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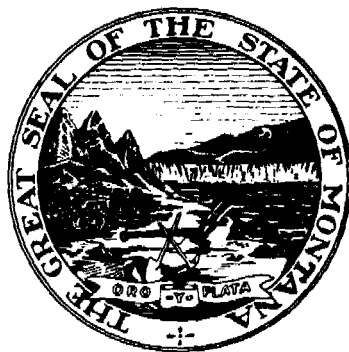
MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.28.418 ANNUAL REGISTRA-
to fees) TION AND FEES AND 8.28.420
) FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 25, 1989, the Board of Medical Examiners proposes to amend the above-stated rules.

2. The proposed amendment of 8.28.418 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-863, Administrative Rules of Montana)

"8.28.418 ANNUAL REGISTRATION AND FEES (1) through (3) will remain the same.

(4) A physician with a permanent license not actively engaged in the practice of medicine and who has retired may renew his license as an inactive-retired licensee for an annual fee."

Auth: 37-3-203, MCA Imp: 37-3-313, MCA

3. The proposed amendment of 8.28.420 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-863, Administrative Rules of Montana)

"8.28.420 FEE SCHEDULE (1) through (f) will remain the same.

<u>(g) Renewal fee (inactive-retired)</u>	<u>25.00</u>
<u>+g+ (h) Penalty fee</u>	<u>125.00"</u>

Auth: 37-3-203, MCA Imp: 37-3-313, MCA

REASON: These amendments will provide a renewal fee for retired physicians who wish to keep their licenses listed in the Board's register of licensees. It will differentiate them from physicians who are on inactive status. The inactive renewal fee is for physicians who do not plan to practice in Montana during the ensuing year, but who might activate their licenses in the future. The inactive-retired renewal fee will be for physicians who have completely retired from the practice of medicine and do not plan on reactivating their licenses. The fee for inactive-retired renewals should be lower because, other than renewing the licenses each year, retired physicians would not require any other services from the Board. Currently, both pay the same fee.

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

Board of Medical Examiners, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than February 23, 1989.

5. 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 Medical Examiners, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than February 23, 1989.

6. 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 10 based on the 100 licensees in Montana.

BOARD OF MEDICAL EXAMINERS
THOMAS J. MALEE, M.D.
PRESIDENT

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

Certified to the Secretary of State, January 16, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
repeal and amendment of rules	)	THE PROPOSED REPEAL OF 8.
pertaining to conduct and	)	42.601 THROUGH 8.42.625 AND
complaints and adoption of	)	AMENDMENT OF 8.42.701 AND
new rule pertaining to un-	)	THE ADOPTION OF NEW RULES
professional conduct and dis-	)	PERTAINING TO UNPROFESSIONAL
ciplinary actions	)	CONDUCT AND DISCIPLINARY
	)	ACTIONS

TO: All Interested Persons:

1. On February 21, 1989, at 9:00 a.m., a public hearing will be held in the downstairs conference room, Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed repeal, amendment and adoption of the above-stated rules.

2. ARM 8.42.601 through 8.42.625 are being proposed for repeal. These rules are located at pages 8-1211 through 8-1217, Administrative Rules of Montana. The authority to repeal these rules is 37-1-131, 37-11-201 and 37-11-321, MCA. These rules implement 37-1-131 and 37-11-321, MCA. These rules are being proposed for repeal because they are vague and therefore difficult to enforce in their present language.

3. The proposed amendment of 8.42.701 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1219, Administrative Rules of Montana)

"8.42.701 WRITTEN COMPLAINTS MUST BE MADE TO THE BOARD

(1) In order to have action taken when a violation of the provisions of Title 37, Chapter 11, MCA or Title 8, Chapter 42, Administrative Rules of Montana, is alleged, a complaint must be made. The complaint must at least give the name of the person suspected of an alleged violation and the nature of the complaint against that person. The complaint must be made to the Montana state board of physical therapy examiners in writing, by letter, or by completing the department's complaint form. Anyone such as a patient, physician, physical therapist, board member, board, or other party, may make a complaint to report a suspected violation of Title 37, Chapter 11, MCA, or Title 8, Chapter 42, Administrative Rules of Montana. Any consumer or other party who has a complaint against a licensed physical therapist may file a written complaint with the Montana Board of Physical Therapy Examiners, 1424 - 9th Avenue, Helena, Montana 59620-0407. The board of physical therapy examiners shall process all complaints in accordance with the Montana Administrative Procedure Act."

Auth: 37-1-131, 37-11-201, 37-11-202, MCA Imp:
37-11-202, MCA

REASON: The Board proposes to amend ARM 8.42.701 to place all parties on notice that a written complaint may be filed with the Board office, and, when filed, will be processed in accordance with the Montana Administrative Procedure Act.

4. The proposed new rules will read as follows:

"1. UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-11-321(3) and (9), MCA, the board defines immoral or unprofessional conduct, conduct unbecoming a person licensed as a physical therapist, and conduct detrimental to the best interests of the public as follows:

(a) Engaging in or soliciting sexual relations with a patient, sexual misconduct, sexual exploitation, sexual contact or sexual intercourse, as defined in 45-2-101, MCA, when such act or solicitation is related to the practice of physical therapy.

(b) All advertising which is false, fraudulent, or misleading;

(c) Misrepresentation or fraud in any aspect of the conduct of the profession;

(d) Incompetence, negligence, or use of any modality procedure in the practice of the profession which creates an unreasonable risk of physical or mental harm to the patient;

(e) Malpractice, or an act or acts below the standard of care for physical therapists providing similar treatment;

(f) Suspension, revocation, or restriction of individual's license to practice physical therapy by competent authority in any state, federal, or foreign jurisdiction;

(g) The possession of, addiction to, prescription for use of, diversion of, or distribution of, controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, or violation of any drug law;

(h) Violation of any state or federal statute or administrative rule regulating the practice of physical therapy, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(i) Failing to cooperate with the board by:

(i) not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the board; or

(ii) not responding to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding;

(j) Interfering with an investigation or disciplinary proceeding by wilful misrepresentation of facts to the board or its authorized representative, or by the use of threats or harassment against any patient, or witness to prevent him, her or them from providing evidence in a disciplinary proceeding or any other legal action;

(k) Failing to make available, upon request of a person using the licensee's services, or his or her designee, copies

of documents in the possession and under the control of the licensee, when those documents have been prepared by the licensee relating to his or her services performed on or for the patient;

(l) Failing to comply with an order issued by the board or with an assurance of discontinuance entered into with the board;

(m) Any of the following, except when reasonably undertaken in an emergency situation to protect life, health, or property:

(i) accepting and performing physical therapy responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(ii) failing to refer a patient to a qualified professional when such referral is called for;

(n) Violating statutory child abuse and elderly abuse reporting requirements;

(o) Promoting for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(p) Overutilizing services by continuing treatment beyond the point of possible benefit to the patient or treating more frequently than necessary to obtain maximum therapeutic effect;

(q) Offering, undertaking, or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the board;

(r) Failing to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(s) Engaging in the profession in a manner involving contact with the public while suffering from a contagious or infectious disease, thereby creating serious risk to public health;

(t) Being convicted of any gross misdemeanor or felony relating to the practice of physical therapy. For the purposes of this subsection, conviction includes all proceedings in which the sentence has been deferred or suspended;

(u) Aiding or abetting an unlicensed person to practice when a license is required;

(v) Wilfully or repeatedly violating rules established by any health agency or authority of the state or a political subdivision thereof."

Auth: 37-1-131, 37-11-201, 37-11-321, MCA Imp:
37-11-321, MCA

REASON: The Board is proposing this rule to more clearly define and describe post licensing conduct standards for licensees in the interest of protecting the public. This proposed rule is prohibitive and more specifically describes conduct on the part of licensees which the Board and the profession consider detrimental to patients that should subject the violator to license disciplinary action.

"II. DISCIPLINARY ACTIONS (1) The board reserves the discretion to take appropriate disciplinary action provided for in 37-11-321, MCA, against a licensed physical therapist violating any law or rules of the board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate, applying the following considerations:

- (a) the seriousness of the infraction;
- (b) the detriment to the health, safety and welfare of the people of Montana; and
- (c) past or pending disciplinary actions relating to the licensee.

(2) The board may impose one or more of the following sanctions in appropriate cases:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) public or private reprimand or censure of a licensee;

- (f) limitation or restriction of the scope of the license and the licensee's practice;

- (g) deferral of disciplinary proceedings or imposition of disciplinary sanctions;

- (h) ordering the licensee to successfully complete appropriate professional training.

(3) Subsections (2)(a) through (3) are provided for in 37-1-136(1), MCA.

(4) When a license is revoked or suspended, the licensee must surrender to the board his wall certificate and current renewal license.

(5) Any person whose registration has been revoked may apply to the board for reinstatement after expiration of the minimum time period, if any, specified in the notice of revocation. In the application for reinstatement the applicant must state why he feels registration should be reinstated, specifically setting forth any changed conditions which would justify reinstatement. The applicant must include evidence that he meets the current requirements for registration. The board upon receipt of said application for reinstatement and after ascertaining that all requirements of the notice of revocation has been met, may reissue a certificate of registration, provided the evidence submitted by the applicant is satisfactory to the members voting in favor of reinstatement and providing three or more of the members of the board vote in favor of reinstatement."

Auth: 37-1-131, 37-1-136, 37-11-201, MCA Imp:
37-1-136, 37-11-321, MCA

REASON: The board is proposing this rule to implement section 37-1-136, MCA, giving the board more options and broader latitude in imposing disciplinary sanctions for improper conduct, and to clarify the procedure for applications for reinstatement.

5. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Physical Therapy Examiners, Department of Commerce, 1424 - 9th Avenue, Helena, Montana 59620, no later than February 23, 1989.

6. Geoffrey L. Brazier has been designated to preside over and conduct the hearing.

BOARD OF PHYSICAL THERAPY
EXAMINERS
LORIN WRIGHT, P.T., CHAIRMAN

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

Certified to the Secretary of State, January 16, 1989.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment to a rule pertaining) ON AMENDMENT TO 8.58.606
to timeshare licensure) LICENSURE--COURSE OF
) EDUCATION

TO: All Interested Persons:

1. On Friday, March 3, 1989, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the State of Montana Department of Commerce building located at 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of rules pertaining to timeshare brokers and salespersons.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text located at pages 8-1615 through 8-1622, Administrative Rules of Montana):

"8.58.606 LICENSURE--COURSE OF EDUCATION (1) Each applicant for licensure or certificate of completion shall have successfully completed a course, or courses, of education related to the timeshare industry and approved by the board. An approved course of education under section 37-53-301, MCA, shall consist of 20 8 classroom hours of instruction or the equivalent in subjects approved in advance by the board.

(2) The board shall provide a correspondence course equivalent to 8 classroom hours of instruction and otherwise meeting the requirements of 37-53-501, MCA. The course is available from the board office upon application and payment of the required fee, \$25. Persons taking the course must file an affidavit of completion included with the course packet prior to receiving a certificate of completion or taking the required examination for licensure.

42+ (3) Request for advance approval for a course of study, other than the board's correspondence course, shall be made in writing and must contain all relevant available information about the course content and the instructors or administrators of the courses, sufficient to enable the board to evaluate timeshare relatedness and to confirm attendance and successful completion. No course will be approved for an applicant if attended more than two years prior to the application for certificate of completion or licensure."

Auth: 37-1-131, 37-53-104, MCA Imp: 37-53-301, MCA.


REASON: The board's assumption that the private sector would be willing to create and provide a course of education proved to be incorrect. This requires that the board develop a course. Comments received from the industry and the board's reconsideration of the matter in light of the resources available, indicate that the number of hours required for a

course of education sufficient to insure a minimum level of competency is eight hours.

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 Realty Regulation, Department of Commerce, 1424 - 9th Avenue, Helena, Montana, 59620, no later than Friday, March 3, 1989.

4. Martin Jacobson, Staff Attorney, Board of Realty Regulation, Department of Commerce, State of Montana, 1424 - 9th Avenue, Helena, Montana, 59620, phone (406) 444-4290, has been designated to preside over and conduct the hearing.

JOHN DUDIS, CHAIRMAN
BOARD OF REALTY REGULATION

BY: 
GEOFFREY L. BRATNER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 16, 1989.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.8.921, 16.8.936, 16.8.937,) FOR AMENDMENT OF
16.8.941, 16.8.1101, 16.8.1103) RULES
and 16.8.1109 concerning the)
permitting of new or altered)
sources of air contamination.)
(Air Quality)

To: All Interested Persons

1. On March 10, at 9:30 A.M. or as soon thereafter as the matter may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments would update and/or correct federal incorporations by reference and clarify other terms in the captioned rules.

3. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.8.921 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) through (21)(b)(iv) same as existing rule.

(v) use of an alternative fuel or raw material by a stationary source which:

(A) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved or conditionally approved pursuant to 40-CFR-51-i8 40 CFR Part 51 Subpart I or 40-CFR-51-i24 40 CFR 51.166; or

(B) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved or conditionally approved pursuant to 40-CFR-51-i24 40 CFR 51.166;

(vi) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved or conditionally approved pursuant to 40-CFR-51-i8 40 CFR Part 51 Subpart I or 40-CFR-51-i24 40 CFR 51.166;

(21)(b)(vii) through (26) same as existing rule.

(27) "Potential to emit" means the ~~capability of a source at maximum design capacity to emit any air pollutant after the application of air pollution control equipment. Any enforceable permit condition or regulation which limits hours of operation, the type or amount of material combusted, stored or processed, or other production or emissions limiting factors,~~

is treated as part of its design. Particulate fugitive emissions do not count in determining potential to emit for all source types not listed in subsection (22)(a) of this rule, ARM 16.8.1423 or ARM 16.8.1424, maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source and particulate fugitive emissions do not count in determining potential to emit of all stationary source types not listed in subsection (22)(a) of this rule, ARM 16.8.1423 or ARM 16.8.1424.

AUTHORITY: 75-2-111, 75-2-203, MCA

IMPLEMENTING: 75-2-202, 75-2-203, MCA

16.8.936 EXEMPTIONS FROM REVIEW

(1) through (2)(a)(vi) same as existing rule.

(vii) lead - $0.1 \mu\text{g}/\text{m}^3$, 24-hour average 3 month average;

(viii) mercury - $0.25 \mu\text{g}/\text{m}^3$, 24-hour average;

(ix) beryllium - $0.0005 \mu\text{g}/\text{m}^3$ $0.001 \mu\text{g}/\text{m}^3$, 24-hour average;

(x) fluorides - $0.25 \mu\text{g}/\text{m}^3$, 24-hour average;

(xi) vinyl chlorides - $15 \mu\text{g}/\text{m}^3$, 24-hour average;

(xii) total reduced sulfur - $10 \mu\text{g}/\text{m}^3$, 1-hour average;

(xiii) hydrogen sulfide - $0.04 \mu\text{g}/\text{m}^3$ $0.2 \mu\text{g}/\text{m}^3$, 1-hour average;

AUTHORITY: 75-2-111, 75-2-203, MCA

IMPLEMENTING: 75-2-202, 75-2-203, MCA

16.8.937 AIR QUALITY MODELS (1) The board hereby adopts and incorporates by reference "Guideline on Air Quality Models (Revised) (Revised July 1986)" and "Supplement A to the Guideline on Air Quality Models (Revised July 1987)" (Publication No. EPA 450/2-78-027R, July, 1986, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711) which sets forth air quality modeling procedures including requirements for concentration estimates, air quality models, data requirements and model validation and calibration; and ARM 16.8.1107(2) and (3) which sets forth the provisions for public notice of the submittal of an application for an air quality permit, notice of the department's preliminary determination on the application for the air quality permit, and the public comment period. A copy of ARM 16.8.1107(2) and (3) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620. "Guideline on Air Quality Models (Revised) (Revised July 1986)" and "Supplement A to the Guideline on Air Quality Models (Revised July 1987)" is are available for public inspection and copying at the Air Quality Bureau, Department of

Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; and at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are available as supplies permit from the Library Service Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(2) All estimates of ambient concentrations required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines on Air Quality Models ~~(Revised)~~ (Revised July 1986)" and "Supplement A to the Guideline on Air Quality Models ~~(Revised July 1987)~~" (Publication No. EPA 450/2-78-027R, July, 1986; Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711).

(3) Where a preferred air quality impact model specified in the "Guideline on Air Quality Models ~~(Revised)~~ (Revised July 1986)" and "Supplement A to the Guideline on Air Quality Models ~~(Revised July 1987)~~" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under ARM 16.8.1107(2) and (3). Written approval of the EPA administrator must be obtained for any modification or substitution. Methods like those referenced in "Guideline on Air Quality Models ~~(Revised)~~ (Revised July 1986)" and "Supplement A to the Guideline on Air Quality Models ~~(Revised July 1987)~~", July, 1986, should be used to determine the comparability of air quality models.

AUTHORITY: 75-2-111, 75-2-203, MCA

IMPLEMENTING: 75-2-202, 75-2-203, MCA

16.8.941 CLASS I VARIANCES -- GENERAL

(1) same as existing rule.

Maximum allowable increase
(micrograms per cubic meter)

(a) Particulate-matter Total suspended particulate:

Annual geometric mean 19

Twenty-four hour maximum 37

AUTHORITY: 75-2-111, 75-2-203, MCA

IMPLEMENTING: 75-2-202, 75-2-203, MCA

16.8.1101 DEFINITIONS

(1) through (6) same as existing rule.

(7) "Potential to emit" means the ~~capability--of-a-source at--maximum--design--capacity--to--emit-any-air-pollutant-after application-of-air-pollution-control-equipment--Any-enforceable-permit-condition-or-regulations-which-limit-hours-of-operation--the-type-or-amount--of--material--combusted--stored--or processed--or--other-emissions--limiting-factors--is-treated-as part-of-its-design--Secondary--emissions-are--not-included-in determining--the--potential--to--emit--of--a-stationary-source~~ maximum capacity of a source to emit a pollutant under its

physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

AUTHORITY: 75-2-111, 75-2-204, MCA
IMPLEMENTING: 75-2-204, 75-2-211, MCA

16.8.1103 EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a new or altered source for which an air quality permit is required by this subchapter shall install on the new or altered source the maximum air pollution control capability which is technically practicable and economically feasible, except that:

(a) best available control technology shall be utilized; and

(b) the lowest achievable emission rate shall be met to the extent and by such sources as may be required by the Federal Clean Air Act, as amended on August 7, 1977. ~~All equipment shall be operated to provide the maximum air pollution control for which it was designed.~~

(2) The owner or operator of a new or altered source for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

AUTHORITY: 75-2-111, 75-2-204, MCA
IMPLEMENTING: 75-2-204, 75-2-211, MCA

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT

(1) through (7) same as existing rule.

(8) Any owner or operator proposing to construct or alter a stationary source in any area designated as non-attainment must comply with the requirements of ~~40-CFR--51.165(j)~~ 40 CFR 51.165(a) as appropriate. The board hereby adopts and incorporates by reference 40 CFR Part 52, Subpart BB, which is a federal agency regulation describing Montana's state implementation plan for control of air pollution in Montana; 40 CFR 81.327, which is a federal agency regulation setting forth air quality attainment status designations for the state of Montana; and ~~40-CFR--51.165(j)~~ 40 CFR 51.165(a), which sets forth the permit requirements for new or altered sources proposed to be constructed or altered in any non-attainment area. Copies of 40 CFR Part 52, Subpart BB, 40 CFR 81.327, and ~~40-CFR 51.165(j)~~ 40 CFR 51.165(a) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

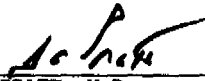
AUTHORITY: 75-2-111, 75-2-204, MCA
IMPLEMENTING: 75-2-204, 75-2-211, MCA

4. The amendments of rules 16.8.936 and 16.8.1101 are proposed to incorporate recent EPA changes in federal regula-

tions which the State must adopt to maintain its delegation of the federal new source review program. The change in 16.8.937 updates an incorporation by reference of an EPA Guideline document and the format change in 16.8.1103 is proposed to clarify the separation of the concept of lowest achievable emission rate from that of operation at maximum design. The change in 16.8.921 corrects a federal incorporation by reference and the change in 16.20.941 clarifies a term in the state's rule on prevention of significant deterioration (PSD).

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either 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 March 11, 1989.

6. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.



SIDNEY PRATT, M.D.
Interim Director

Certified to the Secretary of State January 16, 1989.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

IN the matter of the rules)	NOTICE OF PROPOSED AMENDMENT
regulating the state meat)	OF RULE 32.6.712 RELATIVE
and poultry inspection)	TO FOOD SAFETY AND INSPECTION
program)	SERVICE (MEAT, POULTRY)

(NO PUBLIC HEARING
CONTEMPLATED)

TO: All Interested Persons:

1. On February 25, 1989, the Board of Livestock proposes to amend ARM 32.6.712 adopting as rules of the department additional federal rules on meat and poultry inspection as they are now described.

2. The rule, as proposed to be amended, provides as follows: 32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY) The department of livestock hereby incorporates by reference 9CFR301 through 9CFR320.7; 9CFR325 through 9CFR325.21; 9CFR329.1 through 9CFR329.9; 9CFR352 through 9CFR362.5; 9CFR381 through 9CFR381.37; 9CFR381.45 through 9CFR381.95; 9CFR381.115 through 9CFR381.182; 9CFR381.190; 9CFR381.194; 9CFR381.300 through 9CFR381.311 which sets forth the federal rules on meat and poultry inspection with the following exceptions and clarifications thereto:

(1) through (35) remain the same.

AUTH. 81-9-220

IMP. 81-9-220

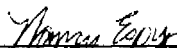
3. The Board of Livestock proposes to adopt these rules amending ARM 32.6.712 pursuant to the mandate of 91-9-220, MCA which requires that a meat inspection program be established by the State of Montana with rules that are "consistent with the requirements of the rules of the U.S. Department of Agriculture governing meat inspection".

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620 no later than February 23, 1989.

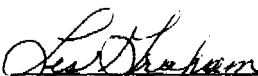
5. If a person who is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than February 23, 1989.

6. If the Board receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rules, 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 public hearing will be held at a later date.

Notice of Hearing will be published in the Montana Administrative Register.



NANCY ESPY, CHAIRMAN
Board of Livestock



LES GRAHAM, EXECUTIVE SECRETARY
to the Board of Livestock

Certified to the Secretary of State January 16, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING ON
of ARM 42.19.402, 42.21.106,)	PROPOSED AMENDMENT OF ARM
42.21.107, 42.21.113, 42.21.123,)	42.19.402, 42.21.106,
42.21.137, 42.21.138, 42.21.139,)	42.21.107, 42.21.113,
42.21.140, 42.21.151, 42.21.155,)	42.21.123, 42.21.131,
42.21.156, 42.21.301, 42.21.302,)	42.21.137, 42.21.138,
42.21.303, 42.21.304, and)	42.21.139, 42.21.140,
42.21.305 relating to Trending)	42.21.151, 42.21.155,
and Depreciating Schedules for)	42.21.156, 42.21.301,
Property.)	42.21.302, 42.21.303,
)	42.21.304, and 42.21.305
)	relating to Trending and
)	Depreciating Schedules for
)	Property.

TO: All Interested Persons:

1. On February 22, 1989, at 9:00 a.m., in Room 408, Mitchell Building, Helena, Montana, the Department proposes to amend the rules shown above relating to trending and depreciating schedules for property.

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

42.19.402 INFLATION ADJUSTMENT FOR LOW INCOME PROPERTY TAX RELIEF Section (1) through (2) remain the same.

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

$$IF_t = \frac{PCE_{t-1}}{PCE_{t0}}$$

where:

IF_t equals the inflation factor for property tax year t ,

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

PCE_{t0} is the implicit price deflator for personal consumption expenditures for the second quarter of 1986.

Using this formula, the calculation of the inflation factor for property tax year 1988 1989 follows:

$$\text{IF } 88 = \frac{\text{PCE } 87}{\text{PCE } 86} = \frac{118.4 \text{ } 123.8}{113.6} = 1.04225 \text{ } 1.08979$$

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

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

The base year income schedule is below.

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

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

Applying the 1988 1989 inflation factor calculated previously (1.04225 1.08979) to each income figure and rounding the product to the nearest dollar yields the income schedule for property tax year 1988 1989:

----- 1988 1989 Income Schedules -----

Single Person		Married Couple		Percentage Multiplier
\$0 -	\$1,090	\$0 -	\$1,308	0%
1,091 -	2,180	1,309 -	2,616	10%
2,181 -	3,269	2,617 -	3,923	20%
3,270 -	4,359	3,924 -	5,231	30%
4,360 -	5,449	5,232 -	6,539	40%
5,450 -	6,539	6,540 -	7,846	50%
6,540 -	7,629	7,847 -	8,954	60%
7,630 -	8,718	8,955 -	10,062	70%
8,719 -	9,808	10,063 -	11,170	80%
9,809 -	10,899	11,171 -	12,277	90%

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

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

(3) For all trucks which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old truck valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates 80% of the average retail value. The trend factors shall be ~~the same as those reflected in ARM-42.21.101(3)~~ those contained in the January 1, 1989, Marshall Valuation Service Manual. The Marshall Valuation Service Manual published by Marshall and Swift Publication Company, 1617 Beverly Boulevard, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(4) remains the same.

(5) The percent good schedule referred to in subsections (2) through (4) is listed below and shall be used for the 1987 1989 tax year.

TRUCK-% GOOD SCHEDULE

<u>YEAR-ACQUIRED</u>	<u>%-GOOD</u>
1988	80%
1987	48%
1986	46%
1985	40%
1984	34%
1983	30%
1982	27%
1981	26%
1980	19%
1979	17%
1978	16%
1977	15%
1976	14%
1975	13%
1974	12%
1973-and-before	11%

TRUCK % GOOD SCHEDULE

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
1989	80%
1988	45%
1987	41%
1986	39%
1985	34%
1984	30%
1983	27%
1982	25%
1981	21%
1980	19%

<u>1979</u>	<u>16%</u>
<u>1978</u>	<u>15%</u>
<u>1977</u>	<u>14%</u>
<u>1976</u>	<u>13%</u>
<u>1975</u>	<u>12%</u>
<u>1974 and before</u>	<u>11%</u>

(6) The department of revenue may develop other supplementary schedules for unique equipment and other trucks not listed in the guidebook. These schedules will be used in conjunction with the above schedules in the valuation of trucks. The purpose of the department developed schedules will be to arrive at a value which approximates 80% of the average retail value. Supplemental schedules for other trucks and unique equipment for 1980 1989 have been developed and are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying at Department of Revenue, Helena, Montana 59620.

(7) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 and 15-6-140 MCA.)

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

(6) The percent good schedules referred to in subsections (3) through (5) are listed below and shall be used for the 1988 1989 tax year.

TRAILERS-0---10,000-LBS.-G-V-Wr

<u>YEAR-ACQUIRED</u>	<u>%-GOOD</u>
1988	80%
1987	64%
1986	58%
1985	56%
1984	52%
1983	49%
1982	46%
1981	43%
1980	40%
1979	37%
1978	35%
1977	33%
1976	31%
1975	29%
1974	27%
1973	25%
1972	23%
1971	21%
1970	19%
1969	17%
1968-and-before	15%

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

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
1989	80%
1988	62%
1987	59%
1986	54%
1985	49%
1984	45%
1983	43%
1982	41%
1981	39%
1980	37%
1979	35%
1978	33%
1977	31%
1976	29%
1975	27%
1974	25%
1973	23%
1972	21%
1971	19%
1970	17%
1969 and before	15%

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

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
1988	80%
1987	48%
1986	46%
1985	40%
1984	34%
1983	30%
1982	27%
1981	26%
1980	19%
1979	17%
1978	16%
1977	15%
1976	14%
1975	13%
1974	12%
1973 and before	11%

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

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
1989	80%
1988	45%
1987	41%
1986	39%

1985	34%
1984	30%
1983	27%
1982	25%
1981	21%
1980	19%
1979	16%
1978	15%
1977	14%
1976	13%
1975	12%
1974 and before	11%

(7) The department of revenue may develop other supplementary schedules to value other unique trailers not listed in the guidebook. These schedules will be used in conjunction with the schedules mentioned in subsection (3) in the valuation of trailers. The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue 1988 1989 trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(8) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 and 15-6-139 MCA.)

42.21.113 LEASED AND RENTED EQUIPMENT (1) through (2)(b) remain the same.

(c) For equipment that has an acquired cost of \$1501 to \$5000 or greater, the department shall prepare a seven-year trended depreciation schedule.

(3) remains the same.

(4) The depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for tax year 1988 1989.

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

Year Acquired	\$0 ~ 500	\$501 - 1500	\$1501 and greater
1988	70%	85%	85%
1987	45%	71%	70%
1986	20%	54%	52%
1985	20%	35%	46%

1984	20%	21%	37%
1983	20%	21%	33%
1982 and older	20%	21%	30%

(5) and (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-136 MCA.)

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

(3) For all farm machinery and equipment which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old farm machinery and equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates wholesale value. The trend factors shall be the same as those mentioned in ARM 42-21-101(3) 42.21.106(3).

(4) remains the same.

(5) The percent good schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year 1988 1989.

YEAR	<u>TRENDED-1-GOOD</u> <u>AVERAGE-LOAN</u>
1988	65%
1987	42%
1986	38%
1985	36%
1984	35%
1983	34%
1982	35%
1981	34%
1980	34%
1979	33%
1978	33%
1977	33%
1976	30%
1975	29%
1974	28%
1973	27%
1972	26%
1971	26%
1970	25%
1969	24%
1968	23%
1967	22%
1966	21%
1965	21%
1964	20%
1963-1-older	20%

<u>YEAR</u>	<u>TRENDED & GOOD AVERAGE LOAN</u>
1989	65%
1988	41%
1987	39%
1986	35%
1985	33%
1984	33%
1983	32%
1982	32%
1981	31%
1980	31%
1979	30%
1978	31%
1977	30%
1976	29%
1975	28%
1974	28%
1973	27%
1972	26%
1971	26%
1970	25%
1969	24%
1968	23%
1967	23%
1966	22%
1965	21%
1964 & older	20%

(6) The department of revenue may develop a manual for other farm equipment not listed in the guidebooks. This manual will be used in conjunction with the schedules mentioned in subsection (2) in the valuation of farm equipment and machinery. The purpose of the department developed manual will be to arrive at values which approximate loan value. The 1987 1989 department of revenue farm machinery manual is hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying at Department of Revenue, Helena, Montana 59620.

(7) remains the same.

(8) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; AUTH Extension, Ch. 516, Sec. 49, L. 1985, Eff. 1/1/86; IMP, Sec. 15-6-138 MCA.)

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

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

Horses; All horses, mules, asses, shetland ponies, donkeys and burrows burros - 9 months --23-months and older
Mules; asses; shetland ponies; donkeys and burrows --24-months

and-older

Stallions---24-months-and-older

Saddle-Horses-and-Brood-Mares---24-months-and-older

Work-and-Pack-Horses,--Riding-and-Pack-Mules---24-months-and-older

Show, Race-and-Roping-Horses---24-months-and-older

Stock-and-Grade-Cattle,

Bulls, All bulls and cattle - 9 months and older

Cattle---9-months-through-23-months

Cattle---24-months-through-32-months

Cattle---33-months-and-older

Steers---33-months-and-older

Dairy-Cattle---24-months-and-older

Pure-Bred-Cattle

Bulls---9-months-and-older

Cattle---9-months-through-23-months

Cattle---24-months-through-32-months

Cattle---33-months-and-older

Goats All goats - 9 months and older

Bucks

Does

Swine All swine - 3 months and older

Bears

Brood-Sows

Market-Hogs---3-months-through-5-months

Other-Livestock

Chickens

Turkeys

Ducks-and-Geese Poultry

Bees

All Sheep - 9 months and older

Registered-Bucks---9-months-and-older

Stock-Bucks---9-months-and-older

Sheep---9-months-through-70-months

Sheep---71-months-and-older

(AUTH, Sec. 15-1-201 MCA; AUTH Extension, Ch. 660, Sec. 13, L. 1987; IMP, Sec. 15-6-136, 15-6-207, 15-24-921, 15-24-922 and 15-24-925 MCA.)

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

(3) For all heavy equipment which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables mentioned in subsection (2) to arrive at a value which approximates wholesale value. The trend factors are contained in the January 1, 1988 1989 Marshall

Valuation Service Manual. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Company", 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(4) remains the same.

(5) The percent good schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year 1988 1989.

HEAVY EQUIPMENT % GOOD SCHEDULE

YEAR	% GOOD WHOLESALE
1988 1989	80%
1987 1988	67%
1986 1987	54%
1985 1986	48%
1984 1985	44%
1983 1984	37%
1982 1983	34%
1981 1982	31%
1980 1981	31%
1979 1980	30%
1978 1979	29%
1977 1978	28%
1976 1977	28%
1975 1976	27%
1974 1975	32%
1973 1974	31%
1972 1973	29%
1971 1972	26%
1970 1971	23%
1969 1970	23%
1968 1969	23%
1967 1968	22%
1966 1967 & before	20%

(6) This rule is effective for tax years beginning after December 31, 1987 1988, and applies to all heavy equipment not listed in ARM 42.21.139. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-135, 15-6-138, and 15-6-140 MCA.)

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT (1) through (3) remain the same.

(4) The percent good schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year 1988 1989.

SEISMOGRAPH UNITS

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
1988	100%	1.000	100%	80%	-80%
1987	-85%	1.000	-85%	80%	-60%
1986	-69%	1.011	-70%	80%	-56%
1985	-52%	1.015	-53%	80%	-42%
1984	-34%	1.030	-35%	80%	-28%
1983	-20%	1.057	-21%	80%	-17%
1982 & older	-5%	1.073	-5%	80%	-4%
1989	100%	1.000	100%	80%	80%
1988	85%	1.000	85%	80%	68%
1987	69%	1.043	72%	80%	58%
1986	52%	1.054	55%	80%	44%
1985	34%	1.059	36%	80%	29%
1984	20%	1.074	21%	80%	17%
1983 & older	5%	1.103	6%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1988	100%	1.000	100%
1987	-85%	1.000	-85%
1986	-69%	1.011	-70%
1985	-52%	1.015	-53%
1984	-34%	1.030	-35%
1983	-20%	1.057	-21%
1982 & older	-5%	1.073	-5%
1989	100%	1.000	100%
1988	85%	1.000	85%
1987	69%	1.043	72%
1986	52%	1.054	55%
1985	34%	1.059	36%
1984	20%	1.074	21%
1983 & older	5%	1.103	6%

(5) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

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

(3) The percent good schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year 1988 1989.

**OIL AND GAS FIELD PRODUCTION
EQUIPMENT PERCENT GOOD SCHEDULE**

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1988 1989	100%	1.000	100%
1987 1988	95%	1.000	95%
1986 1987	89%	1.011 1.043	90% 93%
1985 1986	83%	1.015 1.054	84% 87%
1984 1985	77%	1.030 1.059	79% 82%
1983 1984	71%	1.057 1.074	75% 76%
1982 1983	65%	1.073 1.103	70% 72%
1981 1982	58%	1.129 1.119	65% 65%
1980 1981	51%	1.255 1.177	64% 60%
1979 1980	45%	1.392 1.309	63% 59%
1978 1979	39%	1.514 1.452	59% 57%
1977 1978	33%	1.631 1.579	54% 52%
1976 1977	28%	1.710 1.701	48%
1975 1976	23%	1.816 1.792	42% 41%
1974 1975 & older	20%	1.829 1.894	41% 38%

(4) remains the same.

(5) This rule is effective for tax years beginning December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; AUTH Extension, Ch. 583, Sec. 3, L. 1985, Eff. 4/22/85; IMP, Sec. 15-6-138 MCA.)

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

DEPTH CATEGORIES

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

DEPTH CATEGORIES AND REPLACEMENT COST NEW

<u>MANUFACTURER'S DEPTH RATING</u>	<u>SERVICE RIG R.C.N.</u>	<u>WORKOVER RIG R.C.N.</u>
0 - 3,000'	146,788	186,788
3,001' - 5,000'	187,336	227,336
5,001' - 8,000'	245,572	305,572
8,001' - 10,000'	293,325	393,325
10,001' - 14,000'	322,918	472,918
14,001' and over	405,426	555,426

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

(2) remains the same.

(3) In any year that the information required in subsection (1) is not available for use by the department, workover and service rigs shall be valued by using the cost approach to market value. ~~The taxpayer must provide to the department or its agent the acquired cost, the year acquired, and an itemized description of each piece of equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedules mentioned in subsection (4) schedule from the previous year.~~

~~(4) The department of revenue shall prepare a 10-year trended depreciation schedule for workover and service rigs. The trended depreciation schedule will be derived by using trend factors and depreciation factors published by "Marshall and Swift Publication Company". The trend factors shall be the most recent available from the "Chemical Industry Cost Indexes" listed in the above publication.~~

~~(5) (4) For self-propelled wheeled workover and service rigs, an additional 80% wholesale factor shall be used in determining market value in conjunction with the schedules mentioned in subsection (2) and subsection (4).~~

~~(6) (5) The percent good schedule referred to in subsections subsection (2) and (5) is listed below and shall be used for tax year 1988 1989.~~

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

<u>YEAR</u>	<u>% GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
1988 1989	100%	80%	80%
1987 1988	92%	80%	74%
1986 1987	84%	80%	67%
1985 1986	76%	80%	61%
1984 1985	67%	80%	54%
1983 1984	58%	80%	46%
1982 1983	49%	80%	39%

1981	1982	35%	80%	28%
1980	1981	30%	80%	24%
1979	1980	24%	80%	19%
1978	1979 & older	20%	80%	16%

(7) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year depreciation schedule for oil drilling rigs. The depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The percent good schedule for tax year 1980 1989 is listed below.

DRILL RIG % GOOD SCHEDULE

YEAR	TRENDED % GOOD
1980 1989	100%
1987 1988	92%
1986 1987	84%
1985 1986	76%
1984 1985	67%
1983 1984	58%
1982 1983	49%
1981 1982	35%
1980 1981	30%
1979 1980	24%
1978 1979 and older	20%

(3) In any year that the information required in subsection (1) is not available for use by the department, oil drilling rigs shall be valued by using the cost approach to market value. The taxpayer must provide to the department or its agent the acquired cost, the year acquired, and an itemized description of each piece of equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedules mentioned in subsection (4) previous year's schedule.

(4) The department of revenue shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule will be derived by using trend factors and depreciation factors published by "Marshall and Swift Publication Company". The trend factors shall be the most recent available from the "Chemical Industry Cost Index" listed in the above publication.

(5) (4) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

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

(4) The percent good schedules referred to in subsections

(2) and (3) are listed below and shall be in effect for tax year 1988 1989.

TABLE 1: 5 YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1988	100%	1.000	100%
1987 1988	85%	1.000	85%
1986 1987	69%	1.043	70% 72%
1985 1986	52%	1.058	53% 55%
1984 1985	34%	1.068	35% 36%
1983 1984 & older	20%	1.084	21% 22%

TABLE 2: 10 YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1988	100%	1.000	100%
1987 1988	92%	1.000	92%
1986 1987	84%	1.043	85% 88%
1985 1986	76%	1.058	78% 80%
1984 1985	67%	1.068	70% 72%
1983 1984	58%	1.084	62% 63%
1982 1983	49%	1.113	53% 55%
1981 1982	39%	1.133	44% 44%
1980 1981	30%	1.186	38% 36%
1979 1980	24%	1.309	33% 31%
1978 1979 & older	20%	1.440	30% 29%

(5) and (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, 1987 1988. (AUTH, Sec. 15-1-201 MCA; IMP, Sec. 15-6-140 MCA.)

42.21.155 DEPRECIATION TABLES (1) remains the same.

(2) The percent good schedules for tax year 1988 1989 are listed below. The categories listed are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1988	100%	1.000	100%
1987 1988	70%	1.000	70%
1986 1987	45%	1.017 .996	46% 45%
1985 1986	20%	1.012	20%
1984 1985 and older	10%	1.001	10%

CATEGORY 2

YEAR		% GOOD	TREND FACTOR	TRENDED % GOOD
1988		100%	1.000	100%
1987	1988	85%	1.000	85%
1986	1987	69%	1.028	70% 71%
1985	1986	52%	1.042	53% 54%
1984	1985	34%	1.042	34% 36%
1983	1984 and older	20%	1.039	20% 21%

CATEGORY 3

YEAR		% GOOD	TREND FACTOR	TRENDED % GOOD
1988		100%	1.000	100%
1987	1988	85%	1.000	85%
1986	1987	69%	1.007	70% 69%
1985	1986	52%	1.025	54% 53%
1984	1985	34%	1.036	36% 35%
1983	1984 and older	20%	1.081	23% 22%

CATEGORY 4

YEAR		% GOOD	TREND FACTOR	TRENDED % GOOD
1988		100%	1.000	100%
1987	1988	85%	1.000	85%
1986	1987	69%	1.015	69% 70%
1985	1986	52%	1.010	53%
1984	1985	34%	1.037	35%
1983	1984 and older	20%	1.052	21%

CATEGORY 5

YEAR		% GOOD	TREND FACTOR	TRENDED % GOOD
1988		100%	1.000	100%
1987	1988	85%	1.000	85%
1986	1987	69%	1.022	70% 71%
1985	1986	52%	1.034	53% 54%
1984	1985	34%	1.046	35% 36%
1983	1984 and older	20%	1.064	21%

CATEGORY 6

YEAR		% GOOD	TREND FACTOR	TRENDED % GOOD
1988		100%	1.000	100%
1987	1988	85%	1.000	85%
1986	1987	69%	1.043	70% 72%
1985	1986	52%	1.065	54% 55%
1984	1985	34%	1.089	36% 37%
1983	1984 and older	20%	1.109	22%

CATEGORY 7

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1988	100%	1.000	100%
1987 1988	92%	1.000	92%
1986 1987	84%	1.016 1.021	85% 86%
1985 1986	76%	1.036 1.037	79%
1984 1985	67%	1.065 1.058	71%
1983 1984	58%	1.081 1.086	63%
1982 1983	49%	1.122 1.103	55% 54%
1981 1982	39%	1.214 1.145	47% 45%
1980 1981	30%	1.363 1.239	41% 37%
1979 1980	24%	1.535 1.389	37% 33%
1978 1979 and older	20%	1.692 1.567	34% 31%

CATEGORY 8

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1988	100%	1.000	100%
1987 1988	92%	1.000	92%
1986 1987	84%	1.056 1.036	89% 87%
1985 1986	76%	1.069 1.062	81%
1984 1985	67%	1.105 1.106	74%
1983 1984	58%	1.146 1.143	66%
1982 1983	49%	1.207 1.185	59% 58%
1981 1982	39%	1.307 1.248	51% 49%
1980 1981	30%	1.415 1.352	42% 41%
1979 1980	24%	1.518 1.463	36% 35%
1978 1979 and older	20%	1.660 1.570	33% 31%

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

42.21.156 CATEGORIES (1) remains the same.

(2) Category 1 consists of computer systems, and data processing equipment, and video games. The index used will be the "Producer Price Index for the 1972 Standard Industrial Classification Manual", Code #3674, "Semiconductors and Related Devices", published by the United States Department of Labor, Bureau of Labor Statistics. A 4-year depreciation table will be used.

(3) Category 2 consists of calculating and accounting machines, cash registers, typewriters, vending machines, addressing machines, time recording machines, check endorsing machines, postage machines, electronic games, transcribing equipment, and other office and store machines. The index used will be the "Producer Price Index for Commodity Grouping, No. 1193, "Office and Store Machines and Equipment", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(4) Category 3 consists of citizens band radios, mobile telephones, PBX type systems, and radio and television

broadcasting and transmitting equipment, locally assessed phones and phone systems, all cable T.V. equipment not assessed by ARM 42.22.151, intercom equipment, mics, and sound systems. The index used will be the "Producer Price Index for Commodity Grouping, No. 1178, "Electronic Components and Accessories", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(5) remains the same.

(6) Category 5 consists of hotel and motel furniture and fixtures equipment and also includes apartment, home rental and nursing home furniture and fixtures. The index used will be the "Producer Price Index for Commodity Grouping", No. 12, "Furniture and Household Durables", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(7) and (8) remain the same.

(9) Category 8 consists of all other commercial furniture and fixtures and includes but is not limited to medical and dental chairs and tables, theatre equipment, stereo equipment, survey equipment, bill boards, garbage bins, coin-op car wash equipment, gas pumps, bar equipment, restaurant equipment and furniture and fixtures, bowling alleys and equipment (auto scorers should be valued using category 1), photo and developing equipment, mortuary equipment, safes and security alarm systems. The index used will be the "Producer Price Index for Commodity Grouping", No. 122, "Commercial Furniture", published by the United States Department of Labor, Bureau of Labor Statistics. A 10-year depreciation table will be used. (AUTH, Sec. 15-1-201(1) MCA; IMP, Sec. 15-6-139 MCA.)

42.21.301 VALUATION PROCEDURE {1}--~~This schedule is to be used for vehicles with registration slips indicating expiration dates of June 30, 1987 through and including September 30, 1987. It should also be used for out of state vehicles being registered in the state from July 1, 1987 through and including December 31, 1987.~~

{2} (1) To determine the market value for automobiles and trucks with a rated capacity of 3/4 tons or less, motorcycles and quadricycles, vehicle assessment staff will use the methods in ARM 42.21.302 through 42.21.306 in a sequential order until a definite value is determined. (AUTH, Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

42.21.302 VEHICLES LISTED IN THE GUIDES (1) Automobiles and trucks with a rated capacity of 3/4 ton and less listed in the guides will be valued using:

(a) The "average trade-in" as listed in the January 1987 1989 Mountain States Edition of the N.A.D.A. Official Used Car Guide. This book values automobiles and trucks with manufacturer's years 1980 1982 through 1986 1988. For 1987 1989 vehicles that were first registered in 1986 1988, have already paid their new vehicle sales tax and that need to be reregistered, staff will use 80% of the manufacturer's suggested list price (M.S.R.P.) as the "average trade-in". Those M.S.R.P.'s can be

found in the pink or yellow section of the above-listed guide.

(b) The "average trade-in" as listed in the January through April 1987 1989 National Edition of the N.A.D.A. Official Older Used Car Guide. This book values automobiles and trucks with manufacturers' years 1970 1972 through 1979 1981.

(c) If the vehicle cannot be found in the above mentioned guides, staff will use the January through March 1987 1989 Value Guide to Cars of Particular Interest (C.P.I.). If the vehicle is listed in this guide the market value is the "low" value listed.

(2) Licensed motorcycles and licensed quadricycles listed in the guides will be valued using:

(a) The "average trade-in" or wholesale as listed in the January through April, 1987 1989 National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide. This book values motorcycles and quadricycles with manufacturers' years 1972 1974 through 1987 1989. (AUTH, Secs. 15-1-201 and 61-3-506 MCA; AUTH Extension, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87; IMP, 15-8-202 MCA.)

42.21.303 VEHICLES PREVIOUSLY REGISTERED THAT ARE "SUBSEQUENTLY NOT LISTED" IN THE GUIDES (1) Automobiles and trucks with a rated capacity of 3/4 ton and less and licensed motorcycles and licensed quadricycles previously registered and subsequently not listed in the guides will be valued as follows:

(a) ~~For 1987 only, staff will use the "1970 or last known average trade-in" for the same make and model vehicle as the vehicle being assessed and depreciate that value at the rate of 10% per year for each year it has not been listed in the guide until it reaches the minimum value. Vehicles valued by this method will normally be 1969 models and older. For vehicles that do not have a market value for the preceding year, use the last known "average trade-in" for the same make and model vehicle (from the above N.A.D.A. guides) as the vehicle being assessed and depreciate that value at the rate of 10% per year for each year it has not been listed in the guide until it reaches the minimum value.~~

(b) For vehicles that have established market values for the previous year, use 90% of last year's market as this year's market (Average trade-in). (AUTH, Secs. 15-1-201 and 61-3-506 MCA; AUTH Extension, Ch. 611, Sec. 39, L. 1987, Eff. 4/27/87; IMP, 15-8-202 MCA.)

42.21.304 VEHICLES NOT "ORIGINALLY" LISTED IN THE GUIDES (1) through (1)(a) remain the same.

(b) For vehicles that are 1 year or older in age, the average trade-in value will be determined by depreciating the f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price in accordance with the 1987 1989 trended percent good schedules contained in ARM 42.21.305. (AUTH, Secs. 15-1-201 and 61-3-506 MCA; AUTH Extension, Ch. 611, Sec. 39, L. 1987, Eff. 4/27/87; IMP, 15-8-202 MCA.)

42.21.305 TRENDED PERCENT GOOD SCHEDULES (1) 1987 1989 trended percent good schedule for licensed motorcycles and licensed quadricycles*

Year		Trended % Good
1987	1989	80%
1986	1988	57% 56%
1985	1987	44% 47%
1984	1986	37% 36%
1983	1985	34% 30%
1982	1984	34% 28%
1981	1983	31% 27%
1980	1982	27% 25%
1979	1981	25% 22%
1978	1980	25% 21%
1977	1979	25% 22%
1976	1978	22% 23%
1975	1977	22% 19%
1974	1976	21% 20%
1973	1975	21% 19%
1972	1974 & Older	21%

(2) 1987 1989 trended percent good scheduled schedule for automobiles and trucks with a rated capacity of 3/4 ton and less*

Year		Trended % Good
1987	1989	80% of F.O.B.
1986	1988	78% 80%
1985	1987	69% 73%
1984	1986	59% 64%
1983	1985	56% 56%
1982	1984	44% 45%
1981	1983	38% 37%
1980	1982	32% 31%
1979	1981	29% 26%
1978	1980	27% 24%
1977	1979	24% 21%
1976	1978	21% 18%
1975	1977	19% 15%
1974	1976	14% 14%
1973	1975	13% 14%
1972	1974	13% 14%
1971	1973	13% 16%
1970	1972	12% 14%
& Older		11%

* Note: The schedules are only used for vehicles not originally listed in a NADA book or CPI book. (AUTH. Secs. 15-1-201 and 61-3-506 MCA, AUTH Extension, Ch. 611, Sec. 39, L. 1987, EFF. 4/27/87, IMP, 15-8-202 MCA.)

3. The amendments to these rules are necessary because 15-8-111, MCA, requires the Department of Revenue to assess all property at 100% of its market value except as provided in subsection (5) of 15-8-111 and in 15-7-111 through 15-7-114, MCA. The statute does

not address in detail how the Department of Revenue is to arrive at market value. Through various administrative rules, the Department has adopted the concept of trending and depreciation in arriving at market value for property in instances where the present market value is unknown.

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

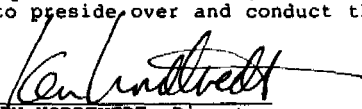
In order to update the trending and depreciation tables for purposes of applying them for the 1989 tax year, the Department is amending ARM 42.19.402, 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.156, 42.21.301, 42.21.302, 42.21.303, 42.21.304 and 42.21.305. The amendments to the rules are the annual updating of the trend factors and the adjustments, as necessary, to the depreciation tables.

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

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

no later than February 27, 1989.

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


KEN NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State 1/16/89.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING IN
proposed amendment of ARM	)	THE MATTER OF THE PROPOSED
46.12.1205 and 46.12.1301,	)	AMENDMENT OF ARM 46.12.1205
repeal of ARM 46.12.1101,	)	AND 46.12.1301, REPEAL OF
46.12.1302, 46.12.1303, and	)	ARM 46.12.1302, 46.12.1303,
46.12.1304 and the adoption	)	AND 46.12.1304, AND THE
of Rules I through IV	)	ADOPTION OF RULES I THROUGH
pertaining to preadmission	)	IV PERTAINING TO PREAMDIS-
screening for persons	)	SION SCREENING FOR PERSONS
entering long term care	)	ENTERING LONG TERM CARE
services.	)	SERVICES.
)	

TO: All Interested Persons

1. On February 15, 1989, at 9:30 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 ARM 46.12.1205 and 46.12.1301, repeal of ARM 46.12.1101, 46.12.1302, 46.12.1303 and 46.12.1304 and the adoption of Rules I through IV pertaining to preadmission screening for persons entering long term care services.

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

RULE I PREADMISSION SCREENING, GENERAL REQUIREMENTS

(1) This rule provides the preadmission screening requirements required by the Montana medicaid program for any entrant into a nursing facility participating in the Montana medicaid program.

(2) Any person, inclusive of medicaid and non-medicaid eligible persons, admitted to a nursing facility participating in the Montana Medicaid program, must undergo prior to that admission a level I screening for mental retardation and for mental illness.

(a) A nursing facility admitting a person for whom a level I screening has not been conducted may be subjected to the sanctions provided at ARM 46.12.402 and to any other measures that federal or state authorities deem appropriate and necessary for the purposes of the federal Social Security Act.

(b) A level I screening may result in the following determinations which will be applied as indicated:

(i) the nursing facility applicant who has no diagnosis or any indications of mental retardation or mental illness will:

(A) if not a medicaid recipient, receive a copy of the level I screen. No further action will be taken by the department; and

(B) if a medicaid recipient, undergo a level of care determination for nursing facility services.

(ii) the nursing facility applicant who has a diagnosis or indications of mental retardation or mental illness will:

(A) be referred to the state mental health or mental retardation authority for a level II screen unless determined by the level I screen to be within one of the exceptions provided for in (3)(a);

(B) undergo a level of care determination for nursing facility services if determined to be within one of the exceptions provided for in (3)(a).

(3) A nursing facility applicant who has a diagnosis or indications of mental retardation or mental illness may enter a nursing facility only if the applicant meets the level of care requirements and is allowed to as provided for in subsections (3)(a) or (b) of this rule;

(a) A person with a diagnosis or indications of mental retardation or mental illness who meets the level of care requirements may enter a nursing facility without a level II screening or a determination of appropriate active treatment, if either:

(i) the person is being discharged from an acute care facility and admitted to a nursing facility for recovery from an illness or surgery for a period not to exceed 120 days and is not a danger to self or others;

(ii) the person is certified by a physician to be terminally ill (prognosis of a life expectancy of six months or less) and is not a danger to self or others;

(iii) the person is comatose, ventilator dependent, functioning at the brain stem level or diagnosed as having chronic obstructive pulmonary disease, severe Parkinson's disease, Huntington's Chorea, amyotrophic lateral sclerosis, congestive heart failure or other similar diagnosis which prohibits the person from participating in active treatment; or

(iv) the person has a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, based on a neurological examination.

(b) A level II screening may result in the following determinations which will be applied as indicated:

(i) Any person with mental retardation or mental illness determined through this process not to be in need of the level of services provided by a nursing facility, whether or not active treatment services are required, shall be considered inappropriate for placement or continued residence in a medicaid-certified nursing facility;

(ii) Any person with mental retardation or mental illness determined through this process to be in need of active treatment services shall be considered inappropriate for placement or continued residence in a medicaid-certified nursing facility;

(iii) Any person with mental retardation or mental illness determined through this process to be in need of the level of services provided by a nursing facility but not to be in need of active treatment services shall be considered appropriate for placement or continued residence in a medicaid-certified nursing facility;

(iv) Any person with mental retardation or mental illness determined through this process to be in need of both the level of services provided by a nursing facility as well as active treatment, who is of advanced years but is competent to make an independent decision and who is not a danger to self or others shall be considered appropriate for placement or continued residence in a medicaid-certified nursing facility if the person so chooses.

(4) Medicaid recipients must undergo a level of care determination by the department or its designee and be determined by a preadmission screening team to require the level of care of a nursing facility before medicaid payment for services in a nursing facility or the home and community services program will be authorized:

(a) If a person is medicaid eligible prior to admission to a nursing facility, a level of care determination must be done prior to admission. Payment for nursing facility care shall be effective on the date of entry to the nursing facility if the applicant meets all eligibility requirements.

(b) If the person applies for medicaid while a resident of a nursing facility, the level of care determination must be done prior to initial medicaid payment. Payment shall be effective on the date of level of care determination or the date of referral to the preadmission screening team, whichever is earlier.

(5) Effective January 1, 1989, retroactive medicaid payments for nursing facility care are not allowable.

(6) A nursing facility applicant who is not a medicaid recipient may request that a level of care determination be conducted for the applicant. This determination will be performed by the preadmission screening team as time allows.

(7) Preadmission screening will be performed by persons the department determines are qualified to conduct the various elements of the screening.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-141, 53-6-402 MCA

RULE II PREADMISSION SCREENING, LEVEL OF CARE CRITERIA

(1) For elderly persons and physically disabled persons, the appropriate level of care will be determined based upon the following criteria:

(a) For the skilled nursing facility (SNF) level of care the person:

(i) requires 180 management minutes or more of nursing care;

(ii) requires one of the specified skilled services;

(iii) the person requires 40 management minutes of licensed nursing time per 24 hours; or

(iv) meets any two of the following criteria:

(A) the status is unstable, deteriorating, critical or terminal;

(B) 150 minutes or more of nursing care are required;

(C) there are 5 or more problems determined to be high-level by the department or its designee.

(b) For the intermediate care facility (ICF) level of care the person:

(i) does not qualify for skilled level of care; and

(ii) is determined by the department or its designee to need care at a level higher than personal care.

(iii) in the absence of the home and community services program and related resources would require care at the intermediate level as determined by the department or its designee through a functional rating of the person. The need for such care, arising from this absence, is indicated when the person:

(A) is able to ambulate (walk or wheel) to a dining room or equivalent;

(B) is capable of self care with minimal assistance;

(C) has four or fewer problems determined to be low level by the department or its designee; and

(D) requires no more than one-hour of nursing care per 24 hours.

(c) A candidate for discharge is a person who has two or less problems. This criteria does not apply to persons with a diagnosis of mental illness or mental retardation.

(2) For mentally retarded persons, the appropriate level of care will be determined based upon the following criteria:

(a) Intermediate care facility for the mentally retarded (ICF/MR) level of care is needed when a mentally retarded person:

(i) has severe medical problems requiring substantial care, but not to the extent that habilitation is impossible;

(ii) has extreme deficits in self-care and daily living skills which require intensive training; or

(iii) has significant maladaptive social and/or interpersonal behavior patterns which require an on-going, supervised program of intervention.

(b) Skilled nursing facility (SNF) level of care is needed when a person with mental retardation:

(i) has needs for medical care which override the need for the active treatment provided in an ICF/MR; and

(ii) meets the requirements for SNF level of care as found in subsection (1)(a) of this rule.

(c) Intermediate care facility (ICF) level of care is indicated when a mentally retarded person:

(i) meets the criteria in subsection 3(a) of Rule V; and

(ii) meets the requirements for SNF level of care as found in subsection (1)(a) of this rule.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

RULE III PREADMISSION SCREENING, RE-EVALUATIONS OF LEVEL OF CARE

(1) For a person identified as requiring the level of care of a nursing facility, and who enroll in the home and community services program, a re-evaluation will take place 90 days after enrollment and every 180 days thereafter.

(2) For a person identified as requiring the level of care of an ICF/MR, and who enrolls in the home and community services program, a re-evaluation will be conducted annually.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

RULE IV PREADMISSION SCREENING, QUALIFIED MENTAL RETARDATION PROFESSIONAL

(1) The department will approve persons as qualified mental retardation professionals for purposes of providing preadmission screening and medicaid related case management services.

(2) Qualified mental retardation professional means a person who has specialized training or one year of work experience in habilitation or related services with mentally retarded or other developmentally disabled individuals.

(3) The department will accept as evidence of specialized training the following factors:

(a) licensure or certification in a profession which involves direct care to developmentally disabled persons;

(b) documentation of training, such as certification as a developmental disabilities client programming technician; or

(c) certification as a developmental disabilities professional person.

(4) The department will accept as evidence of work experience documentation of supervised employment in direct care to developmentally disabled persons.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

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

46.12.1205 PAYMENT PROCEDURES (1) The department pays providers amounts determined under these rules on a monthly basis upon receipt of an appropriate billing which represents the number of patient days of long-term care facility services provided to authorized medicaid recipients times the payment rate minus the amount each medicaid recipient pays toward the cost of care. Authorized medicaid recipients are those residents who have been determined eligible for medicaid and have been authorized for either skilled or intermediate level of care as a result of the screening process described in ARM 46.12.1101 Rules I through V.

Subsections (1)(a) through (7) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1301 PREADMISSION SCREENING, DEFINITIONS

(1) Definitions-as-used-in-this-rule: "Active treatment" means:

(a) for persons with mental retardation or a related condition, a continuous program which includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward:

(i) the acquisition of the behaviors necessary for the person to function with as much self-determination and independence as possible; and

(ii) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain a generally independent client who is able to function with little supervision or in the absence of a continuous treatment program.

(b) for persons with mental illness, the implementation of an individualized plan of care developed under and supervised by a physician and provided by physicians and other qualified mental health professionals, that prescribes specific therapies and activities under the supervision of trained mental health personnel for the treatment of a person who is experiencing an acute episode of severe mental illness.

(2) "Home and community services program" means the provision of services described in ARM 46.12.1401 through

46.12.1482 to a person in a community setting, who meets the nursing facility level of care requirements.

(3) "Level I screen" means a review of a nursing facility applicant to identify whether the applicant has a primary or secondary diagnosis or indications of mental retardation and of mental illness.

(4) "Level II screen" means an assessment applied to persons identified as having a primary or secondary diagnosis of mental retardation or mental illness which determines whether the person as a nursing facility applicant has need for the level of services provided by the nursing facility or by another type of facility and, if so, whether the individual requires active treatment.

(5) "Management minutes" mean the amount of direct nursing time, including licensed nursing time, required by the recipient, as determined by the department or its designee. Direct nursing time, as used in determining management minutes, does not include nursing administrative time, special demands, and other activities or tasks not directly related to the medical care of the recipient.

(6) "Medicaid recipient" means a person who is currently medicaid eligible or who has applied for medicaid.

(7) "Medical status" means the medical condition of the recipient as determined by objective medical criteria. A recipient may be medically unstable, deteriorating, critical or terminal.

(8) "Mental illness" means an applicant has or has had a primary or secondary diagnosis of a major mental disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, third edition (DSM-III-R), limited to schizophrenic, paranoid, major affective, schizoaffective disorders and atypical psychosis, and does not have a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, which is based on a neurological assessment.

(9) "Mental retardation" means:

(a) An applicant has or has had a primary or secondary diagnosis of mild, moderate, severe or profound retardation as described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983); or

(b) An applicant has, or has had a primary or secondary diagnosis of a condition related to mental retardation, which is a severe, chronic disability that:

(i) is attributable to:

(A) autism, cerebral palsy or epilepsy; or

(B) any other condition, other than mental illness found to be closely related to mental retardation due to an impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons requiring treatment or services similar to those required for these persons;

(ii) is manifested before the person reaches age 22;

(iii) is likely to continue indefinitely; and

(iv) results in substantial functional limitations in three or more of the following areas of major life activity:

- (A) self-care;
- (B) understanding and use of language;
- (C) learning;
- (D) mobility;
- (E) self-direction or;
- (F) capacity for independent living.

(10) "Nursing facility" means an institution or a distinct part of an institution which is not primarily for the care and treatment of mental diseases, and is primarily engaged in providing either:

(a) skilled nursing care and related services for residents who require medical or nursing care;

(b) rehabilitation services for the rehabilitation of injured, disabled or sick persons, or

(c) on a regular basis, health-related care and services to persons who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities.

(11) "Nursing facility applicant" means any person who has been referred for or is applying for admission to a nursing facility or the home and community services program, regardless of source of payment for services.

(12) "Preadmission screening" means a medical psychological and social evaluation of a nursing facility applicant which: medicare-recipient-which-yields-a-level-of-care-determination-by-the-preadmission-screening-team.--For-elderly-persons-and-physically-disabled-persons, the medical component of the evaluation will be accomplished through the use of the long-term-care-patient-evaluation-abstract-and-the-psychological/social-component-of-the-evaluation-will-be-accomplished through the use of the geriatric functional rating scale.--For developmentally-disabled-persons, the medical component of the evaluation will be accomplished through the use of the long-term-care-patient-evaluation-abstract-or-other-tool-approved-by-the-department, and the psychological/social component of the evaluation will be accomplished through the use of the individual-behavior-assessment-or-other-tool-approved-by-the-department.

(a) is performed prior to entry to a nursing facility or the home and community services program and includes;

(i) a level I screening to determine if an applicant has a diagnosis or indication of mental illness or mental retardation;

(ii) a level II screening for an applicant who is found by the level I screen to need further assessment; and

(iii) a level of care screening to determine if an applicant is in need of the level of care provided by nursing facilities and the home and community services program;

(c) (13) "Preadmission screening team" means an interdisciplinary group of professionals who are qualified as approved by the department to assess the recipient's medical, psychological and social needs in order to determine the level of care required by the recipient. The team includes at least a licensed registered nurse, a person qualified to assess the social and psychological needs of the recipients and a physician advisor. When developmentally disabled persons undergo preadmission screening, the person qualified to assess the social and psychological needs of the recipient is to be a qualified mental retardation professional. When physically disabled persons undergo preadmission screening, the physician advisor must be a psychiatrist if the recipient's condition requires such expertise.

(a) for a nursing facility level of care determination, a licensed registered nurse and a department long term care specialist;

(b) for a level I screen, a long term care specialist or other professional approved by the department; and

(c) for a level II screen, employees or contractors of the state mental retardation authority or the state mental health authority.

(14) "Problems" means functional impairments, including those involving walking, bathing, grooming, dressing, toileting, transferring, feeding, bladder incontinence, bowel incontinence, special sense impairments (such as speech or hearing), mental and behavioral dysfunctions.

(15) "Specified skilled services" means the following 20 skilled services when they require an equivalent of 40 management minutes of licensed nursing time per 24 hours:

- (a) special skin care;
- (b) decubitus care;
- (c) IV (intravenous);
- (d) oxygen therapy;
- (e) tracheotomy care;
- (f) special colostomy and ileostomy care;
- (g) intake and output;
- (h) sterile dressing;
- (i) suctioning;
- (j) drug regulation;
- (k) multiple injections;
- (l) irrigation/special catheter care;
- (m) inhalation therapy;
- (n) behavior observation;
- (o) patient/family education;
- (p) isolation;
- (q) vital signs evaluation;
- (r) overall management and evaluation of care plan;
- (s) observation and assessment; and
- (t) tube feeding.

~~(2) -- A medicaid recipient must undergo preadmission screening by the department or its designee and must be determined by the preadmission screening team to require the level of care of a skilled nursing facility (SNF), an intermediate care facility (ICF), or an intermediate care facility for the mentally retarded (ICF/MR) before medicaid payment for placement in a SNF, ICF, or ICF/MR or for placement through the home and community-based services program will be authorized.~~

~~(a) -- Criteria for level of care in preadmission screenings are as found in ARM 46.12.1303.~~

~~(16) "State mental health authority" means the Montana department of institutions.~~

~~(17) "State mental retardation authority" means the developmental disabilities division of the Montana department of social and rehabilitation services.~~

~~(b) -- If the person is medicaid eligible prior to admission to a SNF, ICF, or ICF/MR, preadmission screening must be done prior to admission.~~

~~(c) -- If the person applies for medicaid while a resident of a SNF, ICF, or ICF/MR, preadmission screening must be done prior to initial medicaid payment.~~

~~(d) -- Private pay (non-medicaid) persons may volunteer for preadmission screening.~~

~~(3) -- Referrals for preadmission screening may be made by:~~

~~(a) -- hospital medical social workers;~~

~~(b) -- the recipient's family;~~

~~(c) the recipient's attending physician; and~~

~~----(d) -- other interested parties.~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

4. Rule 46.12.1101 as proposed to be repealed is on pages 46-1505, 46-1506 and 46-1525 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-6-101, 53-6-141 and 53-6-402 MCA

5. Rules 46.12.1302, 46.12.1303 and 46.12.1304 as proposed to be repealed are on pages 46-1885, 46-1891, 46-1897 and 46-1903 of the Administrative Rules of Montana.

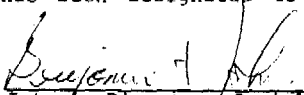
AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA: AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

6. The Omnibus Budget Reconciliation Act of 1987 requires that by January 1, 1989, states must have in effect a preadmission screening and resident review program. The purposes of the new requirements are to perform identification screens for all nursing facility applicants and residents to determine if there is a diagnosis of mental illness or mental retardation and, if so, to conduct assessments which determine the applicant's need for active treatment. The penalties for failing to implement these requirements are loss of medicaid funds for recipient care and loss of certification for medicaid payment for nursing facilities. This loss would create immediate peril to persons who require care. Availability of medicaid funds is contingent on implementation of these requirements of the federal law.

7. 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 February 23, 1989.

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



Interim Director, Social and
Rehabilitation Services

Certified to the Secretary of State January 16, 1989.

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


In the matter of the proposed	)	NOTICE OF ADOPTION
amendment of ARM 6.10. 121	)	OF AMENDMENT
pertaining to registration of	)	TO ARM 6.10.121
securities salesmen and broker-)	
dealers)	

TO: All Interested Persons.

1. On October 13, 1988, the State Auditor and Commissioner of Securities of the state of Montana (commissioner) published notice of the proposed amendment to ARM 6.10.121 at page 2071 of the 1988 Montana Administrative Register, issue number 19.

2. The commissioner amended the rule as proposed.

3. The commissioner did not receive written or oral comments regarding the proposed rules.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State on January 16, 1989.

In the matter of the proposed)	NOTICE OF ADOPTION
adoption of rules pertaining to)	OF RULES PERTAINING TO
unethical practices by investment)	UNETHICAL PRACTICES
advisers and broker-dealers)	

1. On October 13, 1988, the State Auditor and Commissioner of Securities of the state of Montana (commissioner) published notice of the proposed amendment of the above rules at page 2065 of the 1988 Montana Administrative Register, issue number 19.

RULE 15c1-1 6.10.126 "UNETHICAL PRACTICES" BY BROKER-DEALERS
AND SALESMEN DEFINED (1)(a) through (1)(t) same as proposed
rule.

[illegible][illegible][illegible]

(XX) engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.

~~XXXX/AA 6.10.127~~ "UNETHICAL PRACTICES" BY INVESTMENT ADVISERS DEFINED (1) through (2) same as proposed rule.

(3) inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objective, and character of the account;

(4) through (5) same as proposed rules.

(6) borrowing money or securities from a client unless the

client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities;

(7) through (9) same as proposed rules.

(10) charging a client an ~~unreasonable~~ advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser, the sophistication and bargaining power of the client, and whether the investment adviser has disclosed that a lower fee for comparable services may be available from other sources;

(11) through 13 same as proposed rules.

(14) disclosing to a third party the identity, affairs, or investment of a client unless:

(a) required by law to do so; or

(b) consented to by the client;

(15) taking action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, if the investment adviser has custody or possession of the securities or funds when the investment adviser's action is subject to and does not comply with the requirements of rule 206(4)-2 under the Investment Advisers Act of 1940 or the investment adviser is exempt from these requirements by virtue of Rule 206(4)-2(b);

(16) entering into, extending, or renewing an investment advisory contract, other than a contract for impersonal advisory services, unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, and whether the contract grants discretionary power to the investment adviser;

(17) through (18) same as proposed rules.

3. The commissioner received written and oral comments regarding the proposed rules. The comments and the commissioner's responses are as follows:

(a) Bruce A. MacKenzie (D. A. Davidson & Co. and Securities Industry Association) and William L. Larsen (Securities Industry Association) opposed the proposed rules generally because "ethical principals [sic] are not susceptible to legal definitions." The commissioner should not, therefore, prohibit and sanction unethical practices, a task better left to self-regulatory organizations and the securities industry.

The commissioner disagreed. The rules simply define terms used in the Securities Act of Montana. Defining statutory terms is allowed under Montana law. Garsjo v. Department of Labor & Industry, 172 Mont. 182, 562 P.2d 473 (1977) (rule defining term used in statute upheld as reasonable). The commissioner's defining "unethical practices" is not duplicative of self-regulatory organization functions. The commissioner may deny, suspend, or revoke the registration of a broker-dealer or salesman who engages in an unethical practice as defined in the rules; whereas, a self-regulatory organization cannot.

(b) Arguing that arbitration is less expensive, speedier, and fairer than litigation, the following people objected to the proposed subsections of Rule I relating to the use of mandatory Montana Administrative Register

pre-dispute arbitration contracts or clauses (subsections (1)(u) through (1)(w) of Rule I): Paul J. Dubow (Dean Witter Reynolds Inc.); Frank Wilson and Raymond W. Cocchi (National Association of Securities Dealers, Inc.); Thomas E. Meade (Boettcher & Company); John Cummings and Gary Buchanon (Merril Lynch); David Rosedahl (Piper Jaffray & Hopwood Inc.); Bruce A. MacKenzie (D. A. Davidson & Co. and Securities Industry Association); William L. Larsen and William J. Fitzpatrick (Securities Industry Association); John W. Manning; Nick Cladis (Paine Webber); Wayne Chestnut and Theodore A. Krebsbach (Shearson Lehman Hutton); and Robert Retz (Dain Bosworth Incorporated).

Craig A. Goettsch (Chairperson, North American Securities Administrators Association, Inc. (NASAA) Ad Hoc Committee on Arbitration) supported the proposed subsections of Rule I relating to the use of mandatory pre-dispute arbitration contracts or clauses as being consistent with the NASAA purposes of advancing the principle of investor protection and affording a choice to investors in their decisions to participate in securities markets. Kevin P. Howe (IDS Financial Services Inc.) supported the rules as being consistent with NASAA guidelines. Bruce Harper (a Billings, Montana, attorney) supported the rules, stating that investors typically do not realize the effects of signing a contract that includes a mandatory pre-dispute arbitration clause.

The Montana Securities Department proposed an amendment to replace language making the use of mandatory pre-dispute arbitration clauses or contracts an unethical practice with language making it an unethical practice to fail to disclose "[1] that a customer agreement or a contract contains a mandatory pre-dispute arbitration clause which is a non-negotiable precondition of effecting a transaction in securities for the account of the customer or opening a securities cash account or margin account by the customer with the broker-dealer; and [2] the legal effects of the pre-dispute arbitration contract or clause."

Bruce A. MacKenzie (D. A. Davidson & Co. and Securities Industry Association), William L. Larsen (Securities Industry Association), Judith A. Winchester (Shearson Lehman Hutton), Paul J. Dubow (Dean Witter Reynolds Inc.) opposed the proposed disclosure amendment for the following reasons: (1) the Federal Arbitration Act may preempt regulation of arbitration; (2) the proposed amendment does not adequately define "legal effects", making the disclosure requirement vague; (3) the proposed amendment would require special language for Montana residents, interfering with uniform regulation of the securities industry among the states; and (4) the proposed disclosure requirement is unnecessary given disclosure requirements, with national application, presently being considered by the New York Stock Exchange and the National Association of Securities Dealers.

The commissioner deleted the proposed subsections of Rule I relating to mandatory pre-dispute arbitration contracts or clauses and did not replace them with the proposed disclosure requirement.

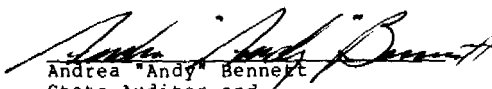
(c) Kevin P. Howe, (IDS Financial Services Inc.) supported the proposed rules defining unethical practices by investment

advisers but suggested that they be amended to reflect 1987 amendments to NASAA policy.

Except for the suggestion to amend subsection (17) of Rule II, the commissioner agreed.

(d) Bruce A. MacKenzie (D. A. Davidson & Co. and Securities Industry Association) and William L. Larsen (Securities Industry Association) opposed the proposed rules defining unethical practices by investment advisers, stating that ethical principles are not susceptible to legal definition.

The commissioner disagreed. The rules simply define terms used in the Securities Act of Montana. Defining statutory terms is allowed under Montana law. Garsjo v. Department of Labor & Industry, 172 Mont. 182, 562 P.2d 473 (1977) (rule defining term used in statute upheld as reasonable).


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State on January 16, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS


In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to) 8.30.701 UNPROFESSIONAL
conduct) CONDUCT

TO: All Interested Persons:

1. On December 8, 1988, the Board of Morticians published a notice of proposed amendment of the above-stated rule at page 2535, 1988 Montana Administrative Register, issue number 23.
2. The Board amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF MORTICIANS
GUY W. MISER, CHAIRMAN

BY:


GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 16, 1989.

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

In the matter of the repeal of	)	NOTICE OF REPEAL
A.R.M. 16.2.602 through 16.2.621	)	OF A.R.M. 16.2.602 THROUGH
and 16.2.701 through 16.2.706 and	)	16.2.621 AND 16.2.701
the adoption of New Rules I through)	)	THROUGH 16.2.706
XXVI providing standards and	)	AND ADOPTION OF RULES
procedures for implementation of	)	I THROUGH XXVI
the Montana Environmental Policy)	
Act)	

To: All Interested Persons

1. On July 28, 1988, the Board of Health and Environmental Sciences and Department of Health and Environmental Sciences, along with the Department of Agriculture, Department of Commerce, Department of Fish, Wildlife and Parks, Board of Land Commissioners, Department of State Lands, Department of Highways, Department of Natural Resources and Conservation, and Fish and Game Commission published notice of public hearings on the proposed repeal of existing rules and adoption of new rules concerning implementation of the Montana Environmental Policy Act at page 1606 of the 1988 Montana Administrative Register, issue number 14.

2. All of the above-referenced agencies, boards, and commissions except the Board of Land Commissioners, Department of State Lands, and the Board and Department of Health and Environmental Sciences published notice of repeal of existing rules and adoption of new rules at page 2692 of the Montana Administrative Register, issue number 24. The Board of Land Commissioners and Department of State Lands published notice of repeal of existing rules and adoption of new rules at page 28 of the 1989 Montana Administrative Register issue number 1.

The Board and Department of Health and Environmental Sciences has repealed ARM 16.2.602 through 16.2.621 and 16.2.701 through 16.2.706 as proposed. The Board and Department of Health and Environmental Sciences have adopted the proposed rules in the same form as adopted by the other agencies, boards and commissions, or as set forth on pages 2692 through 2700 of the 1988 Montana Administrative Register, issue number 24 and the portions of those pages containing the rules as amended are hereby incorporated by reference.

3. At the hearings and during the comment period, the Board of Health and Environmental Sciences and Department of Health and Environmental Sciences received written, oral, or both written and oral comments from 31 persons. Those persons are listed on pages 2700 and 2701 of the 1988 Montana Administrative Register, issue number 24. Summaries of the comments received and agency responses to those comments are found at pages 2702 through 2717 of the 1988 Montana Administrative

Register, issue number 24. The Board and Department of Health and Environmental Sciences have adopted those summaries and responses and hereby incorporate them into this notice by reference.

4. The Board and Department of Health and Environmental Sciences have assigned the following numbers to the rules:

Rule I, 16.2.624; Rule II, 16.2.625; Rule III, 16.2.626; Rule IV, 16.2.627; Rule V, 16.2.628; Rule VI, 16.2.629; Rule VII, 16.2.630; Rule VIII, 16.2.631; Rule IX, 16.2.632; Rule X, 16.2.633; Rule XI, 16.2.634; Rule XII, 16.2.635; Rule XIII, 16.2.636; Rule XIV, 16.2.637; Rule XV, 16.2.638; Rule XVI, 16.2.639; Rule XVII, 16.2.640; Rule XVIII, 16.2.641; Rule XIX, 16.2.642; Rule XX, 16.2.643; Rule XXI, 16.2.644; Rule XXII, 16.2.645; Rule XXIII, 16.2.646; Rule XXIV, 16.2.260; Rule XXV, 16.2.261; Rule XXVI, 16.2.262.

5. The authority of the Board and Department of Health and Environmental Sciences to repeal ARM 16.2.602 through 16.2.621 and ARM 16.2.701 through 16.2.706 is contained in 2-3-103, MCA. The repeal of ARM 16.2.602 through 16.2.621 and ARM 16.2.701 through 16.2.706 implements 75-1-201, MCA; 2-2-121, MCA; 2-3-103, MCA. The authority of the Board and Department of Health and Environmental Sciences to adopt Rules I through XXVI is contained in 2-3-103, 2-4-201, and 75-1-202, MCA. The rules implement sections 2-3-104 and 75-1-201, 202, 203, 205, 206, and 207, MCA.

Sidney C. Pratt, M.D.

SIDNEY C. PRATT, M.D.
Interim Director
Department of Health and
Environmental Sciences

Howard Toole

HOWARD TOOLE, Chairman
Board of Health and
Environmental Sciences

Certified to the Secretary of State January 16, 1989.

BEFORE THE BOARD OF NATURAL
RESOURCES AND CONSERVATION

In the matter of the repeal of)	
A.R.M. 4.2.301 through 311,)	
8.2.301, 12.2.401 through 427,)	
18.2.201 through 234, 36.2.501)	
through 520, 36.2.601 through	)	CORRECTED NOTICE OF
604 and 36.2.606 and the adoption)	)	ADOPTION OF RULE XXIV
of New Rules I through XXVI	)	(36.2.544), Rule XXV
providing standards and	)	(36.2.545) and Rule
procedures for implementation	)	XXVI (36.2.546) relating
of the Montana Environmental	)	to Fees
Policy Act.		

To: All Interested Persons

1. On December 22, 1988, the Board of Natural Resources and Conservation published notice of the proposed adoption of Rules XXIV (36.2.544), XXV (36.2.545) and XXVI (36.2.546) relating to Fees at page 2692 of the 1988 Montana Administrative Register, issue no. 24.

2. The numbers assigned to these rules (36.2.544, 36.2.545 and 36.2.546) are incorrect and are not relative to the rules concerning Fees, we are correcting the numbers through this notice as reflected in paragraph 3 herein.

3. Therefore, the Board of Natural Resources and Conservation has adopted rules XXIV (36.2.609), Fees: Determination of Authority to Impose, XXV (36.2.610), Fees: Determination of Amount, and XXVI (36.2.611), Use of Fee.

William A. Shields
William A. Shields, Chairman
Board of Natural Resources and
Conservation

Certified to the Secretary of State 01/16/89.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ments of ARM 36.21.650 con-	)	36.21.650 CASING PERFOR-
cerning casing perforations	)	ATIONS AND 36.21.654
and ARM 36.21.654 concerning	)	SEALING OF CASING -
sealing of casing - general	)	GENERAL

TO: ALL INTERESTED PERSONS:

1. On November 23, 1988, the Board of Water Well Contractors published a notice of proposed amendment of the above-stated rules at pages 2475 and 2476, 1988 Montana Administrative Register, Issue number 22.

2. The rules are being amended exactly as proposed.

3. No written comment or testimony was received. One phone call was received from Herb Freier, Hi-Line Drilling, Havre, Montana. Mr. Freier was concerned that he could only use one aquifer per well and would have to drill a series of wells to obtain the desired amount of water. It was explained to Mr. Freier that as long as the aquifers had the same quality of water, the same head or pressure, and the same temperature, they could be combined.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, January 9, 1989.

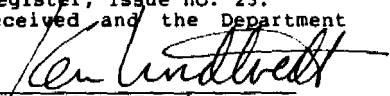
BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.17.105 relating to)	ARM 42.17.105 relating to
Computation of Withholding)	Computation of Withholding
Income Tax.)	Income Tax.

TO: All Interested Persons:

1. On December 8, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.17.105 relating to Computation of Withholding Income Tax at page 2552 of the 1988 Montana Administrative Register, issue no. 23.

2. No comments have been received and the Department amends 42.17.105 as proposed.


KEN NORDTVEDT, Director
Department of Revenue

Certified to Secretary of State 1/16/89.

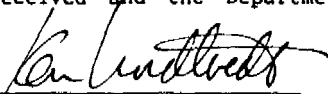
BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.22.1311 relating to)	ARM 42.22.1311 relating to
Industrial Machinery and Equip-)	Industrial Machinery and
ment Trend Factors.)	Equipment Trend Factors.

TO: All Interested Persons:

1. On December 8, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.22.1311 relating to Industrial Machinery and Equipment Trend Factors at page 2549 of the 1988 Montana Administrative Register, issue no. 23.

2. No comments have been received and the Department amended ARM 42.22.1311 as proposed.



Ken Nordtvedt, Director
Department of Revenue

Certified to Secretary of State 1/16/89.

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

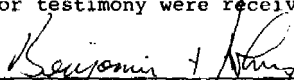
In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 46.12.3803	)	RULE 46.12.3803 PERTAINING
pertaining to medically	)	TO MEDICALLY NEEDY INCOME
needy income standards	)	STANDARDS

TO: All Interested Persons

1. On December 8, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards at page 2554 of the 1988 Montana Administrative Register, issue number 23.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.


Interim Director, Social and
Rehabilitation Services

Certified to the Secretary of State January 16, 1989.

VOLUME NO. 42

OPINION NO. 130

REVENUE, DEPARTMENT OF - Interpretation of section 15-30-108, MCA;
STATUTES - Applicability and termination of section 15-30-108, MCA;
TAXATION AND REVENUE - Duration of individual income tax surtax imposed by section 15-30-108, MCA;
ADMINISTRATIVE RULES OF MONTANA - Section 42.15.106;
MONTANA CODE ANNOTATED - Sections 15-30-101(17), 15-30-103, 15-30-108, 15-30-144;
MONTANA LAWS OF 1987 - Chapter 666;
UNITED STATES CODE - 26 U.S.C. § 441(b), (g); 26 U.S.C. § 7701(23).

HELD: The individual income tax surtax imposed by section 15-30-108, MCA, applies to tax liabilities for calendar years 1987 and 1988, but does not apply to tax liabilities for calendar year 1989.

30 December 1988

Judy Rippingale
Legislative Fiscal Analyst
Room 105, State Capitol
Helena MT 59620

Dear Ms. Rippingale:

You have asked my opinion concerning the duration of the individual income tax surtax imposed by section 15-30-108, MCA. I have rephrased your specific inquiry as follows:

Does the surtax imposed by section 15-30-108, MCA, apply to tax liabilities for the calendar years 1987, 1988, and 1989, or only for the calendar years 1987 and 1988?

Section 15-30-108, MCA, which was enacted as section 6 of chapter 666, Montana Laws of 1987, and became effective May 22, 1987, provides:

After the amount of tax liability has been computed as required in 15-30-103, each person filing a Montana individual income tax return shall add as a surtax 10% of the tax liability, and the amount so arrived at is the amount due the state.

Confusion about the duration of the surtax arises from the fact that the 1987 Legislature also enacted section 12 of chapter 666, which states:

Termination. Section 6 terminates December 31, 1989.

The surtax clearly applies to calendar years 1987 and 1988. See 1987 Mont. Laws, ch. 666, § 11(3). However, because section 15-30-108, MCA, does not terminate until December 31, 1989, there remains a question as to whether the surtax also applies to tax liabilities for the calendar year 1989.

The surtax in question is to be added after the amount of tax liability has been computed as required in section 15-30-103, MCA. That section sets the rate of tax to be levied, collected, and paid upon taxable income for each taxable year. The term "taxable year" is defined by state law to mean the taxpayer's taxable year for federal income tax purposes. § 15-30-101(17), MCA. Under federal law the term "taxable year" means the calendar year for all taxpayers who do not utilize an annual accounting period which qualifies as a fiscal year. See 26 U.S.C. § 441(b),(g); 26 U.S.C. § 7701(23). The term "calendar year" is defined in the Internal Revenue Code of 1986 as a period of twelve months ending on December 31. 26 U.S.C. § 441(d). For purposes of the analysis in this opinion, it is assumed that the taxpayer's taxable year is the calendar year as that term is defined for federal income tax purposes. However, because the surtax imposed by section 15-30-108, MCA, is not effective as of December 31, 1989, the holding would apply to any taxpayer whose taxable year closes on or before December 30, 1989.

Pursuant to its rulemaking authority (see § 15-30-305, MCA; 1987 Mont. Laws, ch. 666, § 10), the Montana Department of Revenue has adopted Rule 42.15.106, ARM, which provides that the 10 percent surtax is to be added to the taxpayer's computed income tax only for tax years 1987 and 1988. In its notice of public hearing on the proposed adoption of this rule, the department set forth its reasons for this interpretation:

The rule is also necessary to clarify the years to which the surcharge applies. The termination date for the section of law establishing the surcharge is December 31, 1989. That termination date is interpreted to end the surcharge with the 1988 tax year. Returns are filed and taxes calculated for tax year 1989 after December 31, 1989. After that

date, there is no provision for a surtax to be applied to the basic tax.

MAR Notice No. 42-2-355, 14 MAR (1987) at 1192.

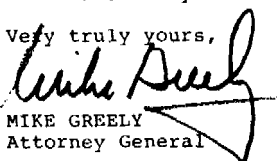
The Montana Supreme Court has often stated that deference must be accorded the interpretation given a statute by the agency charged with its administration. See Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 587 P.2d 1282 (1978); Montana Tavern Association v. State, 43 St. Rptr. 2180, 729 P.2d 1310 (1986). While an agency's interpretive regulation would not necessarily be binding on a reviewing court or this office, I am of the opinion that the department's interpretation in this instance is valid and consistent with legislative intent. The amount of tax liability for calendar year 1989 cannot be computed until after December 31, 1989, and returns made on the basis of a calendar year must be filed on or before April 15 following the close of the calendar year. § 15-30-144, MCA. Thus the tax liability for calendar year 1989 is to be computed, and the return therefor filed, at a time when section 15-30-108, MCA, is no longer effective.

Furthermore, the minutes of the Montana State Senate Taxation Committee hearing on House Bill 904, which became chapter 666, 1987 Montana Laws, support the department's interpretation. The bill's sponsor, Representative Harp, is reported as stating that the surtax would be effective for two years. See Minutes of Taxation Committee Meeting, Montana State Senate, April 7, 1987. In addition, the fiscal note submitted for House Bill 904 assumes that the 10 percent surtax applies to income tax liabilities for calendar years 1987 and 1988.

THEREFORE, IT IS MY OPINION:

The individual income tax surtax imposed by section 15-30-108, MCA, applies to tax liabilities for calendar years 1987 and 1988, but does not apply to tax liabilities for calendar year 1989.

Very truly yours,


MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|--|
| Known
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the
accumulative table and the table of
contents in the last Montana Administrative
Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each
title which list MCA section numbers and
corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1988. This table includes those rules adopted during the period September 30, 1988 through December 31, 1988 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1988, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1988 Montana Administrative Register.

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