RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule pertaining to the bond schedule for itinerant merchants	NOTICE OF PROPOSED AMENDMENT OF RULE 4.12.2618

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 18, 1989, the Department of Agriculture proposes to amend certain rule as above stated relating to the bond schedule for itinerant merchants.

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

4.12.2618 BOND SCHEDULE FOR ITINERANT MERCHANTS

(1) Surety bond or its equivalent for an itinerant merchant who has sold over $2000 of produce in the year preceding his application or whose total inventory or projected cumulative inventory for the license year is more than $2000 shall be established at a minimum of $1000 and increased according to the dollar value of business conducted monthly based on the following schedule:

Monthly Business Conducted	Surety Bond Amount
$ 0 - $ 166	no bond required
167 - 250	$ 1,000
251 - 1,000	5,000
1,001 - 3,000	8,000
3,001 - 5,000	10,000
5,001 - Over	15,000

Auth: 80-3-705 MCA Imp: 80-3-705 MCA

REASON: This change conforms this rule to correspond to the language that was passed by Senate Bill 43 in the 1989 legislature. The bill removed the requirement for a bond if the itinerant merchant sold less than $2000 of produce.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Department of Agriculture, Capitol Station, Helena, Montana, 59620-0201, no later than September 14, 1989.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Department of Agriculture, no later than September 14, 1989.

5. If the Department receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision 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 and mailed to all interested persons.

E. M. Snortland, Director
Department of Agriculture

Certified to the Secretary of State, August 7, 1989

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules pertaining to medicare supplement insurance minimum standards and proposed amendment of ARM 6.6.506 through ARM 6.6.511 and ARM 6.6.513	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons.

1. On September 6, 1989, at 9:00 a.m., a public hearing will be held in Room 260 of the Mitchell Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of rules pertaining to medicare supplement insurance minimum standards and the proposed amendment of ARM 6.6.506 through 6.6.511 and ARM 6.6.513.

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

6.6.506 PROHIBITED POLICY PROVISIONS (1) through (2) remain the same.

(3) The terms "medicare supplement," "medigap" and words of similar import must not be used unless the policy is issued in compliance with this regulation.

(4) No medicare supplement insurance policy, contract or certificate in force in the state of Montana must contain benefits which duplicate benefits provided by medicare.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.507 MINIMUM BENEFIT STANDARDS (1) through (2) remain the same.

(e) A medicare supplement policy shall be "noncancelable," "guaranteed renewable," or "noncancelable and guaranteed renewable" for life except that coverage under a group policy may be convertible upon termination of the group policy or termination of membership in the group to an individual medicare supplement insurance policy with benefits which are at least as favorable to the insured and which are "noncancelable," "guaranteed renewable," or "noncancelable and guaranteed renewable."

(f) Termination of a medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefit.

(3) A medicare supplement policy must provide the following minimum benefits:

(a) Coverage of Medicare Part A inpatient hospital deductible amount for either all or none of the Medicare Part A inpatient deductible amount.

(b) Coverage of Medicare Part A eligible expenses for the daily copayment amount of Medicare Part A eligible expenses for the first 8 days per calendar year incurred for skilled nursing facility care.

(c) Coverage for the reasonable cost of the first 3 pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) under Medicare Part A unless replaced in accordance with federal regulations.

(d) Coverage of Until January 1, 1990, coverage for 20% of the amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year.

(e) Effective January 1, 1990, coverage for the copayment amount (20%) of medicare eligible expenses excluding outpatient prescription drugs under Medicare Part B regardless of hospital confinement up to the maximum out-of-pocket amount for Medicare Part B after the medicare deductible amount.

(f) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(g) Effective January 1, 1990, coverage for the copayment amount (20%) of medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the Secretary of Health and Human Services) subject to the medicare outpatient prescription drug deductible amount, if applicable.

(h) Effective January 1, 1990, coverage for the copayment amount of medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the medicare outpatient prescription drug deductible, if applicable. The copayment for such drugs during the first year following a covered transplant is 20%. During the second and subsequent years following a covered transplant and during any year following a noncovered transplant, the copayments are 50% for 1990, 50% for 1991, 40% for 1992 and 20% for 1993 and thereafter.

(4) For purposes of the standards described in this rule, medicare eligible expenses shall mean health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or

less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.
AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.508 LOSS RATIO STANDARDS (1) Medicare supplement policies ~~must be expected to~~ shall return to policyholders in the form of aggregate benefits under the policy, ~~as well~~ for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices:
(a) and (b) remain the same.
(2) All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of section (1) of this rule.
(3) Every entity providing medicare supplement policies in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.
(4) For the purposes of this rule, policy forms comply with the loss ratio standards if:
(a) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates that have been in force for 3 years or more is greater than or equal to the applicable percentages contained in this rule; and
(b) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this rule. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than 3 years.
(5) As soon as practicable, but no later than 60 days prior to the effective date of medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, every insurer, health care service plan or other entity providing medicare supplement insurance or contracts in this state, except employers subject to the requirements of section 421 of the Medicare Catastrophic Coverage Act of 1988, shall file with the commissioner, in accordance with the applicable filing procedures of this state:
(a) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing. Every insurer, health care service plan or other entity providing medicare supplement insurance or benefits to a resident of this state pursuant to ARM 6.6.503 shall make such premium adjustments as are necessary to produce an expected loss ratio

under such policy or contract as will conform with minimum loss ratio standards for medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan or other entity for such medicare supplement insurance policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date. Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within 60 days of the renewal date or anniversary date if a refund is provided to the premium payer. Premium adjustments shall be calculated for the period commencing with medicare benefit changes.

(b) Any appropriate riders, endorsements or policy forms needed to accomplish the medicare supplement insurance modifications necessary to eliminate benefit duplications with medicare. Any such riders, endorsements or policy forms shall provide a clear description of the medicare supplement benefits provided by the policy or contract.

~~(2)~~ (6) For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as individual policies.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) remains the same.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of medicare benefits, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing and signed by the insured, unless the increased benefits or coverage are required by the minimum standards for medicare supplement insurance policies, or if the increased benefits or coverage is required by law. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge must be set forth in the policy.

(3) remains the same.

(4) remains the same.

(5) Medicare supplement policies or certificates~~//[illegible]//~~

must have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 10 30 days of its delivery and to have the premium refunded if after examination of the policy or certificate the insured person is not satisfied for any reason. [illegible]

(6) remains the same.

(7) remains the same.

(8) The following notice requirements apply to all insurers providing medicare supplement insurance:

(a) As soon as practicable, but no later than 30 days prior to the annual effective date of any medicare benefit changes, every insurer, health care service plan or other entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders and certificate holders of modifications it has made to medicare supplement insurance policies or contracts in a format acceptable to the commissioner. For the years 1989 and 1990 and if prescription drugs are covered in 1991, such notice shall be in a format prescribed in ARM 6.6.511, sample forms A, B and C. In addition, such notice shall:

(i) Include a description of revisions to the medicare program and a description of each modification made to the coverage provided under the medicare supplement insurance policy or contract; and

(ii) Inform each covered person as to when any premium adjustment is to be made due to changes in medicare.

(iii) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(b) Notices under this rule shall not contain or be accompanied by any solicitation.

(8),(9) and (10) remain the same but will be renumbered.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.511 SAMPLE FORMS The following are sample forms of the outline of coverage and notices regarding replacement of medicare supplement policies:

(1) Sample form A (1) through (3) remains the same.

(4) (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the medicare supplement coverage in the following order:)

~~SERVICE~~	~~BENEFIT~~	~~MEDICARE PAYS~~	~~THIS POLICY PAYS~~	~~YOU PAY~~
~~HOSPITALIZATION semiprivate room and board, general nursing and miscellaneous hospital services and supplies.~~	~~First 60 days~~	~~All but $(180)~~		
	~~61st to 90th day~~	~~All but $(135) a day~~		
~~Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.~~	~~91st to 150th day~~	~~All but $(90) a day~~		
	~~Beyond 150 days~~	~~Nothing~~		
~~POSTHOSPITAL SKILLED NURSING CARE.~~	~~First 20 days~~	~~100% of costs~~		
~~In a facility approved by Medicare. You must have been in a hospital for at least three days and enter the facility within 14 days after hospital discharge.~~	~~Additional 80 days~~	~~All but $(22.50) a day~~		
	~~Beyond 100 days~~	~~Nothing~~		
~~MEDICAL EXPENSE~~	~~Physician's services, inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy and ambulance.~~	~~80% of reasonable charge (after $(60) deductible)~~		

~~(5) [Statement that the policy does or does not cover the following:]~~

~~(a) Private duty nursing.~~

~~(b) Skilled nursing home care costs (beyond what is covered by Medicare).~~

~~(c) Custodial nursing home care costs.~~

~~(d) Intermediate nursing home care costs.~~

~~(e) Home health care above number of visits covered by Medicare.~~

~~(f) Physician charges (above Medicare's reasonable charge).~~

~~(g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).~~

~~(h) Care received outside of U.S.A.~~

~~(i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.~~

~~(6) [A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in (4) above, including conspicuous statements:]~~

~~(a) [That the chart summarizing Medicare benefits only briefly describes such benefits.]~~

~~(b) [That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.]~~

~~(7) [A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.]~~

~~(8) [The amount of premium for this policy.]~~

[COMPANY NAME]

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE - 1989

YOUR HEALTH CARE BENEFITS PROVIDED BY THE FEDERAL MEDICARE PROGRAM WILL CHANGE BEGINNING JANUARY 1, 1989. ADDITIONAL CHANGES WILL OCCUR ON MEDICARE BENEFITS IN THE FOLLOWING

YEARS. THE MAJOR CHANGES ARE SUMMARIZED BELOW. THESE CHANGES WILL AFFECT HOSPITAL, MEDICAL AND OTHER SERVICES AND SUPPLIES PROVIDED UNDER MEDICARE. BECAUSE OF THESE CHANGES, YOUR MEDICARE SUPPLEMENT COVERAGE PROVIDED BY [COMPANY NAME] WILL CHANGE, ALSO. THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Benefit Period	Effective January 1, 1989 Medicare Will Pay Per Calendar Year	Your 1988 Coverage Per Benefit Period	Effective January 1, 1989 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	First 60 days-All but $540	Unlimited number of hospital days after $560 deductible		
	61st to 90th day - All but $135 a day			
	91st to 150th day - All but $270 a day (if individual chooses to use 60 nonrenewable lifetime reserve days)			
	Beyond 150th day - Nothing			
SKILLED NURSING FACILITY CARE	Requires a 3 day prior stay and enter the facility generally within 30 days after hospital discharge	There is no prior confinement requirement for this benefit		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Benefit Period	Effective January 1, 1989 Medicare Will Pay Per Calendar Year	Your 1988 Coverage Per Benefit Period	Effective January 1, 1989 Your Coverage Will Pay Per Calendar Year
	First 20 days - 100% of costs	First 8 days - All but $25.50 a day		
	21st through 100th day - All but $67.50 a day	9th through 150th day - 100% of costs		
	Beyond 100 days - Nothing	Beyond 150 days Nothing		

MEDICARE BENEFITS YOUR MEDICARE SUPPLEMENT COVERAGE

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	In 1989 Medicare Part B Pays the Same as in 1988	Your Policy Now Pays	Effective January 1, 1989 Your Policy Will Pay
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible)	NOTE: Medicare benefits change on January 1, 1990 as follows: 80% of allowable charges (after $[75] deductible) until an annual Medicare Catastrophic limit is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is $1370* and will be adjusted on an annual basis.		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	In 1989 Medicare Part B Pays the Same as in 1988	Your Policy Now Pays	Effective January 1, 1989 Your Policy Will Pay
PRESCRIPTION DRUGS	Inpatient prescription drugs only	In 1989 Medicare covers inpatient prescription drugs only. Effective January 1, 1990 Per Calendar Year 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after ($550 in 1990) calendar year deductible is met. Effective January 1, 1991 Per Calendar Year inpatient prescription drugs: 50% of allowable charges for all other outpatient prescription drugs after a $600 calendar year deductible is met (the deductible will change). Coverage will increase to 60% of allowable charges in 1992 and to 80% of allowable		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE
Medicare Now Pays Per Calendar Year	In 1989 Medicare Part B Pays the Same as in 1988 charges from 1993 on.	Your Policy Now Pays	Effective January 1, 1989 Your Policy Will Pay

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

[ANY ADDITIONAL BENEFITS]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [POLICY] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT]
[ADDRESS/PHONE NUMBER]

[COMPANY NAME]
NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1990

YOUR HEALTH CARE BENEFITS PROVIDED BY THE FEDERAL MEDICARE PROGRAM WILL CHANGE BEGINNING JANUARY 1, 1990. ADDITIONAL CHANGES WILL OCCUR IN MEDICAL BENEFITS IN FOLLOWING YEARS. THE MAJOR CHANGES ARE SUMMARIZED BELOW. THESE CHANGES WILL AFFECT HOSPITAL, MEDICAL AND OTHER SERVICES AND SUPPLIES PROVIDED UNDER MEDICARE. BECAUSE OF THESE CHANGES YOUR MEDICARE SUPPLEMENT COVERAGE PROVIDED BY [COMPANY NAME] WILL CHANGE ALSO. THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE

MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	Unlimited number of hospital days after $560 deductible			
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit First 8 days - All but $25.50 a day 9th through 150th day - 100% of costs Beyond 150 days - Nothing			
MEDICARE PART B SERVICES	80% of allowable charges (after $75 deductible)	80% of allowable charges (after $75 deductible) until an annual Medicare Catastrophic Limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is $1370 and will be		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990 Medicare Will Pay Per Calendar Year adjusted on an annual basis.	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for Immunosuppresive therapy drugs during the first year following covered transplant.	Inpatient prescription drugs. 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for Immunosuppressive drugs after ($550 in 1990) calendar year deductible is met.		

*Expenses that you must pay out-of-pocket and that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and co-payment charges and the Part B blood deductible charges.

[ANY ADDITIONAL BENEFITS]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT]
[ADDRESS/PHONE NUMBER]

[COMPANY NAME]
NOTICE OF CHANGES IN MEDICARE AND YOUR
MEDICARE SUPPLEMENT COVERAGE - 1991

YOUR HEALTH CARE BENEFITS PROVIDED BY THE FEDERAL MEDICARE PROGRAM WILL CHANGE BEGINNING JANUARY 1, 1991. ADDITIONAL CHANGES WILL OCCUR IN MEDICAL BENEFITS IN FOLLOWING YEARS. THE MAJOR CHANGES ARE SUMMARIZED BELOW. THESE CHANGES WILL AFFECT HOSPITAL, MEDICAL AND OTHER SERVICES AND SUPPLIES PROVIDED UNDER MEDICARE. BECAUSE OF THESE CHANGES YOUR MEDICARE SUPPLEMENT COVERAGE PROVIDED BY [COMPANY NAME] WILL CHANGE ALSO. THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1991, Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	Unlimited number of hospital days after [$] deductible			
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit First 8 days - All but [$] a day 9th through 150th day - 100% of costs			

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1991, Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
	Beyond 150 days - Nothing			
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible) until an annual Medicare Catastrophic Limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is $1370 and will be adjusted on an annual basis.	80% of allowable charges (after $75 deductible) until an annual Medicare Catastrophic Limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1991 is [$] and will be adjusted on an annual basis.		
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for home IV therapy drugs and 50% of allowable charges for immunosuppresive drugs, after a $550 calendar year deductible is met.	Same as 1990 and 50% of allowable charges for all other outpatient prescription drugs after $600 calendar year deductible is met.		

*Expenses that you must pay out-of-pocket and that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and co-payment charges and the Part B blood deductible charges.

[ANY ADDITIONAL BENEFITS]
[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT]
[ADDRESS/PHONE NUMBER]

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(2) Sample Form B - Notice Regarding Replacement:
(To be used by an insurer other than a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy provides ~~X~~Ø 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in

replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

____
(Date)

____
(Applicant's Signature)

~~(3) Sample form C - Notice regarding replacement (to be used by a direct response insurer)~~

~~NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE~~

~~According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (company name) Insurance Company. Your new policy provides 10 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.~~

~~(1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.~~

(2) [illegible]

(3) [illegible]

//
//[illegible]

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.513 EFFECTIVE DATE This subchapter [illegible] became effective on January 1, 1989, and applies to medicare supplement policies issued on or after January 1, 1989.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

3. The text of the proposed new rules is as follows:

RULE I STANDARDS FOR FACILITATING COMPARISON AMONG POLICIES (1) Every medicare supplement insurance policy or certificate and every application shall identify separately the amount of premium for:

(a) The basic minimum standards coverage portion of the policy or certificate. Such coverage shall be the minimum coverage required to meet the state's minimum standards for medicare supplement insurance and shall not include coverage for the Part A deductible amount.

(b) Each additional coverage or benefit modification, and

(c) The combined total benefits under the policy or certificate. Such premiums and subpremiums shall be set forth in a conspicuous and easily understandable manner, and shall

also be provided to all prospective insureds prior to the insurer's acceptance of an application.

(2) Each entity marketing Medicare supplement insurance shall provide to each prospective applicant or enrollee for medicare supplement insurance prior to accepting an application or enrollment its ratio of complaints to persons insured under the policy form being marketed and its ratio of complaints to persons insured under all medicare supplement insurance policy forms combined. The complaint ratios shall be provided on a form prescribed by the commissioner and calculated in such a manner as is provided on the form.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE II STANDARDS FOR CLAIMS PAYMENT (1) Every entity providing medicare supplement policies must comply with all provisions of section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(2) Compliance with the requirements set forth in subsection (1) above must be certified on the medicare supplement insurance experience reporting form.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE III FILING REQUIREMENTS FOR OUT-OF-STATE GROUP POLICIES (1) Every insurer providing group medicare supplement insurance benefits to a resident of this state pursuant to ARM 6.6.503 shall file a copy of the master policy and any certificate used in this state in accordance with the filing requirements and procedures applicable to group medicare supplement policies issued in this state; provided, however, that no insurer shall be required to make a filing earlier than 30 days after insurance was provided to a resident of this state under a master policy issued for delivery outside this state.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE IV PROHIBITED COMPENSATION ARRANGEMENTS (1) No entity shall provide compensation to its agents or other producers that is greater than the renewal compensation that would have been paid on an existing policy if the existing policy is replaced by another policy with the same insurer and the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same insurer or insurance group.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE V FILING REQUIREMENTS FOR ADVERTISING (1) Every insurer, health care service plan or other entity providing

medicare supplement insurance or benefits in this state shall provide to the commissioner a copy of any medicare supplement advertisement intended for use in this state whether through written, radio or television medium for review by the commissioner to the extent it may be required under state law. Each advertisement shall comply with all applicable laws and rules of this state.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE VI STANDARDS FOR MARKETING (1) Every insurer, health care service plan or other entity marketing medicare supplement insurance coverage in this state, directly or through its producers, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently on the first page of the policy and prominently in any solicitation the following language: "NOTICE TO BUYER: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations found on page ____."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for medicare supplement insurance already has health or disability insurance and the types and amounts of any such insurance.

(e) Every insurer or entity marketing medicare supplement insurance shall establish auditable procedures for verifying compliance with subsection (1).

(2) In recommending the purchase of any accident and health, health service or long-term care policy to any consumer over age 65, or medicare supplement policy to any consumer, an agent or producer shall have reasonable grounds at the time of sale for believing that the recommendation is suitable for the consumer and shall make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by examination of the totality of the particular consumer's circumstances, including, but not limited to, the following:

(a) The consumer's income and assets;

(b) The consumer's need for insurance at the time of sale; and

(c) The values, benefits, and costs of the consumer's existing insurance program, if any, when compared to the values, benefits and costs of the recommended policy or policies.

(3) The following acts and practices are prohibited:

(a) Misrepresentation and false information. Knowingly making, issuing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, issued, disseminated, circulated, or placed before the public

any estimate, illustration, circular, statement, advertisement, sales presentation or comparison containing any assertion, representation, or statement which is untrue, deceptive, or misleading.

(b) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

(c) Excessive insurance. Issuing a medicare supplement or health or disability insurance policy to an individual or issuing a certificate of such insurance to a member of a group under a mass marketed group policy when the insurer or entity issuing the insurance knew or, based on its records and marketing procedures, should have known that such insurance was excessive. Insurance shall be considered excessive if:

(i) The coverage, when combined with coverage already in force, would result in substantial duplication of coverage.

(ii) The coverage, when combined with basic medical expense coverage already in force, would provide for medical expense related benefits of more than 100% of covered medical expenses and such medical expense benefits account for more than 20% of the policy premium.

(iii) The coverage, when combined with coverage already in force, would result in two or more policies which do not provide medical expense benefits of a general and comprehensive nature and would result in a combined premium for all such policies which a competent producer or insurer should know is at least approximately sufficient to purchase a policy which does not provide medical expense benefits of a general and comprehensive nature including substantially similar benefits for losses covered under the limited benefit policies.

(d) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(e) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent, insurance producer, or insurance company.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE VII REFUND OF PREMIUMS REQUIRED (1) Every insurer, health care service plan or other entity providing medicare supplement insurance coverage in this state which is determined to be in violation of any provision of (Rule VI) of this regulation shall, in addition to any other applicable penalties for violations of the insurance code, at the option of the

policyholder or certificate holder, either promptly pay any and all claims properly made under the terms of the policy or contract, or promptly refund all premiums including any policy fees paid by the policyholder or enrollee from the time the violation occurred or from the time of the most recent claim payment. The policyholder may elect to receive such refund at any time the policy is in force. The insurer or other entity providing the coverage may terminate the policy or contract upon payment of a refund pursuant to this section. This section applies only to policies and contracts for which a violation of (Rule VI) occurred.

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

RULE VIII REPORTING OF MULTIPLE POLICIES (1) Every insurer, health care service plan or other entity providing medicare supplement insurance coverage in this state shall report annually to the commissioner no later than June 30 on a form prescribed by the commissioner:

(a) The names and policy numbers for every individual resident of this state for which the insurer or entity has in force more than one medicare supplement insurance policy.

(b) The names, policy numbers and types of policy for every individual Medicare eligible resident of this state for which the insurer or entity has in force more than 2 health, accident, or disability insurance policies.

(c) A summary of the information contained in subsections (1) and (2).

AUTH: 33-1-313, 33-22-904, MCA IMP: 33-15-303 & 33-22-901 through 33-22-924, MCA

4. The amendments to ARM 6.6.506 through 6.6.511 and 6.6.513 are necessary in order to carry out changes in the federal Medicare Catastrophic Coverage Act of 1988 with respect to medicare supplement insurance coverage. As of January 1, 1989, the federal law has applied to insurers that provide Medicare supplement insurance. The new rules set minimum standards for such insurance and implement the National Association of Insurance Commissioners' model regulation governing minimum standards for medicare supplement insurance. The new rules amend existing rules that apply requirements and standards to insurers providing medicare supplement coverage. The existing rules will be amended because they no longer conform to federal requirements for medicare supplement insurance. The new rules include requirements for advertising and a buyer's guide, and requirements that medicare supplemental coverage must not be duplicative of medicare coverage, that insurers must adjust premiums in order to produce appropriate loss ratios, that insurers must file such adjustments with the commissioner, that insurers must give notice of modification of medicare supplement insurance and that insurers must file related advertising with the commissioner for review and approval. The purpose of these

rules is to provide for the standardization of coverage and simplification of terms and benefits of medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for medicare by reason of age.

5. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to David Barnhill, State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604, before September 15, 1989.

6. David Barnhill has been designated to preside over and conduct the hearing.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 7th day of August, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF COSMETOLOGISTS

In the matter of the proposed amendment of rules pertaining to salons and fees

) NOTICE OF PROPOSED AMENDMENT
) OF 8.14.814 FEES, INITIAL,
) RENEWAL, PENALTY AND REFUND
) FEES, 8.14.816 SALONS -
) COSMETOLOGICAL/MANICURING
) AND 8.14.1010 FEES, INITIAL,
) RENEWAL, PENALTY AND REFUNDS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 16, 1989, the Board of Cosmetologists proposes to amend the above-stated rules.

2. The proposed amendment of 8.14.814 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-435 and 8-436, Administrative Rules of Montana)

"8.14.814 FEES, INITIAL, RENEWAL, PENALTY AND REFUND FEES (1) through (1)(b) will remain the same.

(2) Temporary license fee for cosmetologists shall be ~~$10.00~~ $5.00.

(3) The cosmetology examination fee shall be $20.00, plus ~~$25.00~~ $10.00 manager/operator license fee.

(4) Examination to teach shall be $100.00, plus ~~$25.00~~ $15.00 instructor license fee.

~~(5) Itinerant processing license fee shall be $30.00, plus $5.00 manager-operator license fee.~~

(6) will remain the same but will be renumbered (5).

~~(7)~~ (6) Duplicate license fee shall be ~~$6.00~~ $5.00.

(8) and (9) will remain the same but will be renumbered (7) and (8).

~~(10)~~ (9) Manager-operator and manicurist license fee shall be ~~$25.00~~ $10.00.

~~(11)~~ (10) All salon license fees shall be ~~$25.00~~ $15.00.

~~(12)~~ (11) Basic school license fee shall be ~~$100.00~~ $50.00.

~~(13)~~ (12) Advance training school license fee shall be ~~$75.00~~ $25.00 plus basic school license fee.

~~(14)~~ (13) Teacher training unit school license fee shall be ~~$75.00~~ $25.00 plus basic school license fee.

~~(15)~~ (14) All manager/operator and school licenses will expire on December 31 of each year ~~and must be renewed on or before December 31~~. All salon licenses will expire on July 1 of each year.

(16) and (17) will remain the same but will be renumbered (15) and (16)

~~(18) Renewal requests postmarked on or before December 31 will be considered received on December 31, provided fee amount is correct and renewal request is completed properly.~~

(19) through (21) will remain the same but will be renumbered (17) through (19).

~~(22)~~ (20) Manicurists examination fee shall be $40.00 plus ~~$25.00~~ $10.00 license fee.

~~(23)~~ (21) Electrology examination fee shall be $100.00 plus ~~$25.00~~ $10.00 license fee.

Auth: Sec. 37-1-134, 37-31-203, 37-31-323, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-306, 37-37-307, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: The deletion of the fees related to itinerant practitioners is being proposed because the practice act does not recognize itinerant cosmetologists. Fee reductions are being proposed to reflect experienced program area costs. The change in license renewal dates is being proposed to spread out staff work load and program revenue over the course of the calendar year.

3. The proposed amendment of 8.14.816 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-436 and 8-437, Administrative Rules of Montana)

"8.14.816 SALONS - COSMETOLOGICAL/MANICURING

(1) through (6) will remain the same.

~~(a) Cosmetology or manicurist salons housed in a multi-purpose building are required to be completely separate from other established businesses.~~

(7) through (14) will remain the same."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-204, 37-31-301, 37-31-302, 37-31-312, MCA

REASON: This amendment is being proposed because the Board feels the provision proposed for deletion is archaic, unduly restricts development of new businesses, and no longer serves any meaningful sanitary purpose.

4. The proposed amendment of 8.14.1010 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-461, Administrative Rules of Montana)

"8.14.1010 FEES, INITIAL, RENEWAL, PENALTY AND REFUNDS

(1) will remain the same.

~~(a) Application fee for licensing or examination, shall be $25.00 in addition to any other license or examination fee.~~

(b) through (2)(j) remain the same but will be renumbered

Auth: Sec. 37-1-134, 37-32-201, MCA; IMP, Sec. 37-1-134, 37-32-304, 37-32-305, MCA

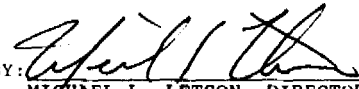
REASON: This fee is being proposed for deletion because program area costs for processing applications, administering examinations and issuing licenses are adequately covered by the fees imposed by ARM 8.14.1010(1)(d), (e) and (f).

5. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Cosmetologists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 14, 1989.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Cosmetologists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 14, 1989.

7. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision 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 580 based on the 5800 licensees in Montana.

BOARD OF COSMETOLOGISTS
MARY BROWN, PRESIDENT

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed adoption of a new rule pertaining to partial dentures	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULE I. PRIOR REFERRAL FOR PARTIAL DENTURES

TO: All Interested Persons:

1. On September 13, 1989, at 1:00, p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the adoption of the above-stated rule.

2. The proposed new rule will read as follows:

"I. PRIOR REFERRAL FOR PARTIAL DENTURES (1) The Board of Dentistry interprets 37-29-403(1)(b), MCA, to mean that all partial denture patients shall be referred to a dentist to determine what is needed prior to the denturist starting his services."

Auth: This rule is advisory only but may be a correct interpretation of the law, Sec. 37-1-131, 37-29-201, MCA; IMP, Sec. 37-29-403, MCA

REASON: A long-standing difference of opinion between dentists and denturists has made it necessary for the Board to address by interpretive rule procedures making and fitting partial dentures. Some parties believe the phrase "as needed" in subsection 37-29-403(1)(b), MCA, requires a referral to a dentist only when the denturist believes it is needed. However, other parties, including the Board, believe that the initial recitals in section 37-29-403(1), MCA, and the phrase "as needed" require a prior referral to a dentist so that the dentist may evaluate the need for additional care prior to the construction and insertion of partial dentures.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 14, 1989.

4. Patricia I. England, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY
ROBERT COTNER, DDS, PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed amendment of rules pertaining to permits and examinations	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.16.402 EXAMINATION, 8.16.605 EXAMINATION AND 8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY

TO: All Interested Persons:

1. On September 13, 1989, at 1:00, p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The proposed amendment of 8.16.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-503 and 8-504, Administrative Rules of Montana)

"8.16.402 EXAMINATION (1) through (6) will remain the same.

(7) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board, after June 1979. The examination results of the western regional examining board for a dentist in general practice shall be valid for a period of 3 5 years from the date of successful completion of the examination. The results of the western regional examining board shall be valid for a period of 10 years from the date of successful completion of the examination if the dentist is a board certified specialist.

(8) will remain the same.

(a) certificate of successful completion of the western regional examining board clinical examination~~, within the last 3 years~~;

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

Auth: Sec. 37-1-131, 37-4-205, 37-4-301, MCA; IMP, Sec. 37-4-301, MCA

REASON: This proposed amendment extends acceptance time of clinical test results from three years to five or ten years. Most other states in the western regional accept the clinical test results for a general dentist for a period of five years. Adoption of this amendment will make Montana requirements consistent with other states.

Since Montana does not license in dental specialties, a ten-year acceptance period for a specialist will more appropriately allow dentists to become trained in a specialty field prior to seeking licensure in Montana. This proposed amendment should attract more specialists to the state of Montana.

3. The proposed amendment of 8.16.605 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-511 and 8-512, Administrative Rules of Montana)

"8.16.605 EXAMINATION (1) through (5) will remain the same.

(6) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board, after June 1979. The examination results of the western regional examining board shall be valid for a period of ~~3~~ 5 years from the date of successful completion of the examination.

(7) will remain the same.

(a) certificate of successful completion of the western regional examining board clinical examination~~, within the last 3 years~~;

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

Auth: Sec. 37-1-131, 37-4-205, 37-4-402, MCA; IMP, Sec. 37-4-402, MCA

REASON: This proposed amendment extends acceptance time of clinical test results from three years to five years. Most other states in the western regional accept the clinical test results for a period of five years. Therefore, this proposed amendment will establish acceptance standards equivalent to other sister states.

4. The proposed amendment of 8.16.902 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-529, Administrative Rules of Montana)

"8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY (1) and (2) will remain the same.

(3) the ~~owner of~~ dentist operating in the facility in which general anesthesia or conscious sedation is employed during dental procedures must hold a valid permit issued by the board upon finding the facility to meet the standards in ARM 8.16.905. The fee for a facility permit is the inspection or reinspection fee provided in ARM 8.16.908.

(4) and (5) will remain the same."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, 37-4-511, MCA; IMP, Sec. 37-4-401, 37-4-511, MCA

REASON: The Board of Dentistry is empowered with regulatory authority only over licensed dentists, dental hygienists and denturists. A person not licensed in dentistry may be an owner of a dental facility; however, only a licensed dentist may possess a general anesthesia permit or conscious sedation permit. Therefore, this proposed amendment clarifies that the dentist is the responsible party in all facilities where dental anesthesia is being administered.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, 1424 - 9th Avenue, Helena, Montana, 59620-0407, no later than September 14, 1989.

6. Patricia I. England, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY
ROBERT COTNER, DDS, PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HEARING AID DISPENSERS

In the matter of the proposed amendment of rules pertaining to traineeship, fees, address change, record retention, ethics, disciplinary actions; repeal of a rule pertaining to hearings; and the adoption of a new rule pertaining to testing procedures	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS, 8.20.402 FEES, 8.20.405 NOTIFICATION OF ADDRESS CHANGE, 8.20.407 RECORD RETENTION, 8.20.408 CODE OF ETHICS, 8.20.411 DISCIPLINARY ACTIONS - FINES; REPEAL OF 8.20.410 HEARINGS; AND THE ADOPTION OF NEW RULE I. MINIMUM TESTING AND RECORDING PROCEDURES

TO: All Interested Persons:

The notice of proposed agency action published in the 1989 Montana Administrative Register on June 15, 1989, is amended as follows because the Board received 17 individual requests for a public hearing (more than 10% of licensees affected).

1. On Friday, September 22, 1989, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the amendment, repeal and adoption of the above-stated rules.

2. The rules as proposed to be amended, repealed and adopted and the reasons therefore can be found on page 694 of the 1989 Montana Administrative Register, issue number 11.

3. Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 22, 1989.

4. Geoffrey L. Brazier, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF HEARING AID DISPENSERS

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BUILDING CODES BUREAU

In the matter of the proposed amendment of a rule pertaining to the model energy code	))))	NOTICE OF PROPOSED AMENDMENT OF 8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 16, 1989, the Building Codes Bureau proposes to amend the above-stated rule.

2. The Bureau proposed amendment of this rule in the Notice of Public Hearing published at page 2611, 1988 Montana Administrative Register, issue number 24. There were no negative comments received with regard to this amendment at that hearing. Adoption of this amendment was postponed to allow review of future direction concerning energy codes in Montana.

3. The proposed amendment will read as follows and is the same as appeared in the original notice: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1996, Administrative Rules of Montana)

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Model Energy Code, ~~1983~~ 1986 Edition with the following ~~changes~~ amendments thereto:

(a) will remain the same.

(b) Section 105.2, Approvals Required, is deleted in its entirety when the code is used by the building codes bureau of the department of commerce. It remains undeleted and available for use for certified local governments using the code.

(c) Section 502.1.1, is amended to read as follows: "The stated U value of any assembly such as roof/ceiling, wall or floor may be increased and the U value for other components decreased, provided that the total heat gain or loss for the entire building envelope does not exceed the total resulting from conformance to the U values specified in Tables Nos. 5-1 and 5-2. For Group R buildings regulated by Section 502.2. Figure No. 11 may be used to determine a lower U value for the roof/ceiling assembly when the U value of the wall does not conform to the U value specified in Table No. 5-1." The following building component R values represent minimum levels of insulation to be provided in Group R buildings in Montana.

Component	R Value
ceiling	38

walls	19*
floors over unheated space	19
slab	6
door	2

Windows shall be at least double glazed.
*Lesser R value may be allowed for log building walls.

(2) will remain the same.

(3) The Model Energy Code, 1986 Edition, is a nationally recognized model code for energy efficient construction of buildings. A copy of the Model Energy Code, 1986 Edition can be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to CABO, 5203 Leesburg Pike, Falls Church, Virginia 22041."

Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-201, 50-60-203, MCA

REASON: The bureau is proposing these amendments to the rules to keep the state standard current with modern technology by adopting energy codes that are cost effective and energy efficient as required by sections 50-60-201(2), (5) and (6), MCA.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to Mr. James Brown, Bureau Chief, Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than September 14, 1989.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to Mr. James Brown, Bureau Chief, Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than September 14, 1989.

5. If the Bureau receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having 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.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Gifted and Talented, Experience Verification and Class 3 Administrative Certificate	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.55.804, GIFTED AND TALENTED, ARM 10.57.204, EXPERIENCE VERIFICATION AND ARM 10.57.403, CLASS 3 ADMINISTRATIVE CERTIFICATE

TO: All Interested Persons

1. On September 14, 1989, at 3:00 P.M., or as soon thereafter as it may be heard, a public hearing will be held in Room 303, Workmen's Compensation Building, 5 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.55.804, Gifted and Talented, ARM 10.57.204, Experience Verification and ARM 10.57.403, Class 3 Administrative Certificate.

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

10.55.804 GIFTED AND TALENTED (1) For those schools which elect to provide a Gifted and Talented Program, ~~B~~ beginning 7/1/92 the school shall make an identifiable effort to provide educational services to gifted and talented students which are commensurate with their needs and foster a positive self-image.

(2) through (2)(f) remain the same.

AUTH: Sec. 20-2-114 MCA
IMP: Sec. 20-2-121 MCA

3. The board is proposing this amendment to eliminate what appears to be a conflict between the rule and present law.

10.57.204 EXPERIENCE VERIFICATION (1) through (6) remain the same.

(7) Beginning with those certificates that expire in 1990, instructional aide experience may be considered for renewal if the following conditions are met:

(a) The individual must hold a valid Montana teaching certificate when the experience is acquired.

(b) The experience must be within the K-12 structure.

(c) It must be verified by the appropriate administrative supervisor as an instructional experience. Instructional aide experience is defined as experience utilizing the course of instruction prescribed by the trustees under an employment agreement of at least 100 days full-time equivalent (600 hours) in any one instructional year.

(d) This experience will apply toward renewal only. It cannot be used for initial certification or another class or endorsement for which teaching experience is required.

(e) Non-instructional aide experience will not apply

toward renewal.

AUTH: Sec. 20-4-102 MCA
IMP: Sec. 20-4-103 MCA

4. The board is proposing the amendment to the rule to address a growing problem in teacher certification and to set criteria for the application of instructional teacher aide experience to renewal certification.

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (8) remain the same.

(9) Supervisor endorsement: This administrative endorsement is issued in specific fields such as math, music, special education, and guidance and counseling, or in general areas such as elementary education, secondary education and curriculum development. This endorsement may be issued to applicants who submit acceptable evidence of successful completion, at an accredited institution of higher learning, of a master's degree or the appropriate professional programs for the general areas endorsement. The applicant must meet eligibility requirements for a class 1 or class 2 teaching certificate endorsed in the field of specialization.

(10) The professional training required for this endorsement must include a graduate course in school law ~~(effective July, 1983)~~ and 15 graduate quarter (10 semester) credits in supervision, curriculum and methods in the fields to be endorsed. (Repealed July 1, 1991) Effective July 1, 1991, the following professional training will be required:

(a) at least 21 graduate quarter (14 semester) credits in education or the equivalent to include:

(i) general school administration,
(ii) administration in the special area to be endorsed,
(iii) supervision of instruction/evaluation,
(iv) school finance and
(v) school law.

(b) a supervised practicum/internship (minimum of 6 quarter credits or appropriate waiver. The recommendation of the appropriate official(s) is required.

AUTH: Sec. 20-4-102 MCA
IMP: Sec. 20-4-106, Sec. 20-4-106(1)(c), Sec. 20-4-108 MCA

5. The board is proposing this amendment to address a concern that special education administrators do not have the necessary background in school administration.

6. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 14, 1989.

7. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:

Certified to the Secretary of State August 7, 1989.

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

In the matter of the proposed repeal of ARM 16.45.101 and 16.45.102 and the adoption of new rules I through LXIII relating to underground storage tanks and reimbursement for petroleum storage tank release clean ups	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF ARM 16.45.101 AND 16.45.102 AND THE ADOPTION OF NEW RULES I THROUGH LXIII RELATING TO UNDERGROUND STORAGE TANKS AND REIMBURSEMENT FOR PETROLEUM STORAGE TANK RELEASE CLEAN UPS (Underground Storage Tanks)

To: All Interested Persons

1. On September 7, 1989, at 9:30 a.m., a public hearing will be held in Room C-209 of the Cogswell Building, 1400 Broadway, Helena, Montana to consider the repeal of ARM 16.45.101 and 16.45.102 and the adoption of new rules relating to underground storage tanks.

2. The rules proposed to be repealed can be found on pages 16-4311 through 16-4313 of the Administrative Rules of Montana. The Department proposes the repeal as part of a complete revision of its rules governing underground storage tanks. New rules I through LXIII are proposed to replace the repealed rules.

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

Sub-Chapter 1
General Provisions

RULE I DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this section and must be used in conjunction with those definitions in section 75-10-403, MCA.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system or tank system and aboveground releases associated with overfills and transfer operations as the regulated substances moves to or from an UST system.

(2) "Aboveground storage tank" or "AST" means any one or a combination of tanks that is used to contain an accumulation of petroleum or petroleum products, and the volume of which is 90 percent or more above the surface of the ground.

(3) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

(4) "Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an

underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(5) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(6) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(7) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(8) "CERCLA" means the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980, as amended.

(9) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(10) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

(11) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(12) "Consumptive use" with respect to heating oil means consumed on the premises.

(13) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(14) "Department" means the department of health and environmental sciences created by section 2-15-2101, MCA.

(15) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

(16) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(17) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(18) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before the effective date of this rule. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(b)(i) Either a continuous on-site physical construction or installation program has begun; or,

(ii) The owner or operator has entered into contractual obligations--which cannot be cancelled or modified without substantial loss--for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(19) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(20) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(21) "Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

(22) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(23) "Groundwater" means water below the land surface in a zone of saturation.

(24) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

(25) "Hazardous waste" means a hazardous waste as defined by 75-10-403, MCA.

(26) "Heating oil" means petroleum that is No. 1, No. 2,

No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(27) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(28) "Implementing agency" means an office or program of a local governmental unit, designated by the department pursuant to Rule LVIII, in which the PST or UST system is located. Only one local governmental unit may act as an implementing agency for any given PST or UST system.

(29) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.

(a) The terms do not include:

(i) the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank;

(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or

(iii) the installation and maintenance of a cathodic protection system.

(30) "Installer" means an individual who is engaged in the business of installation or closure of underground storage tanks.

(31) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(32) "Local governmental unit" means a city, town, or county.

(33) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

(34) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

(35) "New tank performance standards" includes design, construction, installation, release detection and compatibility

standards.

(36) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after the effective date of this rule.

(37) "Noncommercial purposes" with respect to motor fuel means not for resale.

(38) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

(39) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

(40) "Operator" means:

(a) In the case of an UST system, any person in control of, or having responsibility for, the daily operation of the UST system; and

(b) In the case of a PST, for which reimbursement is being sought from the Montana Petroleum Tank Release Cleanup Fund, an operator as defined in Rule LXI.

(41) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(42) "Owner" means:

(a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances;

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use; and

(c) In the case of a PST for which reimbursement is being sought from the Montana Petroleum Tank Release Cleanup Fund, an owner as defined in Rule LXI.

(43) "Person" means:

(a) in the case of an UST system, an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government; and

(b) in the case of a PST for which reimbursement is being sought from the Montana Petroleum Tank Release Cleanup Fund, a person as defined in Rule LXI.

(44) "Petroleum storage tank" or "PST" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403, MCA;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground pipes associated with tanks under subsec-

tions (b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (44)(d)(i) and (ii), if the facility is intrastate.

(45) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(46) "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

(47) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(48) "Public water supply system" means a public water supply system as defined by section 75-6-107, MCA.

(49) "RCRA" means the federal Resource Conservation and Recovery Act of 1986.

(50) "Regulated substance" means a hazardous substance as defined in section 75-10-602, MCA; or petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute); does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4, MCA.

(51) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a tank system into groundwater, surface water or subsurface soils.

(52) "Release detection" means determining whether a release of a regulated substance has occurred from the tank system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

(53) "Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

(54) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(55) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, as amended, 42 U.S.C. § 300f et seq. and implementing regulations in 40 CFR Parts 141 and 142.

(56) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(57) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the

tank are pumped out periodically and hauled to a treatment facility.

(58) "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(59) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

(60) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(61) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(62) "Underground release" means any belowground release.

(63) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

(64) "UST system" or "Tank system" means an underground storage tank or petroleum storage tank, as appropriate, underground ancillary equipment, and containment system, if any.

(65) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP 75-10-405, MCA; Sec. 2, Ch. 528, L. 1989

RULE II APPLICABILITY (1) Except as otherwise provided in subsections (2), (3), (4), (5) and (6) of this rule, this chapter applies to all owners and operators of UST systems; and to all owners and operators of petroleum storage tanks who seek or intend to seek reimbursement from the Montana Petroleum Storage Tank Cleanup Fund. An UST system listed in subsection (4) or (5) of this rule must comply with Rule III.

(2) Exemptions. This chapter does not apply to the following UST systems:

(a) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Exemptions. Subchapters 2, 3, 4, 7, 8, 9, and 10 do not apply to any of the following types of PSTs and UST sys-

tems:

(a) Equipment or machinery that contains regulated substances for operation purposes such as hydraulic lift tanks and electrical equipment tanks;

(b) Any UST system that contains a de minimis concentration of regulated substances;

(c) Any emergency spill or overflow containment UST system that is expeditiously emptied after use;

(d) A storage tank that is situated in an underground area such as a basement, cellar, mine draft, shaft, or tunnel;

(e) An aboveground storage tank with a capacity less than 30,000 gallons; or

(f) Aboveground pipes associated with tanks under (d) and (e), except that pipelines regulated under the following laws are excluded:

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) State law comparable to the provisions of law referred to in subsection (3)(f)(i) and (ii), if the facility is intrastate.

(4) Exemptions. Subchapters 2, 3, 4, 5, 6, 8, 9, 10 and 11 do not apply to any of the following types of UST systems:

(a) Wastewater treatment tank systems;

(b) Any UST system containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and

(c) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A.

(5) Exemptions. Subchapters 2, 3, 4, and 8 do not apply to any of the following types of UST systems:

(a) Any UST system whose capacity is 110 gallons or less.

(b) Airport hydrant fuel distribution system; and

(c) UST systems with field-constructed tanks.

(6) Exemptions. Subchapter 8 does not apply to any of the following types of UST systems:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored; and

(c) Underground pipes connected to an aboveground storage tank.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA

RULE III TANK STANDARDS FOR EXEMPTED UST SYSTEMS No person may install an UST system listed in Rule II(4) or (5) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE IV VARIANCES (1) Any person subject to this chapter may request in writing from the department that a variance from any requirement or procedure of this chapter be granted to that person if that person requests the approval of an alternate requirement or procedure.

(2) The written request must include the following:

(a) The specific site for which a variance is sought;

(b) The specific provision of this chapter from which the variance is sought;

(c) The basis for the variance;

(d) The alternate procedure or requirement for which approval is sought and a demonstration that the alternate procedure or requirement provides an equivalent or greater degree of protection for the health, welfare, safety and environment of persons and the state, including the lands, surface waters, or groundwaters of the state, as the established requirement; and

(e) A demonstration that the alternate procedure or requirement is at least as effective as the established procedure or requirement.

(3) The department shall grant or deny the requested variance within thirty days of the receipt of the information required by subsection (2). The department shall grant the variance if the applicant proves compliance with the requirements of (2)(d) and (e) by substantial evidence.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Subchapter 2
UST Systems:
Design, Construction & Installation

RULE V PERFORMANCE STANDARDS FOR NEW UST SYSTEMS In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(1) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory adopted by reference in subsection (1)(a), (b) and (c) below:

(a) The tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards adopted by reference in subsection (9); or

(b) The tank is constructed of steel and cathodically protected in the following manner and in accordance with any

one of the standards adopted by reference in subsection (10):

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Rule VIII(3); and

(iv) Cathodic protection systems are operated and maintained in accordance with Rule VIII; or

(c) The tank is constructed of a steel-fiberglass-reinforced-plastic composite in accordance with the standards adopted by reference in subsection (11)(a) and (b).

(2) Tanks in environmentally sensitive areas. Tanks installed within one quarter mile of the water source for a public water supply system, a surface water body, or in an area determined by the administrator of the U.S. Environmental Protection Agency, pursuant to the Safe Drinking Water Act, to be a sole source aquifer must use secondary barriers and interstitial monitoring, both as specified in Rule XV(7).

(3) Piping. The piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory adopted by reference in (3)(a) and (b) below:

(a) The piping is constructed of fiberglass-reinforced plastic in accordance with all of the standards adopted by reference in subsection (12); or

(b) The piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards adopted by reference in subsection (13):

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Rule VIII(3); and

(iv) Cathodic protection systems are operated and maintained in accordance with Rule VIII.

(4) Piping installed within one quarter mile of a public water supply well, a surface water body, or in an area determined by the administrator of the U.S. Environmental Protection Agency, pursuant to the Safe Drinking Water Act, to be a sole source aquifer must use secondary barriers and interstitial monitoring, both as specified in Rule XV(7).

(5) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(a) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is de-

tached from the fill pipe (for example, a spill catchment basin); and

(b) Overfill prevention equipment that will:

(i) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(ii) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm.

(6) Installation. All tanks and piping must be properly installed in accordance with the manufacturer's instructions and in accordance with any one of the standards adopted by reference in subsection (14).

(7) Certification of Installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection (6) of this rule by providing a certification of compliance on the UST notification form in accordance with Rule LVI.

(a) The installer has been certified by the tank and piping manufacturers;

(b) The installer has been licensed by the department;

(c) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

(d) The installation has been inspected and approved by the department or the implementing agency; or

(e) All work listed in the manufacturer's installation checklists has been completed.

(8) Subsections (7)(a), (c), and (e) may be used to demonstrate compliance with subsections (6) and (7) until April 1, 1990. On and after that date only paragraphs (7)(b) and (d) may be used to demonstrate compliance with subsections (6) and (7).

(9) The department hereby adopts and incorporates by reference:

(a) Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products" which sets forth requirements for the manufacture and installation of Glass-Fiber-Reinforced Plastic Underground Storage Tanks for petroleum products and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products" which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

(c) American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" which sets forth design standards for FRP UST tanks and a copy of which may be obtained from The American Society of Mechanical Engineers, 345

East 47th Street, New York, NY 10017.

(10) The department hereby adopts and incorporates by reference:

(a) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks" which sets forth design and installation standards of cathodically protected steel underground storage tanks and a copy of which may be obtained from Steel Tank Institute, 728 Anthony Trail, Northbrook, IL 60062, (312) 498-1980;

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-5603.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

(d) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from National Association of Corrosion Engineers, P. O. Box 218340, Houston, TX 77218, (713) 492-0535.

(11) The department hereby adopts and incorporates by reference:

(a) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth requirements for corrosion protection systems for underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and

(b) the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks" which sets forth a minimum consensus standard for the fabrication of FRP clad/composite tanks and a copy of which may be obtained from The Association for Composite Tanks, 108 N. State Street, Suite 720, Chicago, IL 60602.

(12) The department hereby adopts and incorporates by reference:

(a) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe" which sets forth design standards for fiberglass reinforced plastic pipe and a copy of which may be ob-

tained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas" which sets forth manufacture and installation standards for pipe connectors and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids" which sets forth requirements of manufacture and installation of fiberglass reinforced plastic pipe and fittings and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

(d) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors" which sets forth requirements for flexible underground hose connectors for petroleum products and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9.

(13) The department hereby adopts and incorporates by reference:

(a) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" which sets forth fire protection standards for flammable and combustible liquid storage and a copy of which may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(b) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems" which sets forth requirements for sound installation of UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" which sets forth the cathodic protection standards for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375 ; and

(d) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems" which sets forth practices for the control of external corrosion or buried or submerged metallic piping systems and a copy of which may be obtained from National Association of Corrosion Engineers, P. O. Box 218340, Houston, TX 77218, (713) 492-0535.

(14) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System" which sets forth proper installation procedures for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375;

(b) Petroleum Equipment Institute Publication RP100,

"Recommended Practices for Installation of Underground Liquid Storage Systems" which sets forth proper installation procedures for UST systems and a copy of which may be obtained from Petroleum Equipment Institute, P. O. Box 2380, Tulsa, OK 74101 (918) 743-9941; and

(c) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System" which sets forth proper installation and design standards for piping of an UST system and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE VI UPGRADING OF EXISTING UST SYSTEMS (1) Alternatives allowed. No later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(a) New UST system performance standards under Rule V;

(b) The upgrading requirements in subsections (2) through (4) of this rule; or

(c) Closure requirements under subchapter 7 of this chapter, including applicable requirements for corrective action under subchapter 6.

(2) Tank upgrading requirements. Steel tanks must be upgraded to meet any one of the following requirements in accordance with all of the standards adopted by reference in subsection (5);

(a) Interior lining. A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of Rule X, and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(b) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Rule V(1)(b)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with Rule XV(4) through (8); or

(iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of Rule XV(3). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system.

(c) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of Rule X; and

(ii) The cathodic protection system meets the requirements of Rule V(1)(b)(ii), (iii), and (iv).

(3) Piping upgrading requirements. Metal piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in Rule V(13) and must meet the requirements of Rule V(3)(b)(ii), (iii), and (iv).

(4) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in Rule V(5).

(5) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks" which sets forth repair and lining of standards for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375;

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection" which sets forth repair and lining standards for UST systems and a copy of which may be obtained from National Leak Prevention Association, 7685 Sields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(c) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems and a copy of which may be obtained from National Association of Corrosion Engineers, P. O. Box 218340, Houston, TX 77218, (713) 492-0535; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" which sets forth cathodic protection standards for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Sub-Chapter 3

General Operating Requirements

RULE VII SPILL AND OVERFILL CONTROL (1) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of

product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in National Fire Protection Association Publication 385 adopted by reference in subsection (3) shall be used to comply with this subsection. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with Rule XXII.

(3) The department hereby adopts and incorporates by reference: National Fire Protection Association Publication 385. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" which sets forth transferring and dispensing flammable and combustible liquids and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375 or National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE VIII OPERATION AND MAINTENANCE OF CORROSION PROTECTION All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements.

(a) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter; and

(b) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," adopted by reference in subsection (5).

(3) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(4) For UST systems using cathodic protection, records of

the operation of the cathodic protection must be maintained in accordance with Rule XI to demonstrate compliance with the performance standards in this rule. These records must provide the following:

(a) The results of the last three inspections required in subsection (3) of this rule; and

(b) The results of testing from the last two inspections required in subsection (2) of this rule.

(5) The department hereby adopts and incorporates by reference: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems and a copy of which may be obtained from National Association of Corrosion Engineers, P. O. Box 218340, Houston, TX 77218, (713) 492-0535.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE IX COMPATIBILITY (1) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use the following codes adopted by reference in subsection (2) to comply with the requirements of this rule:

(a) American Petroleum Institute Publication 1620, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(2) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Publication 1620, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations" which sets forth requirements for storing and handling regulated substances at UST facilities and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations" which sets forth requirements for storing and handling regulated substances of UST facilities and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE X REPAIRS ALLOWED (1) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with one of the following codes of practice adopted by reference in subsection (2), developed by a nationally recognized association or an independent testing laboratory: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Codes"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(b) Repairs to fiberglass-reinforced plastic tanks and steel-fiberglass-reinforced-plastic composite must be made by the manufacturer's authorized representatives and the tank manufacturer must certify that the repaired tank meet the manufacturer's design standards.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications or must be replaced.

(d) Repaired tanks and piping must be tightness tested in accordance with Rule XV(3) and Rule XVI(2) upon completion of the repair or before the UST system is placed in service.

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with Rule VIII(2) and (3) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this rule.

(2) The department hereby adopts and incorporates by reference:

(a) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Codes" which sets forth fire protection where flammable and combustible liquids are stored or dispensed and a copy of which may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(b) American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines" which sets forth standards for repairing regulated substance pipelines and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks" which sets forth repairing steel UST tanks and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375; and

(d) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection" which sets forth repair of steel UST tanks and a copy of which may be obtained from National Leak Prevention Association, 7685 Sields Ertel Road, Cincinnati, OH 45241, (800) 543-1838.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XI REPORTING AND RECORDKEEPING Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department or the implementing agency, or both as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of RCRA, as amended or pursuant to other state laws or rules or both.

(1) Reporting. Owners and operators must submit the following information to the department:

(a) Notification for all UST systems which includes certification of installation for new UST systems;

(b) Reports of all releases including suspected releases, spills and overfills, and confirmed releases;

(c) Corrective actions planned or taken including initial abatement measures, initial site characterization, free product removal, investigation of soil and ground-water cleanup, and corrective action plan; and

(d) A notification before permanent closure or change-in-service.

(2) Recordkeeping. Owners and operators must maintain the following information:

(a) Documentation of operation of corrosion protection equipment;

(b) Documentation of UST system repairs;

(c) Recent compliance with release detection requirements; and

(d) Results of the site investigation conducted at permanent closure.

(3) Availability and Maintenance of Records. Owners and operators must keep the records required either:

(a) At the UST site and immediately available for inspection by the department or the implementing agency;

(b) At a readily available alternative site and be provided for inspection by the department or the implementing agency upon request; or

(c) In the case of permanent closure records required under Rule XXXIII, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Sub-Chapter 4

Release Detection

RULE XII GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(a) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(b) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) Meets the performance requirements in Rule XV or Rule XVI, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, must be capable of detecting a leak rate or quantity specified for that method in Rule XV(2), (3), and (4) or Rule XVI(1) and (2) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) Owners and operators of an existing UST system within one quarter mile of the public water supply well, a surface water body, or in an area determined by the administrator of the U.S. Environmental Protection Agency, pursuant to the Safe Drinking Water Act, to be a sole source aquifer, must use automatic tank gauging as specified in Rule XV(4) and one other method of release detection provided in that rule.

(3) When a release detection method operated in accordance with the performance standards in Rule XV and XVI indicates a release may have occurred, owners and operators must notify the department and the implementing agency in accordance with Subchapter 5.

(4) Owners and operators of all UST systems must comply with the release detection requirements of this subchapter by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD
New tanks (after December 22, 1988) immediately upon installation.					

P = Must begin release detection for all pressurized

piping in accordance with Rule XIII(2)(a) and XIV(2)(d).

RD = Must begin release detection for tanks and suction piping in accordance with Rule XIII(1), XIII(2)(b), and Rule XIV.

(5) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the closure procedures in subchapter 7 by the date on which release detection is required for that UST system under subsection (4) of this rule.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XIII REQUIREMENTS FOR PETROLEUM UST SYSTEMS Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(1) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in Rule XV(4) through (8) except that:

(a) UST systems that meet the performance standards in Rule V or Rule VI, and the monthly inventory control requirements in Rule XV(1) or (2), may use tank tightness testing (conducted in accordance with Rule XV(3)) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under Rule VI(2), whichever is later;

(b) UST systems that do not meet the performance standards in Rule V or Rule VI may use monthly inventory controls (conducted in accordance with Rule XV(1) or (2)) and annual tank tightness testing (conducted in accordance with Rule XV(3)) until December 22, 1998 when the tank must be upgraded under Rule VI or permanently closed under Rule XXX;

(c) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with Rule XV(2)); and

(d) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for non-commercial purposes, and a tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored, may use yearly tank gauging (conducted in accordance with Rule XV(2)).

(2) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(a) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with Rule XVI(1); and

(ii) Have an annual line tightness test conducted in accordance with Rule XVI(2) or have monthly monitoring conducted in accordance with Rule XVI(3).

(b) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with Rule XVI(2), or use a monthly monitoring method conducted in accordance with Rule XVI(3). No release detection is

required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is closed so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with subsections (2)(b)(ii)-(iv) of this rule to be readily determined.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XIV REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(1) Release detection at existing UST systems must meet the requirements for petroleum UST systems in Rule XIII. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in subsection (2) of this rule.

(2) Release detection at new hazardous substance UST systems must meet the following requirements as provided in 40 CFR 265.193, adopted by reference in this rule:

(a) Secondary containment systems must be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every 30 days.

(b) Double-walled tanks must be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(c) External liners (including vaults) must be designed, constructed, and installed to:

(i) Contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(d) Underground piping must be equipped with secondary containment that satisfies the requirements of subsection

(2)(a) of this rule (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with Rule XVI(1). The department hereby adopts and incorporates by reference 40 CFR 265.193, Containment and Detection of Releases which sets forth standards for secondary containment and detection of releases of UST systems and a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402 (202) 783-3238.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XV METHODS OF RELEASE DETECTION FOR TANKS Each method of release detection for tanks used to meet the requirements of Rule XIII must be conducted in accordance with the following:

(1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(a) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(b) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(c) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(d) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(e) Product dispensing is metered and recorded within for an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(f) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

(2) Manual tank gauging. Manual tank gauging must meet the following requirements:

(a) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(b) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(c) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(d) A leak is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less	10 gallons.....	5 gallons
551-1,000 gallons	13 gallons.....	7 gallons
1,001-2,000 gallons	26 gallons.....	13 gallons

(e) Tanks of 550 gallons or less nominal capacity may use this method as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in Rule XV(1). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter.

(f) Tanks listed in Rule XIII(1)(d) may use this method of release detection as the sole method of annual tank tightness testing.

(3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(a) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(b) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of Rule XV(1).

(5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(a) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(b) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(c) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(d) The level of background contamination in the excava-

tion zone will not interfere with the method used to detect releases from the tank;

(e) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(f) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subsections (5)(a) through (d) of this rule and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(g) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

(a) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(b) Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, course to medium sands, course silts or other permeable materials);

(c) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(d) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(e) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(f) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(g) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subsections (6)(a) through (e) of this rule and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product;

(h) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(i) Monitoring wells must be accessible for the sampling purposes of Rule XX.

(7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also

meets one of the following requirements:

(a) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

(b) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(c) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(8) Other methods. Any other type of release detection method, or combination of methods, can be used if it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XVI METHODS OF RELEASE DETECTION FOR PIPING Each method of release detection for piping used to meet the requirements of Rule XIII must be conducted in accordance with the following:

(1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(2) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour

leak rate at one and one-half times the operating pressure.

(3) Applicable tank methods. Any of the methods in Rule XV(5) through (8) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XVII RELEASE DETECTION RECORDKEEPING All UST system owners and operators must maintain records in accordance with Rule XI demonstrating compliance with all applicable requirements of this Subchapter. These records must include the following:

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the release detection system;

(2) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, except that the results of tank tightness testing conducted in accordance with Rule XV(3) must be retained until the next test is conducted; and

(3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for the operating life of the release detection system.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Sub-Chapter 5

Release Reporting, Investigation, and Confirmation

RULE XVIII GENERAL (1) Except as otherwise provided in this subchapter, owners and operators of UST systems, and owners and operators of PSTs seeking reimbursement from the Montana Petroleum Tank Release Cleanup Fund, must comply with the requirements of this subchapter.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XIX REPORTING OF SUSPECTED RELEASES Owners and operators, any installer, any person who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to Rule XV(3) or Rule XVI(2), must report to the department and the implementing agency by telephone within 24 hours of the existence of any of the following conditions, and follow the procedures in Rule XXI for any of these conditions:

(1) The discovery by an owner or operator or other person of a released regulated substance at the storage tank site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water and groundwater);

(2) Unusual operating conditions observed by an owner or

operator (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the tank system, or an unexplained presence of water in the tank) or person performing the test, unless the tank system equipment is found to be defective but not leaking, and is immediately repaired or replaced; or

(3) Monitoring results from a release detection method required under Rules XIII and XIV that indicate a release may have occurred unless:

(a) the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(b) in the case of inventory control, a second month of data does not confirm a suspected release.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XX INVESTIGATION DUE TO OFF-SITE IMPACTS (1) When required by the department based upon a suspected release, an owner and operator must follow the procedures in Rule XXI to determine if the system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or the implementing agency or brought to its attention by another person.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXI RELEASE INVESTIGATION AND CONFIRMATION STEPS Unless corrective action is initiated in accordance with Subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under Rule XIX, within 7 days of the discovery of the condition identified in Rule XIX, using either of the following steps, unless both are required by the language of this rule:

(1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in Rule XV(3) and Rule XVI(2)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(a) Owners and operators must immediately repair, replace or upgrade the PST or UST tank system, and begin corrective action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a leak exists.

(b) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(c) Owners and operators must conduct a site check as described in subsection (2) of this rule if the test results

for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

(a) Owners and operators must analyze samples of soil and water for at least BTEX (benzene, toluene, ethylbenzene, xylene) using EPA method 602/8020, and TPH (total petroleum hydrocarbons) using EPA method 418.1, or other equivalent methods approved by the department, and submit the analytical results to the department. Site-specific conditions may warrant analysis of additional constituents, especially when waste oils or solvents or hazardous substances are the known or suspected source of contamination. The department should be consulted to assist in determining sample types, sample locations, and measurement methods. Owners and operators of PST sites and owners and operators of UST sites must comply with the Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases in the collection, preservation and analysis of field samples;

(b) If the test results for the excavation zone or the PST or UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Subchapter 6;

(c) If the test results for the excavation zone or the PST or UST site are taken according to Rule XXI(2)(a) and do not indicate that a release has occurred, further investigation is not required if approved by the department; and

(d) The department may reject all or part of the test results, if it has a reasonable doubt as to the quality of data or methods used, and require resampling, reanalysis, or both. AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXII REPORTING AND CLEANUP OF SPILLS AND OVERFILLS

(1) Owners and operators must contain and immediately clean up a spill or overfill, report the spill or overfill to the department and the implementing agency by telephone within 24 hours, and begin corrective action in accordance with Subchapter 6 in the following cases:

(a) Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(b) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

(2) Owners and operators must contain and immediately clean up a spill or overfill of petroleum that is less than 25

gallons and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department and the implementing agency.
AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

Sub-Chapter 6
Release Response and Corrective Action for Tanks Containing Petroleum or Hazardous Substances

RULE XXIII GENERAL (1) Except as otherwise provided in this rule, owners and operators of UST systems, and owners or operators of PSTs seeking reimbursement from the Montana Petroleum Tank Release Cleanup Fund, must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. This subchapter does not apply to USTs excluded under Rule II(2) and (4) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

(2) If initial response and abatement, initial site characterization, remedial investigation, preparation of a corrective action plan or corrective action or any of them are conducted by:

(a) the department through a response action contractor employed by the department, this subchapter governs only to the extent it is not inconsistent with the master contract and task order agreed to between the contractor and the department.

(b) the owner or operator of the PST or UST system, whether with or without a response action contractor, this subchapter governs only to the extent it is not inconsistent with any order issued by a court, the department or the implementing agency or any corrective action plan approved by the department.
AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXIV INITIAL RESPONSE AND ABATEMENT MEASURES Upon confirmation of a release in accordance with Rule XXI or after a release from the PST or UST system is identified in any other manner, owners and operators must:

(1) perform the following initial response actions within 24 hours of a release:

(a) report the release to the department and the implementing agency by telephone or electronic mail;

(b) take immediate action to prevent any further release of the regulated substance into the environment; and

(c) identify and mitigate fire, explosion, and vapor hazards.

(2) perform the following initial abatement measures:

(a) remove as much of the regulated substance from the PST or UST system as is necessary to prevent further release into the environment;

(b) visually inspect any aboveground releases or exposed

belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(c) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone or the PST and entered into subsurface structures (such as sewers or basements) and vapor concentrations measured as gasoline in surface or subsurface structures (basements, buildings, utility conduits) must be reduced to below the following action levels:

(i) action level to guard against explosion or fire is 10 percent of the lower explosive limit of gasoline, (1,300 parts per million(ppm));

(ii) action level to protect the health of individuals exposed in affected structures 8 hours per day, 5 days per week is 30 ppm; and

(iii) action level to protect the health of individuals in affected structures with full-time occupancy is 7 ppm.

If any action level is exceeded, immediate action must be taken by the owners and operators to reduce concentrations to below the above-specified action level. Monitoring and mitigation must continue for as long as they are necessary as indicated by the remedial investigation and these action levels.

(d) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, owners and operators must comply with applicable state and local requirements. Soils heavily contaminated with leaded gasoline, waste oil, solvents, or hazardous substances must be tested for the presence of hazardous wastes. Treatment or disposal of all soils containing hazardous wastes must be approved by the department.

(e) Determine the extent and magnitude of contamination in soils, groundwater, surface water or both, which contamination has resulted from the release at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release. Samples must be collected and analyzed in accordance with Rule XXI(2)(a); and

(f) Investigate surface water and groundwater to determine if existing drinking water sources have been adversely impacted by the release. If so, immediately provide an alternate supply of safe drinking water to the impacted persons, residences or businesses.

(3) Investigate to determine the possible presence of free product, begin free product removal as soon as practicable, and:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts

in compliance with applicable local, state and federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system; and

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions in accordance with local and state fire codes.

(4) Within 30 days after release confirmation, owners and operators must submit a report to the department on a form designated by the department summarizing the initial response and abatement measures taken under subsections (1), (2), and (3) of this rule and any resulting information or data. The report must include data on the nature, estimated quantity and source of the release. If free product is removed, the following information must also be provided in or with the report:

(a) The name of the person(s) responsible for implementing the free product removal measures;

(b) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(c) The type of free product recovery system used;

(d) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(e) The type of treatment applied to, and the effluent quality expected from, any discharge to sanitary sewers, surface water, groundwater or atmosphere and a copy of any current state or federal discharge permit;

(f) The steps that have been or are being taken to obtain necessary permits for any discharge; and

(g) The disposition of the recovered free product.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXV INITIAL SITE CHARACTERIZATION (1) Unless directed to do otherwise by the department, owners and operators must assemble and provide to the department information about a site where a release has been confirmed which must include, but is not necessarily limited to the following:

(a) a legal description of the real property at which the release occurred;

(b) a history of the ownership and operation of the PST or UST from which the release occurred, since at least the time at which the release from the tank did or could have occurred at the site, including the following:

(i) the name, current address and telephone number of all current owners and operators;

(ii) the name, current address and telephone number (if known) of all past owners and operators;

(iii) the years of their ownership and/or operation;

(iv) a description of the activities conducted at the site by each owner/operator; and

(v) a general construction history of site.

(c) a map or maps and descriptions or symbols appropriate in scale and scope showing the following within a 500 foot (unless otherwise noted) radius of the site:

(i) adjacent and nearby buildings;

(ii) owner/operator each building;

(iii) paved (concrete or asphalt) areas;

(iv) property line defining the site;

(v) location of above and underground tanks and associated lines, pumps, and dispensers;

(vi) location of former tanks on property;

(vii) soil boring locations (if done);

(viii) monitoring well locations (if done);

(ix) underground utilities on and adjacent to the property (sewer, water, telephone, electric);

(x) basements and tile drain and sump systems on and adjacent to the property;

(xi) street maps or named/numbered streets;

(xii) all wells and springs within a ½ (one-half) mile radius of the site;

(xiii) water bodies (rivers, ponds, lakes, and irrigation diversion) within a ½ (one-half) mile radius of the site;

(xiv) surface elevation of the site of the release as taken from surveys, topographic maps of city; and

(xv) north arrow and map legend (scale, such as 1 inch = 100 feet).

(d) the following information concerning the PST or UST systems on the property:

(i) date of installation of all the tank or tanks on the site;

(ii) dates of installation and removal of all tanks previously located on the site;

(iii) size of all tanks on site (diameter, length, gallons);

(iv) tank construction material of all tanks on site;

(v) present contents of all tanks on site;

(vi) previous contents of all tanks on site;

(vii) type and locations of product pumps, piping, and dispensers;

(viii) method and results of product inventory reconciliation (describe and attach copies of product inventory charts);

(ix) corrosion protection on tanks and lines (yes/no and description);

(x) type and location of leak detectors;

(xi) type of fill under and around tanks and lines (clay, sand, or other material); and

(xii) type of tank anchors (if any).

(e) a description of all leaks, spills, overfills or other releases from the PST or UST systems located on the site:

(i) date of release;

(ii) date release was reported to the department and to the implementing agency;

(iii) product released;

(iv) quantity lost;

(v) quantity recovered;

(vi) location on site;
(vii) cleanup action taken; and
(viii) offsite effects.

(f) any tank or line test dates, methods used for conducting the tests, tester's name, address, and phone number, and results of the test (include data and worksheets or calculations).

(g) If the PST or UST system (tanks and lines) or any part of it has been removed from the ground, provide a description of the condition of it by answering the following questions and providing the other information called for below:

(i) was corrosion present?
(ii) was there a visible leak?
(iii) were there any loose fittings?
(iv) was the tank/line carefully examined for signs of leakage?
(v) was an independent observer (fire marshal, city official, testing laboratory employee, etc. but not your employee) present when tanks(s) were removed?
(A) name of the independent observer;
(B) organization;
(C) address; and
(D) telephone.
(vi) provide pictures of removed tanks and lines if pictures are available;
(vii) state the disposition of tank(s) (who took it, where was it disposed);
(viii) provide a description of soil conditions in the area of the tank and line excavation, with an estimate of the volumes:
(A) odors present and method of measurement;
(B) visible product in soil;
(C) sheen on water mixed with soil;
(D) sheen on groundwater in excavation;
(E) product on groundwater in excavation;
(F) soil sampling descriptions; and
(G) instrument reading (if available).
(ix) state the disposition of the soil removed during the excavation or at any other time after the release.

(h) copies of all reports previously completed, such as reports on soil, groundwater, or other reports pertinent to the site.

(2) Within 45 days of release confirmation, owners and operators must submit the information collected in compliance with subsection (1) of this rule to the department in a manner that demonstrates its applicability and technical adequacy. AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXVI REMEDIAL INVESTIGATION (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in

groundwater, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(b) Free product is found to need recovery in compliance with Rule XXIV(3);

(c) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures required under Rule XXIV); or

(d) The department or the implementing agency requests a remedial investigation, based on the known or potential effects of contaminated soil or groundwater on nearby surface water, groundwater, and human health.

(2) After reviewing information required under Rule XXIV and Rule XXV, the department may determine that no additional investigation or corrective action is necessary; however, the department may require the owners and operators to initiate and continue compliance monitoring as determined by the department.

(3) A remedial investigation must define the nature, extent, and magnitude of contamination and identify threats to public health, welfare and to the environment. A remedial investigation work plan must be submitted to and approved by the department prior to implementation by the owners and operators. The following information is required to complete the remedial investigation:

(a) Site map(s) showing all sampling locations, including the site(s) of:

(i) borings;

(ii) monitoring wells;

(iii) recovery wells;

(iv) vapor survey points; and

(v) sites where any other samples were taken.

(b) Soil and bedrock technical information and map(s), including:

(i) soil type, thickness, and classification below the site of the release;

(ii) unconsolidated material and bedrock type, thickness, and formation name below the site of the release;

(iii) boring logs and monitoring well logs (description of well, well construction methods, sediment odors, and blow count);

(iv) soil characteristics (grain size, sorting, origin, texture, permeability, classification);

(v) observed contamination (visual, odors, and vapor survey results); and

(vi) laboratory analytical results.

(c) Groundwater technical information and map(s), including:

(i) general description and characteristics of aquifers and unsaturated zone below the site of the release, including:

(A) hydraulic characteristics;

(B) depth to water table;
(C) surveyed water elevations and contours (potentiometric surface);
(D) direction of groundwater flow;
(E) rate of groundwater flow;
(F) perched conditions; and
(G) connections to other aquifers.
(ii) location, ownership, use and construction of all municipal, domestic, irrigation, industrial and monitoring wells within ½ (one-half) mile of the site;
(iii) sampling description;
(iv) results of laboratory analysis.
(d) Surface water technical information and map(s), including:
(i) location and use of all surface water within 1 (one) mile of site;
(ii) groundwater/surface water discharge points;
(iii) sampling description; and
(iv) results of laboratory analysis.
(e) Description of and map(s) showing the extent of free product and vapors discovered, whether as a result of current or past vapors/seepage, in basements and other subsurface structures and utilities. The description must include a copy of the vapor survey.
(f) Technical conclusions, which must be stated with reasonable professional certainty and under the standard of care applicable, must include at least:
(i) source of the release;
(ii) current extent of and potential for the release (determined with field or laboratory analytical detection equipment) in or through the following media:
(A) soil; lateral and vertical extent of fuel-soaked soil;
(B) free product; aerial extent;
(C) water; dissolved phase (water soluble constituents);
(D) vapor;
(g) Sampling summary charts, which clearly identify by the date on which the samples were taken, all of the following: sample ID#, sampling location, sample type, date analyzed, laboratory conducting the analysis, analytical method, and results of the analysis.
(h) Laboratory report sheets.
(4) If a remedial investigation has been conducted, owners and operators must submit a report containing the information collected under subsection (3) of this rule within 120 days of release confirmation.
AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXVII CORRECTIVE ACTION PLAN (1) At any time after reviewing the information submitted in compliance with Rule XXIV through XXVI, the department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated

soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department. Alternatively, owners and operators may, after fulfilling the requirements of Rule XXIV through XXVI, choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the department, and must modify their plan as necessary to meet this standard.

(2) In order to prepare the corrective action plan, owners and operators must properly evaluate and interpret the field and analytical results of the site or remedial investigation to define the extent and magnitude of free product, adsorbed phase product, dissolved phase plume and vapor phase product.

(3) The owners and operators must screen and select corrective action alternatives to develop a matrix evaluation of corrective action alternatives which considers cost, performance, reliability, implementation, safety and effects on public health, welfare and the environment. Information on all corrective action alternatives, with an explanation of why any alternative was selected, must be included in the corrective action plan. Corrective action may include, but is not limited to the following types of action:

(a) take no further action;

(b) excavate the contaminated soil and/or treat and/or dispose of the same;

(c) in-place soil treatment;

(d) product recovery;

(e) groundwater removal and treatment;

(f) groundwater gradient control (hydrodynamic);

(g) vapor control measures;

(h) enhanced biodegradation;

(i) drinking water supply replacement; and

(j) relocation of affected residences and/or businesses.

(4) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department must consider the following factors as appropriate:

(a) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(b) The hydrogeologic characteristics of the facility and the surrounding area;

(c) The proximity, quality, and current and future uses of nearby surface water and groundwater;

(d) The potential effects of residual contamination on nearby surface water and groundwater;

(e) An exposure assessment that identifies routes by which receptors may be exposed to contaminants and estimates contaminant concentrations to which receptors may be exposed; and

(f) Any information assembled in compliance with this subchapter.

(5) Within thirty (30) days of department approval of the corrective action plan or as directed by the department, owners and operators must implement the plan, including any modifications made by the department to the plan. Owners and operators must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department. During implementation of the corrective action plan, a status letter shall be submitted quarterly to the department and to the implementing agency. The corrective action plan must contain a plan and schedule for compliance monitoring to evaluate the effectiveness of corrective action. Compliance monitoring must continue for a period of at least two years after completion of corrective action, or another reasonable time period approved by the department.

(6) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:

(a) Notify the department and the implementing agency of their intention to begin cleanup;

(b) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(c) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

(7) As part of corrective action, owners and operators must conduct restoration activities as soon as the completion of any part of the corrective action plan will allow. Restoration activities must include:

(a) Restoring utility services disrupted as a result of investigative or corrective action activities.

(b) Properly abandon or reclaim recovery and monitoring systems, including any wells, in accordance with state law or rules, after recovery and monitoring operations are terminated. Proper abandonment and reclamation includes reclamation of recovery culverts, infiltration galleries, electrical systems, and plumbing systems, and landscaping necessary to restore any disturbed property to its pre-corrective action state.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

RULE XXVIII PUBLIC PARTICIPATION (1) For each confirmed release that requires a corrective action plan, the department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, letters to individual households, or personal contacts by field staff.

(2) The department must ensure that site release informa-

tion and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(3) Before approving a corrective action plan, the department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(4) The department must give public notice that complies with subsection (1) of this rule if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department.

AUTH: 75-10-405, MCA; Sec. 10, Ch. 528, L. 1989; IMP: 75-10-405, MCA; Sec. 5, Ch. 528, L. 1989

Sub-Chapter 7

Out-of-Service UST Systems and Closure

RULE XXIX TEMPORARY CLOSURE (1) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with Rule VIII, and any release detection in accordance with Subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(2) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

(a) Empty the UST system;

(b) Leave vent lines open and functioning; and

(c) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(3) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with Rules XXX through XXXIII. Owners and operators must complete a site assessment in accordance with Rule XXXI before any extension under Rule IV can be applied for.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXX PERMANENT CLOSURE AND CHANGES-IN-SERVICE (1) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (2) and (3) of this section, owners and operators must notify the department and the implementing agency in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action already notified to the department under subchapter 6. The required assessment of the excavation zone under Rule XXXI must be performed after notifying the department and the implementing agency but before completion of the permanent closure or a change-in-service.

(2) To permanently close a tank or connected piping or both, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks, connected piping, or both, taken out of service permanently must also be either removed from the ground or, when approved by the department, filled with an inert solid material.

(3) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the UST system by removing all liquid, accumulated sludge and all combustible and flammable vapors and conduct a site assessment in accordance with Rule XXXI.

(4) The following cleaning and closure procedures adopted by reference in subsection (5) must be used to comply with this rule:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard * * * Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

(5) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks" which sets forth closure practices for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks" which sets forth cleaning standards for UST tanks and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section which sets forth entrance standards for UST tanks and a copy of which may be obtained from API Publications Department, 1220 L Street, NW, Washington, DC 20005, (202) 682-8375; and

(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard * * * Working in Confined Space" which sets forth standards for working inside an UST tank and a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402 (202) 783-3238.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXI ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE (1) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. When measuring for the presence of a release, owners and operators must:

(a) Collect soil samples, as soon as possible after the tank, piping, or both have been removed, at the base of the tank excavation and piping trench at suspected worst-case locations, which locations may include:

(i) areas around the tank and piping that record the highest concentrations of hydrocarbon vapor recorded with vapor monitoring instruments;

(ii) areas around the tank and piping that look stained or discolored;

(iii) the lowest point of the tank;

(iv) where the tank meets the piping; and

(v) beneath the fill lines.

For tank removal, at least two soil samples, one from either end of the tank or at suspected worst-case locations, shall be taken at least one to two feet below the base of the maximum excavation depth for each tank over 600 gallons being closed. One soil sample shall be collected beneath tanks with a capacity of 600 gallons or less. If contaminated soil is removed from the excavation site, at least one composite sample of the contaminated soil shall be collected for analysis. For piping removal, soil samples shall be collected every twenty feet at the base of the piping trench, and at suspected worst-case locations. Up to five piping trench samples may be composited.

(b) If groundwater is encountered in the tank excavation, the presence of free product should be measured and a sample of the water collected for analysis.

(c) To confirm the presence or absence of contamination, soil and water samples should be analyzed for TPH using EPA method 418.1 or other equivalent method approved by the department. Site-specific conditions may warrant analysis of additional constituents, especially when waste oils, solvents or hazardous substances are the known or suspected source of contamination. The department and the implementing agency should be consulted to assist in determining sample types, sample locations, and measurement methods.

(d) Field hydrocarbon vapor analyzers can be used as screening tools to determine the presence of a release and to assist in determining the extent of contaminated soil to be removed. These analyzers, however, should not be used to confirm the absence of soil or water contamination. Only laboratory analysis of samples will be accepted by the department to confirm the absence of soil or water contamination. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases must be used as a guide for the collection, preservation and analysis of field samples.

(2) If sampling indicates contaminated soils, contaminated groundwater, or if free product as a liquid or vapor is discovered under subsection (1) of this rule, or by any other

manner, owners and operators must begin corrective action in accordance with subchapter 6. A release must be reported to the department and to the implementing agency by the owner or operator within 24 hours.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXII APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS (1) When directed by the department, the owner and operator of a permanently closed UST system must access the excavation zone and close the UST system in accordance with this Subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment or if the UST system was not closed in accordance with Rules XXX through XXXI.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXIII CLOSURE RECORDS (1) Owners and operators must maintain records in accordance with Rule XI that are capable of demonstrating compliance with closure requirements under this Subchapter. Results of the excavation zone assessment required in Rule XXXI must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

(a) By the owners and operators who took the UST system out of service;

(b) By the current owners and operators of the UST system site; or

(c) By mailing these records to the department if the records cannot be maintained at the closed facility.

(2) Owners and operators must submit a completed tank closure report to the department within 30 days of closure on a form designated by the department.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Sub-Chapter 8
Financial Responsibility

RULE XXXIV APPLICABILITY (1) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in Rule II and in this rule.

(2) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in Rule XXXV.

(3) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(4) The requirements of this subchapter do not apply to owners and operators of any UST system exempted from this subchapter by Rule II(2), (3), (4), (5), or (6).

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which

party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in Rule XXXV.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXV COMPLIANCE DATES Owners of petroleum underground storage tanks are required to comply with the requirements of this subchapter by the following dates:

(1) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; October 1, 1989.

(2) All petroleum marketing firms owning 100-999 USTs; October 26, 1989.

(3) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1990.

(4) All petroleum UST owners not described in paragraphs (1), (2), or (3) of this section, including all local government entities; October 26, 1990.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXVI DEFINITION OF TERMS For the purposes of this subchapter, the following terms have the meanings given in this section:

(1) "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected or intended by the tank owner or operator.

(2) "Bodily injury" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(4) "Director" means the director of the department.

(5) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(a) a 10-K report submitted to the SEC;

(b) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(c) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(6) "Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(a) by EPA or the state to require corrective action or to recover the costs or corrective action;

(b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) by any person to enforce the terms of a financial assurance mechanism.

(7) "Occurrence" includes an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

(8) "Owner or operator", when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurances.

(9) "Petroleum marketing facilities" includes all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(10) "Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(11) "Property damage" shall have the meaning given this term by the applicable law of this state. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(12) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in Rules XXXIX through XLVII, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(13) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(14) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(15) "Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) farm or residential tank of 1,100 gallons or less

capacity used for storing motor fuel for noncommercial purposes;

(b) tank used for storing heating oil for consumptive use on the premises where stored;

(c) septic tank;

(d) pipeline facility (including gathering lines) regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.); or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.); or

(iii) which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subsection (d)(i) or (d)(ii) of this definition.

(e) surface impoundment, pit, pond, or lagoon;

(f) storm-water or wastewater collection system;

(g) flow-through process tank;

(h) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) storage tank situated in an underground area (such as a basement, cellar, mineworking, draft, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subsections (a) through (i) of this definition.

(16) "UST system" or "tank system" means an underground storage tank as defined in this subchapter, connected underground piping, underground ancillary equipment, and containment system, if any.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXVII AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY (1) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(a) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

(b) For all other owners or operators of petroleum underground storage tanks; $500,000.

(2) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(a) For owners or operators of 1 to 100 petroleum underground storage tanks, $1 million; and

(b) For owners or operators of 101 or more petroleum underground storage tanks, $2 million.

(3) For the purposes of paragraphs (2) and (6) of this rule, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(4) Except as provided in subsection (5) of this rule, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(a) Taking corrective action;

(b) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(c) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (1) and (2) of this rule.

(5) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(6) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million or annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(7) The amounts of assurance required under this rule exclude legal defense costs.

(8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXVIII ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS (1) Subject to the limitations of subsection (2) of this rule, an owner or operator may use any one or combination of the mechanisms listed in Rules XXXIX through XLVII to demonstrate financial responsibility under this subchapter for one or more underground storage tanks.

(2) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting

the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XXXIX FINANCIAL TEST OF SELF-INSURANCE (1) An owner or operator, and/or guarantor, may satisfy the requirements of Rule XXXVII by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of subsections (2) or (3) of this rule based on year-end financial statements for the latest completed fiscal year.

(2)(a) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by Rule XXXVII, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this rule;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, 165.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(b) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10 million.

(c) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (4) of this rule.

(d) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(e) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(3)(a) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in Rule XXXVII(2)(a) and (2)(b) for the "amount of liability coverage" each time specified in that section.

(b) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(c) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(d) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (4) of this rule.

(e) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) To demonstrate that it meets the financial test under subsection (2) or (3) of this rule, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instruction in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under 40 CFR § 280.95 by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under 40 CFR § 280.95. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under 40 CFR § 280.95 by the tank identification number provided in the notification number provided in the notification submitted pursuant to 40 CFR

?80.22 or Rule LV.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (§§264.143 and 265.143)	$_____
Post-Closure Care (§§264.145 and 265.145)	$_____
Liability Coverage (§§264.147 and 265.147)	$_____
Corrective Action (§§264.101(b)	$_____
Plugging and Abandonment (§144.63)	$_____
Closure	$_____
Post-Closure Care	$_____
Liability Coverage	$_____
Corrective Action	$_____
Plugging and Abandonment	$_____
Total	$_____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer or opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (2) of Rule XXXIX are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (3) of Rule XXXIX are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	$_____	
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$_____	
3.	Sum of lines 1 and 2	$_____	
4.	Total tangible assets	$_____	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$_____	
6.	Tangible net worth [subtract line 5 from line 4]	$_____	
		Yes	No
7.	Is line 6 at least $10 million?	___	___
8.	Is line 6 at least 10 times line 3?	___	___
9.	Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	___	___

10. Have financial statements for the latest year been filed with the Energy Information Administration?.....___ ___
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?.....___ ___
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.].....___ ___

Alternative II

1. Amount of annual UST aggregate coverage being assured by a test, and/or guarantee.....$_____
2. Amount of corrective action, closure and post-closure care costs, liability coverage and plugging and abandonment costs covered by a financial test, and/or guarantee.....$_____
3. Sum of lines 1 and 2.....$_____
4. Total tangible assets.....$_____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6].....$_____
6. Tangible net worth [subtract line 5 from line 4].....$_____
7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.....$_____

		Yes	No
8.	Is line 6 at least $10 million?.....	___	___
9.	Is line 6 at least 6 times line 3?.....	___	___
10.	Are at least 90 percent of assets located in the U.S. [If "No," complete line 11.].....	___	___
11.	Is line 7 at least 6 times line 3?.....	___	___

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets.....$_____
13. Current liabilities.....$_____
14. Net working capital [subtract line 13 from line 12].....$_____

		Yes	No
15.	Is line 14 at least 6 times line 3?.....	___	___
16.	Current bond rating of most recent bond issue.....	___	___
17.	Name of rating service.....	___	___
18.	Date of maturity of bond.....	___	___
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?.....	___	___

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Rule XXXIX(4) as such rule was constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(5) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(6) The Director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of Rule XXXIX(2) or (3) and (4), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(7) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

AUTH: 75-10-405, MCA IMP: 75-10-405, MCA

RULE XL GUARANTEE (1) An owner or operator may satisfy the requirements of Rule XXXVII by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(a) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under paragraph (1)(a)(i) of this section; or (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(b) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(2) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of Rule XXXIX based on year-end financial statements for the latest completed financial reporting

year by completing the letter from the chief financial officer described in Rule XXXIX(4) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Director notifies the guarantor that he no longer meets the requirements of the financial test of Rule XXXIX(2) or (3) and (4), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in Rule LIV(3).

(3) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Montana Department of Health and Environmental Sciences and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of Rule XXXIX(2) or (3) and (4) and agrees to comply with the requirements for guarantors as specified in Rule XL(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies ARM Title 16, Chapter 45, Subchapter 8 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating and above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if grantor is corporate parent of the owner or

operator); "On behalf of our affiliate" (if guarantor is a related form of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Montana Department of Health and Environmental Sciences and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Director of the Montana Department of Health and Environmental Sciences has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Director, shall fund a standby trust fund in accordance with the provisions of Rule LI, in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with ARM Title 16, Chapter 45, Subchapter 6, the guarantor upon written instructions from the Director shall fund a standby trust in accordance with the provisions of Rule LI, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust in accordance with the provisions of Rule LI to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of Rule XXXIX(2), (3) and (4), the guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to ARM Title 16, Chapter 45.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of ARM Title 16,

Chapter 45, Subchapter 8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Rule XXXVII.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Montana Department of Health and Environmental Sciences, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Rule XL(3) as such rule was constituted on the effective date shown immediately below.
Effective date: _____
[Name of guarantor]
[Authorized signature for guarantor]
[name of person signing]
[Title of person signing]
Signature of witness or notary:

_____

(4) An owner or operator who uses a guarantee to satisfy the requirements of Rule XXXVII must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Director under Rule LI. This standby trust fund must meet the requirements specified in Rule XLVI.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLI INSURANCE AND RISK RETENTION GROUP COVERAGE

(1) An owner or operator may satisfy the requirements of

Rule XXXVII by obtaining liability insurance that conforms to the requirements of this rule from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy must be amended by an endorsement worded as specified in subsection (2)(a) of this rule, or evidenced by a certificate of insurance worded as specified in paragraph (2)(b) of this section, except that instruction in brackets must be replaced with the relevant information and the brackets deleted:

(a) Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e).

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Rules XXXIX through XLVI.

c. Whenever requested by the Director, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Rule XLI(2)(a) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(b) Certificate of Insurance
Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:
Endorsement (if applicable):
Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:
Address of Insured:

Certification

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certified that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not

relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider or corrective action or a damaged third-party, with a right or reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Rules XXXIX through XLV.

c. Whenever requested by the Director of the Montana Department of Health and Environmental Sciences, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Rule XLI(2)(b) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(3) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLII SURETY BOND (1) An owner or operator may satisfy the requirements of Rule XXXVII by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond
Date bond executed: _____

Period of coverage: _____
Principal: [legal name and business address of owner or operator]

_____
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

_____
State of incorporation (if applicable):

_____
Surety(ies): [name(s) and business address(es)]

_____

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Per occurrence $_____
Annual aggregate $_____
Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Health and Environmental Sciences, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground stor-

age tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with ARM Title 16, Chapter 45, Subchapter 6, and the Director of the Montana Department of Health and Environmental Sciences' instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ARM Title 16, Chapter 45, Subchapter 4, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Rule XXXVII.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director of the Montana Department of Health and Environmental Sciences that the Principal has failed to ["take corrective action, in accordance with ARM Title 16, Chapter 45, Subchapter 6 and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with ARM Title 16, Chapter 45 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Director under Rule LI.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the

Principal from the Surety(ies) and that the Director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Director under Rule LI.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Sureties) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Rule XLII(2) as such rule was constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
Corporate Surety(ies)
[Name and address]
[State of Incorporation: _____
[Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(4) The owner or operator who uses a surety bond to satisfy the requirements of Rule XXXVII must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instruction from the Director under Rule LI. This standby trust fund must meet the requirements specified in Rule XLVI.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLIII LETTER OF CREDIT (1) An owner or operator may satisfy the requirements of Rule XXXVII by obtaining an irrevocable standby letter of credit that conforms to the requirements of this rule. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit
[Name and address of issuing institution]
Director
Montana Department of Health and Environmental Sciences
Cogswell Building
Helena, Montana 59620
Attn: UST Program

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation by you of

(1) your sight draft, bearing reference to this letter of credit, No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended and the applicable state laws and rules."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different

tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Rule XXXVII.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instruction.

We certify that the wording of this letter of credit is identical to the wording specified in Rule XLIII(2) as such rule was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Rule XXXVII must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under Rule LI. This standby trust fund must meet the requirements specified in Rule XLVI.

(4) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLIV MONTANA PETROLEUM TANK RELEASE CLEANUP FUND An owner or operator may satisfy any part of the applicable requirements of Rule XXXVII for underground storage tanks located in Montana by use of the petroleum tank release cleanup fund created by Ch. 528, L. 1989 (HB No. 603). The burden of proof is upon the owner or operator to prove compliance with all necessary prerequisites for coverage by the petroleum tank release cleanup fund.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLV TRUST FUND (1) An owner or operator may satisfy the requirements of Rule XXXVII by establishing a trust fund that conforms to the requirements of this rule. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2) The wording of the trust agreement must be identical to the wording specified in Rule XLVI(2)(a), and must be accompanied by a formal certification in Rule XLVI(2)(b).

(3) The trust fund, when established, must be funded for a full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(4) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Director for release of the excess.

(5) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director for release of the excess.

(6) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsec-

tion (4) or (5) of this rule, the Director will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLVI STANDBY TRUST FUND (1) An owner or operator using any one of the mechanisms authorized by Rules XL, XLII, or XLIII must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established.

(2)(a) The standby trust agreement must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

[Whereas, the Montana Department of Health and Environmental Sciences," an agency of the Montana state government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) "Trustee" means the trustee who enters into this Agreement and any successor Trustee.

(c) "Department" means the Montana Department of Health and Environmental Sciences.

(d) "Director" means the Director of the Department.

Section 2. Identification of the Financial Assurance Mechanism.
This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.
The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State of Montana acting through the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director of the Department's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for ["Corrective Action" and/or Third-Party Liability Claims"].
The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.
The Fund may not be drawn upon to cover any of the following:
(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the court of employment by [insert owner or operator];
(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
(e) Bodily injury or property damage for which [insert

owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Rule XXXVII.

The Trustee shall reimburse the Grantor, or other persons as specified by the Director in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the

shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advise of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any

action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director of the Montana Department of Health and Environmental Sciences to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Director of the Montana Department of Health and Environmental Sciences if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Montana Department of Health and Environmental Sciences, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Montana Department of Health and Environmental Sciences issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of State of Montana, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Rule XLVI(2)(a) as such rule was constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]
Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]
[Name of the Witness]

[Title]
[Seal]

(3) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] or [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

(4) The Director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(5) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLVII SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR (1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of Rule XXXVII.

(2) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLVIII CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE (1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(a) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on

which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in Rule XLIX, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of such failure and submit:

(a) The name and address of the provider of financial assurance;

(b) The effective date of termination; and

(c) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with Rule LI(2).

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE XLIX REPORTING BY OWNER OR OPERATOR (1) An owner or operator must submit the appropriate forms listed in Rule L(2) documenting current evidence of financial responsibility to the Director:

(a) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under Rule XXII or XXIV;

(b) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(c) As required by Rule XXXIX(7) and Rule XLVIII(2).

(2) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under Rule LV.

(3) The Director may require an owner or operator to submit evidence of financial assurance as described in Rule L(2) or other information relevant to compliance with this subchapter at any time.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE L RECORDKEEPING (1) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank until released from the requirements of this subchapter under Rule LII. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the department.

(2) An owner or operator must maintain the following types of evidence of financial responsibility:

(a) An owner or operator using an assurance mechanism specified in Rules XXXIX through XLIV or Rule XLV must maintain a copy of the instrument worded as specified.

(b) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(c) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(d) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator covered by the Montana Petroleum Tank Release Cleanup Fund must maintain on file a copy of any evidence of coverage supplied by or required by the State under Rule XLIV.

(f) An owner or operator using an assurance mechanism specified in Rules XXXIX through XLV must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subchapter 8 of ARM Title 16, Chapter 45.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Subchapter 8 of ARM Title 16, Chapter 45 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE LI DRAWING ON FINANCIAL ASSURANCE MECHANISMS

(1) The Director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to Subchapters 5 or 6 of a release from an underground storage tank covered by the mechanism; or

(b) The conditions of subsection (2)(a) or (2)(b)(i) or (ii) of this rule are satisfied.

(2) The Director may draw on a standby trust fund when:

(a) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under ARM Title 16, Chapter 45, Subchapter 6; or

(b) The Director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and a third-party liability claim should be paid. The certification must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[___

____].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary)
[Signature(s)]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary) Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subchapter and the Director determines that the owner or operator has not satisfied the judgment.

(3) If the Director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (2) of this rule may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under subsection (2)(b)(i) of this rule, and valid court orders under subsection (2)(b)(ii) of this rule.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE LII RELEASE FROM THE REQUIREMENTS (1) An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by ARM Title 16, Chapter 45, Subchapter 7.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE LIII BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE (1) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director by certified mail of such commencement and submit the appropriate forms listed in Rule LI(2) documenting current financial responsibility.

(2) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in Rule XL.

(3) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance

will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director.

(4) Within 30 days after receipt of notification that the Montana Petroleum Release Cleanup Fund is incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE LIV REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS (1) If at any time after a standby trust is funded upon the instruction of the Director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall be the anniversary date of the financial mechanism from which the funds were drawn:

(a) Replenish the value of financial assurance to equal the full amount of coverage required, or

(b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by Rule XXXVII of this subchapter. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Sub-Chapter 9
Notification

RULE LV NOTIFICATION REQUIREMENTS (1) An owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit a notice of existence of such tank system to the department in the form prescribed by the department.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the state in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub.L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form prescribed by the depart-

ment.

(2) Owners required to submit a notice under subsection (1) of this rule must provide a notice to the department for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operations must file a separate notification form for each separate place of operation.

(3) Notice required to be submitted under subsection (1) of this rule must provide all of the information in sections I through VI of the prescribed form for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must also provide all of the information in section VII of the prescribed form for each tank for which notice must be given.

(4) Owners and operators of new UST systems must certify in the notification form that they have complied with the following requirements:

(a) installation of tanks and piping under Rule V(7);

(b) cathodic protection of steel tanks and piping under Rule V(1) and (3);

(c) financial responsibility under subchapter 8; and

(d) release detection under Rules XIII and XIV.

(5) Owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in Rule V(6).

(6) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's notification obligations under subsection (1) of this rule. The form prescribed by the department shall be used to comply with this requirement.

(7) Owners and operators of existing or new UST systems must notify the department when any of the information submitted of the form has changed, such as upgrading or repairing new or existing tanks or pipes, or change of owner, or contact person, or meeting the requirements specified in Rule VI or subchapter 8.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

Sub-Chapter 10

Tank Fees and Delegation to Local Governments

RULE LVI TANK FEE SCHEDULE (1) Owners or operators of underground storage tanks which have not been closed in accordance with Rule XXX shall annually pay a tank registration fee to the department for each tank owned or operated by the owner or operator. An owner or operator who has not paid the applicable tank registration fee within 90 days of receipt of the registration fee invoice from the department shall pay to the department, in addition to the applicable registration fee, a late registration fee equal to one half the applicable registration fee.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees

in accordance with subsection (1) before the department will issue a tank tag or certificate under subsections (3) or (4):

(a) underground storage tanks with a capacity of more than 1,100 gallons, $50.00 per tank;

(b) underground storage tanks with a capacity of 1,100 gallons or less, $20.00 per tank;

(c) underground storage tanks owned or operated by the State of Montana, the applicable tank fee under section (2)(a) or (2)(b) of this rule, with the total annual fee for all tanks not to exceed $5,000.00 per agency.

(3) Upon receipt of the appropriate registration fee, the department shall issue a tag for the tank for which the fee was paid. The tag shall show that the applicable fee has been paid by the owner or operator. The tag must be attached by the owner or operator to the tank's fill pipe, or to some other part of the tank in plain view if the fill pipe is not accessible.

(4) Upon receipt of the appropriate registration fee, the department shall also issue a facility registration certificate listing each tank for which the fee was paid. The owner or operator of the tank shall visibly post the certificate at the site of the tank for which the certificate was issued or at the owner's or operator's place of business, if posting at the tank site is physically impossible or if the certificate would not otherwise be readily visible to department or implementing agency employees. Certificates shall be shown to department and implementing agency employees upon request.

(5) After March 31 of each calendar year, no person shall deposit a regulated substance into an underground storage tank for which a fee is required to be paid unless the tag issued for that tank under subsection (3) is attached to the tank and is visible to the person depositing the regulated substance or unless the registration certificate issued for that tank under subsection (4) has been read and identified by the person depositing the regulated substance into the tank.

(6) The department shall issue a replacement tank tag or a replacement certificate or both to an owner or operator who proves by evidence considered satisfactory by the department that the tag, certificate or both has been lost or destroyed. If the damaged tag is not available for department inspection, the owner or operator shall provide an affidavit showing proof of payment of the applicable fee and setting forth the facts of loss or destruction.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE LVII GRANTS TO LOCAL GOVERNMENTAL UNITS

(1) Local governmental units may apply for grants from the department for the purposes of designation under Rule LVIII. Grant money received from the department may be used only for the purchase of equipment or basic training of personnel or both necessary for designation under Rule LVIII and specified by the department. Grant money received from the department may not be used for equipment or training not required for designation under Rule LVIII and not specified by

the department. Grants are limited to the amounts of $2,000.00 per year for equipment or personnel training, or both, or to such other amount specified in the written notice of grant award made by the department. No grant may be made or used for any equipment, training or period of time following designation under Rule LVIII, unless approved by the department. Grantees shall comply with all conditions and requirements contained in the written notice of grant award.

(2) Applications for award of a grant shall be submitted to the department on a form prescribed by the department. The form shall include and the applicant shall provide, the following information:

(a) the official name and address of the applicant;

(b) the name, address and telephone number of the person preparing the grant request;

(c) the amount of the grant being requested;

(d) the purpose for which the grant is requested;

(e) if for equipment, a list of the equipment, followed by a description of each item of equipment, including the actual or estimated cost of the item, and the manufacturer and supplier, for each piece of equipment intended to be purchased;

(f) if for training, a list of those personnel who will attend the training, followed by a description of the training, including the cost, location, and provider of the training, for each person intended to be trained; and

(g) a narrative of how the equipment or training will be used in the program for which the grant is sought.

(3) Grant applications must also contain a letter of intent, signed by the chief financial officer of the local governmental unit submitting the grant application, stating the intent of the local governmental unit to use the grant money applied for only for the purposes of equipment or training for the purposes of application for designation under Rule LVIII and to abide by any grant conditions specified by the department.

(4) The grant application, together with all lists and descriptions shall be sent to the department no later than ninety (90) days prior to the date on which the grant funds are expected or needed by the applicant. Upon receipt of the application the department shall review it for completeness and notify the applicant of any missing information or other deficiency in the application. Upon receipt of a completed application the department shall make its determination concerning the approval or disapproval of the grant application. An application may be approved for all or any part of the grant applied for. The department shall issue the grant award upon approval of the application.

(5) The department may approve or disapprove any grant application in whole or in part. In approving or disapproving an application for a grant under this rule, the department shall consider:

(a) the extent to which training or equipment is necessary for designation under Rule LVIII;

(b) the extent to which the training or equipment applied

for fulfills the designation needs of the applicant;

(c) the extent to which the same training or equipment is available from another source at a lower cost;

(d) the nature of the applicant's program for which certification will be sought;

(e) the availability of other equipment, training or financial resources to the applicant;

(f) the amount of grant funds available to the department; and

(g) the extent to which grant applications of the applicant have previously been approved or disapproved.

(6) Grant awards approved under subsection (4) may be spent only for the purposes for which applied and approved. The department may request and the grantee shall provide any proof requested by the department showing that the grantee complied with the requirements of this section.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE LVIII DESIGNATION OF LOCAL UST PROGRAMS (1) A local governmental unit may apply to the department for designation as an implementing agency for the purposes of an underground storage tank inspection and enforcement program conducted by and within that local governmental unit. Upon designation under this rule, an implementing agency may apply to the department for reimbursement, in the manner provided by Rule LIX, for inspection services and may enforce any rule in ARM Title 16, chapter 45, which it is authorized or required by any such rule to administer, in the same manner in which the department is authorized to enforce these rules and may apply to the department for reimbursement for authorized enforcement services.

(2) Applications for designation as an implementing agency shall be submitted to the department on a form prescribed by the department. The form shall include and the applicant shall provide the following information:

(a) the official name and address of the applicant;

(b) the name, address and telephone number of the person preparing the application for designation;

(c) a list of all the personnel to be used directly by the applicant in conducting the designated program, including for each such person, the person's:

(i) name, address and business telephone number; and

(ii) education, training, and experience in the professional, technical or programmatic area to which each person for whom reimbursement will be sought will be assigned in the local program.

(d) a listing of all major equipment to be used directly by the applicant in conducting the program for which designation is sought, including the names of the operators of the equipment;

(e) a description of the operation of the professional, technical or programmatic services to be conducted by the program, including the names of those persons directly involved in the service; and

(f) a listing of those services for which reimbursement will be sought from the department after program designation, including the names of the person(s) providing the service, and the approximate total cost of the program per year.

(3) Designation applications must also contain a letter of intent, signed by the chief administrative officer of the local governmental unit submitting the application, stating an intent to abide by these rules and any conditions contained in the department's letter of designation.

(4) The application for designation, together with all descriptions, lists, forms and other exhibits shall be sent to the department no later than ninety (90) days prior to the date on which designation is expected or intended by the applicant. Upon receipt of the application the department shall review it for completeness and notify the applicant of any missing information or other deficiency in the application. Upon receipt of a completed application, the department shall make its determination concerning the approval or disapproval of the application. An application may be approved for all or any part of or under different terms than the designation applied for. The department shall issue the designation letter upon approval of the application.

(5) In approving or disapproving an application for designation under this rule, the department shall consider:

(a) the extent to which the training, equipment and personnel of the program will allow the local governmental unit to conduct competent inspections and enforcement to ensure compliance with these rules by owners and operators;

(b) the ability of the applicant to maintain appropriate records of costs for which reimbursement will be sought;

(c) the extent to which the applicant is or will be able to comply with the Montana Quality Assurance Plan for Inspections of Releases from Underground Storage Tanks;

(d) the extent to which the designation and resulting reimbursement will contribute to the viability of the applicant's program;

(e) the desirability of having an implementing agency in the geographic area of the applicant; and

(f) the amount of department funds available for reimbursement for the applicant's program.

(6) Within thirty (30) days of approval or disapproval of an application for designation, the department shall notify the applicant of the department's determination. If the department approves an application for designation it shall within thirty (30) days of approval issue a letter of designation to the local governmental unit designating the unit as an implementing agency authorized to seek and receive reimbursement for inspection services, authorized to enforce the rules which it is authorized or required by any rule to administer, and authorized to seek and receive reimbursement for enforcement services. The letter shall set forth any conditions or limitations determined necessary by the department.

(7) A local governmental unit designated by the department pursuant to this rule as an implementing agency shall

immediately notify the department in writing when its ability to perform inspection services or conduct enforcement authorized by these rules and the designation letter is lost, diminished or otherwise jeopardized by the loss or unavailability of trained personnel or equipment. Upon notification, the designation of the local governmental unit may be suspended by the department until such time as the local governmental unit provides evidence satisfactory to the department that the condition resulting in suspension has been remedied. The department may request and the local governmental unit shall provide, information determined necessary by the department for department to redesignate a local unit of government following suspension under this subsection.
AUTH: 75-10-405, MCA IMP: 75-10-405, MCA

RULE LIX IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT (1) Upon receipt of the department's designation of a local governmental unit as an implementing agency, the implementing agency office or program personnel shall at the request of the department and at other times as necessary, conduct on behalf of the department inspections of the installation, maintenance, operation and closure of underground storage tanks to determine compliance with ARM Title 16, chapter 45, applicable industry standards, and limitations or conditions contained in the department's letter of designation, and may enforce any rule in ARM Title 16, chapter 45 as it is authorized or required by any such rule to administer, in the same manner as the department.

(2) Inspections and enforcement conducted by an implementing agency shall be conducted in accordance with ARM Title 16, chapter 45, applicable industry standards, and limitations or conditions contained in the department's letter of designation. An implementing agency shall during the first ten (10) days of every calendar quarter, prepare and send to the department a report summarizing, in a manner acceptable to the department, all inspections and enforcement activity undertaken in the immediately preceding calendar quarter. Implementing agency personnel shall, at the request of the department, provide the department with copies of any inspection report, record, statement, time sheet, enforcement document or other document relating to inspection or enforcement services for which reimbursement is or may be sought under these rules.

(3) Each implementing agency shall maintain accurate and complete records of the time and services for which reimbursement will be sought under this rule. By the tenth day of each calendar quarter, the implementing agency shall send to the department on a form determined by the department a statement showing the number of hours, to the nearest one-half of an hour, spent by each person in the performance of inspection or enforcement duties or both during the previous calendar quarter for which reimbursement is being claimed. The form shall designate the inspection site and date for which the inspection or enforcement activity was conducted and shall designate or include a reference to the appropriate inspection report. The

chief financial officer of each implementing agency submitting a statement shall on the face of the statement attest to the validity and accuracy of the statement. Upon receipt of the statement, the department shall determine whether sufficient information is contained in the statement and supporting material for reimbursement to be paid under this rule. The department shall notify the implementing agency of any deficiency. Upon receipt of sufficient information showing inspections or enforcement or both were carried out during the previous calendar quarter in accordance with ARM Title 16, chapter 45, applicable industry standards and any limitations or conditions contained in the department's designation letter, the department shall reimburse the local governmental unit at the rate of $25.00 per hour. Claims for reimbursement not in accordance with this rule shall be denied. Claims shall be paid only within the limitations of departmental budgets and legislative appropriations.

(4) Payments made under this rule shall be made no more frequently than quarterly by state warrant to the treasurer of the implementing agency. An implementing agency receiving reimbursement under this rule shall use the payment received only for expenses incurred in conducting inspections or enforcement or both under these rules.

AUTH: 75-10-405, MCA IMP: 75-10-405, MCA

RULE LX REVOCATION AND SURRENDER OF DESIGNATION

(1) The department shall issue a letter to an implementing agency revocating the designation issued pursuant to Rule LVIII whenever the department determines that there is substantial evidence that:

(a) the implementing agency is not conducting inspections or enforcement or both in accordance with ARM Title 16, chapter 45, applicable industry standards or limitations or conditions contained in the department's designation letter;

(b) the implementing agency has intentionally submitted a claim for reimbursement for services which were not performed;

(c) conditions exist warranting suspension of designation under Rule LVIII and those conditions show little or no hope of abating; or

(d) insufficient funding exists at the current level of expenditure for the department to maintain the designation.

(2) A revocation of designation by the department is effective upon written or oral notice to the local governmental unit. Following revocation, the local governmental unit may not submit claims for reimbursement of inspection or enforcement services to the department which services were performed following revocation. Any claims so submitted are considered denied. The department shall reimburse the local unit of government for services performed in accordance with these rules prior to revocation of designation.

(3) An implementing agency designated under Rule LVIII may surrender the designation of its inspection and enforcement program by thirty (30) days written notice to the department accompanied by the surrender of its current designation letter.

Inspections shall be conducted by the local governmental unit and reimbursement made pending receipt by the department of the notice required by this subsection. Upon receipt of the notice, no reimbursement may be made for subsequent inspections by the local governmental unit. The department shall reimburse the local government unit for services performed in accordance with these rules prior to surrender of designation.

(4) A revocation of designation by the department under this rule may be appealed in writing to the director. The appeal shall be initiated by a letter to the director from the local governmental unit setting forth the grounds for appeal and attaching any written evidence relevant to the appeal, to which the department shall file a similar response. The director shall determine the appeal on the basis of the written submittals and shall sustain the revocation if he determines that there is substantial evidence of the conditions in subsection (1)(a), (b), (c) or (d). The rules of civil procedure and evidence and Title 2, Chapter 4, MCA, do not apply to the director's determination under this rule. The revocation is effective pending appeal to the director.

AUTH: 75-10-405, MCA IMP: 75-10-405, MCA

Sub-Chapter 11

Petroleum Storage Tank Release Compensation

RULE LXI DEFINITIONS For the purposes of this subchapter, the following terms have the meanings given in this section (most of the following definitions are taken from Sec. 2, Ch. 528, L. 1989):

(1) "Board" means the petroleum tank release compensation board established in Sec. 8, Ch. 528, L. 1989.

(2) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(3) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, Chapter 15, Part 21.

(5) "Eligible costs" means expenses reimbursable under (section 3).

(6) "Fund" means the petroleum tank release cleanup fund established by the law.

(7) "Law" or "the law" means Ch. 528, L. 1989.

(8) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank and who is seeking or intends to seek reimbursement from the Montana Petroleum Tank Release Cleanup Fund.

(9) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank and who is seeking or intends to seek reimbursement from the Montana Petroleum Tank Release Cleanup Fund. The term does not include a person who holds an interest in a tank solely for financial

security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(11) "Petroleum" or "petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(12) "Petroleum storage tank" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403, MCA;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (12)(b) and (12)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (16)(d)(i) and (16)(d)(ii), if the facility is intrastate.

(13) "Release" means a release, as defined in 75-10-701, MCA, of petroleum or petroleum products from a petroleum storage tank.

AUTH: Sec. 10, Ch. 528, L. 1989; IMP: Sec. 5, Ch. 528, L. 1989

RULE LXII REVIEW OF REIMBURSEMENT CLAIMS (1) Upon receipt of a claim for reimbursement of costs for preparing or implementing a corrective action plan from the owner or operator of a petroleum storage tank, the claim and supporting documents shall be forwarded to the appropriate staff person(s) of the department's underground storage tank program for review. The claim and supporting material shall be compared to the applicable and approved written corrective action plan and applicable state and federal law, department rules and federal regulations, including rules governing the extent of required corrective action. If the claim presents insufficient information to determine whether the costs were actually, necessarily, and reasonably incurred for the preparation or implementation or both of a corrective action plan, the department shall notify the owner or operator of the petroleum storage tank of that fact and specify the deficient information. Departmental review of the reimbursement claim is suspended pending receipt of all information required of the owner or operator.

(2) The underground storage tank program staff shall

complete its review of a claim for reimbursement within thirty (30) days of receipt of a completed claim and supporting information, and notify the board in accordance with subsection 6.

(3) The department shall notify the board that a cost incurred by an owner or operator is not considered by the department to be reimbursable unless the owner or operator of the petroleum storage tank has proven to the department by substantial evidence that:

(a) the cost for which reimbursement is claimed is an eligible cost under the law and rules of the board and department;

(b) the cost was actually, necessarily and reasonably incurred for the preparation or implementation of the approved corrective action plan;

(c) the owner or operator is eligible for reimbursement under the law; and

(d) the owner or operator has complied with the law and rules implementing it.

(4) The determination of eligible costs will be made on a case-by-case basis. However, the following types of costs will generally be considered by the department to be reimbursable:

(a) site investigation, testing and monitoring necessary for the preparation of an approved corrective action plan;

(b) preparation of an approved corrective action plan;

(c) recovery and disposal of petroleum or petroleum products;

(d) cleanup and disposal of contaminated soils;

(e) installation and operation of recovery wells;

(f) installation and operation of monitoring wells;

(g) analyses of soils and water;

(h) removal of leaking tanks;

(i) replacement of contaminated water wells or water supplies; and

(j) treatment and disposal of contaminated groundwater.

(b) through (i) must be included in an approved corrective action plan.

(5) The determination of ineligible costs will be made on a case-by-case basis. However, the following are types of costs that will generally be considered by the department not to be reimbursable, in addition to those specified in the law:

(a) retrofitting, repairing or replacing an underground storage tank system;

(b) loss of revenue during shutdown of a petroleum storage tank system;

(c) rental of temporary petroleum storage tanks;

(d) the value of lost trees, shrubs, or signs on the owner's or operator's property;

(e) the value of lost petroleum or petroleum products;

(f) corrective action determined necessary by the department to respond to a release determined to have occurred from the AST or UST system of another owner or operator; and

(g) corrective action taken in violation of state or federal law or rules.

(6) If the department considers any cost to be nonreim-

bursable, it shall notify the board of that fact in writing within thirty (30) days of receipt of a completed claim. A copy of the department's notice to the board shall be sent to the owner or operator of the petroleum storage tank or other person making the claim on behalf of the owner or operator. In the notice, the department must state specifically why it considers the cost to be not reimbursable.
AUTH: Sec. 10, Ch. 528, L. 1989; IMP: Sec. 5, Ch. 528, L. 1989

RULE LXIII PROVISION OF CORRECTIVE ACTION PLANS TO LOCAL GOVERNMENT Upon receipt of a corrective action plan, the department shall forward a copy of the plan to the appropriate office(s) of any local governmental unit having jurisdiction by law for the purposes of corrective action over the release. The department shall request that the office(s) review and comment in writing upon the proposed corrective action plan. The office shall respond to the request within fourteen (14) days and the department shall, in its decision whether to approve the plan, consider any written comments or requests received from the local government office(s) within that time.
AUTH: Sec. 10, Ch. 528, L. 1989; IMP: Sec. 5, Ch. 528, L. 1989

4. The proposed rules will become effective on October 1, 1989.

5. These rules are being proposed to implement the Department's responsibilities under Ch. 384, L. 1989 (SB 321) and Ch. 528, L. 1989 (HB 603). Chapter 384 amended the Montana Hazardous Waste Act to broaden the department's authority over the prevention and correction of releases from underground storage tanks. Chapter 528 creates the Petroleum Tank Release Compensation Board (which will adopt its own rules implementing Ch. 528) and Fund and authorize the Department of Health and Environmental Sciences to adopt rules implementing its separate duties under that Chapter. The rules are also being proposed for the purposes of approval of an underground storage tank release detection, prevention, and correction program by the administrator of the U.S. Environmental Protection Agency (USEPA) pursuant to section 9001 et seq. (42 U.S.C. 6991 et seq.) of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6991c) and the implementing federal regulations (40 CFR Parts 280 and 281). When approved by the Administrator of the USEPA, the State of Montana, through the Department of Health and Environmental Sciences, will be delegated the authority in place of the USEPA to administer and enforce the federal Underground Storage Tank program created by the previously-cited federal laws and regulations. The state rules proposed to implement the existing federal program may not, under the standard provided for approval of state programs in 40 C.F.R. §281.11, be any less stringent that the corresponding federal standards.

6. Interested parties may submit their data, views or arguments orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 15, 1989.

7. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.

DONALD E. PIZZINI, Director

Certified to the Secretary of State August 7, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.12.205 and 42.12.208) relating to Requirements) When Licensing Is Subject to) Lien.))	NOTICE OF EXTENDED COMMENT PERIOD on the PROPOSED AMENDMENT of ARM 42.12.205 and 42.12.208 relating to Requirements When Licensing Is Subject to Lien.

TO: All Interested Persons:

1. On June 29, 1989, MAR No. 12, p. 828 the Department noticed a public hearing to be held on July 19, 1989, at 10:00 a.m. A public hearing was held on that date and time as noticed. At the hearing a request was received from the Montana Tavern Association through their counsel, Jackson, Murdo & Grant to extend the written comment period from July 27, 1989 to August 27, 1989.

2. The Department has considered this request and grants the extension for submitting written comments to August 27, 1989.

3. The authority to amend these rules is found in 16-1-303, MCA and implements 16-4-404, MCA.

4. Interested parties may submit their written comments, data, views, or arguments to:

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

no later than August 27, 1989.

KENNETH NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State August 7, 1989

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I, relating to Allocation of Accommodation Tax.	NOTICE OF THE PROPOSED ADOPTION OF RULE I, relating to Allocation of Accommodation Tax.

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On September 29, 1989, the Department proposes to adopt rule I relating to Allocation of Accommodation Tax.

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

RULE I FORMULA (1) General fund reimbursement of accommodation tax paid by state agencies.

(a) The reimbursement to the general fund for accommodation tax paid by state agencies will be calculated each August by multiplying the accommodation tax collected during the fiscal year by the following percentage:

$$\frac{\text{Accommodation taxes reimbursed state employees in the previous year}}{\text{Projected current fiscal year revenues from the accommodation tax.}}$$

(b) The reimbursement will be deposited in the general fund when distributions are made to the Department of Commerce, Montana Historical Society and the University System. AUTH: 15-65-102, MCA. IMP: 15-65-121, MCA, as amended by Ch. 647, L. 1989.

3. 1989 Legislature passed legislation requiring the accommodation tax paid by state agencies to be refunded to the general fund. The bill does not specify the procedure for accounting for the reimbursement. The rule will provide for consistency in determining percentage.

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 September 14, 1989.

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 September 14, 1989.

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.

KENNETH NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State August 7, 1989.

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

In the matter of the amendment of Rules 46.10.508, 45.10.510 and 46.10.512 pertaining to eligibility requirements for the AFDC program	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.508, 46.10.510 AND 46.10.512 PERTAINING TO ELIGIBILITY REQUIREMENTS FOR THE AFDC PROGRAM

TO: All Interested Persons

1. On September 7, 1989, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.10.508, 46.10.510 and 46.10.512 pertaining to eligibility requirements for the AFDC program.

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

46.10.508 SPECIALLY TREATED INCOME Subsections (1) and (1)(a) remain the same.

~~(b) Earned income tax credit advance payments are counted to determine eligibility and benefits when received.~~

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.510 EXCLUDED EARNED INCOME Subsections (1) through (2)(d) remain the same.

(e) earned income tax credit advance payments and refunds.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.512 EARNED INCOME DISREGARDS (1) When testing net monthly income and determining grant amount, the following disregards are subtracted in the order listed from earned income of each working member of the assistance unit after exclusions provided in ARM 46.10.510 ~~and inclusion of earned income credit advance payments provided in ARM 46.10.508~~, except as provided in ARM 46.10.513:

(a) ~~$75~~90 from each person's earned income.

(b) $30 plus one-third or $30 of the earned income if applicable.

(~~b~~c) ~~Expenses~~ Payments for the care of each working person's dependent child or incapacitated adult living in the same home and receiving assistance under ARM Title 46 are not to exceed ~~$160~~175 per month per child ~~for full time employment of not less than 120 hours per month and not to exceed the~~

~~daily rates for day care provided in ARM 46.10.404 or $160, whichever is less, for employment of less than 120 hours per month~~ or in such case where the child is under age two, the monthly limit cannot exceed $200.00.

Original subsection (1)(b)(i) remains the same in text but will be recategorized as (1)(c)(i).

~~(c) $30 and one-third of the earned income not already disregarded;~~

Subsections (2) and (2)(a) remain the same.

(b) Disregard an amount of earned and unearned income equal to the AFDC net monthly income standard for a family consisting of ~~the natural or adoptive parent and~~ the stepparent and his~~/her~~ children by a former marriage, if such children are claimed as dependents for federal income tax purposes and are living in the same household as the natural or adoptive parent's children but not included in the assistance unit.

Subsections (2)(c) and (2)(d) remain the same.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

3. ARM 46.10.508, 46.10.510 and 46.10.512 are being amended to comport with certain provisions of the Family Support Act of 1988 as they relate to the disregards of earnings in the Aid to Families with Dependent Children Program.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than September 14, 1989.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 7, 1989.

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

In the matter of the amendment of Rules 46.12.570, 46.12.571 and 46.12.573 pertaining to clinic services provided by public health departments	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.570, 46.12.571 AND 46.12.573 PERTAINING TO CLINIC SERVICES PROVIDED BY PUBLIC HEALTH DEPARTMENTS

TO: All Interested Persons

1. On September 7, 1989, at 10:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.570, 46.12.571 and 46.12.573 pertaining to clinic services provided by public health departments.

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

46.12.570 CLINIC SERVICES, DEFINITIONS (1) "Clinic services" means preventive diagnostic, therapeutic, rehabilitative, or palliative items or services provided under the direction of a physician ~~on an outpatient basis~~ by an outpatient facility that is not part of a hospital, but is organized and operated to provide medical care to outpatients independent of a hospital. Clinic services may be provided in mental health centers, diagnostic centers, ~~and~~ surgical centers and public health departments.

Subsections (2) through (5)(a) remain the same.

(b) "Public health department services" mean physician services and nurse specialist services as provided for in 50-2-101 through 50-2-124 MCA.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.571 CLINIC SERVICES, REQUIREMENTS (1) These requirements are in addition to those requirements contained in ARM 46.12.301 through 45.12.308.

Original subsections (1) through (7) remain the same in text but will be recategorized as (2) through (8).

(9) Public health department services consist of the following types of services:

(a) Nurse specialist services which:

(i) are provided through a public health department; and

(ii) meet all requirements specified in ARM 46.12.2010 through 46.12.2012, except for the requirement that the nurse specialist be an independent practitioner.

(b) Physician services which:
(i) are provided either:
(A) directly by the physician; or
(B) by a public health nurse under a physician's immediate supervision. This means the physician has seen the patient and ordered the services except that a minimal service does not require the physician to see the patient; and
(ii) meet the requirements specified in ARM 46.12.2003.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.573 CLINIC SERVICES, REIMBURSEMENT Subsections (1) through (5) remain the same.
(6) Public health department services will be reimbursed at the lowest of either:
(a) the medicare maximum allowable rates as determined by the medicare explanation of benefits;
(b) the fees established by the public health department; or
(c) the fees for physician services and nurse specialist services set forth in ARM 46.12.2003 and 46.12.2013.

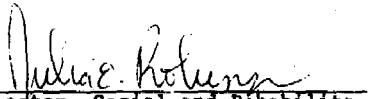
AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

3. House Bill 524 of the 1989 Montana Legislature established health services provided under a physician's order by a public health department as a mandatory medicaid service. In order to implement this law, ARM 46.12.570, 46.12.571 and 46.12.573 are being revised to list services provided by a public health department as a clinic service, describe the limitations on these services and the method of reimbursing public health departments for these services. The proposed services stay within the scope of currently covered services. This will assure that the amount, duration and scope of medicaid services is not impacted as provided for in the fiscal note attached to the law.

Copies of this notice are available for review at local human services offices and county welfare offices.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210 or telefaxed to 444-1970 no later than September 14, 1989.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 7, 1989.

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

In the matter of the amendment of Rules 46.12.505 and 46.12.2013 pertaining to reimbursement for certified registered nurse anesthetists' services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.505 AND 46.12.2013 PERTAINING TO REIMBURSEMENT FOR CERTIFIED REGISTERED NURSE ANESTHETISTS' SERVICES

TO: All Interested Persons

1. On September 8, 1989, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.505 and 46.12.2013 pertaining to reimbursement for nurse specialist services.

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

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsections (1) through (1)(a)(iii) remain the same.

(iv) for sole community providers and neonate DRG's (385-390), a stop-loss reimbursement as set forth in subsections (5) and (6)~~.~~; or

(v) certified registered nurse anesthetist costs as provided in subsection (13).

Subsections (1)(b) through (3)(a)(ii) remain the same.

(4) The department shall reimburse inpatient hospital service providers for medical education related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR §412.113(b), as amended through October 1, 1986. 42 CFR §412.113(b), as amended through October 1, 1986, is hereby adopted and incorporated herein by reference. A copy of this regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210.

Subsections (4)(a) through (12)(c)(i) remain the same.

(13) If the Secretary of Health and Human Services has granted the facility authorization for continuation of cost pass-through under section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 608(c) of the Family Support Act of 1988 (public law 100-485), the department shall reimburse inpatient hospital service providers for certified registered nurse anesthetist costs on a reasonable cost basis as provided in ARM 46.12.509(2).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT

Subsections (1) and (2) remain the same.

(3) Medicaid will reimburse:

(a) directly nurse specialists who are considered to have an independent employment status.

(ai) "Independent employment status" means that a separate federal tax identification number is obtained for the nurse specialist.

(b) hospitals which employ certified registered nurse anesthetists or contract for certified registered nurse anesthetist services, if:

(i) the Secretary of Health and Human Services has not granted the hospital authorization for continuation of cost pass-through under section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 608(c) of the Family Support Act of 1988 (public law 100-485);

(ii) the hospital obtains from the department or its fiscal agent a provider number for certified registered nurse anesthetist services; and

(iii) the hospital bills for services on form HCFA-1500.

(c) ambulatory surgical centers which employ certified registered nurse anesthetists or contract for certified registered nurse anesthetist services, if:

(i) the ambulatory surgical center obtains from the department or its fiscal agent a provider number for certified registered nurse anesthetist services; and

(ii) the ambulatory surgical center bills for services on form HCFA-1500.

Subsections (4) through (7)(h) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. This proposed change will allow hospitals and ambulatory surgical centers to bill for certified registered nurse anesthetist (CRNA) services and receive the correct level of Medicaid reimbursement for these services. The proposed change concurs with current Medicare practices and is necessary to avoid overpayment of CRNA services which would otherwise be paid at the higher level for physician services and not at the rate established for nurse specialists. The services must be billed on form HCFA 1500.

Section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by the Family Support Act of 1988 (Public Law 100-485) allows the Secretary of Health and Human Services to grant hospitals authorization to continue pass-through of CRNA service costs. Hospitals which have been granted such authorization can bill for such costs on form UB-82 under ARM 46.12.505(13), as a pass-through cost. Hospitals which have not been granted such authorization must bill for such services under proposed ARM 46.12.2013(3)(b).

4. This amendment will be applied retroactively to July 1, 1989.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, or telefaxed to 444-1970 no later than September 14, 1989.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 7, 1989.

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

In the matter of the repeal of ARM 46.13.405 and amendment of ARM 46.13.204, 46.13.206, 46.13.301, 46.13.302, 46.13.303, 46.13.401 and 46.13.502 pertaining to the Low Income Energy Assistance Program (LIEAP)	)))))))	NOTICE OF PUBLIC HEARING ON THE REPEAL OF ARM 46.13.405 AND AMENDMENT OF ARM 46.13.204, 46.13.206, 46.13.301, 46.13.302, 46.13.303, 46.13.401 AND 46.13.502 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM (LIEAP)

TO: All Interested Persons

1. On September 13, 1989, at 8:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the repeal of ARM 46.13.405 and amendment of ARM 46.13.204, 46.13.206, 46.13.301, 46.13.302, 46.13.303, 46.13.401 and 46.13.502 pertaining to the Low Income Energy Assistance Program (LIEAP).

2. ARM 46.13.405 as proposed to be repealed is found on pages 46-5887, 46-5888 and 46-5897 of the Administrative Rules of Montana.

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

46.13.204 INVESTIGATION OF ELIGIBILITY Subsection (1) remains the same.

(a) Each application for assistance will be promptly and thoroughly investigated by a staff member of the local contractor. If a case is picked for quality control review, the client must cooperate or be subject to reduced, suspended or terminated benefits.

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

46.13.206 NOTIFICATION OF ELIGIBILITY (1) An individual who makes application for low income energy assistance and/or weatherization will receive written notice of eligibility within 45 days of the date of completed application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the local contractor immediately following final decision on the application.

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

46.13.301 DEFINITIONS Subsection (1) through (1)(a) remain the same.

~~(2)--"PIP household" means a household in Ravalli county which utilizes the Montana Power Company for primary home energy needs and which does not have these costs included in its rent.~~

~~(3)--"Co-payment" means the percentage of the PIP household's income that the household is required to pay each month toward the household's heating bill for the purpose of obtaining LIEAP benefits.~~

~~(4)--"Arrearage" means the outstanding balance of the PIP household's energy bill at the start (October 1) of each program year.~~

~~(5)--"Default" means the non-payment of a PIP co-payment.~~

~~(6)--"Cure" means a PIP household's retroactive co-payment for the preceding month.~~

~~(7)--"Weather normalized" means a consideration of the difference of yearly temperature experienced within a given area.~~

(82) Annual gross income means all non-excluded income including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, worker's compensation, unemployment compensation, and capital gains received by the members of the household in the twelve months immediately preceding the month of application.

(93) Annual gross receipts apply to households with income from self-employment and mean all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the twelve months immediately preceding the month of application.

(~~10~~4) Medical and dental deductions mean all medical and dental payments for allowable costs, as described in ARM 46.13.304(4), made by members of the household in the twelve months immediately preceding the month of application.

(a) Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party.

(~~11~~5) Self-employment deductions means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.

(~~12~~6) For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.

(7) "Elderly" means a person who is 60 years of age or older.

(8) "Disability" is as defined in 20 CFR 416.905 which is the basic definition of disability for social security law purposes. The department hereby adopts and incorporates by reference 20 CFR 416.905, as amended through October 1, 1989.

Copies of 20 CFR 416.905, as amended through October 1, 1989, are available from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, Helena, MT 59604-4210.

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

46.13.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS Subsections (1) through (4)(a) remain the same.

(5) ~~Households in Ravalli county, selected for the pilot percentage of income project, will be eligible according to the rules specific to that project.~~ Households deemed to be within the service population of an Indian tribe which received direct funding from the department to run its own program shall not be eligible for further LIEAP benefits from the state within the current heating season.

(6) Current and future benefits may be denied any applicant or recipient who, having been prioritized for weatherization services as a high excess energy user, according to the criteria set forth in ARM 46.14.301 and 401, refuses, for reasons within his control, energy conservation services for the weatherization assistance program (WAP).

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

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS Subsection (1) through (1)(a) remain the same.

(2) Income standards for all households:

Family Size	Poverty Guideline		50 Percent		125 Percent		150 Percent	
1	~~$ 5,770~~	5,980	~~$ 2,885~~	2,990	~~$ 7,213~~	7,475	~~$ 8,655~~	8,970
2	~~7,730~~	8,020	~~3,865~~	4,010	~~9,663~~	10,025	~~11,595~~	12,030
3	~~9,690~~	10,060	~~4,845~~	5,030	~~12,113~~	12,575	~~14,535~~	15,090
4	~~11,650~~	12,100	~~5,825~~	6,050	~~14,563~~	15,125	~~17,475~~	18,150
5	~~13,610~~	14,140	~~6,805~~	7,070	~~17,013~~	17,675	~~20,415~~	21,210
6	~~15,570~~	16,180	~~7,785~~	8,090	~~19,463~~	20,225	~~23,355~~	24,270
7	~~17,530~~	18,220	~~8,765~~	9,110	~~21,913~~	22,775	~~26,295~~	27,330
8	~~19,490~~	20,260	~~9,745~~	10,130	~~24,363~~	25,325	~~29,235~~	30,390
Additional member add	~~1,960~~	2,040	~~980~~	1,020	~~2,450~~	2,550	~~2,940~~	3,060

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

46.13.401 BENEFIT AWARD MATRICES Subsection (1) through (1)(i) remain the same.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if at or below 100% of OMB poverty, 75% if between 101% - 125% of OMB poverty level) type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. Applicants may claim no more bedrooms than household members except that single elderly and handicapped households ~~who can demonstrate unmet need~~ are entitled to ~~a maximum of~~ two bedrooms benefit designation if the home contains more than one bedroom. The maximum benefit also varies by local contractor districts to account for climatic differences across the state.

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Rosebud, Treasure, Custer, Fallon, Powder River and Carter Counties

Single Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	~~$240~~ 232	$543	~~$344~~ 354	~~$261~~ 283	$165	$152	~~$460~~ 429
two	~~$293~~ 284	$664	~~$419~~ 431	~~$319~~ 346	$206	$190	~~$562~~ 524
three	~~$332~~ 321	$754	~~$477~~ 490	~~$362~~ 393	$247	$228	~~$639~~ 595
four	~~$373~~ 361	$845	~~$534~~ 550	~~$406~~ 440	$288	$266	~~$716~~ 667

Multi Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	~~$209~~ 202	$473	~~$299~~ 308	~~$227~~ 246	$143	$132	~~$400~~ 373
two	~~$255~~ 247	$578	~~$365~~ 375	~~$277~~ 301	$179	$165	~~$489~~ 456
three	~~$288~~ 279	$656	~~$415~~ 427	~~$315~~ 342	$215	$199	~~$556~~ 518
four	~~$325~~ 314	$735	~~$465~~ 478	~~$353~~ 383	$251	$232	~~$623~~ 580

Mobile Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
one	~~$223~~ 216	$505	~~$320~~ 329	~~$243~~ 263	$153	$142	~~$428~~ 399
two	~~$273~~ 264	$617	~~$390~~ 401	~~$297~~ 322	$192	$177	~~$523~~ 487
three	~~$308~~ 299	$702	~~$443~~ 456	~~$337~~ 366	$230	$212	~~$594~~ 553
four	~~$347~~ 336	$786	~~$497~~ 511	~~$377~~ 410	$268	$248	~~$666~~ 620

MAXIMUM BENEFIT AWARD MATRIX FOR
I.C DISTRICT IV

Liberty, Hill and Blaine Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$177~~ 192	~~$424~~ 470	~~$321~~ 381	~~$426~~ 361	~~$203~~ 176	$162
two	~~$216~~ 235	~~$518~~ 574	~~$391~~ 464	~~$520~~ 441	~~$253~~ 219	$203
three	~~$244~~ 266	~~$589~~ 652	~~$445~~ 528	~~$591~~ 501	~~$304~~ 263	$243
four	~~$275~~ 299	~~$659~~ 730	~~$499~~ 592	~~$662~~ 561	~~$354~~ 307	$284

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$154~~ 167	~~$369~~ 408	~~$279~~ 331	~~$370~~ 314	~~$176~~ 153	$141
two	~~$188~~ 204	~~$451~~ 499	~~$340~~ 404	~~$452~~ 383	~~$220~~ 191	$176
three	~~$213~~ 231	~~$512~~ 567	~~$387~~ 459	~~$514~~ 436	~~$264~~ 229	$211
four	~~$239~~ 260	~~$574~~ 635	~~$434~~ 515	~~$576~~ 488	~~$308~~ 267	$247

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$164~~ 179	~~$394~~ 437	~~$298~~ 354	~~$396~~ 335	~~$188~~ 163	$151
two	~~$201~~ 218	~~$482~~ 534	~~$364~~ 432	~~$484~~ 410	~~$235~~ 204	$188
three	~~$227~~ 247	~~$547~~ 606	~~$414~~ 491	~~$550~~ 466	~~$282~~ 245	$226
four	~~$256~~ 278	~~$613~~ 679	~~$464~~ 550	~~$616~~ 522	~~$330~~ 286	$264

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

Glacier, Toole, Pondera, Teton,
Chouteau and Cascade Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	~~$151~~ 164	~~$362~~ 396	~~$287~~ 325	~~$353~~ 343	$150	$138	~~$191~~ 187
two	~~$184~~ 200	~~$442~~ 484	~~$350~~ 396	~~$431~~ 419	$187	$173	~~$233~~ 229
three	~~$209~~ 227	~~$502~~ 550	~~$398~~ 451	~~$490~~ 476	$225	$207	~~$263~~ 259
four	~~$235~~ 255	~~$563~~ 617	~~$446~~ 505	~~$549~~ 533	$262	$242	~~$296~~ 291

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	~~$131~~ 143	~~$315~~ 345	~~$250~~ 283	~~$307~~ 299	$130	$120	~~$166~~ 163
two	~~$160~~ 174	~~$385~~ 421	~~$304~~ 345	~~$375~~ 365	$163	$150	~~$203~~ 199
three	~~$181~~ 197	~~$437~~ 479	~~$346~~ 392	~~$427~~ 414	$195	$180	~~$229~~ 225
four	~~$204~~ 222	~~$489~~ 536	~~$388~~ 439	~~$478~~ 464	$228	$210	~~$258~~ 253

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
one	~~$140~~ 152	~~$336~~ 369	~~$267~~ 302	~~$328~~ 319	$139	$129	~~$177~~ 174
two	~~$171~~ 186	~~$411~~ 451	~~$325~~ 369	~~$401~~ 390	$174	$161	~~$217~~ 213
three	~~$194~~ 211	~~$467~~ 512	~~$370~~ 419	~~$456~~ 443	$209	$193	~~$245~~ 241
four	~~$218~~ 237	~~$523~~ 573	~~$415~~ 470	~~$511~~ 496	$244	$225	~~$276~~ 271

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheatland,
Golden Valley and Musselshell Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$172~~ 187	~~$399~~ 448	~~$327~~ 383	~~$311~~ 374	$171	$158
two	~~$210~~ 229	~~$487~~ 548	~~$399~~ 467	~~$380~~ 457	$214	$197
three	~~$238~~ 259	~~$554~~ 622	~~$453~~ 531	~~$431~~ 519	$256	$237
four	~~$268~~ 291	~~$620~~ 697	~~$508~~ 595	~~$483~~ 582	$299	$276

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$150~~ 163	~~$347~~ 390	~~$284~~ 333	~~$270~~ 325	$149	$137
two	~~$183~~ 199	~~$424~~ 476	~~$347~~ 406	~~$330~~ 398	$186	$171
three	~~$207~~ 225	~~$482~~ 541	~~$394~~ 462	~~$375~~ 452	$223	$206
four	~~$233~~ 253	~~$539~~ 606	~~$442~~ 518	~~$420~~ 506	$260	$240

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$160~~ 174	~~$371~~ 417	~~$304~~ 356	~~$289~~ 348	$159	$147
two	~~$196~~ 213	~~$453~~ 509	~~$371~~ 435	~~$353~~ 425	$199	$183
three	~~$221~~ 240	~~$515~~ 579	~~$422~~ 494	~~$401~~ 483	$238	$220
four	~~$249~~ 271	~~$577~~ 648	~~$472~~ 554	~~$449~~ 541	$278	$257

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

Single Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
one	~~$143~~ 155	~~$331~~ 349	~~$280~~ 287	~~$245~~ 287	$142	$131	~~$204~~ 195
two	~~$175~~ 190	~~$405~~ 426	~~$341~~ 350	~~$300~~ 351	$177	$164	~~$249~~ 238
three	~~$198~~ 215	~~$460~~ 485	~~$388~~ 398	~~$340~~ 398	$213	$197	~~$281~~ 269
four	~~$222~~ 242	~~$516~~ 543	~~$435~~ 446	~~$381~~ 446	$248	$229	~~$317~~ 303

Multi Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
one	~~$124~~ 135	~~$288~~ 304	~~$243~~ 250	~~$213~~ 250	$124	$114	~~$177~~ 170
two	~~$152~~ 165	~~$352~~ 371	~~$297~~ 305	~~$261~~ 305	$154	$143	~~$216~~ 207
three	~~$172~~ 187	~~$400~~ 422	~~$337~~ 347	~~$296~~ 347	$185	$171	~~$245~~ 234
four	~~$194~~ 210	~~$449~~ 472	~~$378~~ 388	~~$332~~ 388	$216	$200	~~$276~~ 264

Mobile Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
one	~~$133~~ 145	~~$308~~ 324	~~$260~~ 267	~~$228~~ 267	$132	$122	~~$189~~ 181
two	~~$163~~ 177	~~$377~~ 397	~~$317~~ 326	~~$279~~ 326	$165	$152	~~$231~~ 221
three	~~$184~~ 200	~~$428~~ 451	~~$361~~ 370	~~$317~~ 370	$198	$183	~~$262~~ 251
four	~~$207~~ 225	~~$479~~ 505	~~$404~~ 415	~~$355~~ 415	$231	$213	~~$295~~ 282

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$166~~ 180	~~$397~~ 440	~~$313~~ 333	~~$415~~ 443	$164	$152
two	~~$202~~ 220	~~$485~~ 537	~~$381~~ 405	~~$507~~ 541	$205	$190
three	~~$229~~ 249	~~$551~~ 610	~~$433~~ 461	~~$576~~ 615	$246	$228
four	~~$257~~ 280	~~$617~~ 684	~~$486~~ 517	~~$646~~ 689	$288	$265

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$144~~ 157	~~$345~~ 382	~~$272~~ 289	~~$361~~ 385	$143	$132
two	~~$176~~ 191	~~$422~~ 467	~~$332~~ 353	~~$441~~ 471	$179	$165
three	~~$199~~ 216	~~$480~~ 531	~~$377~~ 401	~~$501~~ 535	$214	$198
four	~~$224~~ 243	~~$537~~ 595	~~$422~~ 450	~~$562~~ 599	$250	$231

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$154~~ 167	~~$369~~ 409	~~$291~~ 309	~~$386~~ 412	$153	$141
two	~~$188~~ 204	~~$451~~ 500	~~$354~~ 377	~~$472~~ 503	$191	$176
three	~~$213~~ 231	~~$513~~ 568	~~$403~~ 429	~~$536~~ 572	$229	$212
four	~~$239~~ 260	~~$574~~ 636	~~$452~~ 481	~~$600~~ 640	$267	$247

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$166~~ 180	~~$398~~ 441	~~$344~~ 374	~~$365~~ 389	$165	$152
two	~~$203~~ 221	~~$487~~ 539	~~$419~~ 456	~~$445~~ 475	$206	$190
three	~~$230~~ 250	~~$553~~ 612	~~$476~~ 518	~~$506~~ 540	$247	$228
four	~~$258~~ 281	~~$619~~ 686	~~$534~~ 581	~~$567~~ 604	$288	$266

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$144~~ 157	~~$346~~ 384	~~$299~~ 325	~~$317~~ 338	$143	$132
two	~~$177~~ 192	~~$423~~ 469	~~$365~~ 397	~~$388~~ 413	$179	$165
three	~~$200~~ 217	~~$481~~ 533	~~$415~~ 451	~~$440~~ 470	$215	$199
four	~~$225~~ 244	~~$539~~ 597	~~$465~~ 505	~~$493~~ 526	$251	$232

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$154~~ 168	~~$370~~ 410	~~$320~~ 348	~~$339~~ 362	$153	$142
two	~~$189~~ 205	~~$453~~ 501	~~$390~~ 424	~~$414~~ 442	$192	$177
three	~~$213~~ 232	~~$514~~ 570	~~$443~~ 482	~~$471~~ 502	$230	$212
four	~~$240~~ 261	~~$576~~ 638	~~$497~~ 540	~~$527~~ 562	$268	$248

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Single Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
one	~~$175~~ 191	~~$421~~ 466	~~$340~~ 395	~~$432~~ 481	$174	$161	~~$368~~ 354
two	~~$214~~ 233	~~$514~~ 570	~~$414~~ 482	~~$527~~ 588	$218	$201	~~$450~~ 433
three	~~$243~~ 264	~~$584~~ 647	~~$471~~ 548	~~$599~~ 668	$261	$241	~~$512~~ 492
four	~~$273~~ 297	~~$654~~ 725	~~$528~~ 614	~~$671~~ 748	$305	$281	~~$573~~ 551

Multi Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
one	~~$153~~ 166	~~$366~~ 405	~~$296~~ 344	~~$376~~ 419	$152	$140	~~$321~~ 308
two	~~$187~~ 203	~~$447~~ 495	~~$360~~ 419	~~$459~~ 511	$189	$175	~~$392~~ 376
three	~~$211~~ 229	~~$508~~ 563	~~$410~~ 477	~~$521~~ 581	$227	$210	~~$445~~ 428
four	~~$237~~ 258	~~$569~~ 631	~~$459~~ 534	~~$584~~ 651	$265	$245	~~$499~~ 479

Mobile Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
one	~~$163~~ 177	~~$391~~ 433	~~$316~~ 367	~~$402~~ 448	$162	$150	~~$343~~ 329
two	~~$199~~ 217	~~$478~~ 530	~~$385~~ 448	~~$491~~ 547	$203	$187	~~$419~~ 402
three	~~$226~~ 245	~~$543~~ 602	~~$438~~ 509	~~$557~~ 621	$243	$224	~~$476~~ 457
four	~~$254~~ 276	~~$609~~ 674	~~$491~~ 571	~~$624~~ 696	$284	$262	~~$533~~ 512

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$167~~ 182	~~$401~~ 410	~~$316~~ 357	~~$388~~ 369	$166	$153
two	~~$205~~ 222	~~$490~~ 501	~~$385~~ 435	~~$474~~ 451	$208	$192
three	~~$231~~ 251	~~$557~~ 569	~~$438~~ 494	~~$538~~ 513	$249	$230
four	~~$260~~ 283	~~$624~~ 638	~~$490~~ 554	~~$603~~ 574	$291	$268

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$146~~ 158	~~$349~~ 357	~~$275~~ 310	~~$337~~ 321	$145	$133
two	~~$178~~ 193	~~$427~~ 436	~~$335~~ 378	~~$412~~ 393	$181	$167
three	~~$201~~ 219	~~$485~~ 495	~~$381~~ 430	~~$468~~ 446	$217	$200
four	~~$226~~ 246	~~$543~~ 555	~~$427~~ 482	~~$524~~ 500	$253	$233

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$156~~ 169	~~$373~~ 381	~~$294~~ 332	~~$361~~ 344	$155	$143
two	~~$190~~ 207	~~$456~~ 466	~~$358~~ 404	~~$440~~ 420	$193	$178
three	~~$215~~ 234	~~$518~~ 529	~~$407~~ 460	~~$501~~ 477	$232	$214
four	~~$242~~ 263	~~$580~~ 593	~~$456~~ 515	~~$561~~ 534	$270	$250

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,
Beaverhead and Madison Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$196~~ 213	~~$464~~ 520	~~$353~~ 417	~~$504~~ 465	$194	$179
two	~~$239~~ 260	~~$567~~ 635	~~$430~~ 508	~~$615~~ 567	$243	$224
three	~~$270~~ 294	~~$644~~ 722	~~$489~~ 578	~~$699~~ 645	$291	$269
four	~~$304~~ 331	~~$721~~ 808	~~$548~~ 647	~~$783~~ 722	$340	$314

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$170~~ 185	~~$404~~ 452	~~$307~~ 363	~~$438~~ 404	$169	$156
two	~~$208~~ 226	~~$493~~ 552	~~$374~~ 442	~~$535~~ 494	$211	$195
three	~~$235~~ 256	~~$560~~ 628	~~$425~~ 503	~~$609~~ 561	$253	$234
four	~~$265~~ 288	~~$628~~ 703	~~$476~~ 563	~~$682~~ 628	$296	$273

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
one	~~$182~~ 198	~~$431~~ 483	~~$328~~ 388	~~$469~~ 432	$181	$167
two	~~$222~~ 242	~~$527~~ 591	~~$400~~ 473	~~$572~~ 528	$226	$208
three	~~$252~~ 273	~~$599~~ 671	~~$455~~ 537	~~$650~~ 600	$271	$250
four	~~$283~~ 308	~~$671~~ 752	~~$509~~ 602	~~$729~~ 672	$316	$292

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

46.13.502 SUPPLEMENTAL ASSISTANCE Subsection (1) through (1)(b) remain the same.

~~(2)--A-limited-fund-will-be-available-from-which-supplemental-grants-can-be-made-to-PIP-households.--Applications-for-emergency-funds-will-be-required.~~

~~(a)--Recipients-of-PIP-supplemental-grants-are-ineligible-to-receive-other-LIEAP-supplemental-assistance.~~

~~(b)--PIP--supplemental--grants--are--made--directly--to--the-utility-and-are-considered-to-be-a-household-payment.~~

~~(c)--PIP--supplemental--grants-will-be-made-to-households-experiencing-loss-of-employment-or-verifiable-medical-expenses-which-lead-to-an-inability-to-meet-the-required-monthly-co-payment.~~

Subsections (2)(d) through (2)(e) remain the same in text but will be renumbered as (2)(a) through (2)(b).

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

4. Several modifications to the Low Income Energy Assistance Program (LIEAP) are being proposed to enable the program to meet continuing high demand with decreasing resources and to incorporate recommendations that will improve the efficiency and or fairness of the program.

The proposed language to ARM 46.13.302(5) is necessary to clarify federally mandated state practice. See 45 CFR 96.42(f). Eligible households within the service area of a tribal organization which received block grant funds to run its own LIEAP program will not be also eligible for the department's LIEAP program. This remains true whether or not the tribal organization's funds have become depleted prior to the end of the winter heating season.

The change to ARM 46.13.302(6) gives leverage to Weatherization Program operators who occasionally are refused access for frivolous reasons to a home that has been prioritized for service due to high energy consumption. These LIEAP recipients avail themselves of benefits intended for households who are making the effort to conserve energy and rely less on federal assistance.

The LIEAP rule frequently refers to elderly and or handicapped/disabled. To clarify the meaning of these references, ARM 46.13.301 is proposed to be changed to include persons 60 years of age or older to define elderly. Additionally, 20 CFR 416.905 is incorporated by reference to define disability.

ARM 46.13.303 is being changed to include current poverty standards.

ARM 46.13.401 is proposed to be modified to make automatic the addition of a second bedroom for elderly and or handicapped households if their home has more than one bedroom. A calculation for determining LIEAP benefits incorporates a consideration of the size of the home. The number of bedrooms within the home is the only reasonable common denominator for estimating home size.

For the 1985-1986 program a restriction of no more bedrooms than household members was added to the rule to recognize the ability of single individuals to close off unoccupied rooms. Individuals living in homes with more bedrooms than household members were also using a disproportionately greater share of the LIEAP benefits than other recipients. Through program analysis it has been established that those most adversely affected are the elderly and handicapped. The elderly and handicapped require more heat because they are usually homebound and have poor blood circulation.

This rule was modified for the 1987-1988 program to increase the benefit for elderly and handicapped who demonstrated unmet need. This process is burdensome for the applicant and detrimental to the efficiency of the program and is therefor proposed to be made an automatic adjustment.

The benefit award matrix in ARM 46.13.401 is updated annually to incorporate the fluctuations of fuel prices.

The Percentage of Income (PIP) Program has been discontinued.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, or by facsimile machine (FAX) to (406) 444-1970, no later than September 14, 1989.

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

7. These rule changes will be effective October 1, 1989.

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 7, 1989.

MAR Notice No. 46-2-575

15-8/17/89

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL

In the matter of the adoption of new rules pertaining to the "Growth Through Agriculture Program and the transfer of ARM 8.121.103, 8.121.201, 8.121.301, 8.121.401 and the amendment of ARM 8.121.301	NOTICE OF AN ADOPTION OF RULES PERTAINING TO THE "GROWTH THROUGH AGRICULTURE PROGRAM" AND AMENDMENT OF ARM 8.121.301

TO: ALL INTERESTED PERSONS

1. On June 29, 1989, the Department published a notice of proposed adoption and amendment of the above-stated rules on page 810 of the 1989 Montana Administrative Register, Issue No. 12.

2. The council adopted and amended the rules exactly as proposed.

3. No written comments or testimony were received.

4. Rules I through V will be numbered 4.16.301 through 4.16.305; Rule VI through XI will be numbered 4.16.401 through 4.16.406; transferred rule 8.121.103 will be renumbered 4.16.103; 8.121.201 will be renumbered 4.16.201; 8.121.301 will be renumbered 4.16.601 and 8.121.401 will be renumbered 4.16.701.

MONTANA DEPARTMENT OF AGRICULTURE

E M Snortland

E. M. Snortland, Director

Certified to the Secretary of State August 7, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS

In the matter of the amendment of rules pertaining to definitions, applications for limited permit, pass-fail criteria, fees, unprofessional conduct, and limited permits, and the repeal of a rule pertaining to reciprocity	NOTICE OF AMENDMENT OF 8.35.402 DEFINITIONS, 8.35.405 APPLICATIONS FOR LIMITED PERMIT, 8.35.406 PASS-FAIL CRITERIA, 8.35.407 FEES, 8.35.408 UNPROFESSIONAL CONDUCT, AND 8.35.413 LIMITED PERMITS AND REPEAL OF 8.35.410 RECIPROCITY

TO: All Interested Persons:

1. On June 29, 1989, the Board of Occupational Therapists published a notice of proposed amendment and repeal of the above-stated rules at page 819, 1989 Montana Administrative Register, issue number 12.

2. The Board amended and repealed the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF OCCUPATIONAL THERAPISTS
DEBRA J. AMMONDSON, OTR/L
CHAIRPERSON

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OUTFITTERS

In the matter of the amendment of rules pertaining to outfitters and professional guides	NOTICE OF AMENDMENT OF 8.39.504 LICENSURE--APPROVED OPERATIONS PLAN, 8.39.701 CONDUCT--STANDARDS OF OUTFITTER AND PROFESSIONAL GUIDE, 8.39.702 CONDUCT--ADDITIONAL REQUIRED OUTFITTER PROCEDURES, AND 8.39.703 OUTFITTER RECORDS

TO: All Interested Persons:

1. On April 27, 1989, the Board of Outfitters published a notice of public hearing on the proposed amendment of the above-stated rules at page 460, 1989 Montana Administrative Register, issue number 8.

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

3. Sandra Cahill objected to the amendments, but gave no substantive reasons.

4. No other comments or testimony were received.

BOARD OF OUTFITTERS
RON CURTISS, CHAIRMAN

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the amendment of rules pertaining to suspension or revocation - gross immorality and dangerous drugs	NOTICE OF AMENDMENT OF 8.40.415 SUSPENSION OR REVOCATION - GROSS IMMORALITY AND 8.40.1215 ADDITIONS, DELETIONS & RESCHEDULING OF DANGEROUS DRUGS

TO: All Interested Persons:

1. On June 15, 1989, the Board of Pharmacy published a notice of proposed amendment at page 703, Issue No. 11.

2. The Board amended 8.40.1215 exactly as proposed and amended 8.40.415 as proposed but with the following changes:

"8.40.415 SUSPENSION OR REVOCATION - GROSS IMMORALITY

(1) will remain as proposed.

(a) KNOWINGLY engaging in any activity which violates state and federal statutes and rules governing the practice of pharmacy;

(b) KNOWINGLY dispensing an outdated or questionable product;

(c) KNOWINGLY dispensing a cheaper product and charging for a more expensive product;

(d) KNOWINGLY charging for more dosage units than is actually dispensed;

(e) KNOWINGLY altering prescriptions or other records which the law requires pharmacies and pharmacists to maintain;

(f) KNOWINGLY dispensing medication without proper authorization;

(g) KNOWINGLY defrauding any persons or government agency receiving pharmacy services;

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

(j) KNOWINGLY buying, selling, purchasing or trading any prescription drug samples or offering to sell, purchase or trade drug samples. A "drug sample", as used herein, is defined to mean a unit of a prescription drug which is not intended to be sold and is intended to promote the sale of a drug."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-311, MCA

3. All comments received have been thoroughly considered. Those comments and the board's responses thereto are as follows:

COMMENT: One comment was received from staff of the Administrative Code Committee suggesting that the word "knowingly" remain in the definition of gross immorality and also be added to new subsection (j) of that rule.

RESPONSE: The Board concurred and the change has been made as shown above.

4. No other comments or testimony were received.

BOARD OF PHARMACY
ANTHONY FRANCISCO, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF VETERINARY MEDICINE

In the matter of the amendment of rules pertaining to annual renewal of certificate of registration, and continuing education; repeal of a rule pertaining to conduct; and adoption of a new rule pertaining to unprofessional conduct	) NOTICE OF AMENDMENT OF 8.64.504 ANNUAL RENEWAL OF CERTIFICATE OF REGISTRATION, 8.64.505 CONTINUING EDUCATION; REPEAL OF 8.64.507 IMMORAL, UNPROFESSIONAL, OR DISHONORABLE CONDUCT; AND THE ADOPTION OF NEW RULE I. (8.64.508) UNPROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On June 29, 1989, the Board of Veterinary Medicine published a notice of proposed amendment, repeal and adoption of the above-stated rules at page 823, 1989 Montana Administrative Register, issue number 12.

2. The Board has amended, repealed and adopted the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF VETERINARY MEDICINE
JAMES R. BROGGER, DVM
PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

4. No other comments or testimony were received.

BOARD OF PHARMACY
ANTHONY FRANCISCO, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF VETERINARY MEDICINE

In the matter of the amendment of rules pertaining to annual renewal of certificate of registration, and continuing education; repeal of a rule pertaining to conduct; and adoption of a new rule pertaining to unprofessional conduct	)))))))	NOTICE OF AMENDMENT OF 8.64.504 ANNUAL RENEWAL OF CERTIFICATE OF REGISTRATION, 8.64.505 CONTINUING EDUCATION; REPEAL OF 8.64.507 IMMORAL, UNPROFESSIONAL, OR DISHONORABLE CONDUCT; AND THE ADOPTION OF NEW RULE I. (8.64.508) UNPROFESSIONAL CONDUCT

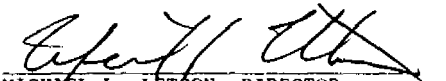
TO: All Interested Persons:

1. On June 29, 1989, the Board of Veterinary Medicine published a notice of proposed amendment, repeal and adoption of the above-stated rules at page 823, 1989 Montana Administrative Register, issue number 12.

2. The Board has amended, repealed and adopted the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF VETERINARY MEDICINE
JAMES R. BROGGER, DVM
PRESIDENT

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 7, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MILK CONTROL BUREAU

In the matter of the proposed amendment of Rule 8.79.201(1)(b) regarding trade practices	NOTICE OF AMENDMENT OF RULE 8.79.201(1)(b)
	DOCKET #94-89

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On June 15, 1989, the Montana department of commerce published notice of proposed adoption of rule 8.79.201(1)(b) regarding trade practices. Notice was published at page 708 of the 1989 Montana Administrative Register, Issue No. 11, as MAR Notice No. 8-79-26.

2. A hearing was held July 26, 1989, at 9:15 a.m. in the Glacier Room, Lee Metcalf Bldg., 1520 East 6th Avenue, Helena, Montana. Four persons appeared at the hearing to offer data, views and arguments, three in favor of the proposed rule change and one as an interested person. The bureau received six written comments prior to the hearing and thirty-nine additional comments at the hearing. Forty-two of the written comments were in favor of the proposed action and three were opposed.

3. After thoroughly considering all of the testimony and comments, the department is adopting the rule exactly as proposed.

4. The authority of the department to adopt the rule as proposed is based on section 81-23-104, MCA, and implements section 81-23-103 and 81-23-303, MCA.

5. Principal reasons for adoption were as follows:

a) The amendment would provide greater flexibility in promoting dairy products.

b) It is in the public's interest to promote healthful milk products over less healthful products.

c) Milk processors are now in the competitive beverage business. To compete, processors must be able to promote milk products in the same manner as competing products.

d) It is cost effective to provide for sampling of fluid milk products to determine consumer acceptance prior to the actual manufacture and marketing of the products.

e) No processor would be disadvantaged because each is in a position to use sampling to its advantage. Opportunities for product sales and promotion are equally available to all processors.

6. Principal reasons given against adoption of the amendment were as follows:

a) It would create a mess for store owners.

b) It would create unnecessary jobs.

c) Milk products are okay the way they are.

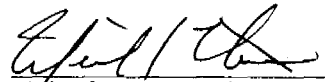
7. The principal reasons for denying the objections were as follows:

a) The stores are free to decide on their own whether to permit sampling of products and there is not compulsion for them to follow the lead of their competitors in providing for sampling of fluid milk products.

b) The extent of regulation of sampling fluid milk products would be minimal and would not necessarily require extra employees, because sampling programs can be tailored to fit the needs of the store.

c) The quality of milk products is not sufficient reason to deny competitive promoting and marketing techniques.

MONTANA DEPARTMENT OF COMMERCE

BY: 
Michael Letson, Director

Certified to the Secretary of State August 7, 1989.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of new rules for the New Horizons Program; amending ARM 24.12.201 through 24.12.206, and 24.12.208; and repealing ARM 24.12.207.	))))))	NOTICE OF ADOPTION OF NEW RULES; AMENDMENTS OF 24.12.201 THROUGH 24.12.206, AND 24.12.208; AND REPEAL OF ARM 24.12. 207, DEALING WITH THE NEW HORIZONS PROGRAM FOR DISPLACED HOMEMAKERS.

TO: All Interested Persons:

1. On June 15, 1989, the Department of Labor and Industry published a notice of proposed adoption of new rules and amendments to ARM 24.12.201 through ARM 24.12.208, and the repeal of ARM 24.12.207 dealing with the New Horizons Program for Disabled Homemakers at pages 722 - 726 of the 1989 Montana Administrative Register, Issue No. 11.

2. The agency has adopted, amended and repealed the rules as proposed.

3. No comments or testimony were received.

4. The authority of the agency to adopt, amend, and repeal the proposed rules is based on section 39-7-603, MCA and the rules implement sections 39-7-602 through 39-7-606, MCA.

Mario A. Micone, Commissioner
Department of Labor and
Industry

Certified to the Secretary of State on August 7, 1989.

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

In the matter of the amendment of Rules 46.10.304A and 46.10.308 pertaining to the NETWORK pilot program in Lewis and Clark County	)))))	NOTICE OF THE AMENDMENT OF RULES 46.10.304A and 46.10.308 PERTAINING TO THE NETWORK PILOT PROGRAM IN LEWIS AND CLARK COUNTY

TO: All Interested Persons

1. On June 15, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.10.304A and 46.10.308 pertaining to the NETWORK pilot program in Lewis and Clark County at page 751 of the 1989 Montana Administrative Register, issue number 11.

2. The Department has amended ARM 46.10.308 as proposed.

3. The Department has amended ARM 46.10.304A as proposed with the following changes:

46.10.304A UNEMPLOYED PARENT Subsections (1) through (4) remain as proposed.

(a) Both parents in a two-parent household selected for the NETWORK pilot program in Lewis and Clark County may be required to participate in that program. Failure to comply ~~will~~ DURING THE INITIAL FIVE WEEKS OF THE PROGRAM MAY subject the household to the sanctions in ARM 46.10.310.

Subsection (5) remains as proposed.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-201 and 53-4-231 MCA

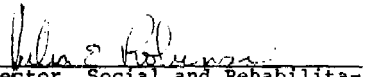
4. The Department has thoroughly considered all commentary received:

COMMENT: Should ARM 46.10.308(2)(a-c) be revised to indicate that the appraisal interviews will be conducted by NETWORK staff rather than WIN staff?

RESPONSE: No. This Rule applies to all WIN locations. NETWORK is one component of the WIN program and as such is encompassed in this provision.

COMMENT: Reference is made to NETWORK as a mandatory program. Should the Rule clarify that NETWORK is only mandatory for the first five weeks?

RESPONSE: Yes. The Rule will clarify that NETWORK may be mandatory only during the first five weeks of participation.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 7, 1989.

VOLUME NO. 43 OPINION NO. 24

ELECTIONS - Registration requirements of electors nominating candidates for school trustee under 20-3-305(2);
SCHOOL BOARDS - Registration requirements of electors nominating candidates for school trustee under 20-3-305(2);
MONTANA CODE ANNOTATED - Sections 13-1-101(6), 13-1-111, 20-3-305, 20-3-305(2), 20-20-301.

HELD: An elector nominating a candidate for a school trustee position under section 20-3-305(2), MCA, must be registered to vote at the time the nominating petition is filed.

July 19, 1989

John C. McKeon
Phillips County Attorney
Phillips County Courthouse
Malta MT 59538

Dear Mr. McKeon:

You have requested my opinion on the following issue:

> Must the electors nominating a candidate for a school trustee position under section 20-3-305(2), MCA, be registered to vote at the time the nominating petition is filed?

You explain in your request that the clerk of one of the school districts in Phillips County received a petition signed by five individuals nominating another individual as a candidate for the board of trustees for that district. The petition was filed more than 40 days before the election, as required by section 20-3-305(2), MCA, but one of the five individuals was not registered as an elector on the date the petition was filed. You note that although the nominator was not registered to vote at the time of the nomination, he did in fact register to vote before the election. The issue is whether the unregistered nominator could be counted to satisfy the requirements of section 20-3-305(2), MCA.

Section 20-3-305, MCA, states:

> Candidate qualification and nomination. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under

> the provisions of 20-20-301 shall be eligible for the office of trustee.
>
> (2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. [Emphasis supplied.]

Section 20-20-301, MCA, states, in pertinent part:

> Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district .... [Emphasis supplied.]

In turn, section 13-1-111, MCA, provides, in pertinent part:

> Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:
>
> (a) He must be registered as required by law.

An elector is defined as "an individual qualified and registered to vote under state law." § 13-1-101(6), MCA. (Emphasis added.)

The plain meaning of these statutes indicates that a nominator must be registered before the filing of a nominating petition. Section 20-3-305(2), MCA, states that any five electors qualified under section 20-20-301, MCA, may nominate. Section 20-20-301, MCA, states that an elector is entitled to vote if he meets the qualifications of section 13-1-111, MCA. Section 13-1-111, MCA, in turn, states that a person must be registered before he can vote. Read together, as required, these statutes suggest no other conclusion. The statutes do not speak in terms of eligibility to register, but in terms of electors, who by definition have already registered. One cannot be an elector under

section 13-1-101(6), MCA, unless one is registered to vote.

THEREFORE, IT IS MY OPINION:

> An elector nominating a candidate for a school trustee position under section 20-3-305(2), MCA, must be registered to vote at the time the nominating petition is filed.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 25

HOUSING, BOARD OF - Certain records subject to public disclosure;
PRIVACY - Certain records held by Board of Housing subject to public disclosure;
RIGHT TO KNOW - Certain records held by Board of Housing subject to public disclosure;
MONTANA CODE ANNOTATED - Sections 2-15-1814, 15-30-303, 90-6-101 to 90-6-127;
MONTANA CONSTITUTION - Article II, sections 9, 10;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 64 (1988), 39 Op. Att'y Gen. No. 17 (1981), 38 Op. Att'y Gen. No. 109 (1980), 38 Op. Att'y Gen. No. 1 (1979), 37 Op. Att'y Gen. No. 107 (1978).

HELD: The "Buyer's Affidavit and Certification" submitted to the Board of Housing pursuant to the Mortgage Credit Certificate Program is subject to public disclosure.

July 20, 1989

David L. Jackson
Montana Board of Housing
203 North Ewing
Helena MT 59601-1300

Dear Mr. Jackson:

You have requested my opinion on behalf of the Montana Board of Housing on the following question:

> Does a mortgagor's right of privacy prohibit public disclosure of documents contained in the mortgagor's loan file which is maintained by the Montana Board of Housing?

Your question arises because of the Mortgage Credit Certificate (MCC) program, which is administered by the Board of Housing (Board). The MCC program is available to qualifying individuals who obtain a mortgage loan (conventional, FHA, VA, or other) to purchase a home. Persons who qualify under the program are entitled to credit a portion of their mortgage loan against their federal income taxes.

Application for membership in the MCC program requires the mortgagor (borrower) to complete a "Buyer's Affidavit and Certification" form. The form requires personal financial information concerning the house

being purchased and the borrower's annual household income. This information is pertinent to the MCC program because the requirements for membership include limits on annual income and purchase price of the house. Another requirement is that the borrower occupy the house as his primary residence. Persons who complete and sign the Buyer's Affidavit and Certification form acknowledge that any material misstatements made by them will subject them to federal criminal prosecution as well as revocation of their MCC certificate.

Certain federal agencies have reason to believe that some MCC members have not been complying with the requirements of the program, and have requested copies of the members' Buyer's Affidavit and Certification forms in order to verify compliance or noncompliance.

Your question is whether the Buyer's Affidavit and Certification forms constitute public information or whether the members' individual right of privacy precludes disclosure of the documents.

Initially it should be noted that the Montana Board of Housing is a state agency, with powers, functions and duties established by statute. §§ 2-15-1814, 90-6-101 to 127, MCA. There are no express statutory provisions that make any information obtained by the Board confidential or otherwise immune from public access. Therefore, the status of the documents in question must be analyzed under Montana's right to know and privacy provisions, Article II, sections 9 and 10 of the Montana Constitution.

Each Montanan's "right to know" is guaranteed by Article II, section 9 of the Montana Constitution, which states:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The right of individual privacy referred to in this section is guaranteed by Article II, section 10 of the Montana Constitution, which states:

> The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Opinions of the Montana Supreme Court and the Montana Attorney General have spoken of the need to reconcile these two rights. The Constitution requires that a potential conflict between the public's right to know and an individual's right of privacy be resolved by applying a balancing test. 42 Op. Att'y Gen. No. 64 (1988). The following balancing test for dealing with these questions has been developed:

> (1) [D]etermining whether a matter of individual privacy is involved,
>
> (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and
>
> (3) deciding whether the demand of individual privacy clearly outweighs the demand of public disclosure. [Emphasis in original.]

42 Op. Att'y Gen. No. 64 (1988). See also Missoulian v. Board of Regents, 207 Mont. 513, 522, 527, 675 P.2d 962, 967, 970 (1983). It is the duty of each agency, when asked to disclose information, to apply these steps and make an independent determination within the guidelines of the law, subject to judicial review. 38 Op. Att'y Gen. No. 109 at 375, 376 (1980). It is useful, however, to examine legal precedent in determining and weighing the merits of privacy or disclosure.

The Montana Supreme Court has spoken several times of a person's subjective expectation of privacy and whether society considers that expectation reasonable. Belth v. Bennett, 44 St. Rptr. 1133, 740 P.2d 638, 642 (1987); Missoulian v. Board of Regents, 675 P.2d at 967-68; Montana Human Rights Division v. City of Billings, 199 Mont. 434, 649 P.2d 1283, 1287 (1982). While there are no set guidelines for the determination of whether a matter of individual privacy is involved, Opinions of the Attorney General have held that information which reveals facts concerning personal aspects of the individual's life necessarily involve individual privacy. 42 Op. Att'y Gen. No. 64 (1988), 38 Op. Att'y Gen. No. 1 at 1, 4 (1979). Information concerning commercial matters may or may not constitute private information, depending in part on the nature of the information. 38 Op. Att'y Gen. No. 1 at 1 (1978).

The right of privacy is not easily defined with precision. 37 Op. Att'y Gen. No. 107 at 460 (1978). The Supreme Court of Washington has utilized the privacy standard of the Restatement (Second) of Torts § 652D at 383 (1977) in analyzing the individual right of privacy.

Hearst Corporation v. Hoppe, 580 P.2d 246 (Wash. 1978). The Restatement limits the disclosure of any private matter that "would be highly offensive to a reasonable person and ... is not of legitimate concern to the public." Examples cited are "[s]exual relations ... family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget." Restatement at 383; Hearst at 253. Cf. 37 Op. Att'y Gen. No. 107 at 460 (1978) (privacy protects facts about an individual's attitudes, beliefs, behavior and other personal aspects of that individual's life). An individual's personal income has long been recognized as a matter of personal privacy. See 26 U.S.C. § 6103 (income tax returns are confidential); § 15-30-303, MCA (state income tax information is confidential); Application of Nicholas, 458 N.Y.S.2d 858, 859 (N.Y. Supp. 1983) (New York has declared information pertaining to personal income a matter of personal privacy).

The Buyer's Affidavit and Certification contains the purchase price of the residence and the borrower's annual household income. In addressing the first step of the test, it is my opinion that the purchase price of the house presents minimal if any privacy demands. This information is readily available as public information on "property record cards" maintained by the Department of Revenue for purposes of tax appraisals. 39 Op. Att'y Gen. No. 17 at 62 (1981). On the other hand, I conclude that a statement of the borrower's annual household income is a matter of individual privacy. When the borrower submits the financial information to the Board, he has an expectation that the information will be used by the administering agency for purposes of the MCC program, but that it will not be disclosed to the general public.

The next step of the test is to determine the comparative demands of individual privacy and the merits of public disclosure. Although information pertaining to personal income is a matter of individual privacy, that privacy interest is necessarily diminished when the individual submits the information to the Board of Housing for the MCC program. The Board of Housing requires the financial information in order to determine eligibility to participate in the program. Once an MCC certificate is issued, the information serves to document the decision of the Board, and since the borrower is required to comply with the requirements of the program on a continuous basis, the information also serves as a basis for confirming compliance. Thus, upon

submission to the Board, the information is integrated into a governmental function that directly benefits the borrower, and his objective expectation of privacy is thereby reduced.

In comparison, the public has a substantial interest in verifying continued compliance of MCC participants, since the program involves the public treasury. Public disclosure is an added safeguard to assure that the Board administers the MCC program properly and that participants comply with the program's requirements.

In addressing the third step of the three-part test, the general rule is that government records must be open to the public, with the burden placed upon the custodian of the records to affirmatively show that the demands of individual privacy clearly outweigh the merits of public disclosure. 37 Op. Att'y Gen. No. 107 at 4 (1978). I conclude that the demands of individual privacy do not outweigh the merits of public disclosure of the Buyer's Affidavit and Certification.

THEREFORE, IT IS MY OPINION:

> The "Buyer's Affidavit and Certification" submitted to the Board of Housing pursuant to the Mortgage Credit Certificate Program is subject to public disclosure.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 26

CITIES AND TOWNS - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;
COUNTIES - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;
COUNTY GOVERNMENT - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;
LAND USE - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;
LOCAL GOVERNMENT - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;
SUBDIVISION AND PLATTING ACT - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;
MONTANA CODE ANNOTATED - Sections 7-1-4111, 7-3-4444, 76-2-310 to 311, 76-2-312, 76-3-101 to 76-3-614, 76-3-601.

HELD: The board of county commissioners has final authority to approve subdivisions that are within the three-mile area immediately outside the corporate limits of the city when the city has a commission-manager form of government.

July 20, 1989

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Bruce Becker
Bozeman City Attorney
P.O. Box 640
Bozeman MT 59715-0640

Gentlemen:

You have requested my opinion on a question which I have phrased as follows:

> Does the board of county commissioners or the city commission, pursuant to section 7-3-4444, MCA, have final authority to approve

subdivisions that are within the three-mile area immediately outside the corporate limits of the city when it has a commission-manager form of government?

I understand that, in your situation, the governing bodies of both Gallatin County and the city of Bozeman have adopted the same city/county subdivision regulations which cover, inter alia, the three-mile area immediately outside the corporate limits of the city. Bozeman is a first-class city, as defined in section 7-1-4111, MCA, and has the commission-manager form of local government.

The statutory provisions which generally define a municipality's authority to regulate subdivisions beyond its corporate limits are sections 76-2-310 and 76-2-311, MCA. However, section 76-2-312, MCA, excludes a city having a commission-manager form of government from the provisions of sections 76-2-310 and 76-2-311, MCA. As a result, your question can be answered by referring to the Montana Subdivision and Platting Act, §§ 76-3-101 to 614, MCA.

The Subdivision and Platting Act specifically addresses the issue of municipal extraterritorial authority in sections 76-3-601(2) and (3), MCA:

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

VOLUME NO. 43 OPINION NO. 26

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HELD: The board of county commissioners has final authority to approve subdivisions that are within the three-mile area immediately outside the corporate limits of the city when the city has a commission-manager form of government.

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The statutory provisions which generally define a municipality's authority to regulate subdivisions beyond its corporate limits are sections 76-2-310 and 76-2-311, MCA. However, section 76-2-312, MCA, excludes a city having a commission-manager form of government from the provisions of sections 76-2-310 and 76-2-311, MCA. As a result, your question can be answered by referring to the Montana Subdivision and Platting Act, §§ 76-3-101 to 614, MCA.

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(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

....

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

Section 76-3-601, MCA, thus limits the extraterritorial role of municipalities over subdivisions to "review and comment" concerning the preliminary plat except as permitted by section 7-3-4444, MCA.

Section 7-3-4444, MCA, applies only to commission-manager municipal governments and reads:

(1) The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, endorse his written approval thereon.

(2) No plat subdividing lands within the corporate limits or within 3 miles thereof shall be entitled to record in the recorder's office of the county without such written approval so endorsed thereon.

This provision grants to the city director of public service authority to review and approve all plats for subdivisions located within three miles of the city's corporate limits. However, such review is limited to ensuring that the involved plat complies with all the requirements generally conditioning the filing of any plat. This construction not only gives effect to the restriction on municipal extraterritorial authority over subdivisions under the Subdivision and Platting Act but also recognizes the largely ministerial power of the director of public service under section 7-3-4444, MCA,

to review plats only with respect to their technical adequacy. See In re Estate of Wilhelm, 45 St. Rptr. 1468, 1474, 760 P.2d 718, 723 (1988). Section 7-3-4444, MCA, accordingly does not authorize a municipality to engage in plenary subdivision review or to deny filing because of noncompliance with its subdivision regulations.

The city has suggested that Gallatin County has not taken the necessary steps to exert its subdivision authority. Its suggestion, however, ignores the county's adoption of subdivision regulations for the area in question. I need not resolve the question of whether the county has adopted a master plan since, even if the county has not, enforceable subdivision regulations do exist.

THEREFORE, IT IS MY OPINION:

> The board of county commissioners has final authority to approve subdivisions that are within the three-mile area immediately outside the corporate limits of the city when the city has a commission-manager form of government.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 27

CRIMINAL LAW AND PROCEDURE - Conduct of criminal trials on Sundays;
COURTS - Conduct of criminal trials on Sundays;
JUDGES - Conduct of criminal trials on Sundays;
MONTANA CODE ANNOTATED - Sections 1-1-202(4), 1-1-216(1)(a), 3-1-302, 3-1-302(1), 46-1-201(6).

HELD: Montana law does not permit criminal trials to be conducted on Sundays except to conclude a trial already initiated as specified in section 3-1-302, MCA.

July 24, 1989

Jim Nugent
City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

> Does Montana law permit criminal trials to be conducted on Sundays?

Your question is clearly answered by Montana's statutory law. Section 3-1-302, MCA, states in its entirety:

> 3-1-302. Nonjudicial day. (1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:
>
> (a) to give, upon its request, instructions to a jury when deliberating on its verdict;
>
> (b) to receive a verdict or discharge a jury;
>
> (c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.

> (2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day. [Emphasis supplied.]

Although subsection (1)(c) at first glance suggests that magistrates might be permitted to conduct criminal trials on nonjudicial days, section 1-1-202(4), MCA, read together with section 46-1-201(6), MCA, limits the powers of magistrates to the issuance of arrest warrants.

Section 1-1-216(1)(a), MCA, entitled "Legal holidays and business days" states, in pertinent part:

> (1) The following are legal holidays in the state of Montana:
>
> (a) Each Sunday[.] [Emphasis supplied.]

There is no doubt that the conduct of a trial is the essence of "judicial business," as that phrase is used in section 3-1-302(1), MCA. See State v. Lambert, 167 Mont. 406, 538 P.2d 1351 (1975).

THEREFORE, IT IS MY OPINION:

> Montana law does not permit criminal trials to be conducted on Sundays except to conclude a trial already initiated as specified in section 3-1-302, MCA.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 28

COUNTIES - Authority to compromise unpaid, delinquent property taxes;
COUNTY COMMISSIONERS - Authority to compromise unpaid, delinquent property taxes;
COUNTY GOVERNMENT - Authority to compromise unpaid, delinquent property taxes;
TAXATION AND REVENUE - Authority of county commissioners to compromise unpaid, delinquent property taxes;
MONTANA CODE ANNOTATED - Sections 15-1-402(1) and (2), 15-1-406(1) and (3), 15-2-301(1) and (5), 15-2-303, 15-2-306, 15-2-307, 15-2-310, 15-7-102(3) and (6), 15-8-115(1), 15-15-102, 15-16-601(1)(a);
REVISED CODES OF MONTANA, 1947 - Section 84-4176;
REVISED CODES OF MONTANA, 1935 - Section 2222;
REVISED CODES OF MONTANA, 1921 - Section 2222;
OPINIONS OF THE ATTORNEY GENERAL - 25 Op. Att'y Gen. No. 29 (1953).

HELD: 1. Section 15-16-601, MCA, does not authorize county commissioners to compromise unpaid, delinquent property taxes.

2. County commissioners do not possess inherent authority to compromise unpaid, delinquent property taxes.

July 25, 1989

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning the following questions which I have phrased as follows:

1. Does section 15-16-601, MCA, authorize county commissioners to compromise unpaid, delinquent property taxes?

2. Do county commissioners possess inherent authority to compromise unpaid, delinquent property taxes?

Your letter indicates that the foregoing questions have arisen in the context of a taxpayer's dispute over the valuation of his property by the Industrial Property

Bureau of the Department of Revenue for the years 1985-87. Property taxes due from this interval are delinquent and unpaid. Apparently, the valuation was significantly reduced in 1988. The taxpayer has paid the first half of the 1988 taxes and has proposed a compromise regarding the accrued delinquent property taxes. Under the proposed settlement, the taxpayer would agree to pay the delinquent property taxes in the amounts actually assessed. The board of county commissioners would agree to order a refund, pursuant to section 15-16-601, MCA, of the difference between the 1988 assessment and the actual assessment in each of the years in which taxes are delinquent.

Section 15-16-601(1)(a), MCA, provides:

> (1)(a) Any taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or 15-16-613 or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment has been made to the state treasurer as provided in 15-1-504 and it afterwards appears to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, the board of county commissioners may refund the portion of the taxes, interest, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded. In the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

The foregoing statutory provision has previously been codified in substantially similar form. See § 84-4176, R.C.M. 1947; § 2222, R.C.M. 1935; § 2222, R.C.M. 1921.

The Supreme Court of Montana has had occasion to construe the predecessor of the foregoing statutory provision in a case involving facts remarkably similar to those described herein. See Yellowstone Packing & Provision Co. v. Hays, 83 Mont. 1, 268 P. 555 (1928).

The taxpayer therein claimed that his property had been "assessed at a higher valuation than other like property in the vicinity." Id. at 556. The board of county commissioners agreed to a compromise acceptance of a substantially lesser amount than the amount actually delinquent. The court held as follows:

> The language employed in the statute appears to be plain and without any ambiguity; therefore it must be construed and applied in accordance with its apparent meaning. It speaks for itself, and by it the board of county commissioners of a county is permitted to refund only such taxes as have been "paid more than once, or erroneously or illegally collected." It should be manifest that the board is not empowered to remit taxes which have not been paid, and that no attempt was thereby made to clothe the board with authority to compromise delinquent taxes.

Id. at 556. (Emphasis supplied.) The Yellowstone Packing & Provision Co. decision formed the basis for a subsequent Attorney General's Opinion. See 25 Op. Att'y Gen. No. 29 at 49 (1953). The issue there was whether a board of county commissioners had authority to remit payment of penalties and interest in cases of hardship. The opinion quoted the familiar rule that such boards are limited to the exercise of powers specifically provided by law. It concluded that the predecessor of section 15-16-601, MCA, constituted the sole source of authority authorizing remission of taxes and associated penalties and interest. Applying Yellowstone Packing & Provision Co., the opinion held that the authority conferred by this statute did not include the power to remit interest and penalties simply in the interest of providing relief to delinquent taxpayers.

The foregoing discussion dictates the proper resolution of your first question. My research does not disclose any subsequent legislation or judicial decision which would alter the conclusion reached in the Yellowstone Packing & Provision Co. decision and the previous Attorney General's Opinion. Therefore, I conclude that section 15-16-601, MCA, does not confer upon boards of county commissioners the authority to compromise unpaid, delinquent property taxes.

Your second question raises the issue of whether county commissioners possess inherent authority to compromise an unpaid, delinquent tax liability. I conclude that such authority would be inconsistent with the judicial and legislative preference for the resolution of

property tax disputes by means of the administrative structure specifically created for that purpose. A brief review of the remedial provisions of Montana law for relief of improper assessment of property taxes provides the proper context.

Section 15-7-102(3), MCA, provides a property owner with the right to a hearing before the Department of Revenue when aggrieved by its classification or appraisal of his land or improvements. An aggrieved taxpayer may then appeal to the county tax appeal board. § 15-7-102(6), MCA. Section 15-15-102, MCA, also permits a taxpayer to proceed directly to the county tax appeal board:

> No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later, a written application therefor. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made.

The county tax appeal board is thus often "the first jurisdictional level for considering protests by taxpayers to assessments, classifications, or appraisals." Department of Revenue v. Countryside Village, 205 Mont. 51, 667 P.2d 936, 942 (1983). These boards are vested with authority to "change any assessment or fix the assessment at some other level." § 15-15-101(3), MCA. An adverse decision may be appealed to the state tax appeal board. § 15-2-301(1), MCA. The state board may "affirm, reverse, or modify" decisions of the county tax appeal board and may order the refund of taxes paid under protest. §§ 15-2-301(5), 15-2-306, MCA. Decisions of the state board are subject to judicial review. § 15-2-303, MCA. During the pendency of the administrative process, the taxpayer is required to pay under protest the disputed portion of the taxes prior to delinquency. § 15-1-402(1), MCA. After exhaustion of the administrative process, a taxpayer may bring an action in district court to recover taxes paid under protest. § 15-1-402(2), MCA.

Montana law also provides direct judicial remedies. Sections 15-2-307 and 15-1-406, MCA, provide that in lieu of the administrative process, a taxpayer may bring a declaratory judgment action to challenge the legality

of, respectively, the method of assessment used or the imposition of the tax. Taxes arising under the challenged assessment procedure or tax must be paid when due as a condition of maintaining either action. §§ 15-2-310, 15-1-406(3), MCA.

As the foregoing discussion indicates, Montana has very detailed and carefully crafted statutory procedures providing relief from excessive or improper assessment. The role of the county commissioners in these procedures is limited:

> Montana's 1972 Constitution provides: "The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization and taxes. The legislature shall include a review procedure at the local government unit level." Art. VIII, § 7. Pursuant to this constitutional mandate, the Montana Legislature determined that the County Tax Appeal Board (Local Board) would be the review procedure at the local government unit level.

Butte Country Club v. Dept. of Revenue, 186 Mont. 424, 608 P.2d 111, 115 (1980). Absent unlawful activity supportive of a declaratory judgment action under section 15-2-307 or 15-1-406, MCA, the administrative remedy is exclusive.

> This Court has determined that as a condition precedent to the reduction of the valuation of property, the taxpayer must appeal at the local level. See Barrett v. Shannon (1897), 19 Mont. 397, 399-400, 48 P. 746. Further, this Court has determined that except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the [county tax appeal board] is the exclusive remedy granted the taxpayer. Keller v. Department of Revenue (1979), ___ Mont. ___, 597 P.2d 736, 36 St. Rptr. 1253; Larson v. State (1975), 166 Mont. 449, 534 P.2d 854.

Butte Country Club v. Dept. of Revenue, supra, 608 P.2d at 116; accord Boehm v. Nelson, 44 St. Rptr. 2147, 747 P.2d 213, 216 (1987). The limited authority to order refunds conferred upon county commissioners by section 15-16-601, MCA, is clearly subordinate to the role of the administrative agencies provided in the protest procedure set forth in section 15-1-402, MCA.

> Clearly, § 15-16-601, MCA, was not meant to be used in lieu of the 15-1-402, MCA requirements of paying under protest, but when the recourse of § 15-1-402, MCA is not available [e.g., where the taxpayer is unaware that his taxes were incorrect at the time he paid them], a taxpayer can obtain a refund under § 15-16-601, MCA.

Department of Revenue v. Jarrett, 216 Mont. 189, 700 P.2d 985, 988 (1985). As a final matter, it is the obligation of the Department of Revenue to defend disputed assessments in actions before the administrative boards and in court. § 15-8-115(1), MCA.

The conclusion that county commissioners possess inherent authority to compromise delinquent property taxes is clearly inconsistent with the roles of the Department of Revenue and the administrative structure discussed above. An obvious implication of such authority would be the opportunity for an aggrieved taxpayer to circumvent the exclusive roles of the department and the administrative boards in controversies involving valuation and assessments.

THEREFORE, IT IS MY OPINION:

1. Section 15-16-601, MCA, does not authorize county commissioners to compromise unpaid, delinquent property taxes.

2. County commissioners do not possess inherent authority to compromise unpaid, delinquent property taxes.

Sincerely,

Marc Racicot

MARC RACICOT
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 June 30, 1989. This table includes those rules adopted during the period July 1, 1989 through September 30, 1989 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1989, this table and the table of contents of this issue of the MAR.

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