all real and personal property, owned, leased, or used, which is reasonable and necessary to the maintenance and operation of a centrally assessed company's interstate or intercounty business.

~~(13)~~ (14) "Property leased from others" is property leased by a centrally assessed company and used in the interstate or intercounty business operations.

~~(14)~~ (15) "Property leased to others" is property owned by a centrally assessed company which is leased out.

~~(15)~~ (16) "Right-of-way" shall be the land beneath and adjacent to a continuous property which is needed for safe passage and maintenance of the property.

~~(16)~~ (17) "Rolling stock" includes but is not limited to all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, cattle cars, coal cars, flat cars, wrecking cars, special purpose cars, track repair and construction cars, and all other cars used by a railroad.

~~(17)~~ (18) "Situs property" is all operating property used by a centrally assessed company that is not part of a roadway or a transmission or distribution system, that is not rolling stock or airplanes, or that by nature is immovable. Situs property includes but is not limited to: buildings, dams, powerhouses, depots, stations, shops, furniture, fixtures, tools, substations, electronic switching equipment, machinery, meters, transformers, and operating lands not in the right-of-way. Situs property does not include automobiles, trucks, and special mobile equipment (as defined in 61-1-104, MCA) upon which property taxes have been assessed and paid.

~~(18)~~ (19) "Taxable period" refers to the entire period of the immediate preceding calendar year. All operations of a centrally assessed company during a taxable period are assessed during the immediate following calendar year.

~~(19)~~ (20) "Taxing units" are counties, municipalities, school districts, and other special districts.

~~(20)~~ (21) "Unit method of valuation" is a method for determining the market value of a centrally assessed company. This involves appraising, as a going concern and a single entity, the entire operating property, wherever located, and then ascertaining the part thereof in this state. The resulting value is referred to as the "unit value". AUTH, Sec. 15-23-108 MCA; AUTH EXT., Ch. 520, Sec. 2, L. 1987; IMP, Sec. 15-23-403 MCA.

42.22.112 COST INDICATOR (1) through (3) remain the same.

(4) New aircraft and supporting equipment which are purchased or acquired under a capitalized lease or operating lease by a scheduled airline company operating within this state, whose allocation of value within this state as determined by the procedures described in 42.22.121 is 50 percent or more, shall be valued according to the following schedule. (This section does not apply to aircraft or equipment which are purchased used.)

Year of acquisition:	28% of full and true value
First year after acquisition:	36% of full and true value
Second year after acquisition:	44% of full and true value
Third year after acquisition:	52% of full and true value
Fourth year after acquisition:	60% of full and true value
Fifth year after acquisition:	68% of full and true value
Sixth year after acquisition:	76% of full and true value
Seventh year after acquisition:	84% of full and true value
Eighth year after acquisition:	92% of full and true value
All succeeding years:	100% of full and true value

AUTH, Sec. 15-23-108 MCA; AUTH EXT., Ch. 520, Sec. 2, L. 1987; IMP, 15-23-403 MCA.

3. These amendments are necessary to implement Ch. 570, L. 1987, enacted by the Montana Legislature to provide a tax benefit for new aircraft which are subject to centralized assessment by the Department of Revenue. These amendments provide affected parties with a description of the Department's method of implementing this law. The definition of new aircraft recognizes that some aircraft may remain in a manufacturer's inventory before being sold and placed in service. The change in 42.22.112 integrates the change in the law with the general methodology used to value centrally assessed airlines. This change also recognizes that aircraft and supporting equipment may be acquired through either purchase or lease methods.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than March 11, 1988.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.120 and 42.21.122 and the ADOPTION of Rule I relating to taxation of livestock and REPEAL of 42.21.121.	NOTICE OF PROPOSED AMENDMENT of ARM 42.21.120 and 42.21.122 and the PROPOSED ADOPTION of Rule I relating to taxation of livestock and the REPEAL of 42.21.121. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1988, the Department of Revenue proposes to amend ARM 42.21.120 and 42.21.122 and adopt Rule I relating to taxation of livestock. The Department also proposes to repeal ARM 42.21.121 which also pertains to the taxation of livestock.

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

42.21.120 TREATMENT OF AGRICULTURAL PRODUCTS (1) Unprocessed agricultural products, including livestock~~, poultry, and the unprocessed products of both~~, not exempted from property taxation pursuant to 15-6-201 or 15-6-207, MCA, are considered to be classified in Class 6 property for purposes of property taxation. These agricultural products are not considered to be business inventory. AUTH, Sec. 15-1-201 MCA; AUTH. EXT., Ch. 660, Sec. 13, L. 1987, Eff. 1/1/88; IMP, Sec. 15-6-136 and 15-6-207, MCA.

42.21.122 LIVESTOCK (1)(a) The average market value for cattle shall be determined by multiplying the weighted average price per cwt. for cows, marketed in Montana during the preceding 12-month period December through November, as determined by the Montana crop and livestock reporting service, times established factors for each of the ~~six~~ five categories of cattle. The established factors are:

Bulls - 9 24 months and older	18
~~Cattle - 9 months thru 20 months~~	~~6.5~~
Cattle - ~~21~~ 24 months thru 32 months	8
Cows - 33 months and older	9
Steers - 33 months and older	12
Dairy Cows - ~~21~~ 24 months and older	12

(b) The average market value for blooded or registered cattle shall be 30% more than the average market value for stock cattle. The average market value for registered or purebred cattle shall apply only to those animals used to reproduce registered or purebred animals.

(2) The average market value for sheep shall be determined by multiplying the average price per cwt. for slaughter lambs, marketed in Montana during the preceding 12-month period December through November, times established factors for each of the four categories of sheep. The established factors are:

Registered Bucks - 9 24 months and older	2.6
Stock Bucks - 9 24 months and older	2
Sheep - 9 24 months thru 70 months	.7
Sheep - 71 months and older	.2

(3)(a) The average market value for swine shall be determined pursuant to 15-24-931, MCA, except market hogs 3 to 5 months which are exempt pursuant to 15-6-207(1)(e).

~~(b)--The most recent five-year average U.S.D.A. Omaha quotation prices are: Grades 1 to 3 at 200 to 240 pounds $40.68; sows 270 to 330 pounds $34.51.~~

~~(4) This rule would be effective for tax years beginning after December 31, 1978.~~ (a) The average market value for horses shall be determined by multiplying the average price per 1,000 pounds for horses used for canning (killer horses), marketed in Montana during the preceding 12 month period, December through November, by established factors for each of the five categories of horses. The established factors are:

mules, asses, shetland ponies, donkeys and burrows - 24 months and older	.75
saddle horses, and brood mares - 24 months and older	1.5
work and pack horses, riding and pack mules - 24 months and older	1.75
show, race and roping horses - 24 months and older	2.5
stallions - 24 months and older	3.75

(5) All Livestock - less than 24 months of age, all Swine - less than 6 months of age, poultry and bees are exempt from ad valorem property taxation.

(a) For the purposes of this subsection, livestock are defined pursuant to 15-1-101(1)(i).

(6) This rule is be effective for tax years beginning after December 31, 1987. AUTH, Sec. 15-1-201 MCA; AUTH EXT., Ch. 660, Sec. 13, L. 1987, Eff. 1/1/88; IMP, Sec. 15-6-136; 15-6-207, MCA.

RULE I PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE (1) For purposes of assessing the per capita tax on livestock, poultry and bees to pay the expense of enforcing the livestock, poultry and bee laws, the following categories of livestock, poultry and bees shall be used by the producer to report the number of animals within each category. The established categories are:

Horses, mules, asses, shetland ponies, donkeys and burrows - 9 months - 23 months
Mules, asses, shetland ponies, donkeys and burrows - 24 months and older
Stallions - 24 months and older
Saddle Horses and Brood Mares - 24 months and older
Work and Pack Horses, Riding and Pack Mules - 24 months and older

Show, Race and Roping Horses - 24 months and older
Stock and Grade Cattle,
Bulls, - 9 months and older

Cattle - 9 months through 23 months
Cattle - 24 months through 32 months
Cattle - 33 months and older
Steers - 33 months and older
Dairy Cattle - 24 months and older

Pure Bred Cattle
Bulls - 9 months and older
Cattle - 9 months through 23 months
Cattle - 24 months through 32 months
Cattle - 33 months and older

Goats
Bucks
Does

Swine
Boars
Brood Sows
Market Hogs - 3 months through 5 months

Other Livestock
Chickens
Turkeys
Ducks and Geese
Bees

Sheep
Registered Bucks - 9 months and older
Stock Bucks - 9 months and older
Sheep - 9 months through 70 months
Sheep - 71 months and older

AUTH, Sec. 15-1-201, MCA; AUTH. EXT., Ch. 660, Sec. 13, L. 1987., IMP 15-24-921; 15-24-921; 15-24-922, and 15-24-925, MCA.

3. ARM 42.21.120 and 42.21.122 are proposed to be amended and ARM 42.21.121 is proposed to be repealed because the 1987 Legislature exempted certain types of agricultural property from taxation. That property includes producer-held grain in storage, bees, poultry, livestock less than 24 months of age, swine less than 6 months of age. ARM 42.21.122 is also being amended to describe for the public the methodology used to value horses.

Rule I is necessary to clarify the information that taxpayers must report to implement the per capita livestock tax levied under Ch. 660, L. 1987.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than March 11, 1988.

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

7. The authority for the repeal of ARM 42.21.121 is 15-1-201 MCA, and the repeal implements 15-6-136 and 15-6-207 MCA. 42.21.121 can be found on page 42-2121 of the Administrative Rules of Montana.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rules 42.21.101 and 42.21.102 relating to aircraft and watercraft taxation.	NOTICE OF THE PROPOSED Repeal of Rules 42.21.101 and 42.21.102 relating to aircraft and watercraft taxation.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1988, the Department proposes to repeal rules 42.21.101 and 42.21.102 relating to aircraft and watercraft taxation.

2. The rules proposed to be repealed can be found on pages 42-2105 through 42-2109 of the Administrative Rules of Montana.

3. The Department proposes to repeal rule 42.21.101 because in Ch. 453, L. 1987, the Montana Legislature substituted a fee system for the ad valorem taxation of most aircraft, except for operating airlines. The amendment exempted most aircraft from personal property taxation. The law now provides that the fee system will be administered by the Aeronautics Division of the Department of Commerce. The proposed repeal of rule 42.21.102 is necessary because the Legislature, in Ch. 644, L. 1987, also substituted a fee system for the ad valorem taxation of certain categories of watercraft. Certain other types of watercraft were exempted from taxation.

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:

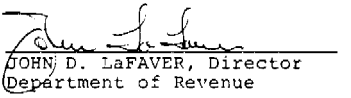
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1988.

5. If a person who is directly affected by the proposed repeal 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 Cleo Anderson at the above address no later than March 11, 1988.

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

7. The authority of the Department to make the proposed repeal is based on § 15-1-201, MCA, and the rule implements § 15-6-138; 15-6-146; 15-6-201; 15-8-201; 23-2-516; 23-2-517; 23-2-518; 23-2-519; 67-3-204; 67-3-205; and 67-3-206, MCA.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I & II relating to) low income residential) property tax benefit.)	NOTICE OF THE PROPOSED ADOPTION of Rules I & II relating to low income residential property tax benefit.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1988, the Department proposes to adopt rules I & II relating to low income residential property tax benefit.

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

RULE I LOW INCOME PROPERTY TAX REDUCTION (1) The property owner of record or his agent must make application through the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620 in order to receive the benefit provided for in 15-6-134 and 15-6-142, MCA. An application must be made on a form available from the local county assessment office before March 1 of the year for which the benefit is sought. Applications postmarked after March 1 will not be considered for that tax year unless the agent of the Department or office manager determines the following conditions are met:

(i) the applicant successfully qualified during the preceding 12 months prior to January 1 of the current tax year, and

(ii) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above listed reasons. Misrepresentation of any facts pertaining to income or the impediments that prevent timely application filing will be handled in accordance with 15-8-306, MCA.

(2) The department or its agent will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department or its agent will approve or deny the application. The applicant will be advised in writing of the decision. An annual application is required unless a review of income tax records or other records related to the applicant's income demonstrates that an individual who met the provisions of (1)(i) had no significant change in income level. In that situation the annual application required may be waived by the department or its agent.

(3) Any reduction in taxable value will apply to the first $80,000 or less of the market value of any mobile home or improvement on real property and appurtenant land not exceeding five acres.

(4) The applicant is required to list total income from all sources, including otherwise tax exempt income of all types. That income includes, but is not limited to, employment income, business income, social security, railroad pension, teachers pension, employment pension, veterans pension, any other pension, alimony, disability income, unemployment benefits, welfare payments, aid to dependent children, food stamps, rentals, interest from investments, stock/bond interest or dividends, interest from banks and any other income.

(5) Business income is that income reported on schedule C line 5, or schedule F, line 12, of the federal income tax return, or the income reported on state income tax return form CLT line 11, or the income reported on federal corporation tax return form 1120 line 11, whichever is greater.

AUTH, Sec. 15-1-201 MCA; AUTH Ext, Ch. 427, Sec. 3, L. 1987, Eff. 4/9/87; Ch. 575, Sec. 3, L. 1987, Eff. 4/20/87; IMP, Sec. 15-6-134 MCA.

RULE II INFLATION ADJUSTMENT FOR LOW INCOME PROPERTY TAX RELIEF (1) Section 15-6-134(2)(b), MCA provides property tax relief to low income homeowners. The section requires the department to annually adjust the income schedules used to determine the eligibility and the amount of relief to account for the effects of inflation.

The calculation of the inflation adjustment and the new income schedules are as follows:

(2) Calculation of inflation factor: Section 15-6-134(2)(ii), MCA specifies that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce, is to be used in the calculation of the inflation factor.

(3) The formula for the calculation of the inflation factor is as follows:

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t\,o}}$$

where:

IF_t equals the inflation factor for property tax year t,

$PCE_{(t-1)}$ is the implicit price deflator for personal consumption expenditures for the second quarter of the year prior to the tax year in question,

$PCE_{t\,o}$ is the implicit price deflator for personal consumption expenditures for the second quarter of 1986.

Using this formula, the calculation of the inflation factor for property tax year 1988 follows:

$$IF_{88} = \frac{PCE_{87}}{PCE_{86}} = \frac{118.4}{113.6} = 1.04225$$

(4) Updating the income schedules for inflation: The inflation factor, calculated per the previous section, is used to annually adjust the base year income schedules for the effects of inflation.

Each income figure in the base year table is multiplied by the inflation factor calculated for the tax year in question in order to update the table. The product is then rounded to the nearest whole dollar amount.

The base year income schedule is below.

---------- Base Income Schedules ----------

Single Person	Married Couple	Percentage Multiplier
$0 - $1,000	$0 - $1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

Applying the 1988 inflation factor calculated previously (1.4225) to each income figure and rounding the product to the nearest dollar yields the income schedule for property tax year 1988:

---------- 1988 Income Schedules ----------

Single Person	Married Couple	Percentage Multiplier
$0 - $1,042	$0 - $1,251	0%
1,043 - 2,085	1,252 - 2,501	10%
2,086 - 3,127	2,502 - 3,752	20%
3,128 - 4,169	3,753 - 5,003	30%
4,170 - 5,211	5,004 - 6,254	40%
5,212 - 6,254	6,255 - 7,504	50%
6,255 - 7,296	7,505 - 8,755	60%

7,297	-	8,338	8,756	-	10,006	70%
8,339	-	9,380	10,007	-	11,256	80%
9,381	-	10,423	11,257	-	12,507	90%

AUTH, Sec. 15-1-201 MCA; AUTH Ext, Ch. 427, Sec. 3, L. 1987, Eff. 4/9/87; Ch. 575, Sec. 3, L. 1987, Eff. 4/20/87; IMP, 15-6-134 and 15-6-151 MCA.

3. Proposed Rule I is being adopted to describe the department's implementation of the low income residential property tax benefit statute, and is necessary for that purpose. Specifically, the Department is addressing five points pertaining to administration of the statute. First, an annual application is being required unless specific exceptions are met. Second, the Department is imposing an application deadline of March 1 for the tax year in which the tax benefit is sought. Third, the rule incorporates the $80,000 market value level eligible for relief by virtue of Ch. 427, L. 1987. Fourth, the Department is defining the concept of income for purposes of qualification and entitlement to the property tax benefit. Fifth, the Department is clarifying the treatment of income from business related sources. The Department is addressing these five points, in order that affected property owners will be advised of the Department's interpretation of the statute, and the application procedures and standards for the relief.

The department is proposing the adoption of Rule II because in Ch. 575, L. 1987, the Legislature amended 15-6-134, MCA, so as to include an inflation adjustment to the low income residential property tax benefit statute. The rule describes the specific methodology which will be employed for purposes of computing the inflation adjustment, and is necessary for that purpose.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1988.

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 Cleo Anderson at the above address no later than March 11, 1988.

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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I relating to residences of disabled veterans.) NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rule I relating to residences of disabled veterans and the AMENDMENT OF ARM 42.20.102.

TO: All Interested Persons:

1. On March 3, 1988, at 10:30 a.m., a public hearing will be held in Third Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I, relating to residences of disabled veterans.

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

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

RULE I PROPERTY TAX EXEMPTION FOR 100% DISABLED VETERANS

(1) The property owner of record or his agent must make application through the property assessment division, the Department of Revenue, Mitchell Building, Helena, Montana, 59620, in order to obtain a property tax exemption. An application must be filed, on a form available from the county assessment office, before March 1 of the year for which the exemption is sought. Applications postmarked after March 1 will not be considered for that tax year unless the agent of the department or office manager determines the following conditions are met:

(i) the applicant successfully qualified during the preceding 12 months prior to January 1 of the current tax year, and

(ii) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above listed reasons. Misrepresentation of any facts pertaining to income or the impediments that prevent timely application filing will be handled in accordance with 15-8-306, MCA.

(2) The following document must accompany the application:

(a) letter of disability from the Veterans' Administration.

(3) The department or its agent will review the application and the supporting document and it may perform a field evaluation. The department or its agent will approve or deny the application. The applicant will be advised in writing of the decision.

(4) The residence of the disabled veteran or the surviving spouse of a disabled veteran is defined as "that house or dwelling owned by the applicant on January 1 of the tax year for which exemption is sought, which is used by the applicant for more than six months per year, and which may include a garage whether attached or detached." All other buildings, outbuildings or improvements shall not be exempt.

(5) A lot for purposes of the property tax exemption will be defined as the land beneath and immediately adjacent to the residence not to exceed one quarter of an acre. Land in excess of one quarter of an acre will not be exempt.

(6) The department of revenue will employ the following exemption criteria when considering exemption claims based upon 15-6-211, MCA.

(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on January 1 of the following tax year if an application is filed in accordance with the requirements specified in rule I(1). A real property exemption for a portion of the tax year shall not be allowed.

(b) If the real property is tax exempt on January 1 of the current year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it will retain its exemption until the following January 1.

(7) The application referred to in paragraph (1) must be submitted on an annual basis unless a review of income tax records demonstrates that an individual who met the provisions of 1(i) had no significant change in income level. In that situation the annual application required may be waived by the department or its agent. If the department or its agent does not receive an annual application from the property owner and the property owner is not eligible for the previously described waiver, the property tax exemption will be rescinded. AUTH, Sec. 15-1-201 MCA; Auth Ext, Ch. 594, Sec. 2, L. 1987, Eff. 10/1/87; IMP, Sec. 15-6-211 MCA.

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record or his agent must make application through the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620, in order to obtain a property tax exemption. An application must be filed on a form available from the division before March 1 of the year for which the exemption is sought. Applications postmarked after March 1 will be considered for the following tax year only.

(2) The following documents must accompany the application:

(a) Articles of incorporation (if incorporated);

(b) Federal internal revenue service tax exempt status letter (501 determination letter);

(c) Deed or security agreement which is evidence of ownership (for real property only);

(d) Title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of ownership (for personal property only);

(e) Letter explaining how the organization or society qualifies for property tax exemption; and

(f) Photograph of the property.

(3) The department will review the application and the supporting documents and will perform a field evaluation. The department will approve or deny the application. The applicant, the county assessor, and the county appraiser will be advised, in writing, of the decision.

(4) The department of revenue will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201(1)(a), MCA:

(a) The properties will be tax exempt as of the purchase date which is reflected on the deed or security agreement.

(b) If a property is tax exempt as of January 1 of the current tax year and is sold to other than a governmental purchaser after January 1 of the current tax year, it will retain its tax exemption until the following January 1.

(5) The department of revenue will employ the following exemption criteria for real properties when considering exemption claims based upon 15-6-201(1)(b), (c), (d), (e), (g), (l), or (n); 15-6-203; and 15-6-209~~; and 15-6-211~~, MCA.

(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on January 1 of the following tax year if an application is filed by March 1 of the following tax year.

(b) If the real property is tax exempt on January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it will retain its exemption until the following January 1. AUTH, Sec. 15-1-201 MCA; Auth Ext, Ch. 594, Sec. 2, L. 1987, Eff. 10/1/87; IMP, Sec. 15-6-211 MCA.

4. It is necessary for the Department to adopt Rule I to provide the public with a description of the administration of the residential tax exemption for disabled veterans and surviving spouses. The rule is also necessary to implement certain changes in this tax exemption enacted by Ch. 594, L. 1987, and to provide guidance to local staff charged with administering this exemption.

The application process in the rule is designed to provide reasonable time for applicants to apply for the tax exemption, while ensuring that information is secured from applicants soon enough to assess property annually in accordance with the law. The process is also designed to accommodate special circumstances where applicants are unable to meet standard deadlines.

The definition of primary residence conforms to the official assessment date of January 1 and incorporates the reasonable standard that a primary residence is a home used for at least half a year. The lot size is a historical standard used by the Department in the administration of this law.

The procedure for granting the tax exemption on the basis of circumstances existing on January 1 of each year is derived from the requirement that property be assessed as of that date. That procedure is supported by a legal opinion from the staff of the Montana Attorney General.

An annual application process is required because conditions that qualify a taxpayer for the tax exemption, such as marital status and income levels, are subject to change on a reasonably frequent basis.

The amendment to ARM 42.20.102 is necessary because the language in Subsection (6) of Rule I substitutes for the language in 42.20.102 as it relates to the implementation of 15-6-211 MCA.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1987.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.114 relating to abstract record valuation.	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of ARM 42.21.114 relating to abstract record valuation.

TO: All Interested Persons:

1. On March 4, 1988, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.21.114, relating to abstract record valuation.

2. The proposed amendment provides as follows:

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

~~(2)--This rule is effective for tax years beginning after December 31, 1984.~~ (1) All abstract and title companies are required to annually submit the following information on a reporting form developed by the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620. The form is available in and will be provided to taxpayers by the county assessment office.

(2) The reporting form shall set forth the following information:

(a) value of title plant,

(b) acquisition cost of title plant if applicable,

(c) acquisition year of title plant if applicable,

(d) estimated number of microfiche if any,

(e) estimated number of microfile if any, and

(f) estimated number of cards if any.

(3) If any of the aforementioned property has been depreciated as a capital asset on the abstract and title companies income tax or corporate license tax records or returns, the abstract and title company is required to state the acquired cost and date of acquisition as reflected on those records or returns.

(a) The acquired cost will be depreciated using depreciation schedule 8 from ARM 42.21.155.

(4) If the taxpayer does not report acquisition cost and acquisition year, but instead reports value of title plant, the division shall use this value as the market value. No depreciation shall be afforded.

(5) All values reported by the abstract and title company are subject to review and audit by the department of revenue. Misrepresentation of information shall be handled in accordance with 15-8-306, MCA. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-140 MCA.

3. The department is proposing this amendment because the present language found in 42.21.114 was declared invalid by the District Court in Lake County Astract Company v. Department of Revenue, Lake County No. DV-85-200. Since the Court held that the department may not use a flat valuation methodology in order to value abstract records, the rule is being amended. The department is describing its valuation methodology for abstract records in order to advise affected taxpayers of the manner in which their property will be assessed. The administrative rule also advises affected taxpayers of the annual reporting requirements for this particular type of property.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1988.

5. Michael G. Garrity, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- MENT of ARM 42.21.106; 42.21.107; 42.21.113; 42.21.123; 42.21.131; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; and 42.21.155.	))))))))	NOTICE OF PUBLIC HEARING on PROPOSED AMENDMENT OF RULES RELATING TO TRENDING AND DEPRECIATION FOR PERSONAL PROPERTY FOR TAXATION PURPOSES.

TO: All Interested Persons:

1. On March 9, 1988, at 1:30 p.m, a public hearing will be held in the Third Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of the above-referenced rules relating to trending and depreciation of personal property for taxation purposes.

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

42.21.106 TRUCKS (1) and (2) remain the same.

(3) For all trucks which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old truck valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates 80% of the average retail value. The trend factors shall be the same as those reflected ~~to~~ in ARM 42.21.101(3).

(4) Remains the same.

(5) The percent good schedule referred to in subsections (2) through (4) is listed below and shall be used for the ~~1987~~ 1988 tax year.

TRUCK % GOOD SCHEDULE

YEAR ACQUIRED	% GOOD
~~1987~~	~~80%~~
~~1986~~	~~58%~~
~~1985~~	~~50%~~
~~1984~~	~~42%~~
~~1983~~	~~36%~~
~~1982~~	~~34%~~
~~1981~~	~~34%~~
~~1980~~	~~30%~~
~~1979~~	~~25%~~
~~1978~~	~~23%~~
~~1977~~	~~21%~~
~~1976~~	~~19%~~
~~1975~~	~~18%~~

~~1975~~	~~18%~~
~~1974~~	~~17%~~
~~1973~~	~~16%~~
~~1972 and before~~	~~15%~~
1988	80%
1987	48%
1986	46%
1985	40%
1984	34%
1983	30%
1982	27%
1981	26%
1980	19%
1979	17%
1978	16%
1977	15%
1976	14%
1975	13%
1974	12%
1973 and before	11%

(6) The department of revenue may develop other supplementary schedules for unique equipment and other trucks not listed in the guidebook. These schedules will be used in conjunction with the above schedules in the valuation of trucks. The purpose of the department developed schedules will be to arrive at a value which approximates 80% of the average retail value. Supplemental schedules for other trucks and unique equipment for ~~1987~~ 1988 have been developed and are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(7) This rule is effective for tax years beginning after December 31, ~~1986~~1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 and 15-6-140 MCA.

42.21.107 TRAILERS (1) through (5) remains the same.

(6) The percent good schedules referred to in subsections (3) through (5) are listed below and shall be used for the ~~1987~~ 1988 tax year.

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

YEAR ACQUIRED	% GOOD
~~1987~~ 1988	80%
~~1986~~ 1987	~~62%~~ 64%
~~1985~~ 1986	~~59%~~ 58%
~~1984~~ 1985	56%
~~1983~~ 1984	52%
~~1982~~ 1983	49%
~~1981~~ 1982	46%
~~1980~~ 1981	43%
~~1979~~ 1980	40%

~~1978~~ 1979	37%
~~1977~~ 1978	35%
~~1976~~ 1977	33%
~~1975~~ 1976	31%
~~1974~~ 1975	29%
~~1973~~ 1974	27%
~~1972~~ 1973	25%
~~1971~~ 1972	23%
~~1970~~ 1971	21%
~~1969~~ 1970	19%
~~1968~~ 1969	17%
~~1967~~ 1968 and before	15%

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

YEAR ACQUIRED	% GOOD
~~1987~~	~~80%~~
~~1986~~	~~58%~~
~~1985~~	~~50%~~
~~1984~~	~~42%~~
~~1983~~	~~36%~~
~~1982~~	~~34%~~
~~1981~~	~~34%~~
~~1980~~	~~30%~~
~~1979~~	~~25%~~
~~1978~~	~~23%~~
~~1977~~	~~21%~~
~~1976~~	~~19%~~
~~1975~~	~~18%~~
~~1974~~	~~17%~~
~~1973~~	~~16%~~
~~1972~~ and before	~~15%~~
1988	80%
1987	48%
1986	46%
1985	40%
1984	34%
1983	30%
1982	27%
1981	26%
1980	19%
1979	17%
1978	16%
1977	15%
1976	14%
1975	13%
1974	12%
1973 and before	11%

(7) The department of revenue may develop other supplementary schedules to value other unique trailers not listed in the guidebook. These schedules will be used in conjunction with the

schedules mentioned in subsection (3) in the valuation of trailers. The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue ~~1987~~ 1988 trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(8) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 and 15-6-139 MCA.

42.21.113 LEASED AND RENTED EQUIPMENT (1) through (3) remain the same.

(4) The depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for tax year ~~1987~~ 1988.

Year Acquired	$0 - 500	$501 - 1500	$1501 - 5000
~~1986~~	~~100%~~	~~100%~~	~~100%~~
~~1985~~	~~70%~~	~~85%~~	~~85%~~
~~1984~~	~~45%~~	~~69%~~	~~69%~~
~~1983~~	~~20%~~	~~52%~~	~~52%~~
~~1982~~	~~20%~~	~~34%~~	~~46%~~
~~1981~~	~~20%~~	~~21%~~	~~37%~~
~~1980~~	~~20%~~	~~21%~~	~~33%~~
~~1979 and older~~	~~20%~~	~~21%~~	~~30%~~
1988	100%	100%	100%
1987	70%	85%	85%
1986	46%	70%	69%
1985	20%	53%	52%
1984	20%	34%	46%
1983	20%	20%	37%
1982	20%	20%	33%
1981 and older	20%	20%	30%

(5) and (6) remain the same

(7) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-136 MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (4) remains the same.

(5) The percent good schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year ~~1987~~ 1988.

YEAR	TRENDED % GOOD AVERAGE LOAN
~~1987~~	~~65%~~
~~1986~~	~~40%~~
~~1985~~	~~38%~~
~~1984~~	~~37%~~
~~1983~~	~~36%~~
~~1982~~	~~37%~~
~~1981~~	~~36%~~
~~1980~~	~~36%~~

~~1979~~	~~35%~~
~~1978~~	~~36%~~
~~1977~~	~~35%~~
~~1976~~	~~34%~~
~~1975~~	~~33%~~
~~1974~~	~~32%~~
~~1973~~	~~31%~~
~~1972~~	~~30%~~
~~1971~~	~~29%~~
~~1970~~	~~28%~~
~~1969~~	~~27%~~
~~1968~~	~~26%~~
~~1967~~	~~25%~~
~~1966~~	~~24%~~
~~1965~~	~~23%~~
~~1964~~	~~22%~~
~~1963~~	~~21%~~
~~1962 & older~~	~~20%~~
1988	65%
1987	42%
1986	38%
1985	36%
1984	35%
1983	34%
1982	35%
1981	34%
1980	34%
1979	33%
1978	33%
1977	33%
1976	30%
1975	29%
1974	28%
1973	27%
1972	26%
1971	26%
1970	25%
1969	24%
1968	23%
1967	22%
1966	21%
1965	21%
1964	20%
1963 & older	20%

(6) The department of revenue may develop a manual for other farm equipment not listed in the guidebooks. This manual will be used in conjunction with the schedules mentioned in subsection (2) in the valuation of farm equipment and machinery. The purpose of the department developed manual will be to arrive at values which approximate loan value. The ~~1987~~ 1988 department of revenue farm machinery manual is hereby

incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

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

(8) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; AUTH Extension, Sec. 49, Ch. 516, L. 1985, Eff. 1/1/86; IMP, Sec. 15-6-138 MCA.

42.21.131 HEAVY EQUIPMENT (1) (2) and (4) remain the same.

(3) For all heavy equipment which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates wholesale value. The trend factors are contained in the January 1, ~~1987~~ 1988 Marshall Valuation Service Manual. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Company", 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(5) The percent good schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year ~~1987~~ 1988.

HEAVY EQUIPMENT % GOOD SCHEDULE

YEAR	% GOOD WHOLESALE
~~1987~~	~~80%~~
~~1986~~	~~67%~~
~~1985~~	~~53%~~
~~1984~~	~~48%~~
~~1983~~	~~42%~~
~~1982~~	~~38%~~
~~1981~~	~~36%~~
~~1980~~	~~36%~~
~~1979~~	~~35%~~
~~1978~~	~~33%~~
~~1977~~	~~31%~~
~~1976~~	~~31%~~
~~1975~~	~~29%~~
~~1974~~	~~33%~~
~~1973~~	~~33%~~
~~1972~~	~~31%~~
~~1971~~	~~27%~~
~~1970~~	~~25%~~
~~1969~~	~~25%~~
~~1968~~	~~24%~~
~~1967~~	~~24%~~
~~1965~~	~~24%~~
~~1965 & before~~	~~20%~~

1988	80%
1987	67%
1986	54%
1985	48%
1984	44%
1983	37%
1982	34%
1981	31%
1980	31%
1979	30%
1978	29%
1977	28%
1976	28%
1975	27%
1974	32%
1973	31%
1972	29%
1971	26%
1970	23%
1969	23%
1968	23%
1967	22%
1966 & before	20%

(6) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987, and applies to all heavy equipment not listed in ARM 42.21.139. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The percent good schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year ~~1987~~ 1988.

SEISMOGRAPH UNITS

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
~~1987~~	~~100%~~	~~1.000~~	~~100%~~	~~80%~~	~~80%~~
~~1986~~	~~85%~~	~~1.000~~	~~85%~~	~~80%~~	~~68%~~
~~1985~~	~~69%~~	~~1.000~~	~~69%~~	~~80%~~	~~55%~~
~~1984~~	~~52%~~	~~1.019~~	~~53%~~	~~80%~~	~~42%~~
~~1983~~	~~34%~~	~~1.046~~	~~36%~~	~~80%~~	~~29%~~
~~1982~~	~~20%~~	~~1.061~~	~~21%~~	~~80%~~	~~17%~~
~~1981 & older~~	~~5%~~	~~1.117~~	~~6%~~	~~80%~~	~~5%~~
1988	100%	1.000	100%	80%	80%
1987	85%	1.000	85%	80%	68%
1986	69%	1.011	70%	80%	56%
1985	52%	1.015	53%	80%	42%

1984	34%	1.030	35%	80%	28%
1983	20%	1.057	21%	80%	17%
1982 & older	5%	1.073	5%	80%	4%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1987~~	~~100%~~	~~1.000~~	~~100%~~
~~1986~~	~~85%~~	~~1.000~~	~~85%~~
~~1985~~	~~69%~~	~~1.000~~	~~69%~~
~~1984~~	~~52%~~	~~1.019~~	~~53%~~
~~1983~~	~~34%~~	~~1.046~~	~~36%~~
~~1982~~	~~20%~~	~~1.061~~	~~21%~~
~~1981 & older~~	~~5%~~	~~1.117~~	~~6%~~
1988	100%	1.000	100%
1987	85%	1.000	85%
1986	69%	1.011	70%
1985	52%	1.015	53%
1984	34%	1.030	35%
1983	20%	1.057	21%
1982 & older	5%	1.073	5%

(5) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

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

(3) The percent good schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year ~~1987~~ 1988.

OIL AND GAS FIELD PRODUCTION EQUIPMENT PERCENT GOOD SCHEDULE

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

~~1973 & older~~	~~20%~~	~~2.357~~	~~47%~~
1988	100%	1.000	100%
1987	95%	1.000	95%
1986	89%	1.011	90%
1985	83%	1.015	84%
1984	77%	1.030	79%
1983	71%	1.057	75%
1982	65%	1.073	70%
1981	58%	1.129	65%
1980	51%	1.255	64%
1979	45%	1.392	63%
1978	39%	1.514	59%
1977	33%	1.631	54%
1976	28%	1.718	48%
1975	23%	1.816	42%
1974 & older	20%	2.029	41%

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

(a) sucker rods;

(b) tubing;

(c) casing; and

(d) submersible pumps.

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

(5) This rule is effective for tax years beginning December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; AUTH Extension, Sec. 3, Ch. 583, L. 1985, Eff. 4/22/85; IMP, Sec. 15-6-138 MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of workover and service rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below of workover and service rigs, there will be two replacement cost categories. One category will represent current replacement cost of a service rig and the second category will represent current replacement cost of a workover rig. Each rig, as it is assessed, will be placed in one category or another based on its depth.

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

DEPTH CATEGORIES AND REPLACEMENT COST NEW

MANUFACTURER'S DEPTH RATING	SERVICE RIG R.C.N.		WORKOVER RIG R.C.N.	
0 - 3,000'	~~177,919~~	146,788	~~217,919~~	186,788
3,001' - 5,000'	~~214,360~~	187,336	~~254,360~~	227,336
5,001' - 8,000'	~~250,281~~	245,572	~~310,281~~	305,572
8,001' - 10,000'	~~309,107~~	293,325	~~409,107~~	393,325
10,001' - 14,000'	~~406,371~~	322,918	~~556,371~~	472,918
14,001' and over	~~449,066~~	405,426	~~599,066~~	555,426

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

(2) through (5) remain the same.

(6) The percent good schedule referred to in subsections (2) and (5) is listed below and shall be used for tax year ~~1987~~ 1988.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

YEAR	% GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
~~1987~~ 1988	100%	80%	80%
~~1986~~ 1987	92%	80%	74%
~~1985~~ 1986	84%	80%	67%
~~1984~~ 1985	76%	80%	61%
~~1983~~ 1984	67%	80%	54%
~~1982~~ 1983	58%	80%	46%
~~1981~~ 1982	49%	80%	39%
~~1980~~ 1981	35%	80%	28%
~~1979~~ 1980	30%	80%	24%
~~1978~~ 1979	24%	80%	19%
~~1977~~ 1978 & older	20%	80%	16%

(7) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.140 OIL DRILLING RIGS (1) Remains the same to this table.

MANUFACTURER'S DEPTH RATING	ELECTRICAL RIG R.C.N.		MECHANICAL RIG R.C.N.	
0 - 3,000			285,209	
3,001 - 5,000			432,135	
5,001 - 7,500	868,250		654,750	
7,501 - 10,000	1,167,210		998,750	
10,001 - 12,500	~~1,363,845~~	1,265,500	~~1,221,225~~	1,130,600
12,501 - 15,000	~~1,788,575~~	1,720,400	~~1,760,575~~	1,538,500

15,001 - 20,000	~~2,103,275~~	1,990,100
20,001 and over	~~2,262,275~~	2,036,047

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

(2) The department of revenue shall prepare a 10-year depreciation schedule for oil drilling rigs. The depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The percent good schedule for tax year ~~1987~~ 1988 is listed below.

DRILL RIG % GOOD SCHEDULE

YEAR		TRENDED % GOOD
~~1987~~	1988	100%
~~1986~~	1987	92%
~~1985~~	1986	84%
~~1984~~	1985	76%
~~1983~~	1984	67%
~~1982~~	1983	58%
~~1981~~	1982	49%
~~1980~~	1981	35%
~~1979~~	1980	30%
~~1978~~	1979	24%
~~1977~~	1978 and older	20%

(3) and (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The percent good schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year ~~1987~~ 1988.

TABLE 1: 5 YEAR "DISHES"

YEAR		% GOOD	TREND FACTOR		TRENDED % GOOD	
~~1987~~	1988	100%	1.000		100%	
~~1986~~	1987	85%	1.000		85%	
~~1985~~	1986	69%	~~1.010~~	1.014	70%	
~~1984~~	1985	52%	~~1.024~~	1.024	53%	
~~1983~~	1984	34%	~~1.052~~	1.039	~~36%~~	35%
~~1982~~	1983 & older	20%	~~1.071~~	1.068	21%	

TABLE 2: 10 YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1987~~	~~100%~~	~~1.000~~	~~100%~~
~~1986~~	~~92%~~	~~1.000~~	~~92%~~
~~1985~~	~~84%~~	~~1.010~~	~~85%~~
~~1984~~	~~76%~~	~~1.024~~	~~78%~~
~~1983~~	~~67%~~	~~1.052~~	~~70%~~
~~1982~~	~~58%~~	~~1.071~~	~~62%~~
~~1981~~	~~49%~~	~~1.122~~	~~55%~~
~~1980~~	~~39%~~	~~1.237~~	~~48%~~
~~1979~~	~~30%~~	~~1.361~~	~~41%~~
~~1978~~	~~24%~~	~~1.488~~	~~36%~~
~~1977 & older~~	~~20%~~	~~1.600~~	~~32%~~
1988	100%	1.000	100%
1987	92%	1.000	92%
1986	84%	1.014	85%
1985	76%	1.024	78%
1984	67%	1.039	70%
1983	58%	1.068	62%
1982	49%	1.087	53%
1981	39%	1.138	44%
1980	30%	1.255	38%
1979	24%	1.381	33%
1978 & older	20%	1.509	30%

(5) and (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, ~~1986~~ 1987. AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-140 MCA.

42.21.155 DEPRECIATION TABLES (1) Remains the same.

(2) The percent good schedules for tax year ~~1987~~ 1988 are listed below. The categories listed are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1987~~ 1988	100%	1.000	100%
~~1986~~ 1987	70%	1.000	70%
~~1985~~ 1986	45%	~~.989~~ 1.017	~~45%~~ 46%
~~1984~~ 1985	20%	~~1.019~~ 1.006	20%
~~1983~~ 1984 and older	10%		10%

CATEGORY 2

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1987~~ 1988	100%	1.000	100%
~~1986~~ 1987	85%	1.000	85%

~~1985~~	1986		69%		~~1.001~~	1.014	~~69%~~	70%
~~1984~~	1985		52%		~~.997~~	1.015	~~52%~~	53%
~~1983~~	1984		34%		~~1.004~~	1.011	34%	
~~1982~~	1983	and older	20%		~~1.030~~	1.018	21%	20%

CATEGORY 3

YEAR			% GOOD	TREND FACTOR		TRENDED % GOOD	
~~1987~~	1988		100%	1.000		100%	
~~1986~~	1987		85%	1.000		85%	
~~1985~~	1986		69%	~~1.011~~	1.018	70%	
~~1984~~	1985		52%	~~1.054~~	1.029	~~55%~~	54%
~~1983~~	1984		34%	~~1.114~~	1.073	~~38%~~	36%
~~1982~~	1983	and older	20%	~~1.150~~	1.134	23%	

CATEGORY 4

YEAR			% GOOD	TREND FACTOR		TRENDED % GOOD	
~~1987~~	1988		100%	1.000		100%	
~~1986~~	1987		85%	1.000		85%	
~~1985~~	1986		69%	~~1.026~~	.993	~~71%~~	69%
~~1984~~	1985		52%	~~1.046~~	1.019	~~54%~~	53%
~~1983~~	1984		34%	~~1.059~~	1.039	~~36%~~	35%
~~1982~~	1983	and older	20%	~~1.130~~	1.052	~~23%~~	21%

CATEGORY 5

YEAR			% GOOD	TREND FACTOR		TRENDED % GOOD	
~~1987~~	1988		100%	1.000		100%	
~~1986~~	1987		85%	1.000		85%	
~~1985~~	1986		69%	~~1.010~~	1.012	70%	
~~1984~~	1985		52%	~~1.027~~	1.023	53%	
~~1983~~	1984		34%	~~1.057~~	1.041	~~36%~~	35%
~~1982~~	1983	and older	20%	~~1.095~~	1.071	~~22%~~	21%

CATEGORY 6

YEAR			% GOOD	TREND FACTOR		TRENDED % GOOD	
~~1987~~	1988		100%	1.000		100%	
~~1986~~	1987		85%	1.000		85%	
~~1985~~	1986		69%	~~1.022~~	1.020	~~71%~~	70%
~~1984~~	1985		52%	~~1.041~~	1.043	54%	
~~1983~~	1984		34%	~~1.075~~	1.063	~~37%~~	36%
~~1982~~	1983	and older	20%	~~1.136~~	1.097	~~23%~~	22%

CATEGORY 7

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1987~~	~~100%~~	~~1.000~~	~~100%~~
~~1986~~	~~92%~~	~~1.000~~	~~92%~~

~~1985~~	~~84%~~	~~1.020~~	~~86%~~
~~1984~~	~~76%~~	~~1.048~~	~~80%~~
~~1983~~	~~67%~~	~~1.064~~	~~71%~~
~~1982~~	~~58%~~	~~1.104~~	~~64%~~
~~1981~~	~~49%~~	~~1.195~~	~~59%~~
~~1980~~	~~39%~~	~~1.340~~	~~52%~~
~~1979~~	~~30%~~	~~1.511~~	~~45%~~
~~1978~~	~~24%~~	~~1.665~~	~~40%~~
~~1977 and older~~	~~20%~~	~~1.818~~	~~36%~~
1988	100%	1.000	100%
1987	92%	1.000	92%
1986	84%	1.016	85%
1985	76%	1.036	79%
1984	67%	1.065	71%
1983	58%	1.081	63%
1982	49%	1.122	55%
1981	39%	1.214	47%
1980	30%	1.361	41%
1979	24%	1.535	37%
1978 and older	20%	1.692	34%

CATEGORY 8

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1987~~	~~100%~~	~~1.000~~	~~100%~~
~~1986~~	~~92%~~	~~1.000~~	~~92%~~
~~1985~~	~~84%~~	~~1.040~~	~~87%~~
~~1984~~	~~76%~~	~~1.075~~	~~82%~~
~~1983~~	~~67%~~	~~1.114~~	~~75%~~
~~1982~~	~~58%~~	~~1.174~~	~~68%~~
~~1981~~	~~49%~~	~~1.271~~	~~62%~~
~~1980~~	~~39%~~	~~1.376~~	~~54%~~
~~1979~~	~~30%~~	~~1.476~~	~~44%~~
~~1978~~	~~24%~~	~~1.614~~	~~39%~~
~~1977 and older~~	~~20%~~	~~1.755~~	~~35%~~
1988	100%	1.000	100%
1987	92%	1.000	92%
1986	84%	1.056	89%
1985	76%	1.069	81%
1984	67%	1.105	74%
1983	58%	1.146	66%
1982	49%	1.207	59%
1981	39%	1.307	51%
1980	30%	1.415	42%
1979	24%	1.518	36%
1978 and older	20%	1.660	33%

AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 MCA.

3. The amendments to these rules are necessary because 15-8-111, MCA, requires the Department of Revenue to assess all property at 100% of its market value except as provided in subsection (5) of 15-8-111 and in 15-7-111 through 15-7-114, MCA. The statute does not address in detail how the Department of Revenue is to arrive at market value. Through various administrative rules, the Department has adopted the concept of trending and depreciation in arriving at market value for property in instances where the present market value is unknown.

The method by which trending and depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules.

In order to update the trending and depreciation tables for purposes of applying them for the 1988 tax year, the Department is amending ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, and 42.21.155. The amendments to the rules are the annual updating of the trend factors and the adjustments, as necessary, to the depreciation tables.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 11, 1988.

5. Michael G. Garrity, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I & II relating to new & expanding industry and class twenty property.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I & II relating to new & expanding industry and class twenty property.

TO: All Interested Persons:

1. On March 4, 1988, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I & II, relating to new & expanding industry and class twenty property.

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

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

RULE I TAX INCENTIVE FOR NEW AND EXPANDING INDUSTRY (1) The industrial plant owner must make application to the governing body of the affected taxing jurisdiction on a form provided by the department of revenue, property assessment division. The form shall include, among other information, a disclosure of other property tax benefits the property receives or for which application has been made. The governing body of the affected taxing jurisdiction must approve the application and pass an approving resolution prior to any construction and before tax benefits under 15-24-1402, MCA, can be received.

(2) In order to be considered for the current tax year, an application must be filed on the form available from the department before March 1 of the tax year.

(3) The administrator, Property Assessment Division, Mitchell Building, Helena, MT 59620 must be notified of the planned expansion or modernization 30 days prior to the commencement of any construction.

(4) The department shall appraise the industrial plant before and after expansion or modernization.

(5) Only the increased value attributed to the expansion or modernization will receive tax incentives under 15-24-1402, MCA.

(6) An industrial plant which qualifies for classification as new industrial property under 15-6-135, MCA, cannot qualify for a tax incentive 15-24-1402, MCA, as new industry property defined in 15-24-1401(3), MCA.

(7) Additional expansion or modernization of an industrial plant constructed in tax years subsequent to an expansion approved for tax incentives under 15-24-1402, MCA, does not qualify for an additional tax incentive unless an additional application is filed and an approving resolution passed. AUTH, Sec. 15-1-201 MCA; AUTH Ext, Ch. 574, Sec. 3, L. 1987, Eff. 4/20/87; IMP, 15-24-1401, 15-24-1402 MCA.

RULE II TAX BENEFITS FOR CLASS TWENTY PROPERTY (1) For the purposes of determining property eligible for class 20 classification, "single working unit" means an integrated facility having been organized, synchronized and combined to perform an industrial function.

(2) The property owner of record or his agent must make application to the department of revenue, property assessment division for the classification of property as class 20. An application must be filed on a form available from the department of revenue, property assessment division before March 1 of each tax year for which the property owner seeks the classification of property as class 20. For the purposes of determining property eligible for class 20 classification, "single working unit" means an integrated facility having been organized, synchronized and combined to perform an industrial function. The application must be accompanied by the approving resolution of the governing body for the taxing jurisdiction.

(3) Real property, improvements to real property, improvements upon real property, fixtures, machinery and mobile equipment left on the site will qualify as class 20 property when authorized in the approving resolution of the governing body for the taxing jurisdiction.

(4) The governing body of a county or incorporated city or town shall determine by resolution the specific buildings, structures, machinery, equipment and fixtures that will be placed in taxable class 20 from an appraisal made by the department.

(5) Property qualifying as class 20 property on January 1 will remain in class 20 for the entire assessment year even though production may commence after January 1.

(6) The department shall maintain two taxable values for a plant approved for class 20 classification. One taxable value will include the 25% reduction in market value granted each year by the approving governing body for class 20 property. The other taxable value will be maintained for purposes of the mill levies to which class 20 does not apply.

(7) When a plant or an operating unit is classified as class 20 property, the property assessment division shall not further reduce value based upon economic or functional obsolescence. AUTH, Sec. 15-1-201 MCA; AUTH Ext, Ch. 618, Sec. 4, L. 1987, Eff. 4/27/87; IMP, 15-6-101, 15-6-150, 15-6-155, 15-8-111 MCA.

4. Rule I is necessary to describe for the public the administration of the local option tax reduction for new and expanding industry. It provides the public with an explanation of when and how the tax relief may be secured and how the extent of the relief is determined.

Rule II is necessary to describe for the public the administration of the class 20 property created in Ch. 618, L. 1987. It provides the public with an explanation of when and how property may be placed in class 20. The rule also interprets class 20 as substituting for other methods of adjusting the value of property for economic or functional obsolescence.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 10, 1988.

6. Eric Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 4.4.302 and new rules 4.4.317 and 4.4.318 and 4.4.319 regarding Hail Insurance.	)))))	NOTICE OF THE ADOPTION OF AMENDMENT(S) TO RULE 4.4.302 AND NEW RULES, RULE I (4.4.317) RULE II (4.4.318), AND RULE III (4.4.319).

TO ALL INTERESTED PERSONS:

1. On October 29, 1987, the Department of Agriculture published notice of the proposed amendment of ARM 4.4.302 and adoption of new rules 4.4.317, 4.4.318 and 4.4.319 starting at page 1861, 1987 Montana Administrative Register, issue number 20.
2. The Department has amended and adopted the rules exactly as proposed.
3. No comments or testimony were received.

Keith Kelly
Director
Montana Department of Agriculture

Certified to the Secretary of State, February 1, 1988.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the Matter of the adoption of new rules pertaining to the regulation of noxious weed seeds and seed merchandising licenses) Notice of adoption of rules pertaining to the regulation of noxious weed seeds and related matters, and repeal of 4.5.110 and New Rules: Rule I, (4.12.3008), Rule II, (4.12.3010) and Rule III,(4.12.3011)

TO: All Interested Persons

1. On October 29, 1987, the Department of Agriculture published notice of public hearing on the proposed adoption of rules relating to the regulation of noxious weed seed and seed merchandising licenses at page 1859 of the 1987 Montana Administrative Register, issue number 20.

2. The agency has adopted without change the following rules: Rule I (4.12.3008) and Rule II, (4.12.3010) and the repeal of ARM 4.5.110.

Rule I,(4.12.3008) was adopted because of a 1987 amendment to 80-5-202, MCA which authorized the department to establish the license year by rule.

Rule 4.5.110 was repealed because subsection (1) became unnecessary after a 1987 amendment to 80-7-801, MCA which redefined "herbicide" to include all weeds as defined in 80-8-102, MCA. Subsection (2) was repealed because it is a repitition of requirements established by 80-7-812, MCA.

3. The agency has adopted proposed rule III with the following changes: (New matter underlined, deleted matter interlined, including several spelling corrections).

Rule III (4.12.3011) Restricted Noxious Weed Seeds (1) Seeds offered for sale or sold shall not contain the following restricted noxious weed seeds in quantities in excess of those listed below:

	Common Name	Species	No of Seeds Per Pound
(a)	Dyers Woad	(Isatis tinctoria)	0
(b)	Spotted Knapweed	(Centaurea maculosa)	0
(c)	Wild Oats	(Avena ~~fatua~~ fatua)	45 of grass seed 9 of cereal seed
(d)	Dodder	(Cuscuta spp.)	18
(e)	Common Crupina	(Crupina vulgaris)	9
(f)	St. Johnswort	(~~Hypereeum~~ Hypericum perforatum)	~~27~~ 18
(g)	Tansy Ragwort	(~~Seneeee~~ Seneceio jacobaea)	9
(h)	~~Curley~~ Curly Dock	(Rumex ~~crespus~~ crispus)	45
(i)	Jointed Goatgrass	(Aegilops cylindrica)	18
(j)	Persian Darnel	(Lolium persicum)	18

(k)	Diffused Knapweed	(Centaurea diffusa)		0
(l)	Yellow Starthistle	(Centaurea solstitialis)	~~18~~	9
(m)	Rush Skeletonweed	(Chondrilla juncea)		9
(n)	Yellow Toadflax	(Linaria vulgaris)		9

AUTH: 80-5-112, IMP: 80-5-105, and 80-5-120

4. The Department of Agriculture has fully considered all written and oral submissions respecting the proposed rules and makes the following responses:

(1) Written and oral comments were received from Bill Hiatt, representing the Montana Weed Control Association. The substance of part of these comments were that the weed seeds should be listed as prohibited if they were now listed on the County Noxious Weed Control Act as either Category I or Category II weeds.

This part of his proposal was agreed with in part in that the weed seeds of Leafy Spurge, Russian Knapweed, Canadian Thistle, Hoary Cress or Whitetop, Field Bindweed, and Dalmation Toadflax are listed as prohibited. However, as to the remainder, the department overruled his proposal because none of the others completely fit the definition of prohibited noxious weed seeds under 80-5-120(16) MCA.

(2) Written and oral comments were received from Bill Hiatt, Montana Weed Control Association; Kim Enkerud, Montana Stockgrowers Association, Inc.; Frank Thompson, Montana State Rural Acres Development Committee. The substance of these comments were that the seeds of Common Crupina, St. Johnswort, Tansy Ragwort, Yellow Starthistle, and Rush Skeletonweed should be restricted to "0" seeds per pound tolerance.

The department overruled this proposal because these weeds did not completely fit under the prohibited noxious weed seed classification, are not presently known to occur in Montana, and did not have the characteristics which would require them to be listed at "0" under the restricted noxious weed seed category. The department's duty under the seed act is to impose only reasonable restrictions on seed commerce. Because of the difficulty in screening out weed seeds, it was determined that less than the amounts specified as allowable, would be unreasonable. Should new information become available, the department has the authority to make amendments to these tolerances through this rule making process.

This proposal was partially agreed with in that the tolerances for St. Johnswort and Yellow Starthistle were reduced from their original proposed amount. The department

agreed to lower the tolerances on St. Johnswort from 27 per lb to 18 per lb and on Yellow Starthistle from 18 per lb to 9 per lb recognizing the concern of these groups for this possible threat. However, reduction lower than 18 per lb of St. Johnswort or 9 per lb of Yellow Starthistle would be restrictive to the point of unreasonable, on seed commerce.

While the department recognizes that one of the purposes of the seed law is to help prevent the spread of noxious weeds, in determining appropriate tolerances, the department must also consider that other routes of weed seed dissemination exist such as on movement of equipment, vehicles, hay, livestock, etc.

(3) Oral comments were received from Lee Hart, Montana State Seed Lab. The substance of his comments were that when a weed seed is classified as prohibited or restricted, the seed lab is called upon to be able to provide the seed or describe it sufficiently so that affected parties may react accordingly; but that this becomes difficult when such seed is not known in Montana and the lab is therefore unable to provide the requested information.

The department overruled these comments in that this lack of seed or information at that point should not in and of itself be a reason for not prohibiting or restricting a weed seed. Rather, the department views a more appropriate solution to this problem, to be through further development of information channels.

Keith Kelly
Director
Department of Agriculture

Certified to the Secretary of State February 1, 1988

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the amendment of 8.40.404 and 8.40.1215) NOTICE OF AMENDMENT OF RULES PERTAINING TO FEES AND DANGEROUS DRUGS

TO: All Interested Persons:

1. On December 24, 1987, the Board of Pharmacy published a notice of proposed amendment of the above-stated rules at page 2294, 1987 Montana Administrative Register, issue number 24.

2. The Board has amended the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF PHARMACY
ANTHONY J. FRANCISCO, R.Ph.
PRESIDENT

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA HEALTH FACILITY AUTHORITY

In the matter of the amendment) NOTICE OF AMENDMENT OF A
of 8.120.206) RULE PERTAINING TO FEES

TO: All Interested Persons:

1. On December 24, 1987, the Health Facility Authority published a notice of proposed amendment of the above stated rule at page 2327, 1987 Montana Administrative Register, issue number 24.

2. The Montana Health Facility Authority amended the rules as proposed with the following changes.

"8.120.206 FEES (1) will remain the same.

(a) An initial planning service fee shall be ~~imposed~~ assessed upon each health institution receiving financing from the authority and shall be a percentage of the principal amount of bonds or notes of the authority issued for the health institutions calculated as follows:

(i) and (ii) will remain the same.

(b) An annual planning service fee shall be payable on the first and each succeeding anniversary date of the sale and issuance of the bonds or notes, or loans ~~amounts~~ and shall be .15% of the principal amount of the bonds or notes or loan amounts outstanding on each such anniversary date.

(c) and (2) will remain the same."

Auth: 90-7-202, MCA Imp: 90-7-202,90-7-211, MCA

3. The following comments were received and considered.

COMMENT: The staff of the Administrative Code Committee suggested the changes as shown above.

RESPONSE: The Health Facility Authority concurred.

COMMENT: The staff of the Administrative Code Committee also suggested that the authority needed to expand on their statement of reasonable necessity.

RESPONSE: The Health Facility Authority concurred and the statement will read as follows: "The Montana Health Facility Authority operates within a financial arena wherein the costs of doing business are ever changing. Since the Montana Health Facility Authority does compete with other financial institutions for financing the capital needs of health facilities, it requires the flexibility to increase and decrease its assessment fees, accordingly, to continue to contain health care costs.

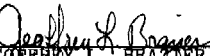
Some health facilities qualify for the funds. However, their financial status may render them unable to pay the application fee prior to the loan being originated. Therefore, the program becomes more accessible by providing an

option to paying the application fee at the time of the loan closing rather than at the bond issue.

The present rule provides for the facility to pay the attendant legal and financial costs associated with bond or note issues. However, there is no provision for them to pay the same attendant costs for issuance, administration and servicing the loan.

4. No other comments or testimony were received.

MONTANA HEALTH FACILITY
AUTHORITY
MARY D. MUNGER, CHAIRMAN

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA STATE LOTTERY

In the matter of the amendment of a rule pertaining to renewals	)))	NOTICE OF AMENDMENT OF 8.127.610 LICENSE RENEWAL

TO: All Interested Persons:

1. On December 24, 1987, the Montana State Lottery published a notice of the above stated rule at page 2330, 1987 Montana Administrative Register, issue number 24.

2. The board has amended the rule exactly as proposed.

3. The staff of the Administrative Code Committee noted that the Authority and Implementing sections were missing in the proposed notice. The Authority section is 23-5-1007, MCA and the Implementing section is 23-5-1012, MCA.

4. No other comments or testimony were received.

MONTANA STATE LOTTERY
DIANA S. DOWLING, DIRECTOR

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1988.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Repeal of ARM 23.4.101 through 23.4.136 and the adoption of new rules I through XI pertaining to alcohol analysis.)	))))	NOTICE OF REPEAL AND ADOPTION OF RULES PERTAINING TO ALCOHOL ANALYSIS

TO: All Interested Persons.

1. On November 27, 1987, the department of justice published notice of a proposed repeal and adoption of rules pertaining to alcohol analysis at pages 2138 to 2141 of the Montana Administrative Register, issue number 22.

2. The Department has repealed rules 23.4.101 through 23.4.119, rule 23.4.121, and rules 23.4.131 through 23.4.136 as proposed. The Department has adopted Rule (I) 23.4.201 DEFINITIONS, Rule (II) 23.4.202 CERTIFICATION, Rule (III) 23.4.203 EXEMPTIONS, Rule (IV) 23.4.204 SUSPENSION OR REVOCATION OF CERTIFICATION, Rule (V) 23.4.205 TYPES OF BREATH-TESTING CERTIFICATION, Rule (VI) 23.4.206 RECERTIFICATION OF PERSONS PERFORMING BREATH ALCOHOL TESTS, Rule (VII) 23.4.207 BREATH TEST RECORDS, Rule (VIII) 23.4.208 REPORTING BREATH TEST RESULTS, Rule (IX) 23.4.209 BREATH-TESTING INSTRUMENTS, Rule (X) 23.4.210 SURVEYS AND PROFICIENCY TESTS, and Rule (XI) 23.4.211 BLOOD AND URINE TEST RECORDS as proposed.

3. No public hearing was held on the proposed repeal and adoption. The Attorney General received no comments regarding the repeal and adoption.

4. The authority for the repeal and adoption of the rules is section 61-8-405(6), MCA. The rules implement the same section of law.

MIKE GREELY
Attorney General

Certified to the Secretary of State Jan 25, 1988.

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

In the Matter of Adoption of a New Rule Allowing the Purchase of a Temporary Trip Permit in Lieu of a Vehicle Identification Stamp.	))))))	NOTICE OF ADOPTION OF A NEW RULE ALLOWING ALL MOTOR CARRIERS REGISTERED WITH THE MONTANA PUBLIC SERVICE COMMISSION TO PURCHASE A TEMPORARY VEHICLE TRIP PERMIT IN LIEU OF A VEHICLE IDENTIFICATION STAMP

TO: All Interested Persons

1. On December 10, 1987, the Department of Public Service Regulation published notice of the proposed adoption a new rule to allow motor carriers registered with the Commission to purchase a temporary vehicle trip permit in lieu of a vehicle identification stamp at pages 2224-2225 of the 1987 Montana Administrative Register Issue Number 23.

2. The Commission has adopted the following new rule as proposed:

Rule I. 38.3.205 TRIP PERMITS

3. Comments: No comments were received nor requests for hearing submitted.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 1, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.23.107) relating to Surtax on Corporations for Corporation Taxes.	NOTICE OF THE ADOPTION of Rule I (42.23.107) relating to Surtax on Corporations for Corporation Taxes.

TO: All Interested Persons:

1. On October 29, 1987, the Department published notice of the proposed adoption of Rule I (42.23.107) relating to Surtax on Corporations for Corporation Taxes at pages 1951 and 1952 of the 1987 Montana Administrative Register, issue No. 20.

2. A public hearing was held on November 19, 1987. No one appeared at this hearing to testify and no written comments were received by the close of the comment period.

3. The Department has adopted Rule I (42.23.107) as proposed.

4. The authority for the rule is 15-31-501, MCA, with the authority extension at Sec. 9, Ch. 616, L. 1987. The rule implements 15-31-121, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/88

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through XI (42.26.213 through 42.26.219 and 42.26.223 through 42.26.226) relating to Water's-Edge Election for Multinational Corporations for Corporation Taxes.	NOTICE OF THE ADOPTION of Rules I through XI (42.26.213 through 42.26.219 and 42.26.223 through 42.26.226) relating to Water's-Edge Election for Multinational Corporation Taxes.

TO: All Interested Persons:

1. On October 29, 1987, the Department published notice of the proposed adoption of Rules I through XI (42.26.213 through 42.26.219 and 42.26.223 through 42.26.226) relating to Water's-Edge Election for Multinational Corporations for Corporation Taxes at pages 1945 through 1950 of the 1987 Montana Administrative Register, issue no. 20. On December 10, 1987, the Department published a notice of extension of comment period on the proposed adoption of these rules at page 2226 of the 1987 Montana Administrative Register, issue no. 23

2. The Department has adopted Rules I through XI (42.26.213 through 42.26.219 and 42.26.223 through 42.26.226) as proposed with the following changes:

RULE V (42.26.216) REVOCATION OR NON RENEWAL OF WATER'S-EDGE ELECTIONS (1) ~~In granting a change in election, the department shall impose reasonable conditions necessary to prevent the avoidance of tax or clearly reflect income for the period the election was in effect. These conditions may include a requirement that income may require adjustment in the year the election is changed. These adjustments may involve the inclusion of dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer but for the existence of the water's-edge election.~~ IF A TAXPAYER WISHES TO CHANGE ITS ELECTION PRIOR TO THE END OF THE 3 YEAR PERIOD, PERMISSION MUST FIRST BE RECEIVED FROM THE DEPARTMENT. THE DEPARTMENT SHALL IMPOSE REASONABLE CONDITIONS NECESSARY TO INSURE THAT THE REQUESTED CHANGE WILL NOT RESULT IN AN AVOIDANCE OF TAX AND THAT INCOME FOR THE PERIOD PRIOR TO THE CHANGE HAS BEEN PROPERLY REPORTED. IN THE YEAR OF THE CHANGE, THE DEPARTMENT MAY, FOR THE PURPOSES PROVIDED FOR IN LAW, REQUIRE THE INCLUSION OF GROSS INCOME OR THE EXCLUSION OF DEDUCTIONS EITHER OF WHICH OCCURRED BECAUSE OF A WATER'S-EDGE FILING FOR THAT PERIOD.

RULE VI (42.26.224) DISREGARDING OR MODIFYING A WATER'S-EDGE ELECTION (1) ~~A water's-edge election may be disregarded by the department if the corporation fails to comply substantially with the requirement to file domestic disclosure spreadsheets as required in Rule IX.~~ THE DEPARTMENT SHALL REVIEW FOR COMPLETENESS THE DOMESTIC DISCLOSURE SPREADSHEETS

THAT ARE FILED AS REQUIRED IN 42.26.217. COMPLETENESS MEANS THAT ENTRIES ARE PROVIDED FOR EACH ITEM REQUESTED. A SPREADSHEET WHICH IS NOT PROPERLY COMPLETED SHALL BE TREATED AS IF NOT FILED, EXCEPT THAT THE TAXPAYER WILL BE GIVEN 60 DAYS TO CORRECT ANY DEFICIENCIES WHICH IT HAS BEEN INFORMED OF IN WRITING BY THE DEPARTMENT. A TAXPAYER WHO FAILS TO FILE A DOMESTIC DISCLOSURE SPREADSHEET OR FAILS TO FILE A COMPLETE SPREADSHEET AFTER HAVING BEEN GIVEN AN OPPORTUNITY TO CORRECT ANY DEFICIENCIES SHALL HAVE ITS WATER'S-EDGE ELECTION REVOKED BY THE DEPARTMENT. Subsections (2) through (4) remain the same.

3. A public hearing was held on November 19, 1987. The following are the comments received at the hearing or in writing and the response of the Department to those comments.

COMMENT: Mr. F.H. Buck Boles of the Montana Chamber of Commerce indicated that this might be a good time to review all of the rules on unitary relationships.

RESPONSE: Although Mr. Boles agreed that such a request went beyond the scope of the hearing, the department has to taken the suggestion under consideration.

COMMENT: Representative Bob Gilbert commented that the dividend adjustment language proposed in rule V: (1) goes beyond what the legislature intended in H.B. 703, (2) is not reasonable (3) and should be addressed only by the legislature.

RESPONSE: The department has amended Rule V to eliminate the specific language on the adjustment for dividends paid during the water's-edge election period. Rule V will be amended to parallel the language in 15-31-324 (2)(b) which requires that the department insure there will not be tax avoidance and that the income during the period of the election had been properly reported. Dividends may be adjusted, but only when necessary to achieve the purposes stated in the law.

COMMENT: Representative Gilbert commented that proposed Rule VI does not define "comply substantially" and gives the department too much leeway in disregarding an election. He further commented that the Department should work with taxpayers to insure the filing of necessary information.

RESPONSE: The Department agrees with Representative Gilbert that it should work with a taxpayer to secure the information required by the law. For that reason, the department has amended Rule VI (1) to allow a taxpayer a specific time to correct its failure to file a disclosure spreadsheet. The rule will state that if the disclosure spreadsheet is not completed properly, the department will notify the taxpayer of the discrepancy and give the taxpayer 60 days to respond. This amendment should give the taxpayer sufficient notice of insufficient information and time to work out the deficiencies with the Department.

COMMENT: Mr. Boles suggested that rather than disallowing an election, the department could issue a penalty assessment.

RESPONSE: The department has reviewed this proposal and cannot find any specific statutory language which would provide for such a penalty. The only statutory provision which may provide for a penalty would be 15-31-523. However, this section provides for a suspension of all corporate powers, rights and privileges for failure to file. The department believes that the penalty under 15-31-523 would be excessive in relation to the problem of insufficient information in a corporation's disclosure spreadsheet.

COMMENT: Representative Gilbert commented that an election may be modified only with the knowledge and consent of the taxpayer.

RESPONSE: The department agrees that any modification to an election must be made with the knowledge of the taxpayer. The department has always notified the taxpayer of any adjustment to a return. The issue need not be addressed in a rule.

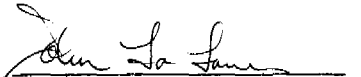
The department does not agree that any modification to an election can only be made with the consent of the taxpayer. The determination as to whether a modification to an election shall be made will be based upon the facts in each case in relation to applicable law and rules and not upon whether the taxpayer agrees to such change. Therefore, subparts 2 and 3 of rule VI will remain.

COMMENT: Representative Gilbert commented that the spreadsheet should have been submitted at the public hearing for comments and questions. He also stated that the spreadsheet must be presented for public scrutiny before it is put into use.

RESPONSE: As was stated at the hearing, the reason the spreadsheet was not available at or prior to the hearing was because it had not yet been developed. When the spreadsheet is developed, the department will notify those who have expressed an interest in the spreadsheet and those whom the department believes have an interest in the spreadsheet and allow for public comment.

Rule IX (1) merely states that the taxpayer must file the disclosure spreadsheet on forms prescribed by the department. No change to this rule is proposed.

Other persons present at the hearing were Janelle Fallan of the Montana Petroleum Association and Walter Hardacre and Jay Moselay of Inco Gold Company. Questions raised by these individuals during the hearing involved implementation of the rules and not disagreement with the content.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rules regarding fees and subscription charges	)	NOTICE OF AMENDMENT OF ARM 1.2.421 SUBSCRIPTION TO THE ARM--COST AND ARM 1.2.423 AGENCY FILING FEES

TO: All Interested Persons.

1. On October 29, 1987, the Secretary of State published notice of proposed agency action regarding fees and subscription charges at page 1956 of the 1987 Montana Administrative Register, issue no. 20. On December 24, 1987, an amended notice was published on page 2357A of the Montana Administrative Register, issue no. 24.

2. The rules have been amended with the following changes.

1.2.421 SUBSCRIPTION TO THE ARM--COST (1) The secretary of state is required by law, (2-4-312, MCA and 2-4-313, MCA) to distribute copies of the ARM and register and revisions thereto, free of charge, to certain federal, state and county agencies enumerated therein.

(2) The secretary is also authorized to make available ~~additional~~ copies of the ARM, register, and revisions thereto to the public at prices fixed to cover publication and mailing costs.

(3) ~~Beginning August 12, 1983, t~~The costs for the Administrative Rules of Montana and the Montana Administrative Register ~~for~~ BEGINNING WITH calendar year 1988 are as follows:

(a) Administrative Rules of Montana - $350.00

(b) Four issues of updates to the Administrative Rules of Montana - ~~$150.00~~ $250.00

(c) Montana Administrative Register ~~-$225.00~~ $300.00

(d) Partial year subscriptions will be prorated.

(4) Extra title charges are as follows:

(a) Initial purchase of title, $50.00 except for two-part titles which may be purchased for $100.00 a title.

(b) Updates to extra titles will be $50.00 per calendar year per title.

(5) All purchase and subscription fees must be paid in advance.

AUTH: 2-4-306, 2-4-313, MCA IMP: 2-4-306, 2-4-313 MCA

1.2.423 AGENCY FILING FEES (1) Beginning ~~August 12, 1983,~~ ~~January~~FEBRUARY 1, 1988, all agencies will be required to pay a ~~$30.00~~$40.00 $35.00 per page filing fee for all

pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The secretary of state will bill monthly for all fees incurred by the agency.
AUTH: 2-4-306, 2-4-313 MCA IMP: 2-4-306, 2-4-313 MCA

3. The Secretary of State received comment on the proposed amendment from the following state agencies: Department of Social and Rehabilitation Services; Department of Natural Resources and Conservation; Department of Labor and Industry; Department of Health and Environmental Sciences; Department of Commerce; and, Department of Revenue. In addition, following consultation the Administrative Code Committee (ACC) offered two suggestions. This notice summarizes salient comments received and provides the Secretary of State's response.

1. Several agencies requested copies of the fiscal analysis on which the proposed amendment relies. The Secretary of State provided copies as requested.

2. Several agencies commented that the estimate of paid pages to be filed was too conservative; the ACC also suggested raising these estimates. The Secretary of State concurs. The estimate of paid pages has been revised upward to 1500 pages in FY88 and 1400 pages in FY89, with a resulting decrease in per page filing fee.

3. Several agencies commented the Secretary of State could reduce the total revenue required to be generated by agency filing fees by limiting the number of so-called free copies distributed. The number of copies is determined by statute and not at the discretion of the Secretary of State. This comment is rejected.

4. Several agencies commented the Secretary of State could reduce the total revenue required by reallocating program expenses. The budget for the program for FY88 and FY89, including allocation of indirect costs, has been determined by the Legislature through the appropriations process. The budget for FY88 and FY89 is reduced from past years; the indirect cost allocation has not changed since FY84. This comment is rejected.

5. Several agencies raised questions about the validity of HB901 as passed by the 1987 Legislature, including alleged defects in the title of the bill, failure to extend rulemaking authority and legislative intent. The Secretary of State is following the statute as promulgated; he declines to substitute his judgement on the validity of the statute for that of the legislature or the courts. These comments are rejected.

6. Several agencies commented on perceived inadequecies in consultation with the ACC. The statute makes no reference as to timing or method of consultation. The Secretary of State has consulted with the ACC twice prior to adoption of the amendment.

JIM WALTERMIRE
Secretary of State

Dated this 1st day of February, 1988.

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

In the matter of the repeal of Rule 46.8.501 pertaining to quarterly reports required of the Developmental Disabilities Division	)))))	NOTICE OF THE REPEAL OF RULE 46.8.501 PERTAINING TO QUARTERLY REPORTS REQUIRED OF THE DEVELOPMENTAL DISABILITIES DIVISION

TO: All Interested Persons

1. On December 24, 1987, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rule 46.8.501 pertaining to quarterly reports required of the Developmental Disabilities Division at page 2358 of the 1987 Montana Administrative Register, issue number 24.

2. The Department has repealed Rule 46.8.501 as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State February 1, 1988.

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

In the matter of the amendment of Rules 46.12.602 and 46.12.605 pertaining to dental services	)))	NOTICE OF THE AMENDMENT OF RULES 46.12.602 AND 46.12.605 PERTAINING TO DENTAL SERVICES

TO: All Interested Persons

1. On December 24, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.602 and 46.12.605 pertaining to dental services at page 2359 of the 1987 Montana Administrative Register, issue number 24.

2. The Department has amended the following rules as proposed with the following changes:

46.12.602 DENTAL SERVICES, REQUIREMENTS Subsections (1) through (4)(f) remain as proposed.

(g) extra-oral, ~~radiograms,~~ PANORAMIC TYPE maxillary or mandibular lateral ~~films~~ x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;

Subsections (4)(h) through (6)(v) remain as proposed.

(w) oral surgery procedures not listed in this rule ~~and performed--by--a---dentist--and--specifically--listed--in--ARM 46.12.2003-2008--are--coverable-when--performed-in--a--medical emergency--due--to--trauma-and--authorized-by--the--designated review-organization.~~ ARE COVERED IF THEY ARE:

(I) LISTED IN ARM 46.12.2003-2008;

(II) PERFORMED BY A DENTIST;

(III) PROVIDED IN A MEDICAL EMERGENCY ARISING OUT OF TRAUMA; AND

(IV) AUTHORIZED BY THE REVIEW ORGANIZATION DESIGNATED BY THE DEPARTMENT.

Subsections (7) through (7)(e) remain as proposed.

(~~7~~8) ~~All full~~ The provision of dentures or the relining or jumping of dentures must be prior authorized by the designated review organization. Requests for full ~~dentures~~ PROSTHESIS must show the approximate date of the most recent extractions, and/or the age AND TYPE of the present ~~dentures.~~ PROSTHESIS. ~~Dentures less than ten years old must be considered for relining or jumping.~~ Jumps or replacement may be done for dentures that are between ~~10~~ 5 and ~~15~~ 10 years old but full reimbursement will be as provided for in ARM 46.12.605~~(9)(d)~~ (10)(J) AND (K). Dentures over ten years old may be replaced when the treating dentist documents the need for replacement. REPLACEMENT OF DENTURES OVER TEN YEARS OLD WILL BE REIMBURSED AS PROVIDED FOR IN ARM 46.12.605(9)(A) AND (B). Tissue conditioners are considered a part of treatment. The following ~~full denture~~ DENTURE services are

available only to EPSDT-referred recipients and must be provided by a dentist or prescribed by a dentist and provided by a licensed denturist:

Subsections (8)(a) through (11)(d) remain as proposed.

(ke) ~~pontic,~~ ceramic pontics ~~only~~;

Subsections (11)(f) through (15) remain as proposed.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.605 DENTAL SERVICES, REIMBURSEMENT Subsections (1) through (9)(e) remain as proposed.

(f) mandibular cast chrome partial denture, acrylic saddles, clasps and rests replacing at least one anterior tooth and any number of posterior teeth plus adjustments - 357.50 when provided by a dentist (code ~~05711~~ 05214) or ~~60.78~~ 178.75 when provided by a denturist (code Z0115);

Subsections (9)(g) through (11)(a) remain as proposed.

(b) (code 06240) ~~pontic~~ - ceramic, ~~only,--each--tooth~~ pontic and abutment teeth - 357.50 for complete bridge and abutment teeth ~~--162.25~~;

(c) (code 06250) - cured acrylic, laboratory processed, veneer, ~~each-tooth---107.25~~, pontic and CROWNED abutment teeth (COMPLETE BRIDGE) - 357.50 for complete bridge and abutment teeth.

Subsections (12) through (17) remain as proposed.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: Staff members of Legislative Council and the Secretary of State's office suggested various changes.

RESPONSE: The Department has complied with the suggestions.

COMMENT: The elimination of the fee for a simple operation under general anesthesia in a hospital was protested because of the need to treat developmentally disabled individuals and individuals under 24 months of age in hospitals. The fee for hospital treatment is needed because the patients cannot be managed in an office setting without general anesthesia. Also the high cost of liability insurance makes it prohibitive to provide this care in the dentist's office.

RESPONSE: This procedure code has only been allowed when there was not an alternative procedure listed in the rule.

Whenever this code is authorized, no other service is paid except for the hospital visit. Those services that are covered by rule will now be paid along with one hospital visit per day.

COMMENT: Comments were received asking about the asterisks by certain codes for pedodontic services.

RESPONSE: The asterisks were included by an earlier rule change and were intended to make clear the exclusion of denture services for adults. They do not affect services to individuals under the age of 21.

COMMENT: A comment was received indicating that annual examinations were not sufficient for children.

RESPONSE: The limit on examinations of one every eleven months was developed in consultation with members of the dental community. The coverage was seen as adequate in light of the fact that amalgum and composite fillings are still available. In addition, prophylaxes are available at 6 month intervals.

COMMENT: Various comments were received from Department personnel regarding grammatical inconsistencies in the text of the first notice.

RESPONSE: Those comments were taken into account in formulation of the text for rule changes in this second notice.

4. At the hearing, the Department representative testified that any orthodontic cases approved and started before the rule went into effect would be covered up to existing program limit if the recipient continues to be eligible for Medicaid. The completion of an exam and full diagnostic records would not constitute initiation of a treatment plan. Full banding or placement of a covered appliance would have to be done prior to the effective date of the rule.

5. These rule changes will be effective March 1, 1988.

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 1, 1988.

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

In the matter of the amendment of Rules 46.14.301, 46.14.302, 46.14.401 and 46.14.402 and repeal of Rules 46.14.303, 46.14.304 and 46.14.305 pertaining to the Low Income Weatherization Assistance Program	))))))	NOTICE OF THE AMENDMENT OF RULES 46.14.301, 46.14.302, 46.14.401 AND 46.14.402 AND REPEAL OF RULES 46.14.303, 46.14.304 AND 46.14.305 PERTAINING TO THE LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM

TO: All Interested Persons

1. On December 10, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.14.301, 46.14.302, 46.14.401 and 46.14.402 and repeal of Rules 46.14.303, 46.14.304 and 46.14.305 pertaining to the low income weatherization assistance program at page 2227 of the 1987 Montana Administrative Register, issue number 23.

2. The Department has repealed Rules 46.14.303, 46.14.304 and 46.14.305 as proposed.

3. The Department has amended Rules 46.14.301, 46.14.302 and 46.14.402 as proposed.

4. The Department has amended the following rule as proposed with the following changes:

46.14.401 PRIORITIZATION FOR SERVICE Subsections (1) through (1)(b) remain as proposed.

(c) Dwellings which have been weatherized after September 30, 1979, with federal Department of Energy funds, AND WITH NON-DEPARTMENT OF ENERGY FUNDS AFTER JULY 1, 1988, are not eligible for weatherization.

Subsections (2) through (6) remain as proposed.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 3, Ch. 390, L. 1985, Eff. 10/1/85
IMP: Sec. 90-4-201 and 90-4-202 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: It is recommended that a supplementary list of applicants applying for weatherization after the April 1 date in Rule 46.14.401 be included on a supplementary list to be provided by July 1.

RESPONSE: The Department agrees and will attempt to provide such a list by July 1, 1988.

COMMENT: It is recommended that households which have been weatherized be eligible for a one time re-weatherization if the household's primary heating consumption warrants.

RESPONSE: The Department agrees that such homes may be re-weatherized, one time, due to the fact that advances in weatherization since the date in the rule would warrant such a rule change. However, the Department will insist that homes weatherized after July 1, 1988, will not be eligible for re-weatherization.

COMMENT: It is recommended that replacement of existing water heaters be an allowable expenditure.

RESPONSE: The Department agrees but will be pursuing such a recommendation with the Federal Department of Energy to ensure that all sources of funding in the weatherization program are operating under the same assumption.

6. These rule changes will be applied retroactively to October 1, 1987, with the exception of ARM 46.14.401, which will be effective April 1, 1988.

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 1, 1988.

VOLUME NO. 42 OPINION NO. 57

INSTITUTIONS, DEPARTMENT OF - Medical treatment as basis for furlough (supervised release) program under former statute sections 95-2217 to 95-2226.1, R.C.M. 1947 (§§ 46-23-401 to 46-23-426, MCA);
PARDONS, BOARD OF - Medical treatment as basis for furlough (supervised release) program under former statute sections 95-2217 to 95-2226.1, R.C.M. 1947 (§§ 46-23-401 to 46-23-426, MCA);
PRISONERS - Medical treatment as basis for furlough (supervised release) program under former statute sections 95-2217 to 95-2226.1, R.C.M. 1947 (§§ 46-23-401 to 46-23-426, MCA);
ADMINISTRATIVE RULES OF MONTANA - Sections 20.7.102, 20.7.103;
MONTANA CODE ANNOTATED - Sections 46-23-401 to 46-23-426;
MONTANA LAWS OF 1975 - Chapter 496, sections 1, 3;
MONTANA LAWS OF 1969 - Chapter 288;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 82 (1977);
REVISED CODES OF MONTANA, 1947 - Sections 95-2217 to 95-2226.1.

HELD: An eligible inmate may present to the Board of Pardons an application for a furlough program which is based solely on medical treatment grounds. Discretion to approve or deny such an application is vested in the Board of Pardons.

21 January 1988

Carroll South, Director
Department of Institutions
1539 Eleventh Avenue
Helena MT 59620

Dear Mr. South:

You have asked my opinion on the following question:

May an eligible inmate present to the Board of Pardons a proposed furlough program that is based solely upon medical treatment?

Upon review of the relevant statutes, their legislative history, and rules promulgated by the Department of Institutions, I have concluded that the Board of Pardons may consider a furlough application directed exclusively to the delivery of medical treatment.

The facts upon which this opinion request is based are unique. The prisoner in question was sentenced to a lengthy imprisonment in 1978 for crimes committed that year. He is eligible under established Department of Institutions (hereinafter Department) rules and policy to apply for a furlough. See § 20.7.102(1)(a), ARM. The statutory framework underlying these regulations was originally enacted in 1969. 1969 Mont. Laws, ch. 288. The basic provisions of the legislation allowed inmates work, educational, and rehabilitation opportunities outside the confines of the prison. The statutes have been repeatedly amended over the years, with the general trend being to restrict eligibility for the program and limit its applicability. Initially termed a "prisoner furlough program," today the process is called a "supervised release program." The furlough program and the respective roles and powers of the Board of Pardons and the Department have been discussed in a prior opinion at some length. See 37 Op. Att'y Gen. No. 82 at 339 (1977).

There are three phases to a furlough request. This opinion assumes that the first phase, eligibility, has been obtained. The opinion addresses the second phase of the process, the application. The third phase of obtaining a furlough--review and favorable action by the Board of Pardons--is not at issue in your request, and nothing below should be construed as commenting on the merits of the furlough application.

The involved inmate suffers from motor impairment of the extremities, slurred speech, and pulmonary complications. These disabilities resulted from injuries he sustained in a car accident while attempting to elude police in 1978. The extent of the injuries and the accompanying psychological depression are the subject of conflicting medical and nonprofessional opinions.

The inmate's family has proposed a furlough program whereby the prisoner would be placed in his parents' private residence in Deer Lodge, Montana, and cared for by the family. This care would include private medical treatment that the family believes is presently unavailable at the state prison. The central question here is whether the furlough statutes contemplate a furlough application exclusively for medical treatment, as opposed to an application based in part on educational or occupational goals.

The purpose and intent of House Bill 72, enacted in 1969, was codified in section 95-2217, R.C.M. 1947. Key language in the statement of intent states:

> The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners[;] ... to make it possible [to] ... work gainfully to support their dependents[;] ... [to] continue their education or training; and at the same time [to] fulfill the obligations of the sentence of imprisonment imposed[.]

The language reflects that the primary purpose of the furlough program as originally enacted was to provide occupational and educational opportunities outside the confines of the prison. However, the statutes were amended in 1975.

House Bill 637 of the Forty-fourth Legislative Session broadened the scope of the furlough program. Language enlarging the goals of the program to include "treatment" was inserted within the statutes. For instance, the statement of intent quoted above was amended by the following: "[The prisoner program] shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes." 1975 Mont. Laws, ch. 496, § 1. Similarly, the code section authorizing the Department to promulgate rules, § 95-2219, R.C.M. 1947, was amended to require rules for participation in a "treatment" program. 1975 Mont. Laws, ch. 496, § 3. The statute as amended read: "Rules shall include provisions for: ... Participating in an educational, treatment, or training program." § 95-2219, R.C.M. 1947 (1977).

The rules which the Department has promulgated under the furlough legislation indicate that the agency interpreted its mandate to include furloughs for medical purposes. In outlining the application process, section 20.7.102, ARM, states in part:

> Treatment programs involving psychiatric treatment and/or serious physical impediment will be considered on an individual basis through supporting documentation of the unit counselors; supervisor of clinical services and/or consulting physician or psychologist.

Additionally, current rules specify terms that must be included in a furlough contract; reference is again made to treatment:

> (a) Location of residence;
> (b) Place of education or training;
> (c) Place of treatment;
> (d) Place of employment (if applicable) ....

§ 20.7.103(1), ARM (1984).

Thus, the furlough legislation as amended in 1975 and subsequent rulemaking expressly provide for furlough programs directed to delivery of medical treatment. While the bulk of the statutory scheme is designed for educational or occupational releases, no language prohibits a supervised release based solely on the need for specialized medical treatment. The legislative history of the 1975 amendments does not shed additional light upon my review. Lobbyists who testified in favor of the 1975 legislation commented that the bill would allow prisoners to obtain treatment for drug and alcohol abuse. The limited legislative history, however, need not be consulted; my opinion is based upon the plain meaning of the statutes in effect at the time the involved inmate's crimes were committed. "There is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses." 2A Sutherland Statutory Construction § 46.01 (4th ed. 1984).

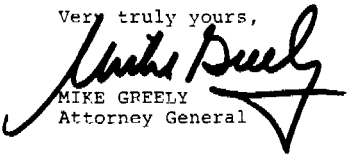
Having held that a furlough application predicated exclusively on medical treatment grounds constitutes a statutorily-valid proposal that must be considered by the Board of Pardons, I emphasize that this opinion

should not be construed as an endorsement of such a proposal. Discretion to approve or deny a prisoner's furlough application is vested in the Board of Pardons by section 46-23-412, MCA. Under that statute, the Board reviews each application individually and must study the actual furlough plan, the prisoner's criminal history, and all other pertinent case material before a decision is reached. See 37 Op. Att'y Gen. No. 82 at 339 (1977).

THEREFORE, IT IS MY OPINION:

An eligible inmate may present to the Board of Pardons an application for a furlough program which is based solely on medical treatment grounds. Discretion to approve or deny such an application is vested in the Board of Pardons.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 58

CITIES AND TOWNS - Consolidation of city and county law enforcement services;
CITIES AND TOWNS - No requirement for law enforcement commission for consolidated law enforcement services;
COUNTIES - No requirement for law enforcement commission for consolidated law enforcement services;
INTERGOVERNMENTAL COOPERATION - No requirement for law enforcement commission for consolidated law enforcement services;
POLICE - No requirement for law enforcement commission for consolidated law enforcement services;
MONTANA CODE ANNOTATED - Title 7, chapter 32, part 41; sections 1-2-101, 7-11-301 to 7-11-310, 7-11-304, 7-32-2101 to 7-32-2145, 7-32-4151 to 7-32-4164, 7-32-4151, 7-32-4154.

HELD: A consolidated city-county law enforcement agency, governed by sections 7-11-301 to 310, MCA, does not require a law enforcement commission established under section 7-32-4151, MCA.

25 January 1988

James Yellowtail
Big Horn County Attorney
Drawer L
Hardin MT 59034

Dear Mr. Yellowtail:

You requested my opinion on the following questions:

1. When police and sheriff's departments have consolidated by election, is a law enforcement or police commission required to be established?

2. If a commission is required, how may such a commission be established when the consolidation proposal approved by the electorate contained no reference to one?

Your letter discloses that in 1976 a cooperative study commission, consisting of representatives of the City of Hardin and Big Horn County, proposed a consolidation plan for the purpose of consolidating the city police and county sheriff's departments. The proposal was successfully presented to the electors and the consolidation became effective in 1977. In 1981, the city and county entered into an interlocal agreement establishing a law enforcement commission patterned after a police commission provided for in sections 7-32-4151 to 4164, MCA. Recently, discussion among members of the city and county commissions has focused on the desire to eliminate the law enforcement commission. These discussions led to the present opinion request.

The initial consideration is the applicability of section 7-32-4151, MCA, to the Hardin-Big Horn County law enforcement consolidation. That section is contained in Title 7, chapter 32, part 41, entitled "Municipal Police Force," and requires the establishment of a police commission in all cities and towns that have organized police departments. Under that section the members of the commission are chosen by the city's chief executive and must be qualified to hold municipal office. The police commission is established for the purpose of hiring, disciplining, and firing policemen. §§ 7-32-4154 to 4164, MCA. Clearly, section 7-32-4151, MCA, does not apply to city-county consolidated law enforcement services because they are not an organized city police department and are not intended to be administered exclusively by the city.

The statutes governing consolidation and transfer of services between a city and a county are found in sections 7-11-301 to 310, MCA. Those sections do not require the establishment of a law enforcement commission for consolidated or transferred law enforcement agencies. Section 7-11-304, MCA, does, however, require the service (or consolidation) plan to include inter alia the method of administration of the consolidated or transferred service.

According to the Hardin-Big Horn County consolidation plan, the personnel and equipment of the city police department were transferred to the county sheriff's department. The department was to continue to be run by the sheriff, and the law enforcement officers were to be

designated as deputies. The budgetary responsibilities were to be retained by the board of county commissioners, and the city was to reimburse the county for the cost of the law enforcement services provided to it. In essence, therefore, the consolidation plan transferred the city police department to the sheriff's department which was to continue operating under the statutes governing the county sheriff (§§ 7-32-2101 to 2145, MCA), and providing law enforcement services to the city in return for payment for those services.

A county sheriff is not required to have a commission like the police commission in section 7-32-4151, MCA. Although the Legislature requires a police commission to hire, discipline, and fire policemen, it has placed those corresponding responsibilities with respect to deputies with the sheriff alone, and has provided, in sections 7-32-2104 to 2112, MCA, guidelines for the sheriff to carry out those responsibilities. I cannot construe a requirement for a commission when the Legislature has failed to do so. See § 1-2-101, MCA.

It is thus evident that there is no requirement for a law enforcement commission for the Hardin-Big Horn County consolidated law enforcement services.

Since my answer to your first question is negative, your second question need not be addressed.

THEREFORE, IT IS MY OPINION:

> A consolidated city-county law enforcement agency, governed by sections 7-11-301 to 310, MCA, does not require a law enforcement commission established under section 7-32-4151, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 59

FAMILY SERVICES, DEPARTMENT OF - Procedures to be followed by Youth Court and Department of Family Services when committing seriously mentally ill and mentally ill youth;
MENTAL HEALTH - Procedures to be followed by Youth Court and Department of Family Services when committing seriously mentally ill and mentally ill youth;
YOUTH COURT - Procedures to be followed by Youth Court and Department of Family Services when committing seriously mentally ill and mentally ill youth;
MONTANA CODE ANNOTATED - Sections 41-5-103, 41-5-206, 41-5-523, 41-5-527, 53-21-101 to 53-21-198, 53-21-506.

HELD: Section 41-5-523, MCA, of the Montana Youth Court Act does not authorize the Youth Court or the Department of Family Services to commit mentally ill or seriously mentally ill youth to a mental health treatment facility without following the commitment procedures set out in sections 53-21-101 to 198, MCA. The statutes do not preclude commitment of youth to private mental health facilities.

29 January 1988

Gene Huntington, Director
Department of Family Services
P.O. Box 8005
Helena MT 59604

Dear Mr. Huntington:

You have requested my opinion on the following questions:

1. Is the Department of Family Services required to follow the involuntary commitment procedures set out in sections 53-21-101 to 198, MCA, when youth are committed to the Department under section 41-5-523(1)(b), MCA?

2. If a youth is not committed to the Department of Family Services, may the Youth Court order placement of seriously mentally ill and mentally ill youth in Rivendell or other private mental health facilities under section 41-5-523(1)(c) and (j), MCA?

Section 41-5-523, MCA, as it was codified in 1985, listed the Youth Court's disposition options and contained the following pertinent provisions protecting the due process rights of seriously mentally ill and mentally ill juveniles facing commitment:

> Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:
>
> (a) place the youth on probation;
>
> (b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;
>
> (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;
>
> (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;
>
> (e) such further care and treatment or evaluation that the court considers beneficial to the youth; or
>
> (f) order restitution by the youth.
>
> ....

(3) At any time after a youth has been taken into custody, the court may request that the youth be evaluated at the Montana youth treatment center, for a period not to exceed 60 days, for the sole purpose of advising the court as to whether the youth is seriously mentally ill, as defined in 53-21-102, but the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102.

....

(5) If the court determines that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a professional person, as defined in 53-21-102, that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(6) Upon a finding of serious mental illness, the court may commit a delinquent youth to the department of institutions and recommend that the youth be placed at the Montana youth treatment center. Upon release or discharge from the center, if the court order has not expired or if the youth is less than 21 years of age, he must be retained under the supervision of the department until the expiration of the court order or until he attains the age of 21. [Emphasis supplied.]

In a special session of the 49th Legislative Assembly in June 1986, the Legislature authorized the sale of the Montana Youth Treatment Center to Rivendell of Billings, Inc., and eliminated subsections (3), (5), and (6) of section 41-5-523, MCA (1985). In the 1987 regular session of the Legislature, subsection (1)(c) was eliminated and (1)(e) modified and listed as (1)(j) in the revision of section 41-5-523, MCA, which now reads:

Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department. The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee as provided in 41-5-527; provided, however, that:

(i) in the case of a youth in need of supervision, such commitment does not authorize the department to place the youth in a state youth correctional facility. The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public;

(iii) a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(iv) a youth is under the supervision of a youth probation officer, except that a youth placed in a youth correctional facility is supervised by the department;

(c) order such further care and treatment or evaluation that does not obligate funding from the department without the department's approval;

(d) order restitution by the youth or his parents;

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(f) require the performance of community service;

(g) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(h) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(i) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or

(j) such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(5) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(6) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth. [Emphasis supplied.]

Section 41-5-103(5), MCA, explains that "department" means the Department of Family Services.

The 1987 amendment eliminated the Youth Court's dispositional alternative of committing delinquent youth to the Department of Institutions and replaced it with the direction that the youth be committed to the Department of Family Services (hereinafter "the Department"). Under the 1987 enactment, the Department, not the Youth Court, is charged with the responsibility of determining "the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee." § 41-5-523(1)(b), MCA. Also remaining is the Youth Court's dispositional option in section 41-5-523(1)(j) of ordering "such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community."

Both the amended 1987 version of section 41-5-523, MCA, and the new section 41-5-527, MCA (listing the responsibilities of the youth placement committee), are silent as to the specific authority of the Youth Court and the Department's youth placement committee to

recommend placement at Rivendell or any other private agency responsible for the care and rehabilitation of seriously mentally ill and mentally ill youth. These statutes are also silent as to the procedural due process requirements of Title 53, chapter 21, previously referred to in section 41-5-523, MCA (1985).

Although silent on the subjects of the due process rights of seriously mentally ill and mentally ill youth and the dispositional option of placing these youth in a private agency, the statutory revision cannot preclude the exercise of due process and does not preclude the option of placing youth in a private agency.

First, on the subject of due process, the courts have repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. It is beyond dispute that a minor has a protectible liberty interest in being free from the restraints of commitment in a psychiatric hospital, and that the State's role in the commitment process necessitates invocation of federal and state due process protections. Secretary of Public Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), Parham v. J.R., 442 U.S. 584 (1979); Addington v. Texas, 441 U.S. 418 (1978); Specht v. Patterson, 386 U.S. 605 (1967).

The United States Supreme Court's recognition of a youth's due process rights prompted it to outline the following minimal procedural protections:

> We conclude that the risk of error inherent in the parental care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied. See Goldberg v. Kelly, 397 U.S. 254, 271 (1970); Morrissey v. Brewer, 408 U.S. 471, 489 (1972). That inquiry must carefully probe the child's background using all available sources, including, but not limited to, parents, schools, and other social agencies. Of course, the review must also include an interview with the child. It is necessary that the decisionmaker have the authority to refuse to admit any child who does not satisfy the medical standards for

> admission. Finally, it is necessary that the child's continuing need for commitment be reviewed periodically by a similarly independent procedure.

Parham v. J.R., 442 U.S. at 646-47. The procedural protections discussed in Parham are minimum standards, and are not found in section 41-5-523, MCA (1987). Montana's procedural protections require more than Parham, and are found in Title 53 of the Montana Code Annotated, in the statutes of chapter 21 pertaining to the treatment of all mentally ill individuals. In its statement of purpose, § 53-21-101, MCA, the Legislature set out the following:

> The purpose of this part is to:
>
> (1) secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;
>
> ....
>
> (4) assure that due process of law is accorded any person coming under the provisions of this part. [Emphasis supplied.]

Further, in light of the constitutional guarantee in the Fourteenth Amendment of the United States Constitution and in article II, section 17 of the Montana Constitution that no person shall be deprived of life, liberty, or property without due process of law, it is clear that the involuntary commitment statutes of Title 53, chapter 21, MCA, apply to all persons, both youth and adult. (This assertion is supported by section 53-21-112, MCA, where it is provided that if a minor fails to join in the consent of his parents or guardian for voluntary commitment, then the application for admission shall be treated as a petition for involuntary commitment. Even more clear is the provision listing eleven specific rights "[i]n addition to any other rights which may be guaranteed by the constitution of the United States and of this state" had by "any person

who is involuntarily detained or against whom a petition is filed." § 53-21-115, MCA.) Therefore, it is clear a youth may not be involuntarily placed in a mental health facility without being afforded due process.

As to the issue of whether the Youth Court or the Department of Family Services may place a mentally ill or seriously mentally ill youth in a private psychiatric facility for treatment, it is clear that while this option is not specifically addressed in sections 41-5-523 and 41-5-527, MCA, it is certainly not precluded by the statutory changes. This conclusion is supported by sections 41-5-523(3) and 53-21-506, MCA, which prohibit commitment of youth to the Montana State Hospital for purposes other than temporary or evaluation-oriented care, unless "other appropriate inpatient psychiatric treatment space is not available," or the youth's case is transferred to the district court under section 41-5-206, MCA. § 53-21-506(2)(c), MCA. The statute does not address all available psychiatric care options for youth, it merely defines the parameters for admission into the state mental hospital.

The statutory definition of a mental health facility supports the conclusion that both the district and youth courts may consider the option of placement in a private psychiatric facility. A mental health facility is defined as "a public hospital or a licensed private hospital which is equipped and staffed to provide" mental health treatment. § 53-21-102(6), MCA. The district court, upon making the determination that a person is mentally ill or seriously mentally ill, is given the choice of committing the person to a mental health facility or of making "some other appropriate order for treatment." § 53-21-127(2)(a), MCA. The Youth Court is also given this flexibility. Under sections 41-5-523(1)(c) and (j), MCA, the Youth Court may enter judgment for "such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community." § 41-5-523(1)(j), MCA. Of course, when a mentally ill or seriously mentally ill youth is to be committed by the court to either a private or a public mental health treatment facility, the commitment proceedings must be in accordance with Title 53, chapter 21, MCA.

THEREFORE, IT IS MY OPINION:

Section 41-5-523, MCA, of the Montana Youth Court Act does not authorize the Youth Court or the Department of Family Services to commit mentally ill or seriously mentally ill youth to a mental health treatment facility without following the commitment procedures set out in sections 53-21-101 to 198, MCA. The statutes do not preclude commitment of youth to private mental health facilities.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 60

CONTRACTS - What constitute "public works contracts" subject to standard prevailing wage requirements;
LABOR AND INDUSTRY, DEPARTMENT OF - What constitute "public works contracts" subject to standard prevailing wage requirements;
LABOR RELATIONS - What constitute "public works contracts" subject to standard prevailing wage requirements;
PREVAILING WAGE - What constitute "public works contracts" subject to;
CODE OF FEDERAL REGULATIONS - 29 C.F.R. §§ 5.2(i)-(k) (1987);
MONTANA CODE ANNOTATED (1987) - Sections 18-1-102, 18-2-401 to 18-2-432, 18-2-403, 18-2-431;
MONTANA CODE ANNOTATED (1985) - Section 18-2-403;
MONTANA CODE ANNOTATED (1981) - Sections 18-2-403, 18-2-422;
MONTANA CODE ANNOTATED (1978) - Sections 18-2-401, 18-2-403 to 18-2-405;
MONTANA LAWS OF 1987 - Chapter 561;
MONTANA LAWS OF 1981 - Chapter 139;
MONTANA LAWS OF 1973 - Chapter 375;
MONTANA LAWS OF 1931 - Chapter 102;
REVISED CODES OF MONTANA, 1947 - Section 41-701;
UNITED STATES CODE - 40 U.S.C. §§ 276a to 276a-7; 41 U.S.C. §§ 351 to 358.

HELD: The term "public works contracts" in section 18-2-403(2), MCA (1987), includes all contracts subject to the requirements of section 18-2-403(1), MCA (1987).

1 February 1988

Mary M. Hartman, Commissioner
Department of Labor and Industry
P.O. Box 1728
Helena MT 59624

Dear Commissioner Hartman:

You have requested my opinion concerning the following question:

Do the standard prevailing wage rate provisions in sections 18-2-401 to 432, MCA (1987), apply to public contracts which provide for the rendering of nonconstruction-related services?

Based on a review of the legislative history associated with Montana's prevailing wage statute, I conclude that its provisions continue to apply, as they have since 1973, to service contracts entered into by the state, counties, municipalities or school districts.

Sections 18-2-401 to 432, MCA (1987), are commonly referred to as Montana's "Little Davis-Bacon Act." Thompkins v. Fuller, 40 St. Rptr. 1192, 1195, 667 P.2d 944, 948 (1983). Enacted in 1931 shortly after passage of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-7, it initially required "all contracts hereafter let for state, county, municipal and school construction, repair and maintenance work under any of the laws of this State" to include an employment preference provision for bona fide Montana residents and a provision mandating the contractor to "pay the standard prevailing rate of wages in effect as paid in the county seat of the county in which the work is being performed[.]" 1931 Mont. Laws, ch. 102, § 1. The statute has been extensively modified since 1931, and several of the amendments are presently relevant.

In 1973 the word "services" was added to the first sentence of section 41-701, R.C.M. 1947. 1973 Mont. Laws, ch. 375. As amended, the statute's employment preference and standard prevailing wage requirements were thus extended to all contracts "let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work[.]" The effect of the amendment was to broaden the statute's scope beyond contracts dealing only with construction-related matters and to encompass contracts concerned with the provision of "services." See Feb. 7, 1973, Minutes of House Labor and Employment Relations Committee (statement of R. L. Rampy). This extension of minimum wage standards to service contracts paralleled the passage of the Federal Service Contract Act, 41 U.S.C. §§ 351-58, in 1967. See generally American Federation of Labor v. Donovan, 757 F.2d 330, 333 (D.C. Cir. 1985) ("The Service Contract Act ... provided the third leg in Congress' support of labor standards in

federal contracting. Workers on federal or federally funded construction contracts were already protected under the Davis-Bacon Act ... which was enacted in 1931, while those performing work under federal supply contracts were protected under the Walsh-Healey Public Contract Act ... passed by Congress in 1936"). When the Commissioner of Labor and Industry was given general rulemaking authority under the Montana statute in 1985 (§ 18-2-431, MCA (1987)), he was accordingly directed to consider Federal Service Contract Act rates in determining standard prevailing wage levels. House Bill 387 (49th Reg. Sess.) (statement of intent), reprinted in 2 MCA Annot., § 18-2-431 (1986).

As a result of the 1978 recodification, the lengthy section 41-701, R.C.M. 1947, was divided and placed into sections 18-2-401(1), 18-2-401(3), 18-2-403, 18-2-404(1), and 18-2-405, MCA (1978). Section 18-2-403(1), MCA (1978), contained the first sentence of section 41-701, R.C.M. 1947, and read:

> In all contracts hereafter let for state, county, municipal, school, or heavy highway construction, services, repair, and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work and must further pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed.

The statute was amended in 1981 to add, most significantly, a new subsection to section 18-2-403, MCA (1978), and a new section, § 18-2-422, MCA (1981). 1981 Mont. Laws, ch. 139, §§ 2, 4. Section 18-2-422, MCA (1981), stated that "[a]ll bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project[,]" while the new subsection to section 18-3-403, MCA (1978), provided that "[f]ailure to include the provisions required by

18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency" (§ 18-2-403(3), MCA (1981)). The 1981 amendments also modified section 18-2-403(1), MCA (1978), to require that the bid specifications for all contracts subject to such provision include a provision setting out the employment preference and standard prevailing wage rate requirements. 1981 Mont. Laws, ch. 139, § 2. The terms "public works contract" and "public works projects" used, respectively, in sections 18-2-403(3) and 18-2-422, MCA (1981), were not defined, and there is no indication from the minutes of pertinent legislative hearings as to the scope those terms were intended to have. See Jan. 8 and 13, and Feb. 3, 1981, House Labor and Industry Committee Minutes; Mar. 5 and 7, 1981, Senate Labor and Employment Relations Committee Minutes. The changes effected in 1981 were instead discussed in broad terms and were designed generally to strengthen the statute's enforceability. No intent to modify its substantive reach appears either in the changes themselves or the associated legislative history.

During the 1987 legislative session, finally, substantial changes were enacted in the geographical areas used for determining applicable standard prevailing wage rates for all public contracts except heavy highway construction contracts now subject to uniform, statewide prevailing wage rates. 1987 Mont. Laws, ch. 561, §§ 1-4. Pursuant to these amendments, the employment preference and standard prevailing wage rate requirements in section 18-2-403(1), MCA (1985), were separated into distinct subsections which read:

> (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.
>
> (2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision

> requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the district in which the work is being performed.

§ 18-2-403(1), (2), MCA (1987). No reported discussion of the term "public works contracts" used in section 18-2-403(2), MCA (1987), appears in pertinent committee minutes. See Feb. 18, 1987, House Business and Labor Committee Minutes; Mar. 24 and 26, 1987, Senate Labor and Employment Relations Committee Minutes. Except for the exclusion of all public contracts of $25,000 or less from coverage under the statute (1987 Mont. Laws, ch. 561, § 2), there was no expressed intent to modify the substantive scope of the statute.

As stated above, no question exists that public contracts for services unrelated to construction matters were subject to the employment preference and standard prevailing wage rate conditions prior to the 1987 amendments. The issue becomes, therefore, whether those amendments were intended to limit application of the prevailing wage requirement to a class of public contracts smaller than that subject to the employment preference requirement in section 18-2-403(1), MCA (1987). Resolution of this issue is in large measure controlled by well-settled canons of statutory interpretation.

The goal of all statutory construction is to ascertain and implement legislative intent. E.g., Burritt v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563, 565 (1973); State ex rel. School District No. 8 v. Lensman, 108 Mont. 118, 128, 88 P.2d 63, 67 (1939). Search for that intent begins with the language of the statute itself and, if such language is unambiguous, ends there. Lewis & Clark County v. State, 43 St. Rptr. 2150, 2153, 728 P.2d 1348, 1350 (1986); W.D. Construction, Inc. v. Board of County Commissioners, 42 St. Rptr. 1638, 1641, 707 P.2d 1111, 1113 (1985). However, when ambiguity does exist, legislative intent can be inferred from both internal and external sources--i.e., from a careful reading of all provisions in the statute and from, most typically, extant legislative history. See, e.g., Lewis & Clark County v. State, supra ("[i]f intent cannot be determined from the context of the statute, we examine

the legislative history"); McClanathan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980) ("[w]here there is doubt about the meaning of a phrase in a statute, the statute is to be construed in its entirety and the phrase must be given a reasonable construction which will enable it to be harmonized with the entire statute"); Hostetter v. Island Development Corporation, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977) ("[t]his is one section of the [act] and it is the duty of this Court to interpret it in such a manner as to ensure coordination with other sections of the Act, and fulfill legislative intent"); Aleksich v. Industrial Accident Fund, 116 Mont. 127, 137, 151 P.2d 1016, 1020 (1944) ("[t]o ascertain the intention of the legislature the Act must be read as a whole and, where possible, conflicting and ambiguous parts made to harmonize"). My duty, like that of a court, is thus "to give effect to the objects of the statute [and] to construe it so as to promote justice[.]" Mackin v. State, 37 St. Rptr. 1998, 2002, 621 P.2d 477, 481 (1980); accord LaFountaine v. State Farm Mutual Automobile Insurance Company, 42 St. Rptr. 496, 499, 698 P.2d 410, 413 (1985).

Instantly, the term "public works contracts" in section 18-2-403(2), MCA (1987), is not defined and is arguably susceptible to different interpretations. The Montana Supreme Court, for example, has construed the term "public contracts for ... public works of all kinds" in section 18-1-102(1)(a), MCA (1987), as including a contract for janitorial services. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 Mont. 220, 226, 456 P.2d 278, 281 (1969). The Commissioner of Labor and Industry, however, issued a declaratory ruling in 1982 construing the term "public works projects" in section 18-2-422, MCA (1981), to include only construction-related activity and thereby concluded that other public contracts, while subject to the standard prevailing wage rate requirement, need not contain a provision setting forth the prevailing wage rate for each job classification. The ruling relied heavily for its conclusion upon the definitions of the terms "building" or "work," "construction," and "public building" or "public work" appearing in United States Department of Labor regulations implementing, inter alia, the Davis-Bacon Act. 29 C.F.R. §§ 5.2(i)-(k) (1987). These definitions limit the scope of such terms to construction-related activity.

Although the issue is not free from doubt, the more reasonable interpretation of the term "public works contracts" in section 18-2-403(2), MCA (1987), is an expansive one consonant with the 1973 amendment to the statute extending both employment preference and standard prevailing wage requirements to contracts for services. An interpretation restricting section 18-2-403(2), MCA (1987), to construction-related contracts would exempt, of course, service contracts from the latter requirement without any apparent legislative intent to undo partially what had been accomplished 16 years earlier. Such a major change in labor standards law seems clearly unintended by the 1987 amendments whose objective, as developed above, was to strengthen the statute's remedial provisions; there was, conversely, no discernible intent to alter its reach except for exclusion of contracts with a value of $25,000 or less. Whatever the precise reason for use of the term "public works contracts" in subsection 2 of section 18-2-403, MCA (1987), rather than simply the term "contracts," I find the scope of that subsection and the previous subsection to be coterminous with respect to the type of public contracts covered. Cf. Johnson v. Marias River Electric Cooperative, Inc., 41 St. Rptr. 1528, 1532, 687 P.2d 668, 671 (1984) (Legislature did not intend to abrogate sub silentio established right of children to recover damages for the wrongful death of a parent by adoption of the Uniform Probate Code).

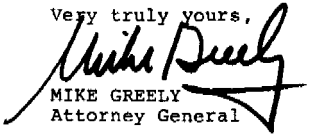
Lastly, my interpretation of the term "public works contracts" in section 18-2-403(2), MCA (1987), is not inconsistent with the Commissioner's 1982 declaratory ruling as to section 18-2-422, MCA (1981). The Commissioner realized that section 18-2-403(1), MCA (1981), directed bids for public contracts and the contracts themselves to require payment of standard prevailing wage rates and was thus concerned only with the discrete question of whether section 18-2-422, MCA (1981), mandated such bids and contracts to include not only a statement of that requirement but also the actual wage rate, including fringe benefits, for each employee job classification of the contractor or subcontractor performing work on the "public works project[.]" The central term in his ruling was therefore not "public works contract," as used in section 18-2-403(3), MCA (1981), but rather "public works projects," as used in section 18-2-422, MCA (1981). When read in its

entirety, the latter provision is clearly directed to construction-related contracts which, like service contracts, represent a form of a "public works contract." The declaratory ruling should not be viewed as concluding that the term "public works contract" in section 18-2-403(3), MCA (1981), refers only to construction-related contracts; instead, that provision, now codified as section 18-2-403(5), MCA (1987), applies only to that class of public works contracts subject to the requirements of section 18-2-422, MCA (1987).

THEREFORE, IT IS MY OPINION:

> The term "public works contracts" in section 18-2-403(2), MCA (1987), includes all contracts subject to the requirements of section 18-2-403(1), MCA (1987).

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. 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, 1987. This table includes those rules adopted during the period September 30, 1987 through December 31, 1987 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, 1987, 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 1987 or 1988 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I-V	and other rules - Use of State's Telecommunications Systems and Facilities, - Approval of Installations, Modifications or Removal of Telecommunications Systems - Use of Systems, p. 1229, 2086
2.5.201	and other rules - Purchasing - Definitions - Department Responsibilities - Delegation of Purchasing Authority - Competitive Sealed Bids and Proposals - Small Purchases of Supplies and Services, p. 799, 2144
2.5.201	and other rules - Contracting for Supplies and Services, p. 1151, 1961
2.21.605	and other rules - Holidays for State Employees, p. 1848, 2369
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