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ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

In the matter of the proposed adoption of rules implementing a loss cost system in property-casualty lines other than workers' compensation	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons.

1. On October 30, 1990, at 9:00 a.m., a public hearing will be held in Room 260 of the Mitchell Building, 126 North Sanders, Helena, Montana, to consider the proposed adoption of rules implementing a loss cost system in property-casualty lines other than workers' compensation.

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

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

RULE I PURPOSE AND SCOPE (1) The purpose of these rules is to set forth procedures for the development and filing for approval of prospective loss cost and supplementary rating information filings of property and casualty insurers. These filings can be made in place of full advisory rates but they must refer to and incorporate in whole or in part filings made by advisory/rating organizations.

(2) These rules apply to the kinds and lines of insurance described in 33-16-103, MCA, and to insurers making filings under 33-16-203, MCA.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE II AUTHORITY (1) These rules are issued pursuant to the authority vested in the commissioner by 33-1-313 and 33-16-202, MCA.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE III DEFINITIONS (1) "Expenses" means the portion of a rate attributable to costs of acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.

(2) "Prospective loss costs" means the portion of a rate that does not include provisions for expenses (other than loss adjustment expenses or profit, and which is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

(3) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit and variations in loss experience, prior to

any application of individual risk variations based on loss or expense considerations. The term does not include minimum premiums.

(4) "Rating organization" is an organization licensed pursuant to 33-16-403, MCA.

(5) "Supplementary rating information" means any classification system, territory code or description, manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, rate-related underwriting rule, experience rating plan, statistical plan and any other similar information needed to determine the applicable rate in effect or to be in effect.

(6) "Supporting information" means:

(a) the experience and judgment of the insurer and the experience or data of other insurers or rating organizations relied upon by the insurer;

(b) the interpretation of any statistical data relied upon by the insurer;

(c) descriptions of methods used in making the rates; and

(d) other similar information required to be filed by the commissioner.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE IV RATING ORGANIZATION REFERENCE FILINGS OF ADVISORY PROSPECTIVE LOSS COSTS (1) Rating organizations may develop and may make reference filings containing advisory prospective loss costs. Such filings shall contain the statistical data and supporting information for any calculations or assumptions underlying those prospective loss costs. The reference filings shall be filed and be effective in the same manner as rates filed pursuant to 33-16-203, MCA.

(2) An insurer may satisfy its obligation to make rate filings by:

(a) becoming a participating insurer of a licensed rating organization which makes reference filings of advisory prospective loss costs;

(b) filing with the commissioner the information required in [Rule V]; and

(c) authorizing the commissioner to accept such reference filings on its behalf.

(3) The insurer's rates will include the prospective loss costs filed by the rating organization which have been filed pursuant to subsection (1), and the insurer's loss cost adjustments filed in accordance with [Rule V] which are in effect for that insurer.

(4) An insurer's filing of loss cost adjustments becomes effective in the same manner as rates filed under 33-16-203, MCA.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA.

RULE V REQUIRED FILING DOCUMENTS (1) All filings by insurers which refer to a reference filing of prospective loss costs

made by a rating organization shall include, in the order listed, the following documents:

(a) reference filing adoption form; and

(b) a summary of supporting information.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE VI RATING ORGANIZATION FILINGS OF ADVISORY SUPPLEMENTARY RATING INFORMATION (1) Rating organizations may develop and make filings of supplementary rating information. These filings shall be made in accordance with 33-16-203, MCA.

(2) An insurer may satisfy its obligation to make filings of supplementary rate information by becoming a participating insurer of a licensed rating organization and by authorizing the commissioner to accept filings by that organization on behalf of the insurer. The insurer's supplementary rating information shall be that filed by the rating organization, subject to any modifications filed by the insurer.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE VII EXISTING RATES AND DEVIATIONS REMAIN IN EFFECT UNTIL DISAPPROVED, REPLACED OR MODIFIED (1) Nothing in [these rules] requires rating organizations or their participating insurers to immediately refile rates in effect. Any participating insurer of a rating organization may continue to use all rates and deviations in effect until such rates are disapproved or until the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the rating organization's prospective loss costs, or the insurer's modification of them.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

4. Under Title 33 of the Montana Code Annotated, rate filings made by individual insurers may include the experience of rating organizations. Such experience includes the statistical data, prospective loss costs and supporting information defined in these rules. The State Auditor and Commissioner of Insurance is proposing these rules in order to encourage competition between insurers by establishing procedures for the development and filing of prospective loss costs in place of full advisory rates where requested.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to David Barnhill, Deputy Insurance Commissioner, State Auditor's Office, P.O. Box 4009, Helena, MT 59604-4009 no later than November 7, 1990.

6. David Barnhill, Deputy Insurance Commissioner, has

been designated to preside over and conduct the hearing.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 14th day of September, 1990.

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

In the matter of the proposed amendment of rules pertaining to examinations, fees, temporary licenses, licensure by endorsement, exemptions, foreign-trained applicants and lists	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF PHYSICAL THERAPY

TO: All Interested Persons:

1. On October 17, 1990, at 1:00, p.m., a public hearing will be held in the conference room of Arcade Building, lower level, 111 N. Jackson, Helena, Montana, to consider the amendment of rules pertaining to the practice of physical therapy.

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

"8.42.402 EXAMINATIONS (1) The examination will be the ~~Professional Examination Service~~ assessment systems, inc. (ASI) or another equivalent examination as the board may in its discretion approve and adopt.

(2) The examination will be offered in February, July and November of each year. Exact examination dates will be established by ~~PES~~ ASI as the national uniform testing date. Applicants must have their applications in the board office at least 45 days prior to the examination date.

(3) through (4)(e) will remain the same.

(5) ~~The applicant's overall passing score for the Professional Examination Service's examination is to be equal to or higher than 1.5 standard deviation below the national mean.~~ The applicant shall score a passing grade as established by the board on the national examination of that particular examination. The passing score on the jurisprudence examination shall be 75%.

(6) The jurisprudence examination shall be an open book examination covering current Montana physical therapy statutes and rules, subject to Title 37, chapters 1, 2 and 11, Montana Code Annotated, state and federal narcotic statutes, and standards of care and definition ~~of~~ moral turpitude. The jurisprudence examination must be passed by all examination and endorsement applicants before original licensure will be granted. For examination candidates separate provisions will be made for taking the jurisprudence examination prior to licensure. Applicants failing the jurisprudence examination must retake said examination until passed. The fee of each retake will be assessed in accordance with the established fee schedule."

Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-11-303, 37-11-304, MCA

REASON: The board is proposing these amendments because it has recently contracted with Assessment Systems, Inc. for the national examination for physical therapists.

"8.42.403 FEES (1) The fees shall be as follows:

(a) Application for ~~PBS~~ ASI examination (for each examination taken)	~~$150.00~~	$100.00
(b) Application for endorsement	~~120.00~~	100.00
(c) Renewal	~~50.00~~	25.00
(d) will remain the same.		
(e) Temporary license	~~30.00~~	50.00
(f) Original license	~~30.00~~	25.00
(g) Jurisprudence re-examination (each retake)	~~15.00~~	5.00
(h) Duplicate license	~~10.00~~	5.00
(i) Lists		20.00

(2) All fees are nonrefundable."

Auth: Sec. 37-1-134, 37-11-201, MCA; IMP, Sec. 37-11-201, 37-11-304, 37-11-307, 37-11-308, 37-11-309, MCA

REASON: The fees are being amended to make them commensurate with program area costs.

"8.42.405 TEMPORARY LICENSES (1) and (2) will remain the same.

~~(3) The board will not renew or extend a temporary license, except in its discretion in cases of emergencies. The board will not extend a temporary license, except at it's discretion in cases of emergency and/or hardship.~~

~~(4) If the applicant fails the PBS examination, he may sit for the next schedule examination with a limit of 3 examinations inclusive of the first. Temporary licenses will not be extended while the applicant is waiting to retake the PBS examination.~~

(3) If the applicant fails the ASI examination, he may sit for the next scheduled examination. Temporary licenses will not be extended while the applicant is waiting to retake the ASI examination."

Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-11-309, MCA

REASON: This amendment is necessary to govern the procedures for applying and issuing temporary licenses pursuant to 37-11-309, MCA, and to clarify that temporary licenses will not be automatically extended for licensees failing the examination.

"8.42.406 LICENSURE BY ENDORSEMENT (1) Each applicant applying for licensure by endorsement must have taken the professional examination service or assessment systems, inc. examination or the national registry exam in another state to be considered for licensure by endorsement. All professional examination service or assessment systems, inc. scores must be reported directly to the board office through the interstate reporting service. All national registry exam scores must be substantiated by the records of the American Congress of Physical Medicine, 80 North Michigan Avenue, Chicago, Illinois

60602. ~~If the overall score of the professional examination service exam is equal to or higher than 1.5 standard deviation below the national mean, the individual may be licensed by endorsement.~~ If the applicant supplies the board with results from the professional examination service examination, such results shall be equal to or higher than 1.5 standard deviation below the national mean in order for the individual to be licensed by endorsement. If the applicant furnishes an examination result from assessment systems, inc., such result shall be equal to or greater than the score allowed by the board for that examination date to qualify the individual for licensure by endorsement. The overall score of those applicants that have taken only the national registry exam, must be in accordance with the pass or fail grades as mandated by the registry. Those applicants failing the national registry exam will not be licensed by endorsement.

(2) through (4) will remain the same."

Auth: Sec. 37-11-201, 37-11-303, 37-11-307, MCA; IMP, Sec. 37-11-101, MCA

REASON: The board has contracted with Assessment Systems, Inc. for the national examination for physical therapists.

"8.42.409 EXEMPTIONS (1) and (2) will remain the same.

(3) For purposes of a maintenance plan only, 'supervision' and 'periodic checks' by a licensed physical therapist, means the monthly or more frequent on-site management and review, by the licensed physical therapist, of the aide's implementation of the physical therapist-designed maintenance plan."

Auth: The portion of this rule implementing 37-11-105, MCA, is advisory only but may be a correct interpretation of the law, Sec. 37-1-131, 37-11-105, 37-11-201, MCA; IMP, Sec. 37-11-101, 37-11-105, MCA

REASON: The addition of subsection (3) is intended to recognize the foregoing subsections as interpretive in nature.

"8.42.410 FOREIGN-TRAINED APPLICANTS (1) will remain the same.

(a) ~~compliance with educational standards equivalent to the university of Montana, physical therapy curriculum shall be established by using an evaluation of educational background performed by any of the following evaluation services,~~ compliance with educational standards equivalent to the national standards of the commission on accreditation of physical therapy education of the American physical therapy association by using an evaluation of educational background performed by any of the following evaluation services:

~~World Education Services, Inc.~~
~~P.O. Box 745~~
~~Old Chelsea Station~~
~~New York, NY 10011~~

International Education Research Foundation, Inc.

Credentials Evaluation Services
P.O. Box 24679
Los Angeles, CA 90024

International Consultants, Inc.
ICI of Delaware
109 Barksdale Professional Center
Newark, DE 19711

International Credentials Associates, Inc.
SouthTrust Bank Bldg., Suite 1600
150 Second Avenue North
St. Petersburg, FL 33701
~~1101 New Hampshire Avenue NW~~
~~Washington, DC 20037~~

(b) through (g) will remain the same."
Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-11-310, MCA

REASON: This amendment is necessary to comply with the national trend to use the curriculum set by National Standards of the Association of Physical Therapists.

"8.42.411 LIST OF LICENSED PHYSICAL THERAPISTS (1) Upon written request and payment of ~~$5.00~~ $20.00, the board office shall mail to an interested person a list of licensed physical therapists. The list is furnished by the board for public information purposes only. It is not intended for use by private parties as a mailing list and no permission has been obtained from the individual licensees for such purposes. The use of material supplied by a state agency as a mailing list to private parties without the permission of those on the list is prohibited by section 2-6-109, MCA."
Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-201, MCA

REASON: This fee is being amended to make it commensurate with program area costs.

3. Interested persons may submit their data, views and arguments, either orally or in writing, at the hearing. Written data, views and arguments may also be submitted to the Board of Physical Therapy Examiners, Arcade Building, 111 N. Jackson, Helena, Montana 59620, no later than October 25, 1990.

4. Robert P. Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF PHYSICAL THERAPY
EXAMINERS
BARBARA M. REED, P.T., CHAIRMAN

BY: 
CHARLES A. BROOKE, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 17, 1990.

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

In the matter of the amendment of rules 16.8.1302 and 16.8.1307	)))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES 16.8.1302 and 16.8.1307 (Air Quality Bureau)

To: All Interested Persons

1. On November 9, 1990, at 8:30 a.m., 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 authorize the open burning of scrap creosote-treated railroad ties under appropriate circumstances, through the use of a permit program. As with other conditional air quality open burning permits, creosote-treated railroad ties may be disposed of by open burning only if open burning constitutes the best available control technology, and the emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or federal ambient air standards. Requirements for application and public notification through publication are also set forth.

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

16.8.1302 PROHIBITED OPEN BURNING (1) Remains the same.

(2) The following material may not be disposed of by open burning:

(a) through (o) Remain the same.

(p) Treated lumber and timbers except creosote-treated railroad ties as provided in ARM 16.8.1307.

(q) through (u) Remain the same.

AUTH: 75-2-111 and 75-2-203, MCA; IMP, Sec. 75-2-203, MCA

16.8.1307 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS (1) The department may issue a conditional air quality open burning permit for the disposal of:

(a) through (b) Remain the same.

(c) Creosote-treated railroad ties if it is demonstrated by the applicant that:

(i) open burning constitutes BACT; and

(ii) emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or federal ambient air quality standards.

(2) An air quality open burning permit issued under this rule is valid for the following periods:

(a) through (b) Remain the same.

(c) creosote-treated railroad ties - a period prescribed by the department, not to exceed one year.

(3) Remains the same.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in subsection (5) of this rule, shall be submitted to the department as part of any application, consistent with this rule.

(5) The applicant for a conditional air quality open burning permit shall notify the public of its application for permit by means of legal publication in a newspaper of general circulation in the area affected by the application. The notice shall be made not sooner than 10 days prior to submittal of an application and not later than 10 days after submittal of an application. Form of the notice shall be provided by the department and shall include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later.

~~(5)~~(6) A conditional air quality open burning permit granted pursuant to subsection (1)(a) above is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

~~(6)~~(7) The department must be reasonable when determining whether open burning constitutes BACT under subsection (1)(a)(i) and (1)(c)(ii) above.

(8) The department's decision to approve or deny an application for a conditional air quality open burning permit may be reviewed by the board in accordance with the provisions of Section 75-2-211(8) and (9), MCA.

AUTH: 75-2-111 and 75-2-203, MCA; IMP, Sec. 75-2-203, MCA

4. The Department is proposing these amendments to the rules in recognition that, in the past, variances have been consistently granted by the Board of Health and Environmental Sciences for the open burning of creosote-treated railroad ties. Instituting a permit program for such activities is much more efficient than use of the variance process, and the Department believes that it will exercise greater control over the eventual burning that takes place. The Board has requested that the Department consider instituting such a permit program. This proposal fulfills that request.

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 Yolanda M. Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 9, 1990.

William J. Opitz

WILLIAM J. OPITZ, Acting Director

Certified to the Secretary of State September 17, 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 23.5.102, motor carrier safety regulations.	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 23.5.102, MOTOR CARRIER SAFETY REGULATIONS

TO: All Interested Persons.

1. On October 17, 1990 at 7:00 p.m., a public hearing will be held in the main floor auditorium of the Scott Hart Building, at 303 North Roberts, Helena, Montana, to consider the amendment of rule 23.3.102.

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

23.5.102 DEPARTMENT OF TRANSPORTATION AND I.C.C. RULES

(1) All motor carriers and other motor vehicles operating ~~under the jurisdiction of this Department~~ within the state of Montana which are subject to regulation by the Department under section 44-1-1005, MCA, shall comply with, and the Department does hereby adopt, by reference, the federal ~~the~~ motor carrier ~~and motor vehicle~~ safety regulations ~~and noise emission requirements~~ of the ~~U.S.~~ Department of Transportation, ~~and the Interstate Commerce Commission, and this Department, by reference, hereby adopts the motor carrier and motor vehicle safety regulations promulated and adopted by the Department of Transportation and the Interstate Commerce Commission.~~with the exception of those regulations specifically excluded below. ~~These~~ The regulations adopted may be found in the Code of Federal Regulations, Title 49, Chapter III~~,~~ , Subchapter B with appendices (1989) updated through the effective date of this rule; they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. 49 C.F.R. Part 391 is subject to the exceptions contained in ARM 23.3.503 to ARM 23.3.507. 49 C.F.R. § 392.10 and 49 C.F.R. § 393.42 apply only to vehicles subject to regulation which are engaged in interstate commerce as defined in 49 C.F.R. § 390.5. Those regulations specifically excluded are found in 49 C.F.R. Part 383, Commercial Driver's License Standards; 49 C.F.R. Part 387, Minimum Levels of Financial Responsibility for Motor Carriers; 49 C.F.R. Part 391, Subpart H, Controlled Substance Testing; and 49 C.F.R. Part 394, Notification and Reporting of Accidents.

AUTH: Sec. 44-1-1005(1) MCA. IMP: 44-1-1005, 61-10-141(4) MCA.

3. The amendment is necessary to comply with the mandates of the federal Motor Carrier Safety Assistance Program, administered by the Highway Patrol Division, Montana Department of Justice. The proposed amendment would adopt, as Montana rules, all of the current versions of the federal rules listed above.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Raimund J. Jenkins, MCSAP Program, Montana Highway Patrol, Scott Hart Building, 303 N. Roberts, Helena, Montana 59620, no later than October 25, 1990.

5. Raimund J. Jenkins, MCSAP Program, Montana Highway Patrol, Scott Hart Building, 303 N. Roberts, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

By: Judy Browning
JUDY BROWNING
Deputy Attorney General

Certified to the Secretary of State September 17, 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 23.3.504 and 23.3.505, licensing operators of commercial motor vehicles.	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 23.3.504 and 23.3.505, LICENSING OPERATORS OF COMMERCIAL MOTOR VEHICLES.

TO: All Interested Persons.

1. On October 17, 1990 at 8:00 p.m., a public hearing will be held in the main floor auditorium of the Scott Hart Building, at 303 North Roberts, Helena, Montana, to consider the amendment of rules 23.3.504 and 23.3.505.

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

23.3.504 PHYSICAL QUALIFICATIONS FOR TYPE 1 ENDORSEMENT

(1) A person may not be issued, nor may he/she retain a type 1 endorsement, unless he/she is physically qualified to have the endorsement and has on his/her person the original or a photographic copy of a medical certificate certifying he/she is physically qualified to operate a commercial motor vehicle as required in federal regulations, 49 C.F.R. 391.43.

(2) A person is physically qualified to hold a type 1 endorsement if he/she:

(a) has no loss of a foot, a leg, a hand, or an arm; no impairment of a hand or finger which interferes with prehension or power grasping; no arm, foot, leg, or limb impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or has been granted a federal waiver or exemption;

(b) has no established medical history or clinical diagnosis of diabetes mellitus currently requiring the use of insulin for control;

(c) has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(d) has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a motor vehicle safely;

(e) has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely;

(f) has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely;

(g) has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to

cause loss of consciousness or any loss of ability to control a motor vehicle;

(h) has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a motor vehicle safely;

(i) has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses, or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors on traffic signals and devices showing standard red, green, and amber;

(j) first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 50 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951;

(k) does not use an amphetamine, narcotic, or any habit-forming drug; and

(l) has no current clinical diagnosis of alcoholism.

(3) If a commercial driver cannot meet the physical qualifications set forth in this section, he or she may attempt to qualify for a Type 2 commercial operator's endorsement (intrastate operation only) under the provisions of ARM 23.3.506 and, if so qualified, will be issued a Montana medical qualification card valid for the life of the current commercial license.

(4) Upon renewal, persons having qualified under section 3 above shall present a federal D.O.T. medical card, or complete the medical statement contained as a part of the commercial vehicle operator's endorsement application, and may be required to furnish a report from a physician indicating whether the condition(s) has worsened or whether any other disqualifying condition exists.

AUTH: 61-5-112, 61-5-117, 61-5-125 MCA.
IMP: 61-5-104, 61-5-105, 61-5-110 to 61-5-112, 61-5-201 MCA.

23.3.505 ELIGIBILITY FOR TYPE 2 ENDORSEMENT (1) A person is eligible to receive a type 2 endorsement if the person:

(a) is at least 18 years of age,

(i) however, a person who is at least 16 years of age and has a minimum of 12 months driving experience may be issued a type 2 endorsement with a "B" classification, restricted to hauling goods and property only within a 150 mile radius of his/her home or place of employment;

(ii) A person who possesses the above "underage" endorsement may have the restrictions imposed due to age removed on or after his/her 18th birthday by completing a driving examination for the type and class of endorsement desired.

(b) can safely operate the type of commercial motor vehicle driven;

(c) can determine whether the cargo he/she transports (including baggage in a passenger carrying vehicle) has been properly placed, distributed, and secured in or on the commercial motor vehicle driven;

(d) is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle driven;

(e) is physically ~~qualified and has submitted a medical statement as outlined in ARM 23.3.517;~~ able to meet the requirements of ARM 23.3.504(1) and (2) or, if unable to meet those requirements, meets the requirements of ARM 23.3.506 and complies with ARM 23.3.507;

(f) has been issued a currently valid Montana driver's license;

(g) is not otherwise ineligible to operate a motor vehicle;

(h) has successfully completed the required driving examination (or presented a certificate of employment/ experience in the case of an exchange or conversion);

(i) has, in the case of a new applicant, successfully completed a written examination appropriate to the class or type of endorsement applied for~~;~~;

(j) certifies that he/she operates solely in intrastate activities and that he/she is not subject to 49 C.F.R., part 391.

(2) A person is ineligible to receive a type 2 endorsement if:

(a) the person has less than 12 months licensed driving experience;

(b) the person is disqualified or has committed violations which would disqualify him or her under federal regulation, 49 C.F.R., part 391.15;

(c) the person's endorsement is cancelled, suspended, or revoked under the laws of Montana;

(d) the person's driver's license is cancelled, suspended, or revoked by any state;

(e) the person's driver's license has been placed on a probationary status by the department for conviction(s) resulting from violation(s) occurring while the driver was operating a commercial motor vehicle;

(f) the person has had in his/her possession while operating a commercial motor vehicle more than one valid driver's license.

(3) The type 2 endorsement of a person who is disqualified under these rules or federal regulations is invalid for the period of ineligibility, and the driver must submit his/her driver's license to the department for removal of the endorsement. Failure of the driver to submit the license for removal of the endorsement is grounds for cancellation of the endorsement under the provisions of section 61-5-201, MCA.

AUTH: 61-5-112, 61-5-117, 61-5-125 MCA.
IMP: 61-5-104, 61-5-105, 61-5-110 to 61-5-112, 61-5-201 MCA.

3. The proposed amendments would bring the Montana rules into conformity with the federal rules adopted under the Commercial Motor Vehicle Safety Act of 1986 and into compliance with the federal Motor Carrier Safety Assistance Program, administered by the Highway Patrol Division, Montana Department of Justice.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Duane B. Tooley, Driver Services Bureau, Motor Vehicle Division, Scott Hart Building, 303 N. Roberts, Helena, Montana 59620, no later than October 25, 1990.

5. Duane B. Tooley, Driver Services Bureau, Motor Vehicle Division, Scott Hart Building, 303 N. Roberts, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

By: Judy Browning
JUDY BROWNING
Deputy Attorney General

Certified to the Secretary of State September 17, 1990.

BEFORE THE DEPARTMENT OF LIVESTOCK OF THE
STATE OF MONTANA

In the matter of a proposed fee change for recording of brands	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 32.2.401 DEPARTMENT OF LIVESTOCK FEES, PERMIT FEES, AND MISCELLANEOUS FEES

(NO PUBLIC HEARING CONTEMPLATED)

TO: All Interested Persons:

1. On December 31, 1990, the Board of Livestock acting through the department of livestock proposes to amend ARM 32.2.401(2), by increasing the recording fee.

2. The rule, as proposed, provides as follows:

32.2.401 DEPARTMENT OF LIVESTOCK FEES, PERMIT FEES, AND MISCELLANEOUS FEES The department of livestock shall charge:

(1) remains the same

(2) for recording a new mark or brand, recording a mark or brand transfer, or recording a mark or brand as required by 81-3-107 MCA, a fee of ~~$35~~ 50;

(3) through (37) remain the same.

AUTH: 81-1-102, MCA IMP: 81-3-107, MCA

3. The Board of Livestock proposes to adopt this rule pursuant to the provisions of 81-3-107, MCA which requires that the department charge and collect a fee for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand.

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

Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620 no later than October 25, 1990.

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 October 25, 1990.

6. If the Board receives requests for a public hearing on the proposed rule amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rule amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of Hearing will be published in the Montana Administrative Register.

7. This rule will be effective January 1, 1991.

Nancy Espy
NANCY ESPY, Chairman
Board of Livestock

BY: Lon Mitchell
LON MITCHELL, STAFF ATTORNEY
Department of Livestock

Certified to the Secretary of State September 17, 1990.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF CORRECTION
of a rule pertaining to fees) of 8.50.437 FEE SCHEDULE

TO: All Interested Persons:

1. On April 26, 1990, the Board of Private Security Patrolmen and Investigators published a notice of proposed amendment of the above-stated rule in issue 8, 1990 Montana Administrative Register. This amendment was adopted in issue number 17, at page 1772, 1990 Montana Administrative Register.

2. It has been determined that the original notice is confusing because text was rearranged and some text was not identified as being derived from the existing rule. The amendments should have been proposed as follows: [Re-exam appears twice (under (4)(a) and (5)). Subsection (5) should remain "Exam" as in the existing rule.]

"8.50.437 FEE SCHEDULE

(1)	License application fees		
(a)	Contract security company	~~200.00~~	75.00
(b)	Proprietary security organization	~~200.00~~	75.00
(c)	Private investigator ~~employer~~	~~200.00~~	75.00
(d)	Qualifying agents and resident managers	~~200.00~~	75.00
(e)	Security alarm installer	~~200.00~~	75.00
~~(f)	License renewals~~	~~50.00~~	
	~~One-half price on renewals only for each additional license for dual or multiple licenses~~		
~~(g)	Duplicate licenses~~	~~15.00~~	
(2)	Employee registration application fees		
(a)	Armed contract security employee	~~75.00~~	15.00
(b)	Armed proprietary security employee	~~75.00~~	15.00
~~(c)	Armed private investigator employee~~	~~75.00~~	
~~(d)	Renewals~~	~~25.00~~	
~~(3)	Employee Identification Application Fees~~		
~~(a)~~	(c) Unarmed contract security employee	~~25.00~~	10.00
~~(b)~~	(d) Unarmed proprietary security employee	~~25.00~~	10.00
~~(c)	Unarmed private investigator employee~~	~~25.00~~	
~~(d)~~	(e) Unarmed installer employee	~~25.00~~	10.00
~~(e)	Renewals for unarmed contract proprietary security employee~~	~~10.00~~	
~~(f)	Renewals for unarmed private investigator employee~~	~~10.00~~	
~~(g)	Renewals for unarmed alarm installer employee~~	~~10.00~~	
(3)	Licensee and employee renewals		

(a)	Unarmed licensee renewals		25.00
(b)	Armed Licensee renewals		35.00
	One-half price on renewals only for each additional license for dual or multiple licenses		
(c)	Armed employee		10.00
(d)	Unarmed contract and proprietary security employee		5.00
(e)	Unarmed alarm installer employee		5.00
(4)	Miscellaneous fees		
(a)	Re-exams	~~20.00~~	15.00
(b)	Late renewals	~~25.00~~	5.00
(c)	Branch office application	~~30.00~~	10.00
(d)	Duplicate licenses		5.00
(5)	Exam fee	~~25.00~~	15.00
(6)	will remain the same.		
(7)	Process Servers		
(a)	Handbook		5.00
(b)	Examination		60.00
~~(7)~~	(8) Request for refunds:		
(a) through (c) will remain the same."			

Auth: Sec. 37-1-134, 37-60-202, MCA; IMP, Sec. 37-1-134, 37-60-304, 37-60-312, MCA

3. The statement of reasonable necessity in the original notice is "These amendments are needed to conform the board's fees to program area costs and reduce overall fund balances."

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
JACK SAMSON, ACTING CHAIRMAN

BY: _____
CHARLES A. BROOKE, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 17, 1990.

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

In the matter of the adoption of rules I through XL, relating to the licensing of underground tank installers and inspectors and the permitting of underground tank installations and closures; and the repeal of Emergency Rules I through XVI	NOTICE OF ADOPTION OF RULES I THROUGH XL AND THE REPEAL OF EMERGENCY RULES I THROUGH XVI

(Underground Storage Tanks)

To: All Interested Persons

1. On August 16, 1990, the Department of Health and Environmental Sciences published a notice of public hearing on the proposed repeal of emergency rules and the adoption of permanent rules governing licensing of underground tank installers and inspectors and the permitting of tank installations and closures. The notice was published at page 1512 of the 1990 Montana Administrative Register, issue number 15. The emergency rules were adopted at page 1549 of MAR issue number 15.

2. The hearing was held on September 6, 1990, at 9:30 a.m. in the auditorium of the SRS building in Helena, Montana.

3. The department has repealed the emergency rules previously adopted and adopted the permanent rules in their place, effective October 1, 1990.

3. As a result of oral comments received at the hearing, the written comments received on the public record and the department's review of the comments and the proposed rules, the department has adopted all of the proposed new rules as follows:

RULE I through RULE II (16.45.1201) through (16.45.1202) Same as proposed.

RULE III (16.45.1203) INSTALLER LICENSE REQUIREMENTS GENERALLY (1) An individual is "engaged in the business of" installation or closure of underground tanks, within the meaning of section 75-11-203(5), MCA, and must therefore have a license under section 75-11-210, MCA, if he or she installs or closes in any year in exchange for something of value, one or more underground storage tanks owned or operated by the same or another person.

(2) through (4) Same as proposed.

RULE IV (16.45.1204) ELIGIBILITY FOR REGULAR INSTALLER LICENSE Same as proposed.

RULE V (16.45.1205) REGULAR INSTALLER LICENSE APPLICATION (1) through (2) Same as proposed.

(3) The application shall be accompanied by at least three references from other persons attesting to the experience and competency of the applicant in the installation and closure of underground tanks. The references must be written on forms provided by the department, and must show that the applicant actively participated in at least three underground storage tank installations and closures, two of which must be installations. If an applicant requests to have his or her license conditioned to allow only lining or closures, or installation or closure or repair of underground piping associated with heating oil tanks, to be conducted under the license, the applicant shall so state on the application, and the references need only apply their statements toward the applicant's tank closure or lining, or installation or closure or repair of underground piping associated with heating oil tanks ~~work~~, as appropriate. References for applicants conducting only tank closures or lining, or installations or closures or repairs of underground piping associated with heating oil tanks, must show that the applicant participated in at least two closures, installations or closures or repairs of underground piping associated with heating oil tanks, or at least two tank linings in the last five years, as applicable.

(4) through (5) Same as proposed.

RULE VI (16.45.1206) REGULAR INSTALLER LICENSE EXAMINATION AND RE-EXAMINATION (1) through (5) Same as proposed.

(6) A score of 80% or higher on the examination constitutes a passing grade. All examinations will be graded, and the applicants notified of their examination score, within thirty days of the date of the examination. An applicant who requested on a license application that his or her license be conditioned for conducting only tank closures or lining, or the installation or closure or repair of underground piping associated with heating oil tanks, need only obtain a passing grade on the sections of the examination pertinent to closure or lining, or the installation or closure or repair of underground piping associated with heating oil tanks, as applicable.

(7) Same as proposed.

RULE VII (16.45.1207) INSTALLER LICENSE ISSUANCE, TERM, CONDITIONS (1) Same as proposed.

(2) Licenses for applicants who request that their licenses be conditioned for conducting only closures or lining, or installation or closure or repair of underground piping connected to heating oil tanks ~~only~~, shall have the closure or lining, or installation or closure or repair of underground piping connected to heating oil tanks, ~~only~~ condition clearly designated on the license.

(3) through (5) Same as proposed.

RULE VIII (16.45.1208) INSTALLER LICENSE REISSUANCE

(1) through (3) Same as proposed.

(4) The department shall notify a licensee of the impending expiration of the person's license at least thirty (30)

days prior to the final date for making application for reissuance of the license. Such notification shall be considered complete when the notification is sent by certified mail to the address given on the licensee's last application for a license.

RULE IX through RULE XVIII (16.45.1209) through (16.45.1218) Same as proposed.

RULE XIX (16.45.1219) PERMIT APPLICATION REVIEW FEES

(1) through (2) Same as proposed.

(3) For the installation or closure of an underground storage tank, the permit applicant shall pay the following permit application review fees:

(a) ~~less than 551 gallon capacity ..... $25/tank~~ farm and residential tanks and heating oil tanks with a capacity of less than 1,100 gallons or less $35/tank

(b) ~~551 - 5,000 gallon capacity ..... $50/tank~~ all other underground storage tanks..... $50/permit plus $.005 per gallon of tank capacity

~~(c) more than 5,000 gallon capacity ..... $100/tank~~

~~(d)~~(c) piping only .... $25/50 feet ($25-min, $100-max)

~~(e)~~(d) modification & repairs only .....~~$25~~ $35

(4) through (5) Remain the same.

RULE XX through XL (16.45.1220) through (16.45.1240) Same as proposed.

5. The following comments were received on the proposed rules and the department makes the following responses:

GENERAL COMMENT: One commenter suggested that the State of Montana assume liability for any damage inflicted on private property by those persons authorized to enter the property to enforce the Montana Underground Storage Tank Installer Licensing and Permitting Act.

RESPONSE: Article II, Section 18 of the Montana Constitution and Title 2, Chapter 9, MCA, governs the liability of the State for tortuous actions of its employees. Section 2-9-108, MCA, makes the State liable for up to $750,000 per claim and $1.5 million per occurrence for acts or omissions of its employees. Therefore, no change is made to the rule in response to the comment.

GENERAL COMMENT: One commenter suggested that penalties for infractions of the rules should not be the same for both large and small tanks, because large tanks which leak have a greater potential for contamination than do small tanks.

RESPONSE: Penalties for any violation of the proposed rules are established by statute. Section 75-11-223, MCA, provides a civil penalty of up to $10,000 per day per violation for any person who violates any rule adopted under the Montana Under-

ground Storage Tank Installer Licensing and Permitting Act. The changing of the penalty would therefore require a change in the statute, because under the rationale of such Montana Supreme Court cases as Bell v. State, 182 M 21, 594 P2d 331 (1979), the department has no authority to change the statutory penalty by adoption of a rule. Therefore, no change is made to the rule in response to the comment.

RULE II (16.45.1202) DEFINITIONS

COMMENT: One commenter requested that the department consider exempting tanks under 1,100 gallons and those tanks owned by individuals who use the stored products themselves.

RESPONSE: Rule II applies the definition of an "underground storage tank" found in Section 75-11-203, MCA, to these rules. Section 75-11-203(12), MCA, relies upon the definition in Section 75-10-403(17), MCA, which section defines an "underground storage tank" as including those tanks which the commenter asked be exempted. The exclusion of those tanks would therefore require a change in the statutes, because under the rationale of such Montana Supreme Court cases as Bell v. State, 182 M 21, 594 P2d 331 (1979), the department has no authority to change the statutory definition by adoption of a rule. Therefore, no change is made to the rule in response to the comment.

COMMENT: One commenter stated tank relining should not be called a repair. According to the commenter, it is a means of corrosive protection and should be considered as an upgrade.

RESPONSE: The definition of "installation" in this rule is identical and consistent to that found in Montana Underground Storage Tank Act, Section 75-11-203(4), MCA, and the Department's previously adopted rules ARM 16.45.101A(30). Therefore, no change is made to the rule in response to the comment.

COMMENT: One commenter suggested that tank lining should be considered a preventive measure and not a "repair" as defined.

RESPONSE: "Repair" as defined in the federal EPA underground storage tank rules, 40 CFR 280.12, and in ARM 16.45.101A(54), means "to restore a tank or UST system component that has caused a release of a product from the UST system." Tank lining could be used as a method to repair a tank that has released a product and is therefore included in the definition of a repair. Tank lining is also defined as a preventive measure or "upgrade" in ARM 16.45.101A(66). Therefore, no change is made to the rule in response to the comment.

RULE III (16.45.1203) INSTALLER LICENSE REQUIREMENTS GENERALLY

DEPARTMENT CHANGE: In order that this rule will be consistent with the requirements of Section 75-11-209(2), MCA, the department is adding a phrase to clarify that an owner or operator

is "engaged in the business of" installation or closure of underground tanks, if he installs or closes for something of value, underground storage tank(s) owned or operated by him.

RULE V (16.45.1205) REGULAR INSTALLER LICENSE APPLICATION and RULE VI (16.45.1206) REGULAR INSTALLER LICENSE EXAMINATION AND RE-EXAMINATION

DEPARTMENT CHANGE: Since proposing these rules, the department has learned that a significant number of plumbers, heating system contractors and repairmen routinely install, repair and remove piping connected to heating oil tanks. These individuals are generally not in the business of installing, repairing or closing underground storage tanks, but they do routinely install, repair or remove heating oil piping connected to heating oil tanks in the course of their duties. These activities would require licensing as an underground storage tank installer or remover under these proposed rules. However, due to their limited involvement in the installing, repairing or removing heating oil tank piping, the department proposes to establish a conditional license class for these individuals. These individuals would be examined on the requirements of proper piping installation, leak detection and corrosion protection and closure of piping associated with heating oil tanks and would be conditionally licensed to perform only those functions. Therefore, Rule V (16.45.1205) has been changed to add "or installation or closure or repair of underground piping connected to heating oil tanks" and Rule VI (16.45.1206) has been changed to establish license examinations for conditionally licensed individuals who conduct only installations, closures and repairs of underground piping associated with heating oil tanks.

RULE VI (16.45.1206) REGULAR INSTALLER LICENSE EXAMINATION AND REEXAMINATION

COMMENT: A commenter suggested that for the first year in which licenses are issued that licensing examinations be offered more than once per year.

RESPONSE: Subsection (1) of the rule as proposed requires that the written examination be offered "a minimum of two times per year...". Therefore, no change is made to the rule in response to the comment.

RULE VII (16.45.1207) INSTALLER LICENSE ISSUANCE, TERM, CONDITIONS

DEPARTMENT CHANGE: Language changes are necessary for the department to establish license examinations for conditionally licensed individuals who conduct only installations, closures and repairs of underground piping associated with heating oil tanks. (See department change of Rule V.)

RULE VIII (16.45.1208) INSTALLER LICENSE REISSUANCE

COMMENT: One commenter asked that the department notify installers of the impending expiration date of their licenses.

RESPONSE: During the formulation of this rule, the department considered adding language which would have required the agency to remind a licensee that it was necessary for his license to be reissued. The agency chose not to propose such a notification provision to (1) reduce the agency's potential liability in the event that instances beyond the department's control prevented the notice from reaching the installer prior to the license's expiration date; (2) minimize the agency's workload and need for extensive recordkeeping procedures which would accommodate the notification procedure; and (3) prevent escalation of the costs associated with the license reissuance procedures. It was also considered that individuals whose driver's license require renewal are not notified, although those licenses are issued for a more lengthy period (four years) than the installer licenses.

After consideration of the comment and the serious consequences which may be associated with the loss of an installer's license because of an applicant's failure to make timely application for license reissuance, the agency is proposing to add a provision to Rule VIII (ARM 16.45.1208) providing for the requested notice.

COMMENT: One commenter stated a licensee who has been gainfully employed since his original license was issued should not be required to be re-examined or attend a study course due to his experience.

RESPONSE: The field of underground storage tank installation, repair and removal is highly technical and requires trained and competent craftsmen to minimize the possibility of product releases and environmental damages. The majority of the standard industry technical practices and procedures adopted by the Department have been written or substantially updated within the past one to three years. The requirement of continuing education and re-examination every three years will ensure licensed tank installers, removers and inspectors maintain proficiency in the latest technical standards and practices. Therefore, no change is made to the rule in response to the comment.

RULE XII (16.45.1212) LICENSED INSTALLER RECORDKEEPING

COMMENT: One commenter said she was unsure of the intent of subsection (3) of the proposed rule but that if the intent was to place a burden on installers, that may not be appropriate.

RESPONSE: The Department has not proposed the rule to place a burden on installers. The words prohibiting any person from placing a regulated substance in a tank without a signed installation checklist and permit are intended to apply to the owner, the operator, the fuel distributor or any other individual or firm who has access to tanks as well as to the installer. By proposing the rule, the agency wishes to ensure that

its permitting staff will have an adequate opportunity to review the installation check list, to ensure that the permit conditions were met and to determine that the installation was completed in compliance with adopted standards. It is the agency's position that such review is necessary since a tank installed by a licensed installer does not need to be inspected prior to closure. Such review will serve as a final check of the installation and prevent accidental release of a regulated substance into the environment. Therefore, no change is made to the rule in response to the comment.

RULE XVI (16.45.1216) INSPECTOR LICENSE REISSUANCE
COMMENT: A commenter suggested that the rule be modified to require the Department to notify inspectors of the impending expiration date of their licenses.

RESPONSE: Subsection (2) of the proposed rule already requires that "The department shall provide adequate notification of the annual expiration date." Therefore, no change is made to the rule in response to the comment.

RULE XX (16.45.1220) INSPECTION FEES
COMMENT: A commenter expressed concern that it is not appropriate for the department to establish inspection fees for inspections completed by local inspectors.

RESPONSE: With the enactment of Section 75-11-204, MCA, the Legislature granted the department authority to develop by rule a schedule of fees for the inspection of tank installation and closures. Further, Section 75-11-213(3), MCA, requires that the owner or operator of an underground storage tank pay the department an inspection fee. The statute further requires that the department shall pay up to 80% of the inspection fee collected back to the local inspector completing the inspection. By its enactment of this section, it is apparent that the legislature intended the department to establish an inspection fee schedule and collect the fees. Development of a single fee schedule statewide, in accordance with the law, will establish uniformity of inspection fees throughout the state. Therefore, no change is made to the rule in response to the comment.

RULE XIX (16.45.1229) PERMIT APPLICATION FEES
COMMENT: One commenter said that elderly persons and persons on fixed incomes cannot bear the costs of permitting and inspections, and that small service stations will be going out of business due to the costs associated with installation of new tanks.

Three other commenters said that the proposed permit fees were too high. One of the three commenters felt that the proposed fee schedule discriminated against the owners and operators of large tanks and suggest that a single permit fee, which would average out over the whole of the applications,

should be adopted. A second commenter suggested that a flat fee of $50.00 be adopted, while the third felt that the proposed fees were exorbitant.

RESPONSE: In its enactment of the "Montana Underground Storage Tank Installer Licensing and Permitting Act", the Legislature authorized the department to establish a program to ensure that underground storage tanks were properly designed, installed, repaired and closed. The Act authorizes the department to adopt schedules of fees, which must provide the sole source of funding for the administration of the permit and licensing program.

While recognizing that the proposed fees are not nominal amounts, the department takes exception to the comment that the proposed fees will force small service stations out of business or discourage the removal of tanks by competent installers. While the permitting costs are being conceived as an added expense, the agency fully anticipates that the expense involved in obtaining a permit and inspection, if necessary, will actually save tank owners and operators, (as well as the public), money over the long run. Permitting procedures will ensure that installations and closures are properly completed, and thereby, preclude the expenses associated with underground leaks; e.g., lost business due to down time, costly environmental remediation and potential liability exposure. Further, it should not be overlooked that the permit review process provides tank owners and operators access to the expertise and service of the program's professional staff members; e.g., engineers, hydrologists, soil scientists and others, who during the course of permit review ensure that the installation, closure, repair or modification of underground storage tanks will be undertaken and accomplished in compliance with applicable technical and environmental rules and regulations and the minimum requirements of adopted standards and practices.

In response to the comments concerning the burden which the fees will impose upon the elderly and those on fixed incomes, it should be noted that throughout the fee development process the agency has been cognizant of that fact. The agency is aware that the imposition of any fee, regardless of size, will have significant financial impact on the elderly and those on fixed incomes. However, other than to subsidize certain review activities there is little that can be done to minimize that impact and still provide the level of service required to protect the public's health and safety and the environment. The agency has chosen not to subsidize one group of tank owners at the expense of another. Instead, the proposed permit fee schedule is designed to establish permit fees which fairly reflect the amount of review that will be necessary for a given tank category.

In response to the comments suggesting specific changes in the fee schedule, the department has decided to modify its

proposed permit fee schedule. The adopted changes will more closely align the fees to reflect the actual amount of program resources that will be needed to complete the review process for an installation or closure site, rather than the individual tank. The permit fee for farm and residential tanks and heating oil tanks with a capacity of 1,100 gallons or less will be adjusted upward, but will remain a flat fee per tank. The permit fees for all other tanks will be calculated by using a flat fee plus a per gallon charge for the total capacity of the tank system. Repair and modification permit fees will be set as a flat fee. The fee for the small farm and residential tanks and heating tanks reflects the fact that the review process is a less complicated procedure than for other tanks. Unlike larger underground storage tank systems, these tank facilities generally are single tank installations and closures without extensive underground piping, rarely have pressurized piping, and are not required to have release detection equipment which must be reviewed.

By adopting the modified permit fee schedule the department believes that it has adequately addressed the concerns of the commenters who felt that the proposed permit fees were too high.

RULE XXI (16.45.1221) REQUIREMENTS FOR INSPECTIONS GENERALLY
COMMENT: One commenter suggested that a second section be added to this rule to require that a licensed inspector be present when a tank is being installed or removed by a licensed installer.

RESPONSE: Section 75-11-209(2), MCA, provides: "In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank unless the installation or closure is: (a) inspected by a department inspector or a designated local inspector as provided in 75-11-213."

Section 75-11-213(1), MCA, provides: "After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer." It is apparent from these statutes, that the Legislature intended that owners and operators utilizing the services of a licensed underground storage tank installer would not be required to have installations and closures of underground storage tanks completed by a licensed installer inspected by a department or designated local inspector. Consequently, the department does not have authority to adopt a rule requiring the simultaneous on-site inspection by licensed inspectors of underground storage tanks installed or closed by licensed underground storage tank installers. Therefore, no change is made to the rule in response to the comment.

RULE XXVIII (16.45.1228) INSPECTOR LICENSING FEES

COMMENT: Another commenter expressed concern that the fee for the Inspector's Study Guide is exorbitant, saying that the fee for the Inspector's Study Guide was significantly more than the fee proposed for either the Tank Installer, Tank Closers or Tank Liners Study Guide.

RESPONSE: Since a tank installer, tank closer or tank liner need only be knowledgeable in his respective area of licensure, the study guide materials included in the respective study guide cover only the one limited area of tank activity. It is the department's position that a tank inspector must be knowledgeable in all areas of tank activity and the size of the Inspector's Study Guide and comprehensiveness of the examination reflect this. Consequently, the proposed fees for the Inspector Study Guide reflect the cost of including all of the materials contained in the three separate study guides. Therefore, no change is made to the rule in response to the comment.

6. The authority of the Department of Health and Environmental Sciences to repeal the emergency rules is contained in Section 75-11-204, MCA. The repeal of the emergency rules implements Title 75, Chapter 11, part 2, MCA. The authority of the Department of Health and Environmental Sciences to adopt Rules I through XL is contained in Section 75-11-204, MCA. The rules implement Title 75, Chapter 11, part 2, MCA.

William J. Opitz

WILLIAM J. OPITZ, Acting Director

Certified to the Secretary of State September 17, 1990

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of new rule to reject permit applications for consumptive uses and to modify permits for nonconsumptive uses of water in the Walker Creek Basin	)))))	NOTICE OF ADOPTION OF ARM 36.12.1014 WALKER CREEK BASIN CLOSURE

To: All Interested Persons

1. On May 17, 1990, the Department of Natural Resources and Conservation published a notice of public hearing on the proposed new rule to reject or modify permit applications in the Walker Creek Basin at page 893, 1990 Montana Administrative Register, Issue number 9. Notices were also published on May 7, 14, and 21, 1990 in the Daily Inter-Lake News and May 9, 16, and 23, 1990 in the Whitefish Pilot. Notices were mailed on May 11, 1990 to each individual water user in the Walker Creek Basin.

2. On June 26, 1990, at 7:00 p.m., the public hearing was held at the St. Charles Parish Hall, 230 Baker Ave. in Whitefish, Montana. During the hearing and prescribed comment period the department received comments, oral and/or written, from the following persons: Marlene and Dwayne Becker, Cora Kerestes, Natalie Bryant, Paul Stafford, Jake and Alice Voermans, T. V. Brenner, Ulrich Bircher, and Marie Lynch, all of Whitefish; Ronald Buentemeier, representative of F. H. Stoltze Land and Lumber Company of Columbia Falls; Gregory Beck of McCall, Idaho; Randy Smith of Santa Barbara, California.

3. The rule is being adopted as proposed.

4. A summary of the comments received, and the agencies' responses are as follows.

GENERAL COMMENTS

COMMENT: The drainages used as models to predict the flows in Walker Creek have much higher flows than those observed in Walker Creek.

RESPONSE: Walker Creek is an ungaged stream. One method to evaluate flows on ungaged streams is to make comparisons to similar streams with existing flow records. Locating identically gaged streams is difficult at best which is why several gaged streams were analyzed to calculate a mean annual flow for Walker Creek. Several creek measurements were made on June 7, 1989 which seem to support the commentor's position. Frequent stream measurements on Walter Creek would be necessary to confirm the commentor's observations. No modification of Rule I(2) was made.

COMMENT: Commentors felt water users on the lower end of the basin should consider drilling wells. Wells drilled in the lower basin wouldn't be as deep and would have a higher success of obtaining water than wells in the upper basin. Walker Creek is a more reliable and economical source of water in the upper basin than wells.

RESPONSE: This may seem like a fair alternative to some on the surface, but the water users in the lower basin have established existing water rights. The Prior Appropriation Doctrine recognizes the priority of water rights on a stream. Appropriative rights are legally protected water rights. Therefore, action to close a basin from further appropriation of water is a method to protect those earlier rights from infringement by new water users. Changes may occur in the future to justify reopening the basin; and if such circumstances come to pass, this avenue does exist for consideration. No modification of the rule was made.

RULE I WALKER CREEK BASIN CLOSURE

COMMENT: A provision should be included in the petition allowing F. H. Stoltze Land and Lumber Company to use water from Walker Creek for slash burning and dust control operations.

RESPONSE: Prior and existing water rights will not be affected by this closure rule since the effective date of the closure is its date of adoption. Existing water uses in Walker Creek that are in compliance with the Montana Water Use Act (Title 85, Chapter 2 of the Montana Code Annotated) will not be effected by this rule. Emergency appropriations of water as defined in ARM 36.12.101(6) and 36.12.105 shall be exempt from these rules (Rule I(8)). Therefore, no modification of the rule is required.

COMMENT: Commentor wants to maintain the right to divert water for a non-consumptive use.

RESPONSE: Applications for non-consumptive uses of water will still be accepted by the department. Applications for non-consumptive uses will have to meet the conditions in Rule I(3) and (4). These conditions are to insure the proposed developments do not cause depletions in Walker Creek and pose no adverse affect to prior appropriators. No modification to the rule is required.

COMMENT: Commentor should be allowed to appropriate water for domestic uses and will not affect downstream users as much as the trash and beaver dams that are in the creek.

RESPONSE: Testimony and the department's water availability report show flows on the lower reaches of this basin are critical at certain times during the year. Cisterns and groundwater are still options in the upper basin, but infiltration galleries will have a restriction of 50 feet from the source. The demands for water in the lower basin equal and sometimes exceed the supply during the requested closure period based on the hydrology reports and testimony. Therefore no modification of the rule was made.

5. No other written or oral comments were received.

Karen L. Barclay, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State, September 17, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.401; 42.11.405; 42.11.406; 42.11.408; and 42.11.409; REPEAL OF ARM 42.11.420 and ADOPTION of NEW RULES I (42.11.421); II (42.11.422); III (42.11.423); IV (42.11.424); V (42.11.425); VI (42.11.426) and VII (42.11.427) relating to Liquor Bailment.	NOTICE OF THE AMENDMENT of ARM 42.11.401; 42.11.405; 42.11.406; 42.11.408 and 42.11.409; REPEAL OF ARM 42.11.420 and ADOPTION of NEW RULES I (42.11.421); II (42.11.422); III (42.11.423); IV (42.11.424); V (42.11.425); VI (42.11.426) and VII (42.11.427) relating to Liquor Bailment.

TO: All Interested Persons:

1. On June 28, 1990 the Department of Revenue published notice of the proposed amendment of ARM 42.11.401; 42.11.405; 42.11.406; 42.11.408 and 42.11.409. It also published notice of the proposed repeal of ARM 42.11.420 and the adoption of new rules I through VII relating to liquor bailment at page 1229 of the 1990 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 19, 1990 where written and oral comments were received.

3. As a result of the comments received the Department has amended ARM 42.11.401; 42.11.405; 42.11.406; 42.11.408 and 42.11.409 as proposed.

4. The Department repeals 42.11.420 and adopts new rules I (42.11.421) through VII (42.11.427) as proposed with the following changes:

RULE I (42.11.421) BAILMENT LIMITS (1) Products listed as "regular", "test market", "seasonal", or "promotional" must be maintained in the bailment warehouse in an amount above the minimum level and below the maximum level.

(2) The minimum bailment level for "regular" products is a three-week supply based on the seasonally adjusted historical average. The minimum level for "test market", "seasonal", and "promotional" products is a three-week supply based on a vendor's estimate of demand that the liquor division concurs in.

(3) Vendors will be charged a space reservation fee of $1.00 per case per day for each case below minimum for any product for which the liquor division is unable to fill store orders. A SPACE RESERVATION FEE WILL NOT BE CHARGED IF THE UNAVAILABILITY OF SUPPLY IS DUE TO AN INCIDENT BEYOND THE VENDOR'S CONTROL FOR WHICH IT HAS NO RECOURSE AGAINST ANY OTHER PARTY.

(4) The maximum bailment level for "regular" products is ~~a six-week~~ AN EIGHT-WEEK supply based on the seasonally

adjusted historical average or one and a half pallets, whichever is greater. The maximum level for "test market", "seasonal", and "promotional" products is ~~a six week~~ AN EIGHT-WEEK supply based on the vendor's estimate of demand that the liquor division concurs in or one and a half pallets, whichever is greater. THE MAXIMUM BAILMENT LEVEL MAY BE EXCEEDED FROM TIME TO TIME IF A VENDOR DEMONSTRATES THAT A LARGER AMOUNT IS NEEDED TO OBTAIN AN ECONOMICAL SHIPMENT AND THE LIQUOR DIVISION AGREES.

(5) Vendors will be charged the direct and indirect costs the liquor division incurs for warehousing any cases that have been in excess of the maximum level for more than five consecutive days.

(6) Each quarter the liquor division will notify vendors what the seasonally adjusted historical weekly average or the concurred in estimate of demand is for their products. Quarters are those used for the liquor division quarterly price list.

(7) Fees and charges will be offset on liquor division payments for products. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE II (42.11.422) BAILMENT RECEIVINGS (1) Vendors may ship products to the bailment warehouse only if they are listed as "regular" "test market", "seasonal", or "promotional" products in accordance with ARM 42.11.406.

(2) Vendors must send the liquor division a bill of lading for each shipment to the bailment warehouse 10 days in advance of the expected date of arrival~~.~~ OR SEND A TELEFACSIMILE COPY OF THE BILL OF LADING ON THE DAY OF SHIPMENT. The bill of lading must include the quantity, THE NATIONAL ALCOHOLIC BEVERAGE CONTROL ASSOCIATION CONTROL STATE CODE, and description of each item shipped.

(3) The liquor division will send vendors an acknowledgement of receipt within 24 hours of receipt upon which will be noted any variance with the bill of lading, the number of undamaged cases received, and number of damaged cases received.

(4) The number of undamaged cases received per product will be credited to the bailment warehouse control account.

(5) SUBSTANTIALLY ~~B~~ damaged cases will not be credited to the control account. Vendors will be given the opportunity to have damaged cases returned at their cost or destroyed. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE III (42.11.423) BAILMENT DEPLETIONS (1) The liquor division may deplete products from the bailment warehouse if the liquor division is purchasing a product from a vendor~~.~~ AND THE VENDOR HAS AFFIRMED AN OFFER TO SELL PRIOR TO THE WEEK IN WHICH THE DEPARTMENT WILL DEPLETE THE PRODUCTS.

(2) Payment for a purchase will be made within 30 days of the date that the liquor division depletes the product

from the bailment warehouse.

(3) Payment amount for a purchase will be a vendor's price per case F.O.B. Helena, Montana that was quoted to the liquor division not less than 60 days prior to the liquor division's price list publication date.

(4) The number of cases depleted per product will be debited to the bailment warehouse control account.

(5) The liquor division will notify vendors once a week of the amount and date their products were depleted from the bailment warehouse during the week. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE IV (42.11.424) BAILMENT ADJUSTMENTS (1) The bailment warehouse control account will be adjusted for vendor product withdrawals, redelivery of low volume products, discovery of deficient cases, and errors.

(2) Vendors may withdraw some or all of any of their products from the bailment warehouse by sending a written request to the liquor division to carry out their instructions.

(3) Vendors will be charged the direct and indirect costs the liquor division incurs for carrying out vendor withdrawal instructions.

(4) Withdrawals below the minimum supply will precipitate liquor division action to delist a product or change its listing classification in accordance with ARM 42.11.409 and will result in a vendor being charged the fee in ARM 42.11.421(3) unless the withdrawal is the result of the liquor division's approval of a vendor's request to delist a product.

(5) Products in the bailment warehouse that fall below the minimum sales standards in ARM 42.11.407 may continue to be maintained in the bailment warehouse and continue their listing classifications until there is insufficient space in the warehouse to accommodate all products.

(6) When there is insufficient space in the warehouse to accommodate all products, products will be delisted in accordance with ARM 42.11.409. These delisted products will be redelivered to the vendor at vendor's expense after 10 day's notice.

(7) The liquor division will notify vendors once a week of the number of cases credited to the bailment warehouse control account that were found to be deficient (i.e. hidden breakage, packed short or have bottles with no fill or low fill) during the week. Vendors will be given the opportunity to have the deficient cases redelivered at their cost or destroyed.

(8) The liquor division will notify vendors once a week of the number of cases credited or debited to the bailment warehouse control account in error during the week and an explanation of the errors that were found. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE V (42.11.425) BAILMENT WAREHOUSE MANAGEMENT (1) Only liquor division personnel are authorized to move or ~~inspect~~ HANDLE products in the bailment warehouse.

(2) VENDORS MAY ARRANGE WITH THE LIQUOR DIVISION FOR THE TEMPORARY TRANSFER OF SELECTED CASES OF PRODUCT TO A WORK AREA SEPARATE FROM THE BAILMENT WAREHOUSE. VENDORS OR VENDORS' REPRESENTATIVES MAY INSPECT OR MODIFY CASES OF THEIR PRODUCT IN THE WORK AREA. THE LIQUOR DIVISION MUST APPROVE ANY MODIFICATIONS THAT MAY AFFECT DOCUMENTATION OF BALANCES IN THE BAILMENT WAREHOUSE CONTROL ACCOUNT. VENDORS WILL BE CHARGED THE DIRECT AND INDIRECT COSTS THE LIQUOR DIVISION INCURS FOR TRANSFERRING CASES TO AND FROM THE WORK AREA.

~~(2)~~(3) Vendors and vendors' representatives may observe the operation of the bailment warehouse at any time during regular working hours by requesting the liquor division for an appointment.

~~(3)~~(4) While on a visit to the bailment warehouse, vendors and vendors' representatives must observe Montana state liquor warehouse safety rules.

~~(4)~~(5) The liquor division will take physical inventory in the bailment warehouse four times a year and reconcile the count with the bailment warehouse control account. Inventory is taken during the last week in March, June, September and December. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE VI (42.11.426) BAILMENT DISPUTES (1) If a vendor disputes any liquor division decision under ARM 42.11.421 through ARM 42.11.425, the vendor and the liquor division will attempt to resolve the dispute informally.

(2) If an informal resolution is not successful, a vendor may contest the decision in accordance with the provisions for contested cases in the Montana Administrative Procedure Act.
(AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

RULE VII (42.11.427) BAILMENT TRANSITION RULE (1) For the purpose of phasing in the limits in ARM 42.11.421 during the ~~three~~ FOUR months following the effective date of this rule the minimum bailment level is a three-week supply of a product less the amount that the liquor division owns and holds in the non-bailment area of the state liquor warehouse. THE LIQUOR DIVISION WILL PURCHASE SUFFICIENT SUPPLY OF LIQUOR FROM A VENDOR TO MEET EXPECTED DEMAND DURING THE FOUR MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS RULE IF ACCEPTABLE ARRANGEMENTS WITH THE VENDOR HAVE NOT BEEN MADE TO MEET EXPECTED DEMAND DURING THE FOUR-MONTH PERIOD THROUGH SUPPLY MAINTAINED IN THE BAILMENT WAREHOUSE.

(2) During the ~~three~~ FOUR-month phase in period, the liquor division will notify vendors once a week of the amount of their products that the division has on hand.

(3) DURING THE FOUR MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS RULE THE THREE-YEAR LIMITATION ON TEST MARKET

PROPOSALS IN ARM 42.11.406 (2)(A) IS LIFTED. PRODUCTS THAT WERE REMOVED FROM THE REGULAR CATEGORY OR REJECTED AS TEST MARKET PRODUCTS DURING THE TWELVE MONTHS PRECEDING THE EFFECTIVE DATE OF THIS RULE MAY BE RESUBMITTED AS TEST MARKET PRODUCTS. (AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.)

5. Comments were received from the persons and organizations listed below. The Department has consolidated the comments and responded to those comments in one response.

Comment: The 6 week inventory ceiling is inadequate. (Montana Tavern Association (MTA)) (Big Sky Beverage (BSB)) (Schieffelin & Sommerset (SS)) (Potter Distilleries, Inc. (PD)) An 8 week maximum is recommended. (MTA) (BSB) A 60 to 90 day maximum is recommended. (SS)

Response: The purpose of a ceiling is to reserve adequate warehouse space for a variety of products and to prevent domination of space by a few suppliers. The proposed ceiling allowed for a 6 week inventory or a pallet and a half which ever is greater. For low volume products the pallet and a half ceiling is greater than a 6 week supply. We have amended the rule to increase the maximum from 6 weeks to 8 weeks and to allow for occasional amounts in excess of the ceiling if that facilitates an economical shipment.

Comment: The 3 week floor is inadequate. (MTA) (PD) A 6 week minimum is recommended. (MTA)

Response: The purpose of the 3 week minimum is to provide a measure against which a supplier will be charged a fee if there is insufficient inventory to fill a store order. The fee is $1.00 per case per day times the 3 week minimum. Although vendors will not be inclined to let supply run out because they will want to maintain their competitive presence in the market, the fee serves as an additional deterrent against a vendor temporarily trading off Montana's supply needs against another customer with larger volumes. Increasing the floor is in effect an increase in the fee. How large the fee needs to be to act as an additional deterrent is a matter of judgement. The amount in the current rule is not insignificant.

Comment: A space reservation fee of $1.00 per case, per day for any item below a 3 week supply and an at-cost service charge for items in excess of a 6 week supply is a great concern; unless withdrawals are consistent weekly, staying within these guidelines could be costly. (The House of Seagram (THS)) (PD)

Response: The space reservation fee is only charged if we are unable to fill an order from inventory. We have amended the rule to increase the normal maximum to 8 weeks and to allow for occasional amounts in excess of the ceiling if that facilitates an economical shipment. As a practical matter this gives vendors up to an 8 week range in which to respond to depletion variations.

Comment: The seasonally adjusted historical average has proven to be an unsatisfactory formula for predicting product

demand and numerous outages and shortages have resulted. (MTA)

Response: The purpose of this average is to estimate weekly demand applicable to the sales season based on past experience and to use that to determine how much product will meet the 6 week (now 8 week) and 3 week inventory limits. Contrary to the comment averages from past experience have served rather well in helping maintain adequate supply with relatively few outages and shortages. In any case the average in the rule is not intended to be an exact measure; rather it establishes the inventory risk range within a 3 to 8 week band which allows for enough time for vendors to react to changes in expectation and to adjust future shipments as necessary. We aid the vendor by sending them weekly reports which show daily inventory depletions, receipts and balances.

Comment: Manufacturers have requested they be held harmless for incidents "beyond their control". The rules should clarify that "beyond their control" must comport with the legal definition of an "Act of God" so that whenever a manufacturer has a legal right of action against another party stemming from the incident that caused the insufficiency, it shall be deemed the manufacturer's responsibility to pursue that legal action and the Division shall collect the penalty as usual; thus the penalty is only forgiven for an incident "beyond their control for which they have no recourse against any other party". (MTA)

Response: Many vendors have orally requested that some form of hold harmless language for supply problems that are beyond their control. The recommended language in the comment is reasonable and has been included as an amendment to the rule.

Comment: Pooling shipments as is currently done by the state to take advantage of the lowest possible freight rates will not be built into the bailment system. There is no incentive for manufacturers to pool their shipments [with other manufacturers] voluntarily. There will be an increase in freight costs that will inexorably lead to higher costs for a product which will in turn lead to a decrease in sales. (MTA) (BSB)

Response: It is a reasonable expectation that each vendor will pool its own supply for shipments to achieve the lowest possible freight rates and therefore maintain competitive prices. We agree that it is less likely that competitive vendors will join forces to pool shipments. Vendors representing 98% of our sales volume will be able to maintain current full truck freight advantage since they will be able to use exactly the same shipping arrangements that the state currently uses without having to pool with competing vendors. We have prepared suggested shipments for these vendors and will continue to do so. Some vendors for the remaining 2% of sales may experience higher freight costs if they don't make pooled arrangements with other vendors; however, several of these are currently being shipped to Montana at less-than-truck-load rates and therefore would not

result in an increased price.

Comment: Smaller volume products and specialty products might very well disappear for Montanans because manufacturers are not going to ship minimal sellers at greater expense. Thus, the state will very possibly fail in its duty as the monopoly controller of liquor in this state by denying consumers many specialty items. (MTA)

Response: Most small volume and specialty products are supplied by vendors who also sell large volume products in Montana. These vendors will continue to make their products available through bailment procedures. There are some vendors who exclusively market in Montana small volume and specialty products which may not be reasonably maintained as "regular" items. Such products do not exceed 2% of our total sales. Nevertheless, if there is customer interest in a product that will not be maintained in the bailment warehouse, we will continue to buy the product as a "variable supply", "warehouse supply", or "special order".

Comment: We conclude that in the absence of any orders being placed under the present system for October delivery and beyond, it will then be the sole responsibility of the suppliers to have an adequate inventory in bailment to meet the demands of the peak season which places this industry in unwarranted jeopardy. (MTA)

Response: We currently have on order or in supply at the warehouse enough of each of the products with a regular listing to cover shipments to stores through at least October 31. In many instances the supply covers expected shipments to stores through the end of the year. We have amended the rule to extend the transition period from three months to four months to be sure that coverage is maintained through the entire peak season. Furthermore, we have added language to the rule to make clear that if we don't reach an acceptable arrangement with a vendor to supply liquor products through bailment, we will continue to purchase directly to cover expected peak season demand.

Comment: The industry is entering its biggest season when even the slightest mishap in ordering and/or delivering can affect an entire year's profit for the seller and it is recommended that the state wait to implement bailment. (MTA)

Response: The transition rule covers the build up to the peak sales season as well as the sales season itself in November and December. We have provided that if product can't be ordered through bailment procedures that we will continue to order product to cover peak season demand. Whether product is to be shipped to Montana under bailment procedures or direct purchase, we are still preparing order estimates and shipment loads as we always have. If we find that a supplier is not timely committing to a shipment under bailment procedures that meets our shipment estimates, we will place a direct order to cover the demand.

Comment: The Liquor Division stated at the public hearing that research as to facts and figures was minimal, but their real impetus came from the other states who used

the system. What about the majority of the control states that have chosen not to utilize the system, particularly those with the same rural characteristics as Montana? Our own inquiries show that their reluctance stems from the same concerns we are voicing herein, particularly, higher costs in a declining market. (MTA)

Response: The fact that several states have converted to bailment did initiate our interest in doing the same. North Carolina and Mississippi have been long time bailment states. More recent conversions are Iowa, Maine, Ohio, Michigan, and West Virginia. The state of Washington is scheduled to begin bailment soon. Other states have expressed their intent to do the same when circumstances are right for them. A few states have said they have no intention of changing to bailment. Although statistical research has been minimal, such research did not seem to be the most appropriate way to evaluate effects on price and reliability in Montana. Instead, we chose an empirical approach. We produced shipment models under the bailment configuration to determine whether we could produce the same freight configuration we now enjoy and still meet the inventory standards in the bailment rules. We demonstrated that 98% of our sales volume meet these criteria.

Comment: We asked for and did not receive a list of which products were to be held in bailment and which were not. (MTA)

Response: The rules only require products that are to be listed as "test market", "regular", "seasonal", or "promotional" to be maintained under bailment. We are not able to provide a list until vendors decide which products they want to maintain under these categories. Negotiations with vendors so far indicate that all but a few products that are currently under these categories will be maintained under bailment. Most of the products that may not be maintained under these listings are table wines which are open market products and available through sources other than the state. The quarterly price list shows all products with categories indicated.

Comment: To our knowledge there has been no legislative review nor is there even a legislative awareness with regard to this proposal. (MTA)

Response: The alcoholic beverage code allows the department to establish rules concerning its method of obtaining products for sale in the state. There is no requirement for legislative review.

Comment: Implementation of these rules should be postponed until the world, national, and state economic situations at least stabilize and the industry can adjust. (MTA)

Response: The effects of wide ranging current events will not be exacerbated by the implementation of these rules. Change in oil prices will weigh equally heavy on the current method of obtaining supply and on the bailment system.

Comment: The responsibility of forecasting, ordering,

and shipping shifts to vendors with a defacto shift to the Montana based "Vendor Representative". Who will pay the vendor's and or their representatives for their time spent in getting products to Helena? If the vendor and or its representative goes uncompensated then the state's revenue will be affected by increased prices or less time spent promoting products. (BSB)

Response: While the division will continue to prepare suggested shipments to facilitate a vendor's ordering, the responsibility for shipping will rest with the vendor under these rules. Whether the vendor assigns this responsibility to the Montana based representative is up to the vendor. For most vendors' representatives this activity will not likely involve more time than they currently allocate for checking with the division on warehouse inventory and shipment status. Whatever the costs that may be incurred, they are not covered by the state but are considered costs of doing business.

Comment: Bureau of Alcohol, Tobacco and Firearms has informed us that any shipment to Montana constitutes a sale with Federal Excise Tax due immediately. We are unable to provide additional subsidies to the state beyond the current 30 day terms of sale. (PD)

Response: Nothing under bailment changes federal requirements for payment of federal taxes. If a product is in bailment, we will pay every 21 days for whatever was been withdrawn during that period so payment will be considerably sooner and more frequent than the current 30 day term. If a vendor is unable to market a product under bailment procedures and there is Montana customer demand for the product, we will purchase the product directly as a variable supply, warehouse supply or special order item as demand warrants.

Comment: An at cost service charge is mentioned numerous times. Can you advise what this charge will be? (THS)

Response: Charges will vary according to activity. Activities involving personnel will be actual time in performing the activities at the wage and benefits of the employee doing the work. Use of warehouse space above the maximum limit or approved limit will be a cubic foot charge for actual space used. A schedule will be produced once the rule is in effect.

Comment: Ideally, we would prefer the reporting of all bailment activity via some form of an electronic interface. (THS)

Response: The department is intending to use electronic data interface in the near future.

Comment: Would your weekly reports on bailment balances, depletions and adjustments show daily activity? We would also require an end of month summary report showing opening inventory, receipts, transfers, withdrawals, adjustments, and ending inventory by individual item code. (THS)

Response: Our reporting will meet all these

requirements. Rather than month end summary, we will produce a 21 day report to coincide with the payment authorization that will be generated on that schedule.

Comment: On all reports for receipts, we need a cross reference to our in-bound order numbers. Also, if possible, we should get copies of our bills of lading attached to each receiving report prepared by the warehouse. (THS)

Response: Our reporting and responses will meet all these requirements.

Comment: Clear segregation of all SPO (special purchase order) activity from the normal bailment activity. (THS)

Response: Special purchase orders will still be generated through our normal purchase order system and will be segregated from bailment activity.

Comment: Payment based on the state's daily withdrawal purchase order instead of paying us based on our invoice to them. (THS)

Response: An invoice will not be required to trigger payment. Every 21 days we will initiate payment based on our actual draw of product during the 21-day period.

Comment: Our bills of lading are generated on the day of shipment. In lieu of your requirement for ten days advance notice, would a copy of the order suffice? (THS)

Response: Yes, provided it is sent by FAX on the day of shipment. The rule is amended to provide for this option.

Comment: On damaged merchandise, both returning a case (freight charges) and destroying a case are costly. Would the state regain (for a charge) or allow us to send someone in to recoup the damage? (THS)

Response: Yes, the rule has been amended to allow for product to be moved to a work area for such activity.

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 17, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- MENT of ARM 42.22.1311 relating to Updating Trend Factors for Industrial Machinery and Equipment	) NOTICE OF THE AMENDMENT) of ARM 42.22.1311 relating to) Updating Trend Factors for) Industrial Machinery and) Equipment

TO: All Interested Persons:

1. On June 14, 1990, the Department of Revenue published notice of the proposed amendment of ARM 42.22.1311 relating to the updating trend factors for industrial machinery and equipment at page 1074 of the 1990 Montana Administrative Register, issue no. 11.

2. The Department makes the following corrections to the rule as published:

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

(1) remains as published to the point of these tables.

TABLE 2	
CEMENT MANUFACTURING (20)	
ORE MILLING & ~~CONCRETING~~ CONCENTRATING (15)	
CONCRETE READY MIX (18)	
BENTONITE (20)	
VERMICULITE (15)	
STONE PRODUCTS (20)	
CONCRETE PRODUCTS (20)	
GYPSUM (20)	
TALC BENEFICATION (20)	
LIME & CALCIUM BENEFICATION (20)	
COAL CRUSHING & HANDLING (20)	
GRAPHITE PRODUCTS (20)	
HEAP LEACH PADS (5)	
HEAP LEACH MECHANICAL (20)	
NONFERROUS SMELTING (15)	
UNDERGROUND MINING (10)	
OPEN PIT MINING & QUARRYING (15)	
PHOSPHATE BENEFICATION (20)	

TABLE 5
CHEMICAL MANUFACTURING (12)
CLAY PRODUCTS (15)
CONTRACTOR EQUIPMENT (10)
SULPHER MANUFACTURING (12)
OXYGEN GENERATION (20)
WOOD PELLET PLANT (16)
REFRIGERATION (12)
FRUIT PACKING (12)
PAINT MANUFACTURING (12)
EGG PACKING (20)
INDUSTRIAL SHOP EQUIPMENT(10)
METAL MACHINE & MILLING (15)
FOUNDRY (15)
RIFLE MANUFACTURING (15)
PLASTIC PRODUCTS MFG (20)
POLYSTYRENE (20)
PRINTING (12)
~~FERTILIZING~~ FERTILIZER MANUFACTURING(12)
METAL FABRICATION (20)

(2) remains the same.

3. Comments were received from Montana Resources and Blue Range Mining Co., LP. The Department provides response to these comments as follows:

COMMENTS: Montana Resources and Blue Range Mining Co., LP, both stated they were concerned because moving mining machinery and equipment from Class 7 to Class 2 would escalate the trend factor faster. This would tend to negate

the understood reduction in Ad Valorem tax.

RESPONSE: These "trend tables" are assigned a numeric heading only for identification purposes. Instead of publishing a trend for each industry, we group all industries having nearly identical trend into a single group. In other words, there is no comparability relationship from table 2 and table 7 in any year, including the 1989 = 100% used for the 1990 trend.

These "trends" are taken from the Marshall & Swift Valuation Manual. We group them in as few groups as possible for convienence only. The trends still follow each industry listed in the explanation of which industries are included in each table and is shown on the same page under the group of tables.

4. The Department adopts the amendments as proposed on June 14, 1990, with these corrections.

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 17, 1990.

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

In the matter of the amendment of Rules 46.8.901 and 46.8.902 pertaining to developmental disabilities standards	)))))	NOTICE OF THE AMENDMENT OF RULES 46.8.901 AND 46.8.902 PERTAINING TO DEVELOPMENTAL DISABILITIES STANDARDS

TO: All Interested Persons

1. On July 12, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.8.901 and 46.8.902 pertaining to developmental disabilities standards at page 1317 of the 1990 Montana Administrative Register, issue number 13.

2. The Department has amended Rules 46.8.901 and 46.8.902 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: How would individuals served by a corporation be protected if a corporation failed to become accredited in the next three years?

RESPONSE: Before a corporation's contract is terminated for cause, its contract would be put out on bid and awarded before the termination is completed. The result would be uninterrupted service to individuals formerly served by that corporation.

COMMENT: After the time period of three years of not being accredited expired, would there be a probation period to allow a transitional period to place individuals served into another corporation?

RESPONSE: No. The corporation's contract would be put up for bid and awarded before the termination is completed. The individuals would be placed into the new corporation when the termination is complete.

Julia E. Roberts
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 13, 1990.

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

In the matter of the adoption of Rules 46.30.501 through 46.30.1607 and the repeal of Rules 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.40.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 pertaining to child support enforcement procedures and administration	CORRECTED NOTICE OF ADOPTION

TO: All Interested Persons

1. On July 12, 1990, the Department of Social and Rehabilitation Services published notice of the adoption of Rules 46.30.501 through 46.30.1607 and the repeal of Rules 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.40.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 pertaining to child support enforcement procedures and administration at page 1337 of the 1990 Montana Administrative Register, issue number 13.

2. The notice of adoption for Rule 46.30.1549, SUPPORT GUIDELINE TABLE/FORMS, Worksheet #2, incorrectly listed the split custody formula at subsection (c) number 1. The worksheet should appear as follows:

(c) WORKSHEET #42

SPLIT CUSTODY

		Mother	Combined	Father
1.	Annual Child support obligation (line 4 12, ~~times line 5,~~ Worksheet #1)		_____	
2.	Percent of resources (line 3 divided by line 4, Worksheet #1)	_____%		_____%
3.	Parent's share of children (number of children with each parent divided by total children)	_____%		_____%
4.	Pro-rated basic obligation for children with each parent (multiply line 1 by line 3)	_____%		_____%
5.	Mother's adjusted obligation (line 2, times line 4, of father column)	_____		
6.	Father's adjusted obligation (line 2, times line 4, of mother column)		_____	
7.	Monthly adjusted support obligation (lines 5 and 6 each divided by 12)	_____		_____

* * * * * * * * *

8. Amount to be paid to other parent (subtract lesser amount on line 7 from the greater) _____

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State for the September 30, 1990 deadline.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 17, 1990.

VOLUME NO. 43 OPINION NO. 72

CLERKS - Authority of district court clerk to charge fees for post-dissolution proceedings;
COURTS - Authority of district court clerk to charge fees for post-dissolution proceedings;
COURTS, DISTRICT - Authority of district court clerk to charge fees for post-dissolution proceedings;
FEES - Authority of district court clerk to charge fees for post-dissolution proceedings;
MARRIAGE AND DIVORCE - Authority of district court clerk to charge fees for post-dissolution proceedings;
MONTANA CODE ANNOTATED - Sections 25-1-102(2), 25-1-201, 25-1-201(1)(a), 40-4-207, 40-5-303;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 56 (1988), 40 Op. Att'y Gen. No. 62 (1984), 37 Op. Att'y Gen. No. 128 (1978).

HELD: The district court clerk may not charge a commencement filing fee for post-dissolution proceedings initiated under the continuing jurisdiction of the district court.

September 12, 1990

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

You requested my opinion on the following question:

> Is the district court clerk entitled to charge a commencement fee on a post-dissolution of marriage action, which is brought under the same cause number as the marital dissolution proceeding and remains under the continuing jurisdiction of the district court?

Following review of Montana case law and the statute authorizing the collection of fees by the district court clerks, I conclude that clerks are not entitled to charge commencement fees in such post-dissolution proceedings.

The controlling statute in relevant part reads as follows:

> 25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

> (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $60; for filing a complaint in intervention, from the intervenor, $60; for filing a petition for dissolution of marriage, a fee of $100; and for filing a petition for legal separation, a fee of $100[.]

This statute makes clear that the clerk shall collect $100 upon the filing of a petition for dissolution. Your question concerns whether clerks may charge filing fees for petitions and motions that relate to the dissolution but arise after a final decree of dissolution is entered. In particular you question whether the standard commencement fee of $60 set forth in section 25-1-201(1)(a), MCA, may be charged for: (1) a petition for modification of maintenance, child support, property disposition, or child custody; (2) a petition for modification of an order granting or denying visitation rights; (3) a request for assignment of wages; and (4) a petition for income deduction for the payment of delinquent child support payments. Arguably all these proceedings are "actions" as that term is defined in section 25-1-102(2), MCA:

> The word "action", as used in this section, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

If the enumerated post-dissolution proceedings are considered distinct actions, independent of the dissolution itself, the clerks of the district court would be entitled to charge $60 upon the commencement of each action. It is obvious that the clerks of court expend time and overhead working on these post-dissolution proceedings which may exceed the time spent processing the dissolution action itself.

The attorney general has been requested to interpret section 25-1-201, MCA, and its statutory predecessor on three occasions. In 37 Op. Att'y Gen. No. 128 at 546 (1978) this office was asked whether clerks could collect a fee from both a "petitioner" and a "co-petitioner" listed on a petition for dissolution. The statute at that time, § 25-232, R.C.M. 1947, provided that the clerk should collect for each action from "the plaintiff or petitioner." The attorney general held that the statute's plain language established one filing fee for each action, as opposed to a fee from each petitioner or co-petitioner. In 1984 this office was asked whether a "declaration of invalidity of a marriage" should be considered a petition for dissolution for purposes of charging a $50 dissolution filing fee under section 25-1-201(1)(a), MCA (1983). The attorney general held that the $50 fee for filing a petition for dissolution was inapplicable to a declaration of invalidity of marriage which represented a distinct proceeding not contemplated by the plain language of section 25-1-201(1)(a), MCA. 40 Op. Att'y Gen. No. 62 at 248 (1984). Finally, in an opinion most relevant to your present

inquiry, this office held in 1988 that clerks may not charge a fee for filing a motion to convert a decree of legal separation to a decree of dissolution. 42 Op. Att'y Gen. No. 56 at 215 (1988). That opinion concluded that the procedure set forth in section 40-4-108(2), MCA (providing for a motion of conversion), does not entail "commencement" of a new action within the meaning of section 25-1-201(1)(a), MCA. In all three opinions the attorney general interpreted section 25-1-201(1)(a), MCA, or its precursor narrowly and refused to provide for payment of a filing fee where the Legislature did not so provide. See § 1-2-101, MCA. There is a general recognition that the language of a statute authorizing court fees strictly controls its interpretation:

> **Statutes authorizing the clerk to collect fees for his [or her] services are strictly construed and will not be extended beyond their letter.**

14 C.J.S. Clerks of Court § 10.

As this office recognized in 42 Op. Att'y Gen. No. 56 at 215 (1988), section 25-1-201, MCA, is prefaced with the language "at the commencement of each action or proceeding" [the clerk shall collect a fee]. The question of whether a petition for modification of a dissolution decree may be considered a "commencement" of an action was squarely addressed in Billings v. Billings, 189 Mont. 520, 616 P.2d 1104 (1980). The wife in that appeal argued that she had an absolute right to a change of venue based on section 25-2-108, MCA, the general venue statute. The statute provides that actions shall be tried in the county where the defendant resides at the commencement of the action. The wife moved from Missoula County (where the marriage was dissolved) to Lincoln County. The husband then petitioned in Missoula County for modification of child custody; the wife argued that the post-dissolution petition was the commencement of a new action and she was therefore entitled to have venue changed to Lincoln County, her place of residence. The Montana Supreme Court emphatically rejected this contention noting that a trial court has "continuing jurisdiction" over a dissolution after a decree has been entered in matters of "maintenance, support, property disposition, and child custody." See In re the Marriage of Ensign, 227 Mont. 357, 361, 739 P.2d 479, 482 (1987); Libra v. Libra, 154 Mont. 222, 462 P.2d 178 (1969).

Other jurisdictions have reached similar results. In re Marriage of Kozloff, 463 N.E.2d 719 (Ill. 1984) (post-decree petitions do not constitute new actions, but merely continuations of the dissolution proceeding); Campbell v. Campbell, 357 So. 2d 129 (Miss. 1978) (chancery courts have continuing jurisdiction to modify final decrees concerning alimony, custody, and child support); Nimmer v. Nimmer, 279 N.W.2d 156 (Neb. 1979) (action seeking modification of custody of children is a proceeding ancillary to the original divorce

and the court has continuing jurisdiction and authority to exercise its discretion); contra State v. Supreme Court, 271 P.2d 435 (Wash. 1954) (proceeding to modify the child custody provisions of a decree is a new proceeding, not ancillary to the divorce decree; petitioner entitled to invoke statutes authorizing the disqualification of judges in the modification proceeding). Support for the majority view that was enunciated by the Montana Supreme Court in Billings comes from the general principle that an action is deemed to commence when the trial court has in some manner acquired jurisdiction over the person of the plaintiff or the subject matter of the action. 1A C.J.S. Actions § 240.

The guidance of the Billings decision for purposes of your opinion request is that all post-dissolution actions concerning matters in which the trial court has continuing jurisdiction may not be considered new actions distinct from the original dissolution. While the Billings decision is specifically applicable to actions for modification (including requests for visitation, § 40-7-103(2), MCA), it also controls resolution of your question of whether district court clerks may charge a separate filing fee for a request for assignment of wages under section 40-4-207, MCA, or a petition for income deduction for the payment of delinquent child support payments under section 40-5-303, MCA. These statutory remedies are designed to fulfill the objectives of child support and maintenance provisions within a decree of dissolution. They may be considered matters within the continuing jurisdiction of the district court in accordance with the dictates of In re the Marriage of Ensign, supra. For purposes of filing fees, such continuing proceedings of the dissolution may not be assessed a commencement fee under the language of section 25-1-201, MCA.

The foregoing discussion is premised upon the assumption that the ancillary proceeding has been filed in the jurisdiction in which the dissolution was initiated and the dissolution decree entered. By contrast, certain petitions may be filed before or in place of a petition for dissolution or may be filed in a different jurisdiction than the dissolution itself. For example, a petition for child custody may be commenced in the absence of a petition for dissolution of marriage. §§ 40-4-211(4)(a), 40-4-213(3), MCA. Similarly, a foreign jurisdiction's dissolution decree may be later modified in the courts of this state. This opinion does not limit the authority of district court clerks to charge fees for the commencement of actions in such instances where the court's jurisdiction is invoked for the first time.

THEREFORE, IT IS MY OPINION:

The district court clerk may not charge a commencement filing fee for post-dissolution proceedings initiated under the continuing jurisdiction of the district court.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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 lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1990. This table includes those rules adopted during the period July 1, 1990 through September 30, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1990, this table and the table of contents of this issue of the MAR.

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