MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of 2.43.404, 2.43.425, 2.43.430, 2.43.432, 2.43.505, 2.43.506, and the adoption of new rules relating to purchasing service credits, election of coverage under new PERS disability retirement provisions, and calculation and payment of supplemental retirement benefits for retired municipal police officers.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES RELATING TO MONTANA'S RETIREMENT SYSTEMS

TO: All Interested Persons.

1. On October 4, 1991 at 9:00 am in the Board Meeting Room of the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.43.404, 2.43.425, 2.43.430, 2.43.432, 2.43.505, and 2.43.506 pertaining to the administration of public retirement systems; and the adoption of new rules relating to purchasing service credits, election and coverage under new PERS disability retirement provisions, and the calculation and payment of supplemental retirement benefits for retired municipal police officers.

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

2.43.404 REQUIRED EMPLOYER REPORTS (1) All reporting officials must submit monthly contribution reports accompanied by statutorily required employer and employee contributions to the retirement system by the 15th of the month following the month reported. The monthly report must be in alphabetical order by last name and include for each employee: social security number, last and first name, salary, regular contributions, additional contributions, if any, and the actual hours ~~worked~~ for which the employee received compensation during the month being reported. Agencies may use the form provided by the retirement division or a report printed by the employer together with compatible magnetic media.

(2) remains the same.

(3) remains the same.

(Auth: Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201 and 19-13-202 MCA; IMP, Secs. 19-3-307, 19-3-1106, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-202 and 19-13-203 MCA.)

2.43.425 INCOMPLETE PAYMENTS (1) No newly qualified or requalified service credits will accrue to a member's account until total payment has been made based upon the letter of intent on file with the board to purchase such service credits.

(2) If a member who is not yet vested in his retirement benefits terminates covered employment for reasons other than death or disability, prior to completing ~~those~~ payments for purchasing service described in (1), his additional contributions, plus accrued interest, shall be refunded to him and no additional service credits or years of service will be added to the member's account.

(3) If any member making payments to a retirement system in order to requalify previously refunded service or to qualify other types of service, as provided by statute, terminates covered employment due to death or disability prior to completing payments, the member, or anyone acting on his behalf, must complete those payments prior to payment of any benefits.

(4) If any member, or anyone acting on his behalf, fails to pay the balance of the agreed upon payments when due, the additional contributions (plus interest) will be refunded to the member, his beneficiary, or his estate, the service being qualified will not accrue to his retirement account, and benefits will be paid based upon the previously credited service. (Auth: Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, Title 19, Ch. 3, part 5, Chs. 5, 6, 7, 8, part 3, Chs. 9 and 13, part 4 MCA.)

2.43.430 OUT-OF-STATE OR FEDERAL PUBLIC SERVICE (PERS) (1) A statutorily eligible PERS member must apply, in writing, to the retirement division, supplying the following information:

(a) remains the same.

(b) ~~name and mailing address of his former public retirement system, approximate dates of employment, name of employing agency, approximate date of refund, and full name (if different) under which he was then employed, or~~

(c) is renumbered to be (b)

(2) remains the same.

(3) The actuarial cost rate will be the current total cost rate of the system plus simple interest ~~beginning one month~~ from the date of initial eligibility for qualifying such service or the date on which he completed six years of PERS service, whichever is later.

(4) remains the same.

(5) remains the same.

(Auth: Sec. 19-3-304 MCA; IMP, 19-3-512, MCA)

2.43.432 ~~PERS~~ "1-FOR-5" ADDITIONAL SERVICE (1) Subject to statutory limitations, a person who became a PERS member prior to July 1, 1989 or a person who is an active member of the sheriffs' retirement system, and who has 5 or more years of membership service may purchase 1 full year of additional service credit for each 5 full years of service credited in the system. A person eligible to purchase a full year of additional service may elect to purchase full months of service totalling 11 months or less.

(2) The cost of each year of additional service in the PERS will be 13.4% of the compensation earned by the member during

the immediately preceding 12 months of PERS membership service. The cost of each full month of PERS additional service will be 1/12 of 13.4% of the compensation earned by the member during the immediately preceding 12 months of PERS membership service.

(3) The cost of each year of additional service in the sheriffs' retirement system will be the appropriate actuarial cost rate as currently adopted by the board applied to the compensation earned by the member during the immediately preceding 12 months of membership service. The cost of each full month of additional service in the sheriffs' retirement system will be 1/12 of the amount which would be due for purchasing a full year of additional service credit.

~~(3)~~ (4) The purchase may be completed through a lump sum payment or in monthly installments, which will include interest at the rate currently set by the board. If making monthly installments, a member may purchase only 1 year; after completing payments for that year, he may purchase additional years or months based upon his immediately preceding 12 month compensation at that point in time.

~~(4)~~ (5) PERS ~~S~~service purchased under these provisions can not be counted toward initial retirement eligibility but will be used in calculating the amount of the PERS retirement benefit, including any early retirement reduction.

~~(5)~~ is renumbered to become (6). (Auth: Sec. 19-3-903 and 19-7-201, MCA; IMP, 19-3-513, HB 941, 52nd Legislature.)

2.43.505 INVOLUNTARY RETIREMENT (1) Remains the same.

(2) Remains the same.

(3) A member of the sheriffs' retirement system who does not hold elected office is eligible for an involuntary retirement allowance only upon termination from active duty due to a reduction in force. (Auth: Sec. 19-7-201 MCA; IMP, Sec. 19-7-504, MCA)

2.43.506 RETURN TO COVERED EMPLOYMENT BY RETIREE (1) For purposes of reemployment, a retiree is considered to be receiving a retirement allowance when the individual:

(a) has not worked in covered employment for at least 30 days or more; and

(b) has been ~~issued~~ paid a retirement ~~check~~ benefit.

(2) A PERS retiree who is employed by a PERS covered employer(s) after retirement must report, in writing, all such covered employment to the PERS on a monthly basis. This report must reach the PERS by the 15th of the month following the month for which employment is being reported and include the following information:

(a) retiree's name and social security number;

(b) month and year being reported;

(c) name and address of PERS covered employer(s);

(d) number of hours worked (for each covered employer); and

(e) gross compensation received (from each covered employer). (Auth: Secs. 19-3-304 and 19-7-201, MCA; IMP, Secs. 19-3-403(15), 19-3-1104, 19-3-1106, and 19-7-301(2), MCA)

3. The rules are proposed to be amended in order to respond to new legislation, and in order to clarify provisions of certain rules. Legislation enacted during the 1991 Legislature provided that the retirement board will set contribution deadlines, PERS members with at least 5 years of service could complete service purchases after termination from PERS-covered employment; highway patrol officers could also purchase out-of-state service; sheriffs' retirement system members could purchase additional service credits on a "1-for-5" basis; sheriffs' retirement system members could qualify for involuntary retirement with fewer years of service; and PERS retirees could return to work for longer periods each year prior to off-set of retirement benefits.

The amendment to 2.43.404 is required since SB 167 enacted by the last legislature removed the contribution deadlines for the various retirement systems from statute and required the Board to set those deadlines. The deadlines set in the amendment of this rule are the same deadlines as were previously set in statute. The Board will not amend these deadlines to create a shorter reporting and payment period until it can be shown that requiring contributions to be deposited earlier will increase the investment earnings of the system(s) and forestall potential employer and/or employee contribution rate increases. In addition, clarification is needed that the employer must report actual hours in pay status for employees being reported.

HB 769 enacted during the 1991 session spells out vested rights for PERS members who terminate covered employment with at least 5 years of service and who leave their contributions on deposit with the retirement system. The amendment to 2.43.425 brings the rule regarding incomplete payments by members into agreement with this new law.

Since legislation enacted during the 1991 session also provided for the purchase of out-of-state service by highway patrol officers and since a new rule was required to cover that type of service purchase, the current "out-of-state" service rule, 2.43.430 has to be clarified to cover only PERS members. In addition, a correction is made in defining the time period over which interest is calculated.

HB 941 enacted in 1991 extends "1-for-5" additional service purchase to members of the sheriffs' retirement system with some slight differences between the purchase in that system with the similar purchase in PERS. Therefore, 2.43.432, the current "1-for-5" service purchase rule must be amended in order to distinguish between the requirements for purchasing this type of service in each of the two systems.

Another piece of legislation passed during the last legislative session reduces the amount of service a member of the Sheriffs' Retirement System must own prior to becoming eligible for an involuntary retirement allowance. Due to the larger number of

members who potentially may become eligible for this benefit, the amendment to 2.43.505 is necessary to clarify what actions constitute involuntary retirement for non-elected members of the retirement system.

The amendment to 2.43.506 is required in order to specify the reporting responsibilities for PERS retirees who return to PERS-covered employment as required by SB 231.

4. The proposed rules provide as follows:

RULE I. HIGHWAY PATROL OFFICERS' OUT-OF-STATE LAW ENFORCEMENT SERVICE (1) A member of the highway patrol officers' retirement system who is statutorily eligible to purchase periods of out-of-state law enforcement service must apply, in writing, to the retirement division, supplying the following information:

(a) certification by the member's former retirement system of his dates of employment as a law enforcement officer, full- or part-time employment status, weekly or monthly hours of employment (if part-time), date and amount of refund, and current membership status, or

(b) certification by the member's former law enforcement employer that the member was employed with the employer prior to the employer's adoption of a retirement system, the dates of employment, full- or part-time employment status, weekly or monthly hours of employment (if part-time), date employer adopted a retirement system (if applicable), and name and address of the retirement system later adopted (if applicable).

(2) The actuarial cost for purchasing one year of out-of-state law enforcement service will be the appropriate actuarial cost rate currently adopted by the board multiplied by the salary earned by the member in the 12 months immediately preceding receipt of his completed request to purchase this service.

(3) The member may purchase such service in one lump-sum or equal monthly installments by payroll deduction, with monthly payments subject to additional interest. It will be the member's responsibility to initiate and terminate additional contributions with his payroll officer. Any overpayments will be refunded to the member along with interest, upon the request of the member.

(4) No service will be credited to the member's account until full payment has been made. (Auth: Sec. 19-6-201 MCA; IMP, SB 230, 1991 Legislature)

RULE II. SERVICE CREDITS FOR PERIODS OF COMPENSATED EDUCATIONAL LEAVE (1) When a member of a retirement system is compensated by his employer for periods of educational leave the employer will report this service on the employer's regular monthly retirement payroll reports and all normal membership contributions will be withheld from the member's compensation and made to the member's retirement system.

(2) A member on educational leave will be considered to be receiving compensation if the amounts paid to the member by

his covered employer are reported as "salaries, tips and wages" for social security and/or other payroll withholding tax purposes. A "stipend" or some other form of financial aid which is not treated by the employer as taxable income to the member will not be considered compensation for retirement purposes.

(3) Service credits will be granted in the member's retirement system during such periods of compensated educational leave on the same proportional basis with the compensation paid to the member during each month of his paid educational leave as compared to the member's covered compensation received in his first full month of service in covered employment upon return from educational leave.

(4) If the member does not return to covered employment after the period of educational leave, no service credit will be awarded for the period of compensated educational leave.

(5) A member with a previous period of compensated educational leave with a retirement system employer, but who's compensation and service was not reported by the employer to the retirement system at the time the service was rendered, will be eligible to purchase service credits for this period of compensated educational leave in the same manner as other members of the retirement system are eligible to purchase retroactive service in the system. Compensation and service for such retroactive periods of educational leave will be calculated and credited in the same manner as described in subsections (2), (3) and (4) of this rule. Interest will be due and payable on any contributions due in the same manner as with other purchases of retroactive service credits. (Auth: Secs. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, Title 19, Chs. 3, 6, 7, 8, 9, and 13 MCA)

RULE III. PURCHASE OF RETROACTIVE SERVICE BY FEE BASIS OFFICIALS (1) When a retirement system member is statutorily eligible to retroactively purchase previous service with a public employer and such previous service was compensated on a fee basis for which no record of hours of employment exist, service will be purchased and credited in the following manner:

(a) The public employer will provide certification to the retirement system of the inclusive dates of service and the fees paid to the individual.

(b) The retirement division will calculate the employer and employee contributions and interest (if applicable) required to qualify the period of public service into the member's current retirement system.

(c) Service credits will be awarded for such fee based service on the same proportional basis with the fees paid to the member during each month of service being qualified as compared to the member's covered compensation received in his first full month of membership service as a regularly paid and contributing member of the system. (Auth: Secs. 19-3-304, 19-6-201, and 19-7-201, MCA; IMP, Title 19, Chs. 3, 6, and 7, MCA)

RULE IV. PURCHASE OF PREVIOUS MILITARY SERVICE--MODIFICATIONS AFFECTING ACTUARIAL COST (1) When any member of the municipal

police officers' retirement system or a firefighter who became a member of the firefighters' unified retirement system prior to July 1, 1981 is statutorily eligible to purchase previous active duty military service for credit in the retirement system, the actuarial cost of purchasing periods of active duty military service will be calculated as follows:

(a) For a member with at least 15 years but less than 20 years of qualified service, the cost of purchasing military service which will bring the member toward achieving, but not exceeding, 20 years of qualified service will be the current actuarial cost rate adopted by the board multiplied by the appropriate salary defined in statute, plus any applicable interest due.

(b) For a member with at least 20 years of credited service, or for a member whose total military service purchase will increase his total qualified service to more than 20 years, the cost of purchasing only those periods of military service which will increase the member's service to over 20 years of qualified service will be 40% of the appropriate actuarial cost rate as adopted by the board multiplied by the appropriate salary defined in statute, plus any applicable interest due.

(2) For a member of the sheriffs' retirement system whose purchase of military service can not be used for retirement eligibility, the actuarial cost of purchasing each year of active duty military service will be 65% of the appropriate actuarial cost rate for the system as adopted by the board, multiplied by the appropriate salary defined in statute, plus any applicable interest due. (Auth: Sec. 19-7-201, 19-9-201 and 19-13-202, MCA; IMP, 19-7-310, 19-9-403, and 19-13-403, MCA)

RULE V. ELECTION FOR COVERAGE UNDER NONDISCRIMINATORY PERS DISABILITY PROVISIONS (1) PERS members employed in a PERS covered position on February 24, 1991 are covered for disability retirement purposes under the provisions of 19-3-1002(1) MCA, unless they choose to make an irrevocable election to be covered under the provisions of 19-3-1008(2) MCA.

(2) Such voluntary elections must be made by individual members in writing, witnessed by the employee's spouse (or another person only if the member has no spouse), and received by the PERS by no later than December 31, 1991.

(3) On or before September 1, 1991, PERS will provide PERS-covered employers with descriptions of the different disability retirement provisions along with election forms which may be filed by their employees who were PERS members on February 24, 1991. Each PERS employer is responsible for ensuring that each of their eligible employees is provided with this information, prior to October 1, 1991.

(4) PERS members exercising the option of electing coverage under 19-3-1008(2) will have this coverage effective on the date the properly completed election form is received by the PERS. Once received by the PERS, the election to be covered under the provisions of 19-3-1008(2), MCA may not be rescinded or reversed.

(5) Elections received by the PERS on or after January 1,

1992 will be null and void and members will be so notified in writing. (Auth: Sec. 19-3-304, MCA; IMP, Secs. 19-3-1002 and 19-3-1008, MCA)

RULE VI. MUNICIPAL POLICE OFFICERS' SUPPLEMENTAL BENEFITS AND ALLOWANCE ADJUSTMENTS (1) When a city belonging to the municipal police officers' retirement system has not negotiated a salary agreement with their actively employed police officers by July 1, the following actions will be taken by the public employees' retirement division:

(a) Supplemental benefits and allowance adjustments will be paid to retirees from that city which will be calculated using the base salary of a newly confirmed police officer of that city during the most recently reported fiscal year for which there was a negotiated salary agreement in effect.

(b) By August 1 a report will be sent to the state auditor stating the supplemental benefits payable from the appropriate insurance premium tax funds based upon information available from cities as of that date.

(c) As salary agreements are negotiated by cities and the retirement division is notified of changes in base pay for newly confirmed police officers, supplemental benefits will be recalculated and adjustments paid retroactively to retired members from those cities.

(d) Updated reports will be sent to the state auditor certifying the additional supplemental benefits payable from insurance premium tax funds during a given fiscal year as those additional amounts become known. (Auth: Sec. 19-9-201, MCA; IMP, Secs. 19-9-1007 and 19-9-1011 MCA)

NEW RULE VII. PURCHASE OF PREVIOUS MILITARY SERVICE BY RETIREMENT SYSTEM MEMBERS (1) A member who is statutorily eligible to qualify previous active duty military service into the retirement system will become eligible to purchase each full year of service at the end of the member's year of membership service which makes him eligible to purchase that year of military service, as defined in statute. (For example, a member of the PERS who must first complete 10 years of service prior to becoming eligible to qualify any military service will become eligible to buy one year of that military service on the date he completes his 11th year of membership service in PERS.)

(2) A member who has a period of less than one year of active duty military service to qualify (or remaining to be qualified on a multi-year military service) will become eligible to purchase any complete months of active duty military time after he has completed the appropriate years and months of membership service as described in statute. (For example, a member of the municipal police officers' retirement system who must first complete 15 years of service prior to becoming eligible to qualify his active duty military time, and who has already become eligible and has purchased one full year of his total of one year and 3 months of active duty military service, becomes eligible to purchase the remaining 3 months of military service when he has completed 16 years and 3 months of service

in the retirement system.)

(3) A member who has become eligible to purchase any year or partial year of previous active duty military service may make full payment for each year or partial year of military service on the date he completes his eligibility or he may elect to make monthly payments to the retirement system. Monthly payments will include interest at the rate currently set by the board and over the entire period of the monthly payments until the total amount is paid to qualify that period of military service.

(4) Any lump-sum amounts required to qualify any eligible periods of military service will be increased by the appropriate interest rates in effect during the time between when a member could first have qualified the period of military service until such time as the service is actually qualified by the member into his retirement system. (For example, if a PERS member with 18 years of service elects to qualify 2 years of active duty military time into the PERS, the applicable interest will be added to the lump-sum amount due on his first year of military service beginning on the date he completed his 11th year of PERS service and interest will be added to the lump-sum amount due on his second year of military service beginning on the date he completed his 12th year of PERS service. Interest due on these sums will terminate on the date of the actual lump sum payment.)

(5) Members who make additional contributions to their retirement system in advance of their initial eligibility to qualify any periods of active duty military time shall have any interest earned on such deposits credited against any total amounts which would be due based on payment being made as of the dates of initial eligibility to purchase such service. (For example, if a member of the sheriffs' retirement system made $1,000 in additional contributions to the system in advance of his initial eligibility to purchase the first year of military service and had earned $50 in interest on those contributions as of the date of his initial eligibility to purchase the first year of military service, a total of $1,050 would be credited against the total amount due to actually qualify that first year of military service.)

(6) Any amounts contributed (or credited against amounts due) by the member to qualify eligible periods of active duty military time in excess of the total amounts due to qualify the service will be refunded to the member upon his request.

(7) Any eligible full or partial year periods of military service will be credited to the member's account only upon completion of payment(s) for that period of service. (Auth: Secs. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, Secs. 19-3-503, 19-6-304, 19-7-310, 19-8-304(3) and (4), 19-9-403, and 19-13-403, MCA)

5. Rule I is proposed to be adopted in order to implement the provisions of SB 230 enacted by the 1991 Legislature. The rule provides a process for certifying the out-of-state law enforcement service to the retirement system and details how the cost of the service will be calculated and service credits

awarded in the highway patrol officers' retirement system.

Rule II is proposed to establish and clarify the procedure for crediting periods of compensated educational leave for members of the various retirement systems. This rule is necessary due to requests received by the Board to credit periods of time for which members have received varying forms of "payment." Since the retirement statutes require member contributions to be based on compensation received, a definition of compensated leave is required, along with a methodology for equitably granting service credits to members when no records of hours are maintained.

Rule III is proposed to be adopted in order to establish and clarify the procedure for retroactively crediting periods of service by fee-basis officials into the various retirement system. Since no records of hours are maintained for such individuals, this rule is necessary in order to establish a methodology for equitably granting service credits for such periods of service.

Rule IV is proposed to be adopted in order to establish a procedure for modifying the actuarial cost of purchasing previous military service in three retirement systems where the value of the benefit being purchased varies depending upon when in the member's service the service is purchased. Since the cost of each year of military service in the municipal police officers' and the firefighters' unified retirement systems is dependent upon whether the member has more or less than 20 years of service when he purchases the military service, this rule provides the mechanism for reducing the actuarial cost of the purchase for any periods of time which will increase the member's total service to more than 20 years of service. In the sheriffs' retirement system, military service may not be used to retirement eligibility and therefore, a mechanism for reducing the actuarial cost of the service purchase is required in order to accurately reflect the value of the service being purchased in this system.

Rule V is proposed in order to specify particular time frames which will be effective for implementing the provisions of HB 323 and federal amendments to the Age Discrimination Act which set new disability retirement benefits for PERS members who were not employed on February 24, 1991. Since PERS members employed on February 24, 1991 have the right to make a one-time irrevocable election of coverage under these new provisions, it is necessary to clearly articulate those election rights and the manner and time frame in which those elections must be made.

Rule VI is required to implement specific provisions of HB 830 which require the board to establish procedures for calculating, paying and billing the state auditor for supplemental benefits paid to retirees of the municipal police officers' retirement system. Since supplemental benefits are tied to the base pay of newly confirmed police officers in various cities during the

current fiscal year, and because some of these negotiated salary levels are not available at the time the supplemental benefit adjustments are calculated, this rule establishes an alternative procedure which will be used to implement the intent of state statutes if a current fiscal year salary level has not been negotiated by the required date set in statute.

Rule VII is necessary to clarify the procedure to be used by the retirement division in calculating the amount of military service time members of the various retirement systems are eligible to purchase and also specifies how and when interest will become due on the purchase of military service. The rule also addresses a new problem which has been encountered by agency staff: how to credit interest earned on "pre-payments" against interest due for purchase of service.

6. 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 no later than October 11, 1991 to the:

Public Employees Retirement Board
1712 Ninth Avenue,
Helena, Montana 59620

7. Paul Smietanka, legal counsel for the Department of Administration, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed rules is based on sections 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA, and the rules implement Title 19, Sections 3,5,6,7,8,9, and 13, MCA.

By: Robert A. Batista
Robert Batista, President
Public Employees' Retirement Board

Certified to the Secretary of State on August 26, 1991.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to dental hygienist examination and adoption of a new rule pertaining to dental hygienist licensure by credentials	))))))	NOTICE OF PROPOSED AMENDMENT OF 8.16.605 DENTAL HYGIENIST EXAMINATION AND ADOPTION OF NEW RULE I DENTAL HYGIENIST LICENSURE BY CREDENTIALS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 12, 1991, the Board of Dentistry proposes to amend and adopt the above stated rules.

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

"8.16.605 DENTAL HYGIENIST EXAMINATION (1) through (6)(b) will remain the same.

(c) certificate of graduation from an ~~board-approved~~ accredited dental hygiene school;

(d) through (g) will remain the same."

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

REASON: The amendment is proposed to make the rule consistent with SB 90 (Ch. 66, L. 1991).

3. The proposed new rule will read as follows:

"I DENTAL HYGIENIST LICENSURE BY CREDENTIALS (1) The applicant for dental hygiene licensure by credentials shall fulfill the following requirements and submit an application and supporting documentation to be licensed by credentials:

(a) certificate of graduation from an accredited dental hygiene school;

(b) successful completion of the national board of dental hygiene examination. The applicant for licensure by credentials must submit his/her official score.

(c) successful completion of a clinical examination;

(d) the applicant is currently licensed in another state or territory of the United States; and submits license verification from the licensing board(s) of the state(s) under whose jurisdiction the applicant is licensed;

(e) proof that the applicant has practiced dental hygiene continuously for a minimum of 500 hours during the one year immediately prior to application;

(f) submits a current CPR card;

(g) upon approval of the application, successful completion of the Montana jurisprudence examination;

(h) payment of:
(i) application fee $75.00
(ii) examination fee 75.00
(iii) licensure fee 35.00."

Auth: Sec. 37-1-131, 37-4-205, 37-4-402, MCA; IMP, Sec. 37-4-404, MCA

REASON: This rule is proposed to adopt a procedure for dental hygienists to gain licensure by credentials which is authorized by SB 90 (Ch. 66, L. 1991).

4. Interested persons may present their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than October 10, 1991.

5. If a person who is directly affected by the proposed amendment and adoption wishes to present his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than October 10, 1991.

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

BOARD OF DENTISTRY
WAYNE L. HANSEN, D.D.S.,
PRESIDENT

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1991.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule pertaining to infectious wastes) NOTICE OF PROPOSED ADOPTION OF NEW RULE I MANAGEMENT OF INFECTIOUS WASTES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 12, 1991, the Board of Dentistry proposes to adopt the above-stated rule.

2. The new rule will read as follows:

"I MANAGEMENT OF INFECTIOUS WASTES (1) Each dentist licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labelled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA). If OSHA has no such requirements, the dentist shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words "used dental sharps" on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 37-4-205, Ch. 483, Sec. 6, L. 1991; IMP, Ch. 483, Sec. 6, L. 1991

REASON: To provide for the infectious waste control for the dental profession as required by HB 239 (Ch. 483, L. 1991).

3. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than October 10, 1991.

4. If a person who is directly affected by the proposed adoption wishes to present his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than October 10, 1991.

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

having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF DENTISTRY
WAYNE L. HANSEN, D.D.S.,
PRESIDENT

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1991.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules generally regarding nursing home administrators	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO NURSING HOME ADMINISTRATORS

TO: All Interested Persons:

1. On October 25, 1991, at 9:00, a.m., in the Marysville Room, Park Plaza Hotel, Helena, Montana, a public hearing will be held to consider the proposed amendment and repeal of rules pertaining to nursing home administrators.

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

"8.34.406 STANDARDS FOR NURSING HOME ADMINISTRATORS

(1) will remain the same.

(2) ~~The following constitute standards for nursing home administrators in compliance with section 37-8-203(1), MCA:~~ Pursuant to section 37-9-203(1), MCA, the board establishes the following standards for persons licensed and serving as nursing home administrators, violation of which will subject the licensee to disciplinary action:

(a) willful and/or repeated violation of any board statutes or rule or the statutes or rules of any federal, state, county or city agency having licensing and regulation of nursing homes or administrators;

(b) conviction of a felony related to the practice of the profession by a court of competent jurisdiction, unless exempt by section 37-1-203, MCA;

(c) ~~has used~~ use of fraud, deceit or misrepresentation in the securing of a nursing home administrators license;

(d) ~~is~~ being mentally and/or physically incompetent to engage in or act in the professional status as a nursing home administrator;

~~(i)~~ (e) ~~This will include the intemperate~~ use of alcoholic beverages or addictive drugs to the extent that it impairs the ability to practice the profession safely;

~~(e) has accepted or paid valuable consideration for the solicitation of procurement, either directly or indirectly of nursing home usage;~~

~~(f) has used fraudulent, misleading or deceptive advertising;~~

~~(g) has knowingly allowed individuals to falsely impersonate another licensee of like or different names;~~

~~(h) has knowingly failed to exercise true regard for the safety, health and welfare and life of the patient or resident;~~

~~(i) has willfully permitted unauthorized disclosure of information relative to the patients' or residents' records;~~

~~(j) has disclosed or used confidential information in the course of duties as a nursing home administrator which would further substantiate his own economic interests;~~

~~(k) has failed to uphold his professional status by virtue of continuous failures to comply with standards for the operation of the nursing home for which they are responsible;~~

~~(l) has willfully failed to correct deficiencies or failed to maintain corrective measures in the nursing home as cited by any agency of government which has nursing home administration responsibility; however, the board may take disciplinary action under the subsection only when:~~

~~(i) such correction of deficiencies or maintenance of corrective measures is reasonably within the licensee's power; and~~

~~(ii) the licensee has exhausted all administrative and legal remedies regarding such citation and it has been upheld, or the time for availing himself of those remedies has expired;~~

~~(m) has failed to maintain or provide accounting of a patient's or resident's property or assets during confinement in the nursing home; however, the administrator will be responsible only for that property with which he has been specifically entrusted by the resident, or that property over which the administrator has reasonable means of exercising security;~~

~~(n) has allowed harassment of patients or residents by employees;~~

~~(o) has failed to cooperate with an authorized investigation of a complaint; and~~

~~(p) has violated orders of the board while under probation or other disciplinary measures.~~

(f) diversion or appropriation of drugs or medications prescribed for patients in the nursing home;

(g) failure to terminate an employee who diverts drugs or medications prescribed for patient of the nursing home to his/her own personal use;

(h) acceptance of valuable consideration for the solicitation of procurement, either directly or indirectly, of nursing home usage;

(i) use of fraudulent, misleading or deceptive advertising;

(j) knowingly allowing an individual to falsely impersonate another licensee;

(k) knowingly failing to exercise true regard for the safety, health and welfare and like of the patient or resident;

(l) willfully permitting unauthorized disclosure of information relative to the patients' or residents' records;

(m) disclosure or use of confidential information in the course of duties as a nursing home administrator which would further his/her own economic interests;

(n) continuous failure, or allowing the continuous failure, of employees to comply with standards for the operation of the nursing home for which the administrator is responsible;

(o) willful failure to correct deficiencies or failure

to maintain corrective measures in the nursing home as cited by any agency of government which has nursing home administration responsibility;

(p) failing to maintain or provide accounting of or for patient's or resident's property or assets during confinement in the nursing home. However, the administrator shall be responsible only for that property with which he has been specifically entrusted by the resident, or that property over which the administrator has reasonable means of exercising security;

(q) allowing harassment or abuse of patients or residents by employees;

(r) failing to cooperate with an authorized investigation of a complaint; and

(s) violating orders of the board."

Auth: Sec. 37-1-131, 37-9-203, 37-9-311, MCA; IMP, Sec. 37-9-203, 37-9-311, MCA

REASON: These amendments are being proposed to clarify and establish standards for nursing home administrators.

"8.34.410 RECORD OF MINUTES AND HEARINGS ~~(1) The department shall see that the minutes of all meetings are properly recorded and shall cause to be kept and maintained adequate and correct accounts of the properties and the business transactions of the board. He shall perform such other duties as may be prescribed.~~

~~(2)~~ (1) The record of ~~the~~ a hearing shall be preserved for one year or until resolution of any court action on the matter, whichever is later. The department will make provisions for stenographic record of the testimony, but it shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review. Any person desiring a copy of the record of the hearing or any part thereof shall be entitled to the same upon written application to the board and at his own cost."

Auth: Sec. 37-1-131, 37-9-201, MCA; IMP, Sec. 37-9-201, MCA

REASON: Subsection (1) is being deleted because it is redundant of 37-1-101, MCA. Amendment of subsection (2) limits the duration a hearing record must be kept.

"8.34.414 EXAMINATIONS (1) Examinations will be administered ~~in May and November~~ the second Thursday of April and October of each year. An application for examination shall be filed at least 30 days prior to the examination date and must be accompanied by the required fee, which shall not be refunded.

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

(5) Each applicant shall be required to attain a final score of at least ~~75%~~ 113 raw score in examinations prepared by the professional examination service, or the national association of boards, and final score of at least 90% in the open book examination relating to the provisions of the Montana long-term care facility licensing law and regulations.

(6) will remain the same."

Auth: Sec. 37-9-203, MCA; IMP, Sec. 37-9-201, 37-9-301, MCA

REASON: These amendments are being made to change examination dates and change the passing score from percentage to raw score to conform to testing service.

"8.34.416 CONTINUING EDUCATION (1) will remain the same.

(2) All applicants for renewal shall submit proposed courses to the board for approval. No course shall be accepted as satisfying the continuing education requirement unless it shall have had approval by the board. Such approval shall ~~take into consideration~~ be based on the relevance, and scope and contemporaneous nature of the course in light of the current trends in quality nursing home administration. From time to time, the board may, in its discretion, designate certain specific courses offered to the public as courses which, upon successful completion, shall satisfy the continuing education requirement.

(3) Twenty five hours of continuing education will be required annually for renewal of a license or renewal of an inactive registration.

(a) The ~~hours of~~ continuing education requirement will not ~~commence~~ apply until January 1 of the year following the year of original license.

(b) ~~Any surplus~~ Up to 25 hours earned in excess of 25 hours in a calendar year may be carried over into the succeeding year, ~~but shall be limited to 25 hours~~.

(4) Only 25 hours of college courses may be submitted for continuing education in any three year period. These courses shall be approved in advance by the continuing education committee and should contribute to the professional competence of the participant. The remaining continuing education hours submitted during that three year period must pertain to nursing home administration."

Auth: Sec. 37-1-131, 37-9-203, MCA; IMP, Sec. 37-9-305, MCA

REASON: The amendments are being proposed to clarify language and limit college courses for continuing education credits.

"8.34.417 RECIPROCITY LICENSES (1) ~~A signed statement from the examining board of another jurisdiction attesting that the applicant attained a general average of at least 75% in an examination prepared by the professional examination service or the national association of boards and setting forth that the applicant holds a currently valid license and that said state's requirements to sit for the examination are at least equal to the requirements of Montana.~~ An application for licensure by reciprocity without examination must include a signed statement from the examining board of another jurisdiction attesting that the applicant attained a minimum raw score of 113 in an examination administered by the professional examination service or the national association of boards and setting forth that the applicant holds a

currently valid license.

(2) will remain the same."

Auth: Sec. 37-1-131, 37-9-203, MCA; IMP, Sec. 37-9-303, MCA

REASON: The proposed amendment establishes requirements for licensure by reciprocity.

"8.34.418 FEE SCHEDULE ~~(1) In accordance with the provisions of Title 37, chapter 9, MCA, each person applying for active license, inactive registration, reciprocity or temporary permit shall pay an application fee of $50, which is not refundable.~~

~~(2) Each applicant shall pay an examination and license fee of $100 for the May examination, and $120 for the November examination. The licenses granted at the May exam expire as of December 31 unless renewed. The licenses granted at the November exam remain in effect until December 31 of the following year and then must be renewed.~~

~~(3) Each person registered as an inactive nursing home administrator shall pay a registration fee of $50.~~

~~(4) Each person granted a temporary permit shall pay a permit fee of $60.~~

~~(5) Each person granted reciprocity licensure shall pay a reciprocity fee of $85 and this shall include the original license or registration, but not the application fee. The reciprocity license expires on December 31 unless renewed.~~

~~(6) Each person applying for renewal of an active nursing home administrators license shall pay $100 annually on or before December 31 of each year.~~

~~(7) Each person applying for renewal of an inactive nursing home administrators registration shall pay $50 annually on or before December 31 of each year.~~

~~(8) Each person applying for a duplicate license, registration or temporary permit shall pay $10.~~

~~(9) Each person applying for reinstatement of an expired license or registration must pay all delinquent renewal fees. Reinstatement is subject to board approval and is limited to applications within 2 years of expiration date.~~

~~(10) Each person requesting a list of active and inactive nursing home administrators shall pay a fee of $10 for the list.~~

~~(11) Completion of records for licensing history shall require a fee of $10.~~

~~(12) Renewal requests postmarked after December 31 will be considered delinquent and a penalty fee of $50 shall be charged in addition to the regular annual licensee fee.~~

(1) The examination and license fees shall be as follows:

(a)	application fee	$ 30.00
(b)	examination and license for the May examination	100.00
(c)	examination and license for the November examination	120.00
(d)	inactive renewal fee	30.00
(e)	active renewal fee	60.00

(f) temporary permit	40.00
(g) reciprocity	85.00
(h) duplicate license	10.00
(i) lists of licensees	10.00
(j) verification of licensure	10.00
(k) late renewal (if paid after December 31)	25.00

(2) All fees are non-refundable."

Auth: Sec. 37-1-131, 37-1-134, 37-9-304, MCA; IMP, Sec. 37-9-304, MCA

REASON: The proposed amendments will update the fee schedule and make the fees commensurate with program area costs.

"8.34.419 REINSTATEMENT OF EXPIRED LICENSE (1) An application for reinstatement for an expired license may be filed within 2 years of the expiration date ~~of expiration~~, provided the applicant can establish to the satisfaction of the board that ~~he continues to be qualified~~ the continuing education requirement has been met. The application must be accompanied by all delinquent fees which shall not be refunded."

Auth: Sec. 37-1-131, 37-9-203, MCA; IMP, Sec. 37-9-305, MCA

REASON: The proposed amendment adds continuing education as a requirement of reinstatement.

3. ARM 8.34.401, 8.34.403, 8.34.404, 8.34.409, 8.34.418, 8.34.420 and 8.34.422 are being proposed for repeal. These rules are located at pages 8-1035 through 8-1044, Administrative Rules of Montana. The rules being repealed are redundant, obsolete or unnecessary.

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 the Board of Nursing Home Administrators, Arcade Building, Lower Level, 111 North Jackson, Helena, Montana 56920-0407, no later than October 25, 1991.

5. Steven J. Shapiro, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF NURSING HOME ADMINISTRATORS
MOLLY L. MUNRO, CHAIRPERSON

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1991.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees and continuing education and the proposed adoption of new rules pertaining to definitions, applications for certification, examinations, continuing education, use of specific drugs - supervision, record keeping and unprofessional conduct with respect to embryo transfer	NOTICE OF PROPOSED AMENDMENT OF 8.64.402 FEE SCHEDULE AND 8.64.505 CONTINUING EDUCATION AND THE ADOPTION OF NEW RULES PERTAINING TO THE PRACTICE OF EMBRYO TRANSFER IN VETERINARY MEDICINE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 12, 1991, the Board of Veterinary Medicine proposes to amend and adopt the following rules pertaining to the practice of veterinary medicine and non-surgical embryo transfer.

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

"8.64.402 FEE SCHEDULE
(1) through (1)(c) will remain the same.

(2) Embryo transfer technicians	
(a) Application for examination	$450.00
(b) Annual renewal of certification	25.00"

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-1-134, 37-18-104, MCA

REASON: This amendment will establish fees for embryo transfer licensees and to make them commensurate with program area costs.

"8.64.505 CONTINUING EDUCATION (1) Each veterinarian licensed shall be required to obtain every two years a minimum of 20 credit hours of continuing education approved by the board. The credit hours must be obtained within the 24 months prior to renewal on November 1 of the even-numbered years. Licensees licensed less than two full calendar years but more than one full calendar year on their first continuing education reporting date shall be required to submit 10 hours of continuing education.
(a) through (c) will remain the same."
Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-307, MCA

REASON: This amendment is proposed to set hours for continuing education for licensees licensed less than two years but more than one.

3. The proposed new rules will read as follows:

"I DEFINITIONS - LIMITATION ON PRACTICE (1) For the purposes of these embryo transfer rules, the phrase "non-surgical embryo transfer" means "the procedure of the removal of ova or embryos from a donor bovine animal and subsequent implantation of the embryos into a surrogate mother bovine animal, including the follow-up verification of pregnancy status."

(2) The practice of non-surgical embryo transfer involves basic knowledge, skills and abilities in manual rectal palpation, synchronization and stimulation with hormones, administration of local anesthetics, flushing with lab media, use of microscopes, freezing and thawing of embryos, catheterizing animals, administration of antibiotics and grading of embryos.

(3) Permissible practices and procedures that may be performed by embryo transfer technicians are limited to those that fall within the scope of non-surgical embryo transfer, as defined in this rule."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

"II APPLICATIONS FOR CERTIFICATION - QUALIFICATION

(1) Applications for certification as embryo transfer technician (ETT) shall be made on forms provided by the board.

(2) Applications shall include:

(a) a current photograph of the applicant certified by a notary;

(b) certified transcripts verifying the required education sent directly from the college or university attended; and

(c) an original form signed by the applicant and a veterinarian licensed to practice and residing in this state in which the veterinarian agrees to supervise the possession and administration of specific drugs necessary for embryo transfer procedures.

(3) Applicants must be at least 18 years of age and have successfully completed at least six semester hours of 300 level reproductive physiology and endocrinology courses from accredited colleges or universities."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

"III CERTIFICATE EXAMINATIONS - REEXAMINATIONS

(1) Certification examinations will consist of a written examination and a practical examination.

(2) Examinations will be administered at times and places designated by the board in advance.

(3) The written examination will test the applicants' knowledge of reproductive physiology, embryology, endocrinology, pharmacology, grading of embryos, freezing and storing of embryos and export regulations.

(a) The passing score on the written examination will be 70% overall.

(4) The practical examination will test the applicants' knowledge and skills in administration of epidural blocks, catheterization, use of pipettes, and palpation.

(a) Practical examinations will be graded on a pass-fail basis.

(5) If an applicant fails either the written examination or the practical examination, he or she must pay the required examination fee and retake the entire examination, both written and practical.

(6) There will be no limit on the number of times an applicant may retake the examination to qualify for certification."

Auth: 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

"IV ANNUAL RENEWAL AND CONTINUING EDUCATION (1) A person certified as an embryo transfer technician under these rules must renew his certificate annually before November 1.

(2) The certificate shall be issued by the department upon payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the certificate holder has ten credit hours of continuing education in embryo transfer during the preceding year.

(3) New certificate holders shall be granted the renewal the first year without attending the educational programs.

(4) The board may waive, revise, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship.

(5) A certificate holder may be granted a grace period of three months after the November 1 deadline in which to fulfill continuing education requirements. This grace period will be granted only upon written request to the board, payment of the renewal fee, and board approval. A certificate valid for the duration of the grace period will be issued only to a person granted grace by the board.

(6) Failure of a person to renew his or her certificate, apply for a grace period or to obtain hardship relief within 90 days of the November 1 deadline constitutes a forfeiture of the certificate. A defaulting certificate holder under this provision must apply and qualify for a new certificate, including passing the applicable examinations if he or she wishes to renew his or her certificate and practice.

(7) It is the responsibility of the certificate holder to maintain proof of his or her continuing education attendance.

(8) Continuing education credits obtained during a license year or grace period cannot be used for the next year.

(9) Proposed continuing education programs must be approved in advance by the board.

(10) Persons exempt from these provisions are licensed veterinarians, new certificate holders for their first annual certificates, and persons on active duty in a branch of the armed services of the United States."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

"V USE OF SPECIFIC DRUGS - SUPERVISION (1) Possession and administration of drugs by an embryo transfer technician is limited to the following specific drug categories:

(a) local anesthetics;

(b) antibiotics used in reproductive work; and
(c) synchronizing and stimulating hormones used in reproductive work.
(2) Possession and administration of specific drugs by embryo transfer technicians must be under the supervision of a veterinarian licensed to practice and residing in Montana. Records of supervision forms signed by the technicians and the supervising veterinarians will be maintained by the board. When a new or different veterinarian agrees to supervise a technician, it is the technician's responsibility to see that a new supervision form is filed with the board."
Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

"VI RECORD KEEPING (1) Embryo transfer technicians must make and maintain the following records related to embryo transfers:
(a) For each donor insemination, a written record of the permanent identification or registration name and registration number of the male whose semen is used. The embryo transfer technician must use his records compiled under this rule when completing forms for, or providing data to, breed associations and others.
(b) For each donor collection, a written record showing:
(i) permanent identification or registration name and registration number of each female from which embryos were recovered;
(ii) date of recovery of each embryo;
(iii) the number of transferable embryos recovered, including stage and grade as established by the international embryo transfer society (IETS);
(iv) identification of each recipient to which embryos were transferred;
(v) date of transfer of each embryo; and
(vi) complete records of all embryos divided.
(c) For all embryos recovered:
(i) all frozen embryos must be labeled and graded in keeping with the standardized procedures of IETS;
(ii) an inventory record of all frozen embryos in storage must be maintained; and
(iii) a record of all divided embryos in storage must be maintained in such a manner that animals that result from divided embryos can be identified on applications for their respective registration, if necessary.
(d) For embryo transfer technicians who purchase and sell embryos, complete records of the embryo transactions at the time of sale, including, but not limited to, date of sale of all embryo sales, together with the name and address of the purchaser, the permanent identification and breed of the recipient, and the identity of the embryo transferred.
(e) For embryo transfer technicians maintaining recipient herds:
(i) the identity of all recipients at the time acquired;
(ii) the date each animal was acquired;
(iii) the name and address of the person or firm from whom it was acquired;

(iv) the official health record, including brucellosis calfhood vaccination and certificate/tag/tatoo, if available;

(v) a complete record of health testing, vaccinating and parasite control while the animal was in the possession or custody of the embryo transfer technician; and

(vi) the date of each embryo transfer and the date removed from the premises, the name and address of the person or firm receiving said recipient, and the identity of the embryo.

(f) For all embryo transfer technicians using specific drugs, a drug log on a form provided by the board showing the identity, date of acquisition and disposition of all drugs the embryo transfer technician obtains and administers.

(2) All of the foregoing records must be maintained for a period of at least six years."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

"VII UNPROFESSIONAL CONDUCT (1) The Board may, with respect to the practice of non-surgical embryo transfer, either refuse to grant a certificate of registration or suspend or revoke a certificate of registration on the grounds and procedures set forth in 37-18-311, MCA, and ARM 8.64.405.

(2) For the purpose of implementing the provisions of section 37-18-104, MCA, the board defines "unprofessional conduct" subject to the disciplinary powers of the board for embryo transfer technicians as follows:

(a) Any act involving moral turpitude, dishonesty or corruption relating to the practice of embryo transfer whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the certificate holder or applicant of the crime described in the complaint, indictment or information, and of the person's violation of the statute on which it is based. For the purpose of this section, conviction includes all instances in which a plea of guilty is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended.

(b) Violation of any state or federal statute or administrative rule regulating the practice of embryo transfer.

(c) Advertising which is false, fraudulent, or misleading;

(d) Resorting to fraud, misrepresentation or deception in the examination or treatment of an animal or in billing or reporting to a person, company, institution or agency;

(e) Incompetence, negligence, or use of any practice or procedure in the practice of embryo transfer which creates an unreasonable risk of physical harm or serious financial loss to the client;

(f) Malpractice, or an act or acts falling below the generally accepted standard of care for embryo transfer technicians whether actual harm was suffered by any patient or client;

(g) Suspension, revocation, or restriction of the individual's certificate to practice embryo transfer by competent authority in any state, federal, or foreign jurisdiction for reasons that would be grounds for disciplinary sanction in this jurisdiction, a certified copy of the order or agreement being conclusive evidence of the revocation, suspension, or restriction;

(h) Possession, use, addiction to, diversion or distribution of controlled substances or legend drugs in any way other than legitimate use for embryo transfer procedures as authorized by the supervising veterinarian licensed in Montana, or violation of any drug law;

(i) Failing to cooperate with an investigation authorized by the board of veterinary medicine by:

(i) not furnishing any papers or documents in the possession of and under the control of the certificate holder;

(ii) not furnishing in writing a full and complete explanation covering the matter contained in the complaint; or

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

(j) Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by the use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

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

(l) Practice beyond the scope of practice encompassed by the certificate;

(m) Failing to maintain appropriate records as specified in the rules of the board;

(n) Failing to adequately supervise auxiliary staff to the extent that the donor or recipient's physical health or safety is at risk;

(o) Aiding or abetting an uncertified person to practice when a certificate is required;

(p) Performing embryo transfer while the embryo transfer technician's certificate is suspended, revoked, or not currently renewed.

(q) Willful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof;

(r) Engaging in the practice of embryo transfer while suffering from a contagious or infectious disease creating a serious risk to public health;

(s) Cruel or inhumane treatment of animals."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

REASON: These new rules are being proposed to implement section 37-18-104(3)(b) (the Embryo Transfer statute) which was mandated by the 1989 Legislature and amended in Ch. 321, Laws of 1991. These new rules deal with definitions, qualifications for licensure, examinations, continuing education, supervision and record-keeping.

4. Interested persons may present their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Veterinary Medicine, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than October 10, 1991.

5. If a person who is directly affected by the proposed amendments and adoptions wishes to present his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Veterinary Medicine, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than October 10, 1991.

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

BOARD OF VETERINARY MEDICINE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1991.

BEFORE THE MONTANA BOARD OF SCIENCE
AND TECHNOLOGY DEVELOPMENT
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to application procedures for a research and development project loan, medical research facility projects and the proposed adoption of new rules pertaining to research and development loans made by the Montana Board of Science and Technology Development	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.122.607 AND 8.122.616, AND THE PROPOSED ADOPTION OF NEW RULES PERTAINING TO RESEARCH AND DEVELOPMENT LOANS MADE BY THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROGRAMS

TO: All Interested Persons:

1. On October 22, 1991, from 9:00 a.m. to 11:00 a.m., a public hearing will be held in the fourth floor conference room of the Power Block Building, located on the southwest corner of Sixth Avenue and Last Chance Gulch, Helena, Montana, to consider the proposed adoption of rules pertaining to loans made by the Montana Board of Science and Technology Development to Montana companies, medical research facilities, and university-based research and development programs.

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

"8.122.607 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - SUBMISSION OF RESEARCH AND DEVELOPMENT PROPOSAL (1) through (1)(c) will remain the same.

(d) the proposal goals and objectives;

(e) through (i) will remain the same.

(j) a list of milestones delineated on a time line which describes specific tasks to be achieved, and as more fully described in new rule II;

(k) through (n) will remain the same.

(o) background information on the company, medical research facility, or university-based research and development program;

(p) background information about other participating organizations."

Auth: Sec. 90-3-204, MCA; IMP, Sec. 90-3-204, MCA

"8.122.616 MEDICAL RESEARCH FACILITY PROJECTS - APPLICATION PROCEDURES, REVIEW PROCESS, AND BOARD ACTION

(1) The procedural rules set forth in ARM 8.122.606, 8.122.607, 8.122.608, 8.122.609, 8.122.610, 8.122.611, 8.122.613, 8.122.614 and 8.122.615, are applicable to the

grants made by the board pursuant to chapter 634, L. 1989 and Chapter 429, L. 1991 and (section 90-3-901).

(2) As required by section 1, chapter 634, L. 1989, and Chapter 429, L. 1991, and (section 90-3-901), the funds granted by the board must be used to match federally appropriated funds on at least a ~~four-to-one~~ 2 1/2 to 1 federal-to-state matching basis for construction, equipment, and start-up operating costs for medical research facility projects in the state.

(3) will remain the same."

Auth: Sec. 90-30-204, 90-3-901, MCA; IMP, Sec. 90-3-204, MCA

3. The proposed new rules will read as follows:

"I RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES, AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROGRAMS - ADDITIONAL INFORMATION ON SCIENTIFIC AND TECHNOLOGICAL ASPECTS OF PROJECT (1) In addition to the information required in ARM 8.122.607, the research and development proposal must also contain information pertaining to specific scientific and technological aspects of the project. This information includes the following items:

(a) A problem statement and background which describes:

(i) the present state of the technology;

(ii) existing competing technologies, if any;

(iii) the advantages of the proposed technology specifically for Montana companies;

(iv) the limitations in the existing technology which make an improved or new technology desirable.

(b) A proposed work plan which describes:

(i) the methods used by the applicant to solve technical problems in addition to the preliminary data or test results that support the methodology and feasibility of the project; and

(ii) the role of each participating organization and location where the work will be carried out.

(c) A resources statement which describes:

(i) the facilities and equipment made available to the project by the company and non-profit partners, if any, and to the medical research facility or university; and

(ii) the arrangements made for providing or securing other required technological resources for the project."

Auth: Sec. 90-3-204, MCA; IMP, Sec. 90-3-204, MCA

"II RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES, AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROGRAMS - COMMERCIALIZATION POTENTIAL OF PROJECTS (1) In addition to the information required by ARM 8.122.607 and new rule I, the research and development proposal must also contain information pertaining to the commercialization potential of the project. This information must include the following items:

(a) A market analysis which describes the following:

(i) total market, including any analysis of both the demographics and projected sales;
(ii) an identification of the target market, including an analysis of both the demographics and projected sales;
(iii) an identification of the competition and their respective market shares;
(iv) product and strategic differentiation; and
(v) the marketing strategy.
(b) Plan of protection of proprietary rights which must address the following:
(i) the ownership of the technology if proprietary technology results from or is utilized by the project;
(ii) the terms under which the company has control of the technology if the technology is not owned by the company;
(iii) status of any existing patents, copyrights, licensing agreements, trade secrets, or other types of protection that must be considered;
(iv) the barriers to entry that exist for potential competitors if the technology is not proprietary.
(c) For Montana companies only, the applicants must describe the marketing, sales, distribution, and customer service plan which constitutes the marketing strategy. Specifically, the description of the marketing strategy must describe the following:
(i) product positioning, pricing, and promotion;
(ii) anticipated sales strategy, addressing utilization of direct sales, manufacturers' representatives, distributors or licensed sales, whichever is applicable;
(iii) distribution channels and manner in which the distribution channels will be supported;
(iv) post-sale servicing.
(d) For Montana companies only, a manufacturing strategy must also describe the following:
(i) the one-year, three-year, and five-year production strategy;
(ii) whether the technological development will be commercialized by licensing out the production and distribution and, if so, why; and
(iii) the steps that will be maintained for quality control."

Auth: Sec. 90-3-204, MCA; IMP, Sec. 90-3-204, MCA

"III RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES - FINANCIAL INFORMATION REQUIREMENTS (1) The applicant must provide five years pro forma financial statements for the company. These financial statements must include income statements, balance sheets, and cash flow projections. Specifically,
(a) the income statement must identify revenues by source and specify revenues generated by the proposed project;
(b) the pro forma financial statements must include the income statements, balance sheets, and cash flow projections for the next five years; and
(c) the financial statements should correspond to the company's fiscal year.

(2) The applicant must attach financial statements, as regularly prepared by the company for the most recent quarter and fiscal year."

Auth: Sec. 90-3-204, MCA; IMP, Sec. 90-3-204, MCA

"IV RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES, AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROJECTS - REQUIREMENT FOR TECHNICAL DEVELOPMENT AND COMMERCIALIZATION MILESTONES (1) The technical development and commercialization milestones must include:

(a) Project tasks must be listed in priority order for each quarter of the project year, as required. The dates for each quarter must also list the anticipated funding dates;

(b) Both technological development and commercialization milestones must be addressed;

(c) If available, gantt charts, pert charts, CPM diagrams, and task and personnel schedules should be attached;

(d) The amount of the board loan and match dollars associated with each activity must also be designated; and

(e) Project disbursement schedule for board funds."

Auth: Sec. 90-3-204, MCA: IMP, Sec. 90-3-204, MCA

4. The rules proposed to be amended, ARM 8.122.607 and 8.122.616, can be found on pages 8-4772 and 8-4776 of the Administrative Rules of Montana.

5. These amendments and new rules are being proposed in order to more comprehensively implement the Montana Science and Technology Development Act, as set forth in Title 90, chapter 3, MCA, and SB 242 (Chapter 594, Laws of 1991) and SB 105 (Chapter 429, Laws 1991) passed by the 52nd Legislature and signed into law by the Governor on April 24, 1991, and April 15, 1991, respectively.

6. Interested persons may present their data, views or comments either orally or in writing at the hearing. Written data, views, or comments may also be submitted to Mr. Carl Russell, Executive Director, Montana Science and Technology Alliance, 46 North Last Chance Gulch, Helena, Montana 59620, no later than 5:00 p.m. on October 25, 1991.

7. Mona Jamison, legal counsel, will preside over and conduct the hearing.

MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT
RAY TILMAN, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1991.

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

In the matter of the amendment of rules 16.20.255 and new rule I concerning service connection fees for public water supplies	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF 16.20.255 AND NEW RULE I

(Water Quality Bureau)

To: All Interested Persons

1. On October 4, 1991, at 9:30 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 and the adoption of new rule I.

2. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The new rule implements a fee structure to be assessed annually on public water supply systems suppliers.

3. The proposed amendment would extend the exemption from maximum contaminant level and treatment technique requirements to public water systems that have entered into a compliance plan with the Department.

4. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.20.255 COMPLIANCE PLAN -- EXEMPTIONS (1) Remains the same.

(2) ~~A compliance plan accompanying an exemption may not extend beyond January 1, 1984, unless the public water supply system has entered into an enforceable agreement to become part of a regional public water system, in which case the compliance plan may not extend beyond January 1, 1986.~~ The department must agree to the schedules submitted pursuant to subsections (1)(a) and (b) before an exemption may be issued. If the public water supply system supplier does not adhere to the schedules, the department may revoke the exemption 30 days after giving written notice to the supplier.

AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA

RULE I SERVICE CONNECTION FEES (1) A public water supply system must pay to the department an annual fee for each state fiscal year. The annual fee must be postmarked or delivered to the department no later than March 1 of each year. Payment for fiscal year 1992 must occur no later than March 1, 1992. Each annual fee is considered payment for the next state fiscal year.

(2)(a) For purposes of this rule, an active service connection is one that provides water service to a customer who

pays for that service.

(b) The annual fee does not apply to a service connection if:

(i) the service connection has been turned off for the entire fiscal year prior to any March 1 fee payment deadline; and

(ii) the public water supply system has not required payment for service for that time period.

(c) Each community public water supply system supplier must determine the total number of active service connections for each fiscal year based on an assessment that occurs between July 1 and August 1 of that fiscal year.

(d) The total annual service connection fee is determined by multiplying the number of active service connections by the appropriate annual fee per service connection.

(e) Regardless of the number of service connections, the minimum annual fee for any community public water system is $100.

(3) Fees for community public water supply systems are determined as follows:

(a) The annual fee per active service connection is $2.25 for fiscal years 1992 and 1993.

(b) Beginning fiscal year 1994, the annual fee per active service connection is $2.00.

(4) Fees for non-community public water supply systems are determined as follows:

(a) The annual fee for a non-transient non-community public water supply system is $100.

(b) The annual fee for any other non-community public water supply system is $50.

(5) Failure to pay the annual fee by March 1 of the fiscal year for which the fee is assessed subjects the system supplier to an additional charge to be calculated by multiplying the fee by 10% for each calendar month in which the fee is not paid.

AUTH: 75-6-103, MCA; IMP: 75-6-104 and 75-6-108, MCA

5. The department is proposing these rules in order to implement an annual fee system for public water supply systems as provided for with the passage of Senate Bill 407, and to extend the exemption for systems under a compliance plan.

6. 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 Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 10, 1991.

7. David Simpson, Chairman of the Board, has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State September 3, 1991.

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

In the matter of the amendment of rules 16.8.807 and 16.8.809 and the repeal of 16.8.810 which update the incorporations by reference of the Montana Quality Assurance Manual.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 16.8.807 AND 16.8.809 AND REPEAL OF 16.8.810

(Air Quality Bureau)

To: All Interested Persons

1. On October 4, 1991 at 10:00 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 adopt by reference recent changes to both the Montana Quality Assurance Manual and the U.S. Environmental Protection Agency Quality Assurance Manual. The proposed amendments also simplify the process by which future changes to the Montana Quality Assurance Manual will be adopted, while still providing the regulated community with an opportunity for comment and hearing.

3. The rule to be repealed (16.8.810) is located at page 16-166 of the Administrative Rules of Montana.

AUTH: 75-2-111, MCA; IMP: 75-2-201, 75-2-202, MCA

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

16.8.807 AMBIENT AIR MONITORING (1) Remains the same.

(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual (~~March 1989~~ July 1991 ed.), all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Manual (~~March 1989~~ July 1991 ed.) except when more stringent requirements are determined by the department to be necessary pursuant to the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984 Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV), or 40 CFR, Part 50 including appendices A through E, Part 53 including appendix A, and Part 58 including appendices A through G (July 1, 1990 ed.), at which time

the latter two documents shall be adhered to for the specific exception.

(3) Remains the same.

(4) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (~~March 1989~~ July 1991 ed.) and the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G (July 1, 1990 ed.), which are state and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-111, MCA; IMP: 75-2-201, 75-2-202, MCA

16.8.809 METHODS AND DATA (1) Except as otherwise provided in this subchapter or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual (~~March 1989~~ July 1991 ed.), all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in the Montana Quality Assurance Manual (~~March 1989~~ July 1991 ed.) except when more stringent requirements are contained in the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) or 40 CFR, Part 50 including appendices A through E, Part 53 including appendix A, and Part 58 including appendices A through G (July 1, 1990 ed.). Any valid recorded value at any one monitoring device which exceeds the applicable ambient air quality standard shall constitute an exceedance at that monitoring location but not at any other monitoring location and permitted exceedances shall be applicable to each monitoring location. If a valid recorded value comprises in whole or in part an exceedance of an ambient air quality standard, such recorded value shall not comprise in whole or in part a second exceedance of the same ambient air quality standard.

(2) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (~~March 1989~~ July 1991 ed.) and the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G (July 1, 1990 ed.), which are state

and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.
AUTH: 75-2-111, 75-2-202, MCA; IMP: 75-2-202, MCA

5. These amendments are being proposed to streamline the procedures for updating requirements relating to quality assurance, while still providing the regulated community with an opportunity for comment and hearing. The Department has found the current procedures unworkable, often requiring over a year (and an enormous amount of effort) to complete. These amendments also update the applicable quality assurance requirements for ambient monitoring, as required in order to maintain primacy.

6. 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 Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 10, 1991.

7. David W. Simpson, Chairman of the Board, has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State September 3, 1991.

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

In the matter of the amendment of rules 16.44.103, 16.44.105-106, 16.44.109, 16.44.114-116, 16.44.118, 16.44.123-124, 16.44.202, 16.44.610, 16.44.901-902, 16.44.911, and new Rule I dealing with permits for owners and operators of hazardous waste	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES AND THE ADOPTION OF NEW RULE I (Solid & Hazardous Waste)

To: All Interested Persons

1. On October 7, 1991, at 9:00 a.m., the Department 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 are part of the ongoing process of seeking re-authorization from the Environmental Protection Agency under RCRA to the State of Montana to continue to operate an independent hazardous waste program. Owners and operators of hazardous waste management units must have hazardous waste management permits during the active life, including the closure period, for the unit. These amendments reflect those changes required by EPA's revisions of existing permit requirements. The EPA revisions, mirrored by the amendments to the current rules, more fully explain and outline the permitting process. One new rule describes the Department of Health and Environmental Sciences's authority to deny a permit.

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

16.44.103 SCOPE OF PERMIT REQUIREMENTS (1) Remains the same.

(2) Owners and operators of hazardous waste management units must have HWM permits during the active life, including the closure period, of the unit~~, and, for any unit which closed after January 26, 1983, during any post closure care period required under 40 CFR 264.117 and during any compliance period specified under section 40 CFR 264.96 including any extension of that compliance period under such section~~. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under sections (8) and (9) of this rule. If a post-closure permit is re-

quired, the permit must address applicable groundwater monitoring, corrective action, and post-closure care requirements of subchapter 7 of this chapter. The denial of a permit for the active life of a hazardous waste management facility or hazardous waste management unit does not affect the requirement to obtain a post-closure permit under this section.

(3)-(7) Remain the same.

(8) Owners and operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under the standards of subchapter 6 must obtain a post-closure permit unless they can demonstrate to the department that the closure met the standards for closure by removal or decontamination in 40 CFR 264.228, 264.280(e), or 264.258, respectively. The demonstration may be made in the following ways:

(a) If the owner or operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that subchapter 7 closure by removal standards were met. If the department believes that the standards were met, it will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in subsection (9) of this rule.

(b) If the owner or operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the department for a determination that a post-closure permit is not required because the closure met the applicable subchapter 7 closure standards.

(i) The petition must include data demonstrating that closure by removal or decontamination standards were met.

(ii) The department shall approve or deny the petition according to the procedures outlined in subsection (9) of this rule.

(9) If a facility owner or operator seeks an equivalence demonstration under subsection (8) of this rule, the department will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The department will also, in response to a request or at its discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the subchapter 6 closure to a subchapter 7 closure. The department will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(a) The department will determine whether the subchapter 6 closure met subchapter 7 standards for closure by removal or decontamination within 90 days of receipt of the request for determination. If the department finds that the closure did not meet the applicable subchapter 7 standards, it will provide the owner/operator with a written statement of the reasons why the closure failed to meet standards. The owner/operator may

submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The department will review any additional information submitted and make a final determination within 60 days.

(b) If the department determines that the facility did not close in accordance with subchapter 7 closure by removal standards, the facility is subject to post-closure permitting requirements.

(8) Remains the same but is renumbered (10).

AUTH: 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

16.44.105 TEMPORARY PERMITS (INTERIM STATUS)

(1) through (5) Remain the same.

(6) Interim status terminates:

(a) through (c) Remain the same.

(d) (For owners or operators of any land disposal unit that is granted authority to operate as a change to interim status under ARM 16.44.610(1)(a), (b) or (c), because of the application of a new requirement) on the date twelve months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(d) and (e) Remain the same but are numbered (e) and (f).

AUTH: 75-10-404, 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

16.44.106 APPLICATION FOR PERMIT (1) and (2) Remain the same.

(3) The department shall not issue a permit before receiving a complete application for a permit except for permits by rule, ARM 16.44.121 or emergency permits, ARM 16.44.122. An application for a permit is complete when the department receives an application form and any supplemental information which are complete to its satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in section (7) of this rule. ~~The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An application is complete when the department receives either a complete application or the information listed in a notice of deficiency.~~ The department may deny a permit for the active life of a hazardous waste management facility or hazardous waste management unit before receiving a complete application for a permit.

(4) through (7) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

16.44.109 CONDITIONS OF PERMITS The following conditions apply to all HWM permits, and shall be incorporated into the permits either expressly or by reference. If incorporated

by reference a specific citation to these rules must be given in the permit.

(1) through (11) Remain the same.

(12) The permittee shall comply with the following reporting requirements:

(a) Remains the same.

(b) The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, except as provided in ARM 16.44.118, until:

(i) and (ii) Remain the same.

(13) through (23) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.114 EFFECT OF A PERMIT (1) Compliance with a valid permit during its term constitutes compliance, for purposes of enforcement, with the Act and with this chapter, except for those requirements adopted as a part of this chapter that restrict the placement of hazardous wastes in or on the land. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in ARM 16.44.116 and ~~ARM 16.44.110~~ 16.44.117, or the permit may be modified upon the request of the permittee as set forth in ARM 16.44.116 and 16.44.118.

(2) and (3) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.115 TRANSFER OF PERMITS (1) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under ARM 16.44.116, or a minor modification under ARM ~~16.44.117~~ 16.44.118(1) is made, to identify the new permittee and incorporate such other requirements as may be necessary under the Act.

(2) Changes in the ownership or operational control of a facility may be made as a minor modification. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the transferring and new permittees must also be submitted to the department. When a transfer of ownership or operational control of a facility occurs, the transferring owner or operator shall comply with the requirements of subchapter 8 of this chapter, until the new owner or operator has demonstrated to the department that he or she is complying with the requirements of that subchapter. The new owner or operator must demonstrate compliance with subchapter 8 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon

demonstration to the department by the new owner or operator of compliance with subchapter 8, the department shall notify the transferring owner or operator in writing that he or she no longer needs to comply with subchapter 8 as of the date of the demonstration.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.116 MODIFICATION OR REVOCATION AND REISSUANCE

(1) When the department receives any information [for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under ARM 16.44.902 or conducts a review of the permit file] it may determine whether or not one or more of the causes listed for modification or revocation and reissuance or both exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations of section (4) of this rule, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this rule ~~or ARM 16.44.110~~, the department shall not modify or revoke and reissue the permit except on request of the permittee. If a permit modification satisfies the criteria in ARM 16.44.118(1) for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures followed as required in subchapter 9 of this chapter.

(2) The following are causes for modification but not revocation and reissuance of permits; the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:

(a) and (b) Remains the same.

(c) the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. ~~Permits may be modified during their terms for this cause only as follows:~~

~~(i) for promulgation of amended standards or regulations, when:~~

~~(A) the permit condition requested to be modified was based on a promulgated hazardous waste rule; and~~

~~(B) the department has revised, withdrawn, or modified that portion of the rule on which the permit condition was based; and~~

~~(C) a permittee requests modification in accordance with ARM 16.44.902 within ninety (90) days after notice of the action on which the request is based.~~

~~(ii) for judicial decisions, a court of competent jurisdiction has remanded and stayed department rules if the remand and stay concern that portion of the rules on which the permit condition was based and a request is filed by the permittee in~~

~~accordance with ARM 16.44.902 within ninety (90) days of judicial remand.~~

(d) Remains the same.

(e) the department may also modify a permit:

(i) when modification of a closure plan is required under 40 CFR 264.112(b) or modification of a post-closure plan is required under 40 CFR 264.118(b);

(ii) Remains the same.

(iii) when the permittee has filed a request under ARM ~~16.44.816~~ 16.44.820 for a variance to the level of financial responsibility or when the department demonstrates under ARM ~~16.44.817~~ 16.44.821 that an upward adjustment of the level of financial responsibility is required;

(iv) through (viii) Remain the same.

(f) Remains the same.

(3) through (5) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.118 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1) ~~Upon~~ At the request or upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in Table I of this rule, without following the procedures set forth in subchapter 9. Any permit modification not processed ~~as a minor modification~~ under this ~~section~~ rule must be made ~~for cause and~~ with draft permit and public notice as required in ARM 16.44.116.

~~(2) Minor modifications may only:~~

~~(a) correct typographical errors;~~

~~(b) require more frequent monitoring or reporting by the permittee;~~

~~(c) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;~~

~~(d) allow for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the department. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of subchapter 8 of this chapter, until the new owner or operator has demonstrated to the department that he is complying with the requirements of that subchapter. The new owner or operator must demonstrate compliance with subchapter 8 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the~~

~~department by the new owner or operator of compliance with subchapter 8, the department shall notify the old owner or operator in writing that he no longer needs to comply with subchapter 8 as of the date of the demonstration;~~

~~(e) change the lists of facility emergency coordinators or equipment in the permit's contingency plan;~~

~~(f) change estimates of maximum inventory under 40 CFR 264.112(a)(2);~~

~~(g) change estimates of expected year of closure or schedules for final closure under 40 CFR 264.112(a)(4);~~

~~(h) approve periods longer than 90 days or 180 days under 40 CFR 264.113(a) and (b);~~

~~(i) change the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the change is minor;~~

~~(j) change the operating requirements set in the permit for conducting a trial burn, provided that the change is minor;~~

~~(k) grant one extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste;~~

~~(l) change the treatment program requirements for land treatment units under 40 CFR 264.271 to improve treatment of hazardous constituents, provided that the change is minor;~~

~~(m) change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with ARM 16.44.124, provided that the change is minor;~~

~~(n) allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 40 CFR 264.272(a), provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.~~

~~(3) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.112, 264.113, 264.271, and 264.272. The correct CFR edition is listed in ARM 16.44.102.~~

~~(a) 40 CFR sections 264.112 and 264.113 are federal agency rules setting forth requirements for owners and operators of HWM facilities concerning, respectively, amendments of closure plans and periods of time allowed for closure;~~

~~(b) 40 CFR sections 264.271 and 264.272 are federal agency rules setting forth requirements for owners and operators of HWM facilities concerning, respectively, the establishment of land treatment programs and treatment demonstrations;~~

~~(c) copies of 40 CFR sections 264.112, 264.113, 264.271, and 264.272 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.~~

TABLE I

LISTING OF MINOR MODIFICATIONS

A. General Permit Provisions

1. Administrative and informational changes

2. Correction of typographical errors

3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)

4. Changes to increase the frequency of monitoring, reporting, sampling, or maintenance activities by the permittee

5. Changes in interim compliance dates

6. Changes in expiration date of permit to allow earlier permit termination

7. Changes in ownership or operational control of a facility, provided the procedures of ARM 16.44.115(2) are followed.

B. General Facility Standards

1. Changes to waste sampling or analysis methods:

a. To conform with department guidance or regulations.

b. To incorporate changes associated with F039 (multisource leachate) sampling or analysis methods

2. Changes to analytical quality assurance/control plan to conform with department guidance or regulations.

3. Changes in procedures for maintaining the operating record.

4. Increases in the frequency of inspection schedules.

5. Changes in the training plan which do not decrease the amount or affect the type of training.

6. Contingency plan:

a. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.

b. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.

2. Changes in groundwater sampling or analysis procedures or monitoring schedule.

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred.

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility

b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period

c. Changes in the expected year of final closure, where other permit conditions are not changed

d. Changes in procedure for decontamination of facility equipment or structures

2. Addition of tanks used for neutralization, dewatering, phase separation, or component separation.

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan

2. Changes to the expected year of final closure, where other permit conditions are not changed.

F. Containers

1. Modification or addition of container units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

2. Addition of a roof to a container unit without alteration of the containment system.

Note: See section (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes.

3. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

G. Tanks

1. Addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation

2. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided

-- The capacity difference is no more than 1500 gallons,
-- The facility's permitted tank capacity is not increased, and
-- The replacement tank meets the same conditions in the permit.

4. Management of different wastes in tanks:

a. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

Note: See section (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Treatment, storage, or disposal of different wastes in surface impoundments:

a. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological

requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

b. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

Note: See section (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

1. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit

Note: See subsection (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Landfill different wastes:

a. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

b. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

Note: See section (3) of this rule for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

1. Modification of a land treatment unit management practice to decrease rate of waste application.

2. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met.

3. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

L. Incinerators

1. Shakedown and trial burn:

a. Authorization of up to an additional 720 hours of waste incineration during the shakedown period for determining operational readiness after construction

b. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor.

c. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor.

2. Substitution of an alternate type of fuel that is not specified in the permit

Note: In the case of modifications not specifically listed in this table, the permittee may request a determination by the department that the modification should be reviewed and approved as a minor modification. If the permittee makes this request, he or she must provide the department with the necessary information to support the requested classification.

(2) Upon request of the permittee, the department may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this section. Temporary authorizations must have a term of not more than 180 days.

(a)(i) The permittee may request a temporary authorization for any modification which is not a minor modification covered under section (1) of this rule.

(ii) The temporary authorization request must include:

(A) a description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary; and

(C) sufficient information to ensure compliance with the standards of ARM 16.44.702.

(b) The department shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the department must find:

(i) the authorized activities are in compliance with the standards of ARM 16.44.702.

(ii) the temporary authorization is necessary to achieve

one of the following objectives before action is likely to be taken on a modification request:

(A) to facilitate timely implementation of closure or corrective action activities;

(B) to allow treatment or storage in tanks or containers of restricted wastes in accordance with 40 CFR Part 268;

(C) to prevent disruption of ongoing waste management activities;

(D) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) to facilitate other changes to protect human health and the environment.

(c) Upon approval or denial of the temporary authorization request, the department will send a notice of the temporary authorization decision to all persons on its current facility mailing list and to appropriate units of state and local governments as specified in ARM 16.44.905(6)(a)(v) and (vi).

(d) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a modification under ARM 16.44.116 for the activity covered in the temporary authorization, and the department determines that the reissued temporary authorization involving the permit modification request is warranted to allow the authorized activities to continue while the modification procedures of ARM 16.44.902 are conducted.

(3) The permittee is authorized to continue to manage wastes newly listed or identified as hazardous under subchapter 3 of this chapter if he or she:

(a) was in existence as a hazardous waste facility with respect to the newly listed or identified waste on the effective date of the final rule listing or identifying the waste (refer to the "existing facility" definition in ARM 16.44.202);

(b) submits a request for a modification under section (1) of this rule (whether the modification is a minor modification or not) on or before the date on which the waste becomes subject to the requirements of this chapter;

(c) is in compliance with the standards of ARM 16.44.609;

(d) in the case of modifications which are not minor modifications under section (1), also submits a complete permit modification request under ARM 16.44.116 within 180 days after the effective date of the new rule or rule amendment listing or identifying the waste; and

(e) in the case of land disposal units, certifies that such unit is in compliance with all applicable ARM 16.44.609 groundwater monitoring and financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous. If the owner or operator fails to certify compliance with these requirements, he or she shall lose authority to operate under this section.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.123 PERMITS FOR HAZARDOUS WASTE INCINERATORS (1) For purposes of determining operational readiness following completion of physical construction, the department must establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The department may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to ARM 16.44.~~117~~118(1).

(a) and (b) Remain the same.

(2) For the purposes of determining feasibility of compliance with the performance standards of 40 CFR 264.343 and of determining adequate operating conditions under 40 CFR 264.345, the department must establish conditions in the permit to a new hazardous waste incinerator to be effective during the trial burn.

(a) Applicants must propose a trial burn plan, prepared under subsection (2)(b)~~(ii)~~ of this rule with Part B of the permit application.

(b) The trial burn plan must include the following information:

(i) through (iii) Remain the same.

(iv) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the department's decision under subsection (2)~~(b)(v)~~(e) of this rule;

(v) through (vii) Remain the same.

(viii) such other information as the department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this subsection and the criteria in subsection (2)~~(b)(v)~~(e) of this rule.

(c) through (f) Remain the same.

(g) The applicant must submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in subsection (2)~~(b)(vi)~~(f). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the department.

(h) All data collected during any trial burn must be submitted to the department following the completion of the trial burn.

(i) All submissions required by this subsection must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under ARM 16.44.~~107~~108.

(j) Based on the results of the trial burn, the department shall set the operating requirements in the final permit according to 40 CFR 264.345. The permit modification shall proceed ~~as a minor modification~~ according to ARM

16.44.~~117~~118(1).

(3) Remains the same.

(4) For the purposes of determining feasibility of compliance with the performance standards of 40 CFR 264.343 and of determining adequate operating conditions under 40 CFR 264.345, the applicant for a permit ~~to~~ for an existing hazardous waste incinerator ~~may~~ must prepare and submit a trial burn plan and perform a trial burn in accordance with subsections (2)(b)~~(ii)~~ through (2)~~(b)(ix)~~(i) of this rule or, instead, submit other information as specified in 40 CFR 270.19(c), (40 CFR 270.19 is incorporated by reference in ARM 16.44.120(3)). Applicants submitting information under 40 CFR 270.19(a) are exempt from compliance with 40 CFR 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in subsection (2)~~(b)(vi)~~(f), with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the department to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. ~~If~~ When the applicant submits a trial burn plan with Part B of the permit application, ~~the trial burn must be conducted and the results submitted within a time period to be specified by the department~~ the department will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

(5) and (6) Remain the same.

AUTH: 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

16.44.124 PERMITS FOR LAND TREATMENT DEMONSTRATIONS

(1) through (3) Remain the same.

(4) If the department determines that the results of the field tests or laboratory analyses meet the requirements of 40 CFR 264.272, it will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with 40 CFR Part 264, subpart ~~(M)~~ M, based upon the results of the field tests or laboratory analyses.

(a) Such permit modification may proceed as a minor modification under ARM 16.44.118, provided any such change is minor, or otherwise will proceed as a modification under ARM 16.44.116.

(b) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the department will give notice of its final decision to the permit applicant and to each person who submitted written comments on the ~~phase~~ phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit then will become effective.

(c) Remains the same.

(5) Remains the same.
AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:
(1) through (12) Remain the same.
(13) "Component" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).
(13) through (22) Remain the same but are renumbered (14) through (23).
~~(23)~~(24) "Elementary neutralization unit" means a device which:
(a) Is used for neutralizing wastes which are hazardous wastes only because they demonstrate the corrosivity characteristic defined in ARM 16.44.322, or are listed in ARM 16.44.330 through ARM 16.44.333 only for this reason; and
(b) Meets the definition of a "tank", "tank system," "container", "transport vehicle", or "vessel" in this rule.
(24) through (35) Remain the same but are renumbered (25) through (36).
(37) "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.
(36) through (104) Remain the same but are renumbered (38) through (106).
~~(105)~~(107) "Wastewater treatment unit" means a device which:
(a) and (b) Remain the same.
(c) is a "tank" or "tank system" as defined in this rule.
(106) through (108) Remain the same but are renumbered (108) through (110).
AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (1) Except as provided in section (2) of this rule, the owner or operator of a temporarily permitted (interim status) facility may make the following changes at the facility:
~~(1)~~(a) ~~A~~ Treatment, storage, or disposal of new hazardous waste not previously identified in the information required by ARM 16.44.605 (and in the case of newly listed or identified hazardous wastes, addition of the units being used to treat, store, or dispose of those hazardous wastes on the effective date of the listing or identification) ~~may be treated, stored, or disposed of at a permitted existing facility~~ if the owner or operator submits to the department a revision of the information required by ARM 16.44.605 on the new waste prior to treatment, storage or disposal of the new waste.
~~(2)~~(b) Increases in the design capacity of processes used at ~~a permitted existing~~ the facility ~~may be made~~ if the owner or operator submits to the department, prior to such a

change, a revision of the information required by ARM 16.44.605 with a written justification explaining the need for the capacity increase and the department approves the capacity increase because:

(i) ~~of~~ there is a lack of available treatment, storage or disposal capacity at other hazardous waste management facilities~~.~~, or

(ii) the change is necessary to comply with a federal, state or local requirement.

~~(3)~~(c) Changes in the processes for the treatment, storage or disposal of hazardous waste ~~may be made at a permitted existing facility~~ or additional of processes ~~may be added~~ if the owner or operator submits a revision of the information required by ARM 16.44.605 prior to such change with a written justification explaining the need for the change and the department approves the change because:

~~(a)~~(i) ~~it~~ the change is necessary to prevent a threat to human health or the environment because of an emergency situation;

~~(b)~~(ii) ~~it~~ the change is necessary to comply with a federal, ~~regulations or~~ state, or local ~~laws~~ requirement.

~~(4)~~(d) Changes in the ownership or operational control of a ~~permitted existing~~ facility ~~may be made~~ if the new owner or operator submits a revision of the information required by ARM 16.44.605 no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the transferring owner or operator shall comply with the requirements of subchapter 8 of this chapter until the new owner or operator has demonstrated to the department that it is complying with that subchapter. The new owner or operator shall demonstrate compliance with subchapter 8 financial requirements within six months of the date of the change in the ownership or operational control of the facility. All other duties imposed by ARM 16.44.609 are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with subchapter 8 the department shall notify the transferring owner or operator in writing that it no longer needs to comply with ARM 16.44.609 as of the date of demonstration.

(e) Changes made in accordance with a corrective action order issued by the EPA or other federal authority, by the department, or by a court in an action brought by either the department or by the EPA. Changes made under this subsection are limited to the treatment, storage, or disposal of waste from releases that originate within the boundary of the facility.

~~(5)~~(2) Except as specifically allowed under this section, ~~c~~changes listed under section (1) of the rule may not be made to a ~~permitted existing~~ facility during ~~temporary permitting~~ interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new facility. If all other

requirements are met, the following changes may be made even if they amount to reconstruction:

(a) ~~Changes under this section do not include~~ changes made solely for the purpose of complying with the requirements of 40 CFR 265.193 for tanks and ancillary equipment~~.~~;

(b) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of RCRA section 3004(o);

(c) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification;

(d) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(e) changes necessary to comply with a corrective action order issued by the EPA or other federal authority, by the department, or by a court in a judicial proceeding brought by the department or by the EPA, provided that such changes are limited to the treatment, storage, or disposal of waste from releases that originate within the boundary of the facility; and

(f) changes to treat or store, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by 40 CFR part 268, provided that such changes are made solely for the purposes of complying with 40 CFR part 268.

AUTH. 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

16.44.901 PURPOSE OF RULES This subchapter contains procedures for issuing, modifying, revoking and reissuing, or terminating all HWM permits other than temporary permits (interim status), emergency permits and permits by rule. The procedures of this sub-chapter also apply to the denial of a permit for the active life of a hazardous waste management facility or hazardous waste management unit under [RULE I].
AUTH: 75-10-404, 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

16.44.902 MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS (1) HWM permits may be modified, revoked and reissued, or terminated either at the request of ~~any interested person, including~~ the permittee, or upon the department's initiative. However, unless requested by the permittee, HWM permits may only be modified, revoked and reissued, or terminated for the reasons specified in ARM 16.44.116 and ~~16.44.118~~ 16.44.117. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the department decides the request is not justified, it shall send the ~~requester~~ permittee a brief written response giving a reason for the decision. Denials of requests

for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3)(a) and (b) Remains the same.

(c) "Minor modifications" as defined in ARM 16.44.118(1) are not subject to the requirements of this rule.

(4) If the department tentatively decides to terminate a permit under ARM 16.44.117, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under ARM 16.44.903.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

16.44.911 ISSUANCE AND EFFECTIVE DATE OF PERMITS (1) After the close of the public comment period under ARM 16.44.905 on a draft permit, the department shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or hazardous waste management unit under [RULE I]. The department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision.

(2)-(3) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA;
IMP: 75-10-405, 75-10-406, MCA

RULE I PERMIT DENIAL (1) The department may, pursuant to the procedures in subchapter 9 of this chapter, deny a permit either in its entirety or as to the active life of a hazardous waste management facility or hazardous waste management unit only.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

4. The Department is proposing these amendments to the rules in order to seek re-authorization from the Environmental Protection Agency under RCRA to the State of Montana to continue to operate an independent hazardous waste program. Owners and operators of hazardous waste management units must have hazardous waste management permits during the active life, including the closure period, for the unit. These amendments reflect those changes required by EPA's revisions of existing permit requirements.

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 Roger Thorvilson, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 10, 1991.

6. Patti Powell has been designated to preside over and conduct this hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of rules regarding occupational safety and health and construction safety	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.30.102 AND 24.30.103 AND PROPOSED ADOPTION OF NEW RULES I AND II

TO ALL INTERESTED PERSONS:

1. On Tuesday, October 8, 1991, at 9:00 a.m., a public hearing will be held in the first floor conference room, Room 111, of the Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, Montana, to consider proposed amendments to and proposed adoption of Rules pertaining to occupational safety and health.

2. The Department of Labor and Industry proposes to amend its rules regarding occupational safety and health and construction safety.

3. The Department proposes to amend the rules as follows:

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR GENERAL INDUSTRY (1) 1910.1 Purpose and scope. Section 50-71-311 MCA, of the Montana sSafety aAct provides that the ~~division of workers' compensation~~Department of Labor and Industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal eOccupational sSafety and hHealth aAct of 1970 does not include safety standards coverage for employees of this state or political subdivisions of this state. Therefore, it is the intent of these rules adopted in subsection (3) below under the Montana sSafety aAct that employees of this state and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal eOccupational sSafety and hHealth aAct of 1970. The ~~division~~Department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States sSecretary of lLabor under the eOccupational sSafety and hHealth act of 1970 which are found in the federal register as indicated below. Under section 2-4-307 MCA, the ~~division~~Department consents to the omission from publication in the code or register the rules adopted below because the ~~division~~Department has determined, with the assent of the sSecretary of sState, that publication of the rules would be unduly cumbersome and expensive. The rules in printed form are available and copies may be obtained ~~on application to the division of workers' compensation~~ at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street,

Washington, D.C. 20401.

(2) 1910.2 Definitions. As used in the rule adopted in subsection (3) below, unless the context clearly requires otherwise:

(a) "Act" means the Montana sSafety aAct (sections 50-71-101 through 50-71-334 MCA).

(b) "Assistant sSecretary of lLabor" or "sSecretary" means the ~~administrator~~Commissioner of the ~~division of workers' compensation~~Department of Labor and Industry.

(c) "Employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(d) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined above, under any appointment or contract of hire, expressed or implied, oral or written.

(3) 1910.3 Adoption by reference. The ~~division of workers' compensation~~Department of Labor and Industry hereby adopts under section 50-71-311 MCA, a safety code for every place of employment conducted by an employer as defined in subsection (2) above. This safety code is adopted by reference to the occupational safety and health standards found in the ~~federal register, volume 39, number 125, part II, dated June 27, 1974, sections 1910.21 through 1910.309~~Code of Federal Regulations, Title 29, Part 1910, as of July 1, 1990, and Federal Register Vol 55, No. 151, published Monday, August 6, 1990, pp 32015-32020, together with all safety standards adopted therein, as adopted by the United States sSecretary of lLabor pursuant to his authority under section 6 of the federal oOccupational sSafety and hHealth aAct of 1970. All sections adopted above are binding on every employer as defined in subsection (2) above even though the sections are not separately printed in a separate state pamphlet and are omitted from publication in the Montana aAdministrative rRegister and the aAdministrative rRules of Montana. ~~Sections 1910.21 through 1910.309 of volume 39, number 125, part II of the federal register, dated June 27, 1974, are~~ The Code of Federal Regulations, Title 29, Part 1910, as of July 1, 1990, and Federal Register Vol 55, No. 151, published Monday, August 6, 1990, pp 32015-32020, together with all safety standards adopted therein, are ~~is~~ considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the ~~division~~Department and all employers, employees, and other persons when referring to the provisions of the safety code adopted under this subsection. All the provisions, remedies, and penalties found in the Montana sSafety aAct (sections 50-71-101 through 50-71-334 MCA) apply to the administration of the provisions of the safety code adopted in this subsection.

(4) 1910.4 Numbering. For convenience, ~~purposes,~~ the federal number of a particular section found in the federal

register shall be used when referring to a section in the safety code adopted in subsection (3) above. The federal number shall be preceded by the term (5). Thus, when section 1910.27 of the federal register pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5)1910.27 of section 24.30.102 ARM".

~~(4)(i) Amendment to section 1910.309(b) of the federal register. Section 1910.309(b) of the federal register adopted in subsection (3) above is changed in its entirety to read as follows:~~

~~1910.309(b) (1) Unless inconsistent with sections 50-60-601 and 50-60-603 MCA, and rules adopted thereunder, every new electrical installation and all new utilization equipment installed after March 15, 1972, and before August 5, 1976, and every replacement, modification, or repair or rehabilitation after March 15, 1972, and before August 5, 1976, of any part of any electrical installation or utilization equipment installed before August 5, 1976, shall be installed or made and maintained in accordance with the provisions of the 1971 National Electrical Code, NFPA 70-1971, ANSI C1-1971 (Rev. of C1-1968)~~

~~(2) Every new electrical installation and all new utilization equipment installed after August 4, 1976, and every replacement, modification, or repair or rehabilitation after August 4, 1976, or any part of any electrical installation or utilization equipment shall be installed or made and maintained in accordance with the provisions of the 1975 National Electrical Code, NFPA 70-1975, ANSI C1-1975 (Rev. of C1-1971).~~

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

24.30.103 CONSTRUCTION SAFETY CODE (1) 1926.1 Purpose and scope. Section 50-71-311 MCA, of the Montana sSafety aAct provides that the ~~division of workers' compensation~~Department of Labor and Industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment including the repair and maintenance of such places of employment to render them safe. The federal oOccupational sSafety and hHealth aAct of 1970 does not include safety standards ~~coverage~~ for employees of this ~~state or political subdivisions of this state~~. Therefore, it is the intent of these rules adopted below under the Montana sSafety aAct that employees in this state and political subdivisions of this state shall be protected by the same safety standards for employments covered by the federal oOccupational sSafety and hHealth aAct of 1970. The ~~division~~Department is therefore adopting by reference certain safety and health regulations for construction adopted by the United States sSecretary of lLabor under the oOccupational sSafety and hHealth aAct of 1970 which are found in the federal register as indicated below, together with all safety standards incorporated by reference therein. Under section 2-4-307 MCA, the ~~division~~Department consents to the omission from publication in the code or register the rules adopted below because the ~~division~~Department has determined, with the assent of the

sSecretary of sState, that publication of the rules would be unduly cumbersome and expensive. The rules in printed form are available and copies may be obtained at cost ~~upon application to the division of workers' compensation~~from the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624 or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) 1926.32 Definitions. The following definitions shall apply to the application of the rules adopted in subsection (3) below unless the context requires otherwise:

(a) "Act" means the Montana sSafety aAct (sections 50-71-101 through 50-71-334, MCA).

~~(b) "ANSI" means American National Standards Institute.~~

(eb) "Approved" means sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency.

(dc) "Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the jobsite.

(ed) "Administration" means Safety Bureau of the ~~division of workers compensation~~Research, Safety and Training Division of the dDepartment of lLabor and lIndustry.

(fe) "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

(gf) "Defect" means any characteristic or condition which tends to weaken or reduce the strength of the tool, object, or structure of which it is a part.

(hg) "Designated person" means "authorized person" as defined in paragraph ~~(d)~~ (c) of this section.

(ih) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer as defined below under any appointment or contract of hire, expressed or implied, oral or written.

(ji) "Employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations, quasi public corporations, and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(kj) "Hazardous substance" means a substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death, or injury~~or illness~~.

(lk) "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

(ml) "Safety factor" means the ratio of the ultimate breaking strength of a member or piece of material or equipment to the actual working stress or safe load when in use.

(nm) "Secretary" means the ~~administrator~~Commissioner of the ~~division--of--workers'--compensation~~Department of Labor and Industry.

~~(o)--"SAE"-means-sSociety-of-aAutomotive-eEngineers.~~

(pn) "Shall" means mandatory.

(qo) "Should" means recommended.

(rp) "Suitable" means that which fits, and has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(3) 1926.33. The ~~division----of----workers'-compensation~~Department of Labor and Industry hereby adopts under section 50-71-311 MCA, a safety code for every place of employment conducted by an employer as defined in subsection (2)(j) above. This safety code is adopted by reference to the safety and health regulations for construction found in the ~~federal-register,-volume-39,-number-122,-part-II,-dated-June-24,-1974,--sections--1926.50--through--1926.1003,~~Code of Federal Regulations, Title 29, Part 1910 and 1926 as of 1990, as adopted by the United States sSecretary of lLabor insofar as those standards are applicable to employment and places of employment, for purposes of administering the Montana Safety Act. All sections above are binding on every employer as defined in subsection (2)(ji) above, even though the sections are not separately printed in a separate state pamphlet and are omitted from publication in the Montana aAdministrative rRegister and aAdministrative rRules of Montana. ~~Sections-1926.50-through-1926.1003--of--volume-39,--number-122,--part-II--of--the-federal-register-are~~The code of Federal Regulations, Title 29, Part 1910 and 1926 as of 1990, is considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the ~~division~~Department and all employers, employees, and other persons when referring to the provisions of the safety code adopted in this section. All provisions, remedies and penalties found in the Montana sSafety aAct (sections 50-71-101 through 50-71-334 MCA) apply to the administration of the provision of the safety code adopted in this subsection.

(4) 1926.34 Numbering. For convenience purposes, the federal number of a particular section found in the federal register shall be used when referring to a section in the safety code adopted in subsection (3) above. The federal number shall be preceded by the term (5). Thus, when section 1926.151 of the federal register pertaining to fire prevention is to be referred to or cited, the correct cite would be "subsection (5)1926.151 of section 24.30.103 ARM".

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

4. The Department proposes to adopt the following rules:

RULE I INSPECTIONS AND CITATIONS

(1) In order to require the state and every political subdivision of this state to furnish to its employees a place of employment free from recognized hazards likely to cause death or serious physical harm to employees the Department of Labor and Industry has adopted ARM 24.30.102 and 24.30.103. In accordance with such rules the Department of Labor is entitled to conduct inspections and to issue citations for alleged violations. With respect to such power the following provisions apply:

(2) Posting of Notice. Each employer shall post and keep posted a notice or notices, to be furnished by the Safety Bureau, Montana Department of Labor, informing employees of the protections and obligations provided for in the Montana Safety Act. Such notice or notices shall be posted by the employer in each public entity in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(3) Authority for Inspection. Any representative of the Safety Bureau presenting himself to any place of employment including, but not limited to, any field operation for the purpose of carrying out the intent and purpose of the Montana Safety Act shall be allowed entry without delay and at reasonable times.

(4) Consultation With Employees. Any Safety Bureau representative may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Montana Safety Act which he has reason to believe exists in the workplace to the attention of the Safety Bureau representative.

(5) Posting of Citations. Upon receipt of any citation under the Montana Safety Act, the employer shall immediately post an unedited legible copy in a prominent place where it will be readily observable by all affected employees. A copy of the completed Mandatory Inspection Response form(s) shall be posted at the same location the citations were posted no later than the time the original Mandatory Inspection Response form is submitted to the Safety Bureau. It shall remain posted for thirty (30) days or until all abatement action has been approved by the Safety Bureau, whichever period is longer.

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

RULE II RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES (1) Purpose and Scope. Pursuant to 50-71-311, MCA of the Montana Safety Act and to supplement ARM 24.30.102 and 24.30.103, the Department of Labor and Industry establishes this rule with the purpose of providing a vehicle for recording of all occupational accidents, injuries and illnesses involving public sector employees covered under the Act as necessary or appropriate. Further, this rule provides for developing information regarding the causes and prevention of occupational

accidents and maintaining a program of collection, compilation and analysis of occupational safety and health statistics.

(2) Definitions: As used in this rule, unless the context clearly requires otherwise:

(a) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in: (1) Fatalities, regardless of the time between the injury and death, or the length of the illness; or (2) Lost workday cases, other than fatalities, that result in lost workdays; or (3) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or required medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workdays cases.

(b) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(c) "First Aid" is any one-time treatment, and any followup visit for the purpose of observation, or minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(d) "Lost workdays": The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

(e) "Establishment": A single physical location where business is conducted or where services or industrial operation are performed.

(3) Log and Summary of Occupational Injuries and Illnesses.

(a) Each employer shall, (1) faithfully maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and (2) enter each recordable injury and illness on the log and summary as early as practicable but no later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose a form equivalent to the OSHA No. 200 furnished by the Department of Labor and Industry or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form. The OSHA form No. 200 shall not be used.

(4) Period Covered. Records shall be established on a calendar year basis.

(5) Posting Requirements. The employer shall continuously

post the current year's log throughout the year it represents. In addition, during the entire month of February of a calendar year, the summary log of the previous calendar year shall be posted. The summary log shall consist of annual totals of the data required on the log together with the raw data.

(6) Retention of Records. Records provided for in this part shall be retained for a minimum of five (5) years or as long as is deemed necessary by the Department of Labor and Industry to track potential occupational illnesses peculiar to the work undertaken at that facility.

(7) Access to Records. Records provided for in this part maintained and retained by an employer shall be made available promptly upon request to representatives of the Safety Bureau, or to workers subject to that employer, or their appointed representatives. "Made available" means presenting to the authorized person to be physically reviewed or copied as necessary.

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

5. The rationale for amending Rule 24.30.102 and Rule 24.30.103 is to bring them into conformity with current federal safety standards. The rationale for adopting Rule I and Rule II is to establish safety and health standards with respect to inspections and citations to ensure occupational safety as well as recording and reporting of occupational injuries or illnesses.

6. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption of these rules in writing to the Safety Bureau, Research, Safety and Analysis Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624 no later than October 10, 1991.

7. The Hearings Unit of the Legal Services Division of the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, has been designated to preside over and conduct the hearing.

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: August 28, 1991

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of new rules for the control of migratory bison from herds affected with a dangerous disease	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE I TO CONTROL MIGRATORY BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE

TO: All Interested Persons

1. On October 18, 1991, at 9:00 a.m., a public hearing will be held in the conference room of the Department of Livestock on the third floor of the Scott Hart Building, 6th and Roberts, Helena, Montana, to consider the proposed adoption of rules to control migratory bison from herds affected with a dangerous disease.

2. The text of the proposed rule is as follows:

RULE I UNLAWFULLY ESTRAYED AND PUBLIC OWNED MIGRATORY BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE (1) When estrayed or migratory bison exposed to or affected with brucellosis, a dangerous, contagious, zoonotic disease of man and animals, enter into or are otherwise present within the state of Montana one of the following action will be taken:

(a) The live bison may be physically removed by the safest and most expeditious means from within the state boundaries. This means may include but not be limited to capture, trucking, hazing/aversion, or delivery to a departmentally approved slaughterhouse.

(b) If live bison cannot safely or by reasonable and permanent means be removed from the state they shall be summarily destroyed where they stand by the use of firearms. If firearms cannot be used with due regard to human safety and public property bison may be relocated to such a danger free area and destroyed by firearms or by any other practicable means of euthanasia.

(c) When bison of necessity or unintentionally are killed through actions of the department, the carcass remains will be disposed of by the most economical means possible. This may include but not be limited to burying, incineration, rendering, or field dressing for delivery to a departmentally approved slaughterhouse or slaughter destination.

AUTH: 81-2-102 and 81-2-103, MCA; IMP: 81-2-102 and 81-2-103, MCA.

3. The Department of Livestock believes these rules are necessary to comply with the statutory mandate of section 81-1-102(1), MCA, which provides in pertinent part that "the department shall exercise general supervision over, and, so far as possible, protect the livestock interests of the state from . . . disease . . . ."

In addition, these rules will give the department latitude in the treatment of bison based upon the different circumstances which might be encountered as these bison emigrate from Yellowstone Park.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the staff attorney, Department of Livestock, 6th and Roberts, Helena, Montana 59620, no later than October 17, 1991.

5. Geoffrey L. Brazier, attorney at law, has been designated as hearing officer to preside over and conduct the hearing.

Jack Salmond

Jack Salmond, Chairman
Board of Livestock

By: Lon Mitchell

Lon Mitchell, Staff Attorney
Department of Livestock

Certified to the Secretary of State September 3, 1991.

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

In the matter of proposed new rule to reject permit applications for consumptive uses and to modify permits for nonconsumptive uses in Towhead Gulch Basin	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULE TO REJECT OR MODIFY PERMIT APPLICATIONS IN TOWHEAD GULCH BASIN

To All Interested Persons:

1. On October 29, 1991 at the Department of Natural Resources, 1520 E. 6th Avenue, Helena, Montana, a public hearing will be held in the Lee Metcalf Building, Room 43 to consider the adoption of a new rule to reject permit applications in the Towhead Gulch Basin.

2. The definitions set out in ARM 36.12.1010 apply to the following proposed new rule:

"RULE I TOWHEAD GULCH CLOSURE (1) Towhead Gulch basin means the Towhead Gulch drainage area, a tributary of the Missouri River at Upper Holter Lake, located in hydrologic basin 41I in Lewis and Clark County, Montana. The entire Towhead Gulch drainage, from its headwaters in Section 33, Township 14 north, Range 3 west, MPM to its confluence with the Missouri River, including Beartooth Creek, McLeod Gulch, Rattlesnake Gulch, and all unnamed tributaries are contained in the closure area.

(2) The department shall reject applications for surface water permits in Towhead Gulch, McLeod Gulch, Rattlesnake Gulch and their unnamed tributaries for any diversions, including infiltration galleries, for consumptive uses during any time of the year.

(3) The department shall reject applications for surface water permits in Beartooth Creek and its tributaries for any diversions, including infiltration galleries, for consumptive uses during the period from June 1 to October 31.

(4) Applications for nonconsumptive purposes shall be received and processed. Any permit granted for nonconsumptive uses shall be modified or conditioned to provide that there will be no decrease in the source of supply, no disruption in the stream conditions below the point of return, and no adverse effect to prior appropriators within the reach of stream between the point of diversion and the point of return. The applicant for a nonconsumptive use shall prove by substantial credible evidence its ability to meet the conditions imposed by this rule.

(5) These rules apply to all surface water within the Towhead Gulch basin.

(6) Emergency appropriations of water as defined in ARM 36.12.101(6) and 36.12.105 shall be exempt from these rules.

(7) These rules apply only to applications received by the department after the date of adoption of these rules.

(8) The department may, if it determines changed circumstances justify it, reopen the basin to additional appropriations and amend these rules accordingly after public

notice and hearing."
AUTH: 85-2-112 and 85-2-319, MCA; IMP: 85-2-319, MCA

3. The rationale for Rule I is that Towhead Gulch does not have enough flow to satisfy claimed existing water rights except during rare runoff events of short duration. On May 6, 1986 a petition was filed pursuant to 85-2-319, MCA with the Department of Natural Resources and Conservation. The petition requested the basin be closed year-round to all new consumptive uses of water. The petitioner claims there is no unused water in Towhead Gulch basin. The basin does not produce enough water to fulfill the existing recorded rights. In response to the petition the Department made a water availability analysis of the basin. The report indicates that during at least 80% of the time water is not available for existing diversions on Towhead Gulch for any one month period during the irrigation season. The stream channel has such significant losses below the petitioners upper diversion that water rarely reaches their lower diversion. Further McLeod Gulch and Rattlesnake Gulch historically flow infrequently and for only short periods of time. Beartooth Creek has a more or less perennial flow to a certain point. Water appears available from November 1 - May 31, however from June through October two irrigation diversions require the average monthly flow. In order to preserve existing stream flows for senior appropriators this rule is proposed to close the basin to new consumptive uses of water.

4. Interested parties may present their data, views or arguments in writing or orally at the hearing. Written data, comments or arguments in support of or in opposition to the adoption must be submitted to the Department of Natural Resources and Conservation, Water Rights Bureau, 1520 E. 6th Ave., Helena, Mt. 59620 no later than November 1, 1991.

5. Questions concerning the proposed adoption or requests for a copy of the water availability report should be directed to the Department of Natural Resources and Conservation at the above address, or call 444-6695 or 444-6610.

6. T. J. Reynolds has been designated to preside over and conduct the hearing.

Donald D. MacIntyre, Chief Legal Counsel
Department of Natural Resources
and Conservation

Certified to the Secretary of State, September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.102 and 42.20.147 relating to applications for property tax exemptions and criteria for agricultural land valuation	NOTICE OF PROPOSED AMENDMENT of ARM 42.20.102 and 42.20.147 relating to applications for property tax exemptions and criteria for agricultural land valuation

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1991, the Department of Revenue proposes to amend ARM 42.20.102 and 42.20.147, relating to applications for property tax exemption and criteria for agricultural land valuation.

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

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS

(1) through (3) remain the same.

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

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

(b) If a property is tax exempt as of January 1 of the current tax year and is sold to ~~other than a governmental~~ a nonqualifying purchaser after January 1 of the current tax year, ~~it will retain its tax exemption until the following January 1~~ becomes taxable upon the transfer of the property. The tax is prorated according to 15-16-203, MCA.

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

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

~~(b) If the real property is tax exempt on January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it will retain its exemption until the following January 1.~~ AUTH: Sec. 15-1-201 MCA; IMP, 15-6-201; 15-6-203; 15-6-209; 15-6-211; and 15-16-203 MCA.

42.20.147 CRITERIA FOR AGRICULTURAL LAND VALUATION

(1) An applicant for agricultural land classification must prove that the parcel(s) indicated in the application actually

produced the livestock, poultry, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. Proof of production shall be evidenced by:

(a) submission of a copy of the current year's county farm and ranch assessment filed by the owner, the owner's agent, employee, or lessee, and

(b) weight receipt from elevator or stockyard, or

(c) visual confirmation by the county appraiser.

(2) through (4) remain the same. AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-201, 15-7-202 through 15-7-216 MCA.

3. ARM 42.20.102 is proposed to be amended because the 1991 Legislature changed the exemption period for exempt property sold to a nonqualifying purchaser. Prior to the law change, the property wasn't taxable until January 1 following the sale. With the change, the exempt property is taxable at the time of the sale.

ARM 42.20.102 must be amended to conform to the new law (House Bill 757). Also, a provision is added for prorating the tax for the time the property is taxable. The proposed proration procedure is the one used for personal property entering the state after January 1 (15-24-303, MCA). The new law is effective for tax years beginning after December 31, 1991.

ARM 42.20.147 is proposed to be amended because the definition of agricultural for purposes of property taxation was changed by the 1991 Legislature. The legislature expanded the definition of agricultural by including "sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes."

ARM 42.20.147 must be amended to conform with the new law (House Bill 869). The new law is retroactive for tax year 1991. Therefore, the rule must be applied retroactively.

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

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

no later than October 11, 1991.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than October 11, 1991.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is

less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.1311 relating to industrial machinery and equipment trend factors	) NOTICE OF PROPOSED AMENDMENT) of ARM 42.22.1311 relating to) industrial machinery and) equipment trend factors)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1991, the Department of Revenue proposes to amend ARM 42.22.1311 relating to industrial machinery and equipment trend factors.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Industries with similar trending factors are grouped. The schedules in the rule reflect an average of trend factors for each industry group. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

~~INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS~~
~~1990 = 1000~~

~~YEAR~~	~~TABLE 1~~	~~TABLE 2~~	~~TABLE 3~~	~~TABLE 4~~	~~TABLE 5~~	~~TABLE 6~~
~~1990~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~1989~~	~~1.027~~	~~1.029~~	~~1.026~~	~~1.022~~	~~1.028~~	~~1.026~~
~~1988~~	~~1.084~~	~~1.083~~	~~1.079~~	~~1.080~~	~~1.083~~	~~1.085~~
~~1987~~	~~1.133~~	~~1.120~~	~~1.122~~	~~1.135~~	~~1.127~~	~~1.135~~
~~1986~~	~~1.152~~	~~1.132~~	~~1.138~~	~~1.148~~	~~1.142~~	~~1.150~~
~~1985~~	~~1.169~~	~~1.139~~	~~1.147~~	~~1.154~~	~~1.151~~	~~1.160~~
~~1984~~	~~1.190~~	~~1.155~~	~~1.162~~	~~1.169~~	~~1.167~~	~~1.176~~
~~1983~~	~~1.221~~	~~1.184~~	~~1.194~~	~~1.203~~	~~1.198~~	~~1.205~~
~~1982~~	~~1.240~~	~~1.207~~	~~1.217~~	~~1.221~~	~~1.221~~	~~1.221~~
~~1981~~	~~1.300~~	~~1.274~~	~~1.275~~	~~1.271~~	~~1.282~~	~~1.277~~
~~1980~~	~~1.437~~	~~1.414~~	~~1.407~~	~~1.396~~	~~1.420~~	~~1.411~~
~~1979~~	~~1.580~~	~~1.554~~	~~1.543~~	~~1.554~~	~~1.568~~	~~1.561~~
~~1978~~	~~1.752~~	~~1.697~~	~~1.682~~	~~1.700~~	~~1.732~~	~~1.707~~

~~1977~~	~~1.808~~	~~1.812~~	~~1.817~~	~~1.814~~	~~1.864~~	~~1.833~~
~~1976~~	~~1.908~~	~~1.937~~	~~1.916~~	~~1.907~~	~~1.964~~	~~1.929~~
~~1975~~	~~2.117~~	~~2.053~~	~~2.049~~	~~2.022~~	~~2.087~~	~~2.042~~
~~1974~~	~~2.363~~	~~2.346~~	~~2.257~~	~~2.281~~	~~2.367~~	~~2.306~~
~~1973~~	~~2.738~~	~~2.722~~	~~2.588~~	~~2.698~~	~~2.770~~	~~2.695~~
~~1972~~	~~2.838~~	~~2.816~~	~~2.673~~	~~2.802~~	~~2.882~~	~~2.797~~
~~1971~~	~~2.950~~	~~2.912~~	~~2.761~~	~~2.913~~	~~2.987~~	~~2.908~~

INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS
1991 = 100%

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6
1991	1.000	1.000	1.000	1.000	1.000	1.000
1990	1.020	1.019	1.017	1.013	1.019	1.019
1989	1.048	1.049	1.043	1.036	1.048	1.046
1988	1.106	1.103	1.097	1.094	1.104	1.106
1987	1.155	1.141	1.141	1.150	1.149	1.156
1986	1.175	1.153	1.157	1.163	1.164	1.171
1985	1.192	1.161	1.166	1.169	1.173	1.182
1984	1.214	1.177	1.181	1.185	1.190	1.199
1983	1.246	1.206	1.214	1.219	1.222	1.228
1982	1.265	1.230	1.237	1.237	1.245	1.244
1981	1.326	1.298	1.297	1.288	1.306	1.301
1980	1.466	1.440	1.430	1.413	1.447	1.437
1979	1.620	1.583	1.568	1.573	1.598	1.591
1978	1.789	1.729	1.709	1.721	1.765	1.740
1977	1.928	1.862	1.846	1.837	1.899	1.869
1976	2.031	1.973	2.946	1.930	2.001	1.967
1975	2.163	2.092	2.082	2.045	2.127	2.082
1974	2.415	2.391	2.294	2.316	2.412	2.353
1973	2.798	2.774	2.629	2.739	2.822	2.750
1972	2.900	2.869	2.716	2.845	2.936	2.854
1971	3.015	2.967	2.806	2.957	3.044	2.966

TABLE 1 through TABLE 6 remain the same.

~~YEAR~~	~~TABLE 7~~	~~TABLE 8~~
~~1990~~	~~1.000~~	~~1.000~~
~~1989~~	~~1.024~~	~~1.026~~
~~1988~~	~~1.069~~	~~1.078~~
~~1987~~	~~1.104~~	~~1.123~~
~~1986~~	~~1.119~~	~~1.126~~
~~1985~~	~~1.127~~	~~1.127~~
~~1984~~	~~1.140~~	~~1.140~~
~~1983~~	~~1.166~~	~~1.161~~
~~1982~~	~~1.179~~	~~1.172~~
~~1981~~	~~1.232~~	~~1.249~~
~~1980~~	~~1.363~~	~~1.400~~

~~1979~~	~~1.404~~	~~1.556~~
~~1978~~	~~1.618~~	~~1.700~~
~~1977~~	~~1.743~~	~~1.834~~
~~1976~~	~~1.839~~	~~1.941~~
~~1975~~	~~1.908~~	~~2.051~~
~~1974~~	~~2.166~~	~~2.304~~
~~1973~~	~~2.447~~	~~2.714~~
~~1972~~	~~2.506~~	~~2.816~~
~~1971~~	~~2.601~~	~~2.927~~

YEAR	TABLE 7	TABLE 8
1991	1.000	1.000
1990	1.016	1.023
1989	1.040	1.049
1988	1.086	1.103
1987	1.121	1.148
1986	1.136	1.152
1985	1.145	1.153
1984	1.158	1.165
1983	1.184	1.187
1982	1.198	1.198
1981	1.252	1.277
1980	1.385	1.432
1979	1.508	1.591
1978	1.644	1.738
1977	1.770	1.876
1976	1.868	1.985
1975	2.020	2.098
1974	2.200	2.356
1973	2.486	2.775
1972	2.546	2.880
1971	2.642	2.994

TABLE 7
Warehousing (10)
Fertilizer Distribution (10)
Peat Moss Bagging Plant (20)

TABLE 8
Petroleum (16)
Oil Refining (16)
Stationary Asphalt Plant (15)
Sugar Refinery (18)
Natural Gas Processing (16)

Note: 1. The number in each parenthesis above indicates assigned economic life expectancies.
Note: 2. Lab equipment is to be included in its related industry's table at 10-year life expectancy.

(2) The application of the trend factors set forth in subsection (1) will be as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed:

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.
3. Acquire the original installed cost (direct and indirect) for the subject equipment.
4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
5. Depreciate the RCN on the basis of age to arrive at sound value. Example:

Industry - Sawmill
Economic Life - 10 years
~~1990~~ 1991 Table - Table 3 (Subsection 1)

Case	I	II
Equipment - Motor		
Original Installed Cost	$ 200	$ 100
Year Installed	1980	1972

Case I

~~Cost~~	~~$ 200~~
~~x Trend~~	~~1.407~~
~~RCN~~	~~281~~
~~x % Good~~	~~.20~~
~~Sound Value~~	~~$ 56~~

Cost	$ 200
x Trend	1.430
RCN	286
x % Good	.20
Sound Value	$ 57

Case II

~~Cost~~	~~$ 100~~
~~x Trend~~	~~2.673*~~
~~RCN~~	~~267~~
~~x % Good~~	~~.20~~
~~Sound Value~~	~~$ 53~~

Cost	$ 100
x Trend	1.430*
RCN	143
x % Good	.20
Sound Value	$ 29

*The trending factor is applied only to the last year of the economic life. Although the equipment is 18 years old, it is trended by the 10th year trend. AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-138 and 15-8-111 MCA.

3. ARM 42.22.1311 is proposed to be amended because 15-8-111, MCA, requires the department to value all property at 100 percent of its market value except as provided in subsection (5) of 15-8-111 and 15-7-111, MCA. Through the use of administrative rules, the department has adopted the concept of trending and depreciating to arrive at market value for industrial machinery and equipment, furniture, and fixtures.

The method by which trending and depreciation schedules are derived is described in the existing administrative rules and that method is not being changed. The methodology results in annual changes to the trending schedules.

Examples are updated to reflect current trend factors.

This is merely an annual update and there is no methodology change.

The increase in the trend factors between 1990 and 1991 is minimal. In most cases this will be off-set by annual depreciation.

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

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

no later than October 11, 1991.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than October 11, 1991.

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

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.104 relating to centrally assessed property	))))	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of Rule 42.22.104 relating to centrally assessed property

TO: All Interested Persons:

1. On October 9, 1991, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Sam W. Mitchell Building, Helena, Montana, to consider the amendment of ARM 42.22.104, relating to centrally assessed property.

2. The amendment as proposed provides as follows:

42.22.104 TREATMENT OF MOTOR VEHICLES AND MOBILE EQUIPMENT (1) Automobiles, trucks, equipment attached to the vehicle and special mobile equipment excluded from the definition of situs property are to be ~~reported to the department by each county. The county assessor shall transmit to the department a statement showing the total market and taxable value for all automobiles, trucks, and special mobile equipment assessed in the county for~~ locally assessed and reported to the department of revenue by each centrally assessed company.

(2) Each centrally assessed company having such equipment shall provide the department with a statement showing the total market ~~and taxable~~ value for ~~this type of~~ each piece of equipment ~~for each county~~. The market value shall be the value shown on the automobile, truck, equipment on the back or special mobile equipment Montana vehicle registration and payment receipt. Companies with prorated vehicles shall provide the department with the total number of miles traveled in and out of the state of Montana and the market value for each vehicle. Companies that license fleet vehicles with the Montana Gross Vehicle Weight (GVW) Division will use the value for each piece of equipment reported to GVW as the market value to report to the department. This statement is to be filed at the same time the report required by ARM 42.22.105 is filed.

(3) The department of revenue may, at any time, ask for verification of the reported equipment's market value from the county, other agencies, other states or the company. This verification may be, but is not limited to, supplying the department with copies of each vehicle's Montana registration form. Omission of any requested information may result in loss of or a partial deduction for the equipment.

~~(3)~~ (4) The total market value for these assessed automobiles, trucks, equipment attached to the vehicle and special mobile equipment is deducted from the Montana unit value, as

defined in ARM 42.22.121, to determine the amount of the Montana unit value to be allocated under the provisions of ARM 42.22.122. This methodology shall be effective for all reporting years beginning after December 31, 1991. AUTH: Sec. 15-23-108, MCA; IMP, 15-23-101, MCA.

3. The Department is proposing the amendment because the current requirement for the reporting of licensed motor vehicles by centrally assessed companies is to have each company list the original cost and estimated market value for each motor vehicle and special equipment it operates in the state. This information is reported to the Inter-county Property Bureau where the market value is either verified or calculated and then deducted from the Montana allocated value for centrally assessed companies.

The purpose of the amendment is to set standard guidelines for determining market value of automobiles, trucks, equipment attached to the vehicle and special mobile equipment for centrally assessed companies. The current method doesn't have guidelines for how market value is determined. Therefore, different market values for the same type of equipment are used. Because of this disparity the department has to verify or calculate the market value for most of the reported equipment. This process is very tedious and time consuming for the bureau. If the department required companies to report the market value which has been determined by the counties it would save duplicate work.

With standard guidelines the department would only have to spot check the reported market values to ensure compliance. To verify the reported market values the department reserves the right to check with the county, other state agencies, other states or the company about the reported value of the equipment. This protects and establishes an audit capability for the department. If a company omits requested information, it may result in a loss of or partial deduction for the licensed equipment. This clause is needed to help ensure that the companies report properly.

Standard guidelines ensure that each taxpayer is being treated equal and receiving a fair deduction for licensed equipment.

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

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

no later than October 11, 1991.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.401 relating to low income property tax reduction	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of rule 42.19.401 relating to low income property tax reduction

TO: All Interested Persons:

1. On October 9, 1991, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Sam W. Mitchell Building, Helena, Montana, to consider the amendment of ARM 42.19.401, relating to low income property tax reduction.

2. The amendment as proposed provides as follows:

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

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

~~(b)~~ the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above listed reasons. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(2) and (3) remain the same.

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

from banks and any other income, but not including social security income paid directly to a nursing home.

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

(6) "Head of household" means an unmarried individual who is not a surviving spouse and who maintains a household containing a dependant, as the term "head of household" is defined in section 2 of the Internal Revenue Code, as amended. AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-134 and 15-6-151 MCA.

3. The Department is proposing the amendment because eligibility for the low income property taxable value reduction (15-6-134 and 15-6-151, MCA) was changed by the 1991 Legislature. House Bill 904 excludes social security paid to nursing homes in determining eligibility for the reduction. Senate Bill 436 requires a head-of-household to receive the same treatment as a single person in determining eligibility and allows the use of net business income or loss instead of gross income in determining eligibility.

ARM 42.19.401 must be amended to conform with the new laws. The law changes from HB904 are retroactive for tax year 1991. Therefore, the rule change must be applied retroactively.

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

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

no later than October 11, 1991.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.31.501 and 42.31.510 relating to telephone license tax	) NOTICE OF PROPOSED AMENDMENT) of ARM 42.31.501 and 42.31.510) relating to telephone license) tax

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1991, the Department of Revenue proposes to amend ARM 42.31.501 and 42.31.510 relating to telephone license tax.

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

42.31.501 DEFINITIONS (1) through (5) remain the same.

(6) The term "carrier access service" means the service a local exchange company provides to an interexchange carrier for the origination or termination of telecommunications.

(7) The local exchange company is a telecommunication company that provides telephone access lines to members of the general public who are its customers.

(8) Interexchange carrier does not provide access lines to the public but provides access service to local exchange companies in-between the origination and termination of telecommunications. AUTH: Sec. 15-53-104 MCA; IMP, Secs. 15-53-101, 15-53-104, and 15-53-111 MCA.

42.31.510 PENALTY AND INTEREST (1) Penalty attaches if ~~delinquent tax~~ the tax that is deficient is not paid within ten days of notice of final determination. Thereafter interest is calculated on the amount of tax ~~plus penalty~~.

(2) In the instance of a delinquent telephone license tax liability, interest is calculated at the rate of 1% per month or fraction thereof on the unpaid balance of ~~both~~ the tax ~~and the 10% penalty~~.

(3) In the instance of a deficiency, the interest is calculated at the rate of 1% per month or fraction thereof on the unpaid tax ~~until such time as penalty attaches~~. AUTH: Sec. 15-53-104 MCA; IMP, Secs. 15-53-101, 15-53-104, and 15-53-111 MCA.

3. ARM 42.31.501 and 42.31.510 are proposed to be amended because the 1991 Legislature enacted legislation providing additional definitions and changing the penalty and interest computation to be consistent with other taxes administered by the Department. The rules must be amended to reflect these changes.

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

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

no later than October 11, 1991.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than October 11, 1991.

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

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.16.111 through 42.16.119 and 42.16.131 and the PROPOSED ADOPTION of Rules I through XII relating to the Uniform Review Procedures for Taxpayer Objections to Additional Tax Assessments and Refund Denials	NOTICE OF PUBLIC HEARING on the REPEAL of ARM 42.16.111 through 42.16.119 and 42. 16.131 and the PROPOSED ADOPTION of Rules I through XII relating to the Uniform Review Procedures for Taxpayer Objections to Additional Tax Assessments and Refund Denials

TO: All Interested Persons:

1. On October 15, 1991, 1991, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of rules I through XII, relating to the uniform review procedure for taxpayer objections to additional tax assessments and refund denials.

2. The following are the rules to be repealed since the proposed new rules will replace or modify these rules:

42.16.111 REQUEST FOR RECONSIDERATION OF ASSESSMENT, found at page 42-1611 of the Administrative Rules of Montana.

42.16.112 FORMAL HEARING ON REQUEST, found at page 42-1611 of the Administrative Rules of Montana.

42.16.113 APPLICATION FOR FORMAL HEARING, found at pages 42-1611 and 42-1612 of the Administrative Rules of Montana.

42.16.114 CONTENTS OF APPLICATION, found at page 42-1612 of the Administrative Rules of Montana.

42.16.115 PROCESSING OF APPLICATION, found at page 42-1612 of the Administrative Rules of Montana.

42.16.116 HEARING PROCEDURE, found at pages 42-1612 and 42-1613 of the Administrative Rules of Montana.

42.16.117 TREATMENT OF EVIDENCE, found at page 42-1613 of the Administrative Rules of Montana.

42.16.118 SUBMISSION ON BRIEFS, found at page 42-1613 of the Administrative Rules of Montana.

42.16.119 DEPARTMENT DECISION, found at page 42-1613 of the Administrative Rules of Montana.

42.16.131 REQUEST FOR REFUND, found at page 42-1621 of the Administrative Rules of Montana. AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-147, MCA, for all the above rules.

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

RULE I UNIFORM TAX REVIEW PROCEDURE - DEFINITIONS - APPLICABILITY DATE (1) The procedure for reviewing tax assessments and refund denials shall be as described in this sub-chapter for the following taxes administered by the Department:

(a) Centrally assessed property taxes provided for in Chapter 23 of Title 15, MCA;

(b) Dangerous drug tax provided for in Chapter 25 of Title 15, MCA;

(c) Individual income tax provided for in Chapter 30 of Title 15, MCA;

(d) Corporation license or income tax provided for in Chapter 31 of Title 15, MCA;

(e) Coal severance tax provided for in Chapter 35 of Title 15, MCA;

(f) Oil and gas severance tax provided for in Chapter 36 of Title 15, MCA;

(g) Mining license taxes provided for in Chapter 37 of Title 15, MCA;

(h) Resource indemnity trust tax provided for in Chapter 38 of Title 15, MCA;

(i) Public contractor's fees and tax provided for in Chapter 50 of Title 15, MCA;

(j) Electric energy producer's tax provided for in Chapter 51 of Title 15, MCA;

(k) Telephone company license tax provided for in Chapter 53 of Title 15, MCA;

(l) Freight line company license tax provided for in Chapter 55 of Title 15, MCA;

(m) Cement and gypsum taxes provided for in Chapter 59 of Title 15, MCA;

(n) Lodging facility use tax provided for in Chapter 65 of Title 15, MCA;

(o) Alcoholic beverage taxes provided for in Chapter 1 of Title 16, MCA; and

(p) Tobacco product taxes provided for in Chapter 11 of Title 16, MCA.

(2) "Tax assessment", "assessment of tax" or "assessment" as the terms are used in this sub-chapter include original assessments, additional assessments and the assessment of penalties and/or interest for any taxes listed in this rule. The terms do not include the original assessment of centrally assessed property taxes but do include revised assessments of centrally assessed taxes pursuant to 15-8-601, MCA.

(3) "Director of revenue", "director", "division administrator" and "administrator" as these terms are used in

this sub-chapter include any person officially designated to hear taxpayer's objections, issue a decision or perform any other function pursuant to this sub-chapter.

(4) The rules in this subchapter apply to requests for refunds received, and tax assessments issued, after December 31, 1991. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE II NOTICE TO TAXPAYER (1) If an auditor or agent of the department issues a tax assessment or denies a refund, the department must provide the taxpayer with a notice that clearly states:

(a) The amount of tax, penalty and/or interest which is being assessed;

(b) The reasons for the department's determination that the above amount is due or that a refund should be denied;

(c) The taxpayer's right to a review by the department and his right to an appeal after a final department decision;

(d) The procedure the taxpayer is required to follow to have the tax assessment reviewed;

(e) The taxpayer has 30 days from the date the notice was mailed to either notify the department in writing that he does not agree with the assessment or pay the amount assessed;

(f) The taxpayer can not contest the determination before the department or file an appeal with the state tax appeal board (STAB) if he fails to notify the department in writing within 30 days that he objects to the assessment;

(g) The department may issue a warrant for distraint placing a lien on the taxpayer's property unless he notifies the department in writing that he objects to an assessment or pays the assessment within 30 days;

(h) The address the taxpayer should use to mail the notice of objection to the Department;

(i) The assessment notice from the department stops the running of the statute of limitations regarding the assessment of the tax;

(j) Interest on the assessment shall continue to accrue;

(k) The rate at which interest will accrue on the assessment; and,

(l) The taxpayer has no guaranteed right to appeal the assessment to a court of law if he fails to notify the department in writing within 30 days.

(2) The taxpayer will be informed of the Taxpayer's Bill of Rights with his tax assessment. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE III TAXPAYER OBJECTIONS TO AUDITOR'S ASSESSMENT OR REFUND DENIAL (1) A taxpayer receiving a notice of assessment as provided for in Rule II and who objects to the tax assessment or refund denial, may, within 30 days from the date the notice was mailed, notify the department in writing that he objects to the determination. The notification of objection should be addressed as provided in the notice.

(2) The taxpayer's written notification of objection to the Department constitutes a request for review by the division administrator. It is not required to contain specific reasons or be in any particular form. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE IV CONSEQUENCES OF FAILURE TO OBJECT TO AN ASSESSMENT IN A TIMELY MANNER (1) If the taxpayer does not notify the department, in writing, within 30 days after being mailed an assessment or division administrator's decision, that he objects to the assessment or decision:

(a) The assessment becomes final and the assessed tax, plus any interest and penalty must be paid;

(b) The taxpayer has waived any right to further review before the department or appeal to the state tax appeal board;

(c) The taxpayer is not guaranteed any right to contest the determination in state or federal court; and

(d) If any tax assessment is not paid a warrant for distraint may be issued and the taxpayer's property seized without further opportunity to be heard on the assessment. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE V DIVISION ADMINISTRATOR'S DECISION (1) Within 60 days after the notice of objection is mailed by the taxpayer, he may present his objections, the reasons for his objections, and any other information to the division administrator. The division administrator shall notify the taxpayer of the opportunity to submit information upon receipt of the notice of objection.

(2) The taxpayer may choose to present his reasons for objections in writing, by telephone, or at an informal conference. No official record of telephone calls or informal conferences will be kept. However, the taxpayer or the department with the consent of the taxpayer may record them. Failure to present reasons within 60 days may result in a decision being issued without consideration of the taxpayer's specific objections.

(3) The division administrator has 60 days after the taxpayer has presented his reasons for objection to issue a written decision. The division administrator shall fully explain the basis for the decision. The decision shall include all of the applicable information required for assessments by Rule II.

(4) A copy of the decision shall be maintained in the division office for public inspection. However, if the taxpayer has a right of privacy concerning the particular assessment, any and all information which could identify the taxpayer must be masked or struck from the decision in order to protect the privacy of the taxpayer.

(5) The taxpayer has 30 days after the division administrator's decision is mailed to pay the assessment unless an objection is filed as provided in Rule VI. AUTH: Sec. 15-1-

201, MCA; IMP: Sec. 15-1-211, MCA.

RULE VI TAXPAYER OBJECTION TO DECISION OF THE DIVISION ADMINISTRATOR (1) A taxpayer who receives a division administrator's decision as provided for in Rule IV and objects to the decision, may, within 30 days from the date the decision was mailed, notify the department in writing that he objects to the determination. The notice of objection shall be addressed as provided in the decision.

(2) The taxpayer's notice of objection to a division administrator's decision is a request for review by the director of revenue. It is not required to contain specific reasons or be in any particular form.

(3) Failure to notify the department within 30 days as provided above will result in consequences for the taxpayer as stated in Rule IV. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE VII ALTERNATIVE PROCEDURES (1) After the taxpayer has filed the notice of objection to the division administrator's decision with the department, he may either:

(a) Allow the director of revenue to consider the objection; or,

(b) Appeal to the state tax appeal board by filing a complaint with the board within 30 days after mailing the notice of objection to the department.

(2) If the taxpayer appeals to the board, the director may review the decision as provided in Rule X. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE VIII DIRECTOR OF THE DEPARTMENT OF REVENUE'S DECISION (1) Unless the taxpayer has appealed to the state tax appeal board, he may present his objections, the reasons for his objections, and any other information to the director of revenue. The taxpayer may also rely on the objections to the initial assessment and information as stated in the Division Administrator's decision. The director shall notify the taxpayer of the opportunity to submit information or file an appeal with the state tax appeal board upon receipt of the notice of objection.

(2) The taxpayer may choose to present his reasons for objection in writing, by telephone, or at an informal conference. No official record of telephone calls or informal conferences will be kept. However, the taxpayer or the department with the taxpayer's consent may record them. Failure to present reasons within 60 days may result in a decision being issued without consideration of the taxpayer's specific objections.

(3) The director has 60 days after the taxpayer has presented his reasons for objection to issue a written decision. The written document shall fully explain the basis for the decision and contain all of the applicable information required

by Rule II.

(4) A copy of the decision shall be maintained in the Director's office for public inspection. However, if the taxpayer has a right of privacy concerning the particular assessment, any and all information which could identify the taxpayer must be masked or struck from the decision in order to protect the privacy of the taxpayer.

(5) The taxpayer has 30 days after the director's decision is mailed to pay any tax assessment unless an appeal to the state tax appeal board is filed. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE IX TAXPAYER APPEALS TO THE STATE TAX APPEAL BOARD (1) A taxpayer who disagrees with a final decision of the department of revenue may file an appeal with the state tax appeal board pursuant to 15-2-302, MCA. The board is completely independent of the department of revenue. The board has adopted administrative rules concerning appeals in Title 2, Chapter 51, Administrative Rules of Montana. The taxpayer should contact the board directly for information concerning appeals.

(2) Any decision of the director of revenue is a final decision of the Department. In addition, a taxpayer can make a decision of the division administrator a final decision by filing both a notice of objection to the director and an appeal to the board as provided in Rule VI.

(3) A taxpayer may appeal a decision of the state tax appeal board to state district court. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE X DIRECTOR INITIATED REVIEW (1) If a taxpayer has elected to appeal a division administrator's decision to the state tax appeal board as provided in Rule VI, the director may review the decision before the board issues a decision. The director must notify the board within 30 days after an appeal is filed that he desires to review the decision.

(2) If the Director requests a review the board shall delay the appeal for a reasonable period of time. The period may not exceed 90 days except by the mutual consent of the director and the taxpayer.

(3) If the director requests a review, the taxpayer may provide his objections and reasons for objections to the director so that he may review the controversy and issue a decision within the period of the delay. The taxpayer may also rely on the objections to the initial assessment and information as stated in the division administrator's decision.

(4) If the taxpayer is dissatisfied with the director's decision the appeal may be resumed before the state tax appeal board. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE XI SETTLEMENT OF TAX DISPUTES (1) The department is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered

by the department for any taxable period.

(2) Taxpayers are encouraged to discuss settlement of tax disputes at any point in time during the process. The division administrator will consider any settlement proposal made by the taxpayer.

(3) Division administrators are authorized to settle tax disputes. The director will not discuss settlement of a tax dispute with a taxpayer until all settlement efforts with the Division Administrator have been exhausted and the taxpayer has received a written decision from the division administrator.

(4) Any agreement entered into is final and cannot be reopened or modified at a future date except for fraud or as may be specifically provided in the agreement. A settlement is not binding on the taxpayer or the department concerning other tax years or other taxpayers. The particular terms of any settlement may be kept confidential if the taxpayer has a right of privacy concerning the particular assessment. Taxpayers may waive their right of privacy. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

RULE XII DEPARTMENTAL PROCEDURES (1) The director and his staff encourages discussion and comment on general tax issues and policy issues from the public. The director will not discuss a specific tax dispute with a taxpayer prior to the review by the division administrator. Any discussion of a specific tax dispute by a division administrator or the director shall take place in the context of the procedure set forth in this sub-chapter for the taxes covered by this sub-chapter.

(2) Division administrators and the director may delegate any part or all of their responsibilities under this sub-chapter at their sole discretion. It is not required that the administrator or director personally hear the evidence in order to issue a decision.

(3) The procedures followed by the department in conducting reviews of tax assessments are informal. The proceedings before the department are not subject to the Montana Administrative Procedure Act or the attorney general's model rules. There is no right to formal discovery but the taxpayer may review the department's files and discuss the assessment with the auditor who issued it.

(4) The auditor who issued the assessment, his audit supervisor or someone else knowledgeable about the assessment will be present at an informal conference to answer any questions and explain the assessment. If the taxpayer is represented by legal counsel, the department may have legal counsel present at an informal conference. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-1-211, MCA.

4. The Department is proposing to repeal the rules listed above and replace them with new rules I through XII. These rules are referred to as the Department's tax review procedures. They have been designed to comply with the provisions of SB 445

which was passed by the 1991 Legislature and mandates a tax appeal process. The impact on the taxpayers will be favorable since the process will be less costly for the average taxpayer.

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

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

no later than October 18, 1991.

6. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

Denis Adams, Director
Department of Revenue

Certified to the Secretary of State September 3, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, and 42.21.305 and the ADOPTION of RULE I and RULE II relating to personal property	) NOTICE OF PUBLIC HEARING on) the PROPOSED AMENDMENT of ARM) 42.21.106, 42.21.107,) 42.21.113, 42.21.123,) 42.21.131, 42.21.137,) 42.21.138, 42.21.139,) 42.21.140, 42.21.151) 42.21.155 and 42.21.305) and the ADOPTION of RULE I) and RULE II to personal) property

TO: All Interested Persons:

1. On October 9, 1991, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room, Sam W. Mitchell Building, Helena, Montana, to consider the amendment of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, and 42.21.305 and the adoption of RULE I and RULE II relating to personal property.

2. The amendments as proposed provide as follows:

42.21.106 TRUCKS (1) through (3) remain the same.

(4) The trended depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for the ~~1991~~ 1992 tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in subsection (1).

TRUCK TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD
~~1991~~	~~80%~~
~~1990~~	~~45%~~
~~1989~~	~~39%~~
~~1988~~	~~34%~~
~~1987~~	~~31%~~
~~1986~~	~~26%~~
~~1985~~	~~24%~~
~~1984~~	~~21%~~
~~1983~~	~~19%~~
~~1982~~	~~18%~~
~~1981~~	~~17%~~
~~1980~~	~~16%~~
~~1979~~	~~15%~~
~~1978~~	~~14%~~

~~1977~~	~~13%~~
~~1976~~	~~12%~~
~~1975 and before~~	~~11%~~
1992	80%
1991	45%
1990	39%
1989	33%
1988	29%
1987	25%
1986	21%
1985	19%
1984	17%
1983	16%
1982	15%
1981	14%
1980	14%
1979	13%
1978	12%
1977	12%
1976 and before	11%

(5) remains the same.

(6) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 and 15-6-140 MCA.

42.21.107 TRAILERS (1) (a) through (d) remain the same.

(e) The trended depreciation schedules referred to in subsections (1)(b), (c), and (d) is listed below and shall be used for the ~~1991~~ 1992 tax year.

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

YEAR NEW/ACQUIRED	% GOOD
~~1991~~	~~80%~~
~~1990~~	~~62%~~
~~1989~~	~~58%~~
~~1988~~	~~53%~~
~~1987~~	~~49%~~
~~1986~~	~~45%~~
~~1985~~	~~42%~~
~~1984~~	~~40%~~
~~1983~~	~~39%~~
~~1982~~	~~37%~~
~~1981~~	~~35%~~
~~1980~~	~~33%~~
~~1979~~	~~31%~~
~~1978~~	~~29%~~
~~1977~~	~~27%~~
~~1976~~	~~25%~~

~~1975~~	~~23%~~
~~1974~~	~~21%~~
~~1973~~	~~19%~~
~~1972~~	~~17%~~
~~1971 & Before~~	~~15%~~
1992	80%
1991	61%
1990	58%
1989	53%
1988	49%
1987	45%
1986	42%
1985	39%
1984	38%
1983	37%
1982	35%
1981	33%
1980	31%
1979	29%
1978	27%
1977	25%
1976	23%
1975	21%
1974	19%
1973	17%
1972 & Before	15%

(2) (a) through (c) remain the same.

(d) The trended depreciation schedule mentioned in subsection (2)(b) and (c) is listed below and shall be used for the ~~1991~~ 1992 tax year. It is the same schedule as used in ARM 42.21.106(4).

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

YEAR ACQUIRED	% GOOD
~~1991~~	~~80%~~
~~1990~~	~~45%~~
~~1989~~	~~39%~~
~~1988~~	~~34%~~
~~1987~~	~~31%~~
~~1986~~	~~26%~~
~~1985~~	~~24%~~
~~1984~~	~~21%~~
~~1983~~	~~19%~~
~~1982~~	~~18%~~
~~1981~~	~~17%~~
~~1980~~	~~16%~~

~~1979~~	~~15%~~
~~1978~~	~~14%~~
~~1977~~	~~13%~~
~~1976~~	~~12%~~
~~1975 & Before~~	~~11%~~
1992	80%
1991	45%
1990	39%
1989	33%
1988	29%
1987	25%
1986	21%
1985	19%
1984	17%
1983	16%
1982	15%
1981	14%
1980	14%
1979	13%
1978	12%
1977	12%
1976 & Before	11%

(3) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 and 15-6-139 MCA.

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

(3) The trended depreciation schedules referred to in subsections (1) and (2) are listed below and shall be used for tax year ~~1991~~ 1992.

Year New/Acquired	$0 - 500	$501 - 1500	$1,501 or Greater
~~1990~~	~~70%~~	~~85%~~	~~85%~~
~~1989~~	~~44%~~	~~71%~~	~~73%~~
~~1988~~	~~20%~~	~~54%~~	~~58%~~
~~1987~~	~~20%~~	~~36%~~	~~39%~~
~~1986~~	~~20%~~	~~21%~~	~~24%~~
~~1985~~	~~20%~~	~~21%~~	~~24%~~
~~1984 and older~~	~~20%~~	~~21%~~	~~24%~~
1991	70%	85%	85%
1990	44%	68%	73%
1989	19%	52%	58%
1988	19%	35%	40%
1987	19%	21%	24%
1986	19%	21%	24%
1985 and older	19%	21%	24%

(4) remains the same.

(5) For rental video tapes the following schedule shall be used:

Year Acquired	Trended % Good
1991	25%
1990	15%
1989	10%

~~(5)~~ (6) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-136 MCA.

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

(5) The trended depreciation schedule referred to in subsections (2) through (4) is listed below and shall be used for tax year ~~1991~~ 1992. The schedule is derived by using the guidebook listed in subsection (1) and the "Farm Tractor Trade-In Guide" and "Farm Equipment Trade-In Guide" of the current year of assessment and are incorporated by reference, Technical Publications Division, Intertec Publishing Corporation, Box 12901, Overland Park, Kansas 66212, as the data base. The trended depreciation schedule will approximate average loan value.

YEAR	TRENDED % GOOD AVERAGE LOAN
~~1991~~	~~65%~~
~~1990~~	~~48%~~
~~1989~~	~~45%~~
~~1988~~	~~40%~~
~~1987~~	~~37%~~
~~1986~~	~~35%~~
~~1985~~	~~33%~~
~~1984~~	~~32%~~
~~1983~~	~~32%~~
~~1982~~	~~33%~~
~~1981~~	~~32%~~
~~1980~~	~~32%~~
~~1979~~	~~31%~~
~~1978~~	~~29%~~
~~1977~~	~~28%~~
~~1976~~	~~27%~~
~~1975~~	~~27%~~
~~1974~~	~~26%~~
~~1973~~	~~26%~~
~~1972~~	~~25%~~
~~1971~~	~~25%~~
~~1970~~	~~24%~~
~~1969~~	~~23%~~
~~1968~~	~~22%~~
~~1967~~	~~21%~~

~~1966 & Older~~	~~20%~~
1992	65%
1991	51%
1990	46%
1989	44%
1988	40%
1987	37%
1986	36%
1985	35%
1984	34%
1983	33%
1982	33%
1981	32%
1980	33%
1979	32%
1978	31%
1977	29%
1976	27%
1975	26%
1974	26%
1973	25%
1972	25%
1971	24%
1970	23%
1969	22%
1968	21%
1967 & Older	20%

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.131 HEAVY EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedules referred to in subsections (1), (3) and (4) is listed below and shall be used for tax year ~~1991~~ 1992. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in subsection (2).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR	% GOOD WHOLESALE
~~1991~~	~~80%~~
~~1990~~	~~67%~~
~~1989~~	~~53%~~
~~1988~~	~~50%~~
~~1987~~	~~47%~~
~~1986~~	~~44%~~

~~1985~~	~~39%~~
~~1984~~	~~36%~~
~~1983~~	~~32%~~
~~1982~~	~~30%~~
~~1981~~	~~28%~~
~~1980~~	~~29%~~
~~1979~~	~~28%~~
~~1978~~	~~28%~~
~~1977~~	~~28%~~
~~1976~~	~~29%~~
~~1975~~	~~27%~~
~~1974~~	~~27%~~
~~1973~~	~~28%~~
~~1972~~	~~28%~~
~~1971~~	~~28%~~
~~1970 & Before~~	~~26%~~

1992	80%
1991	67%
1990	53%
1989	50%
1988	47%
1987	44%
1986	39%
1985	36%
1984	32%
1983	30%
1982	28%
1981	29%
1980	28%
1979	28%
1978	28%
1977	29%
1976	27%
1975	27%
1974	28%
1973	28%
1972	28%
1971 & Before	26%

(6) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991, and applies to all heavy equipment not listed in ARM 42.21.139. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year ~~1991~~ 1992.

SEISMOGRAPH UNITS

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
~~1991~~	~~100%~~	~~1.000~~	~~100%~~	~~80%~~	~~80%~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~	~~80%~~	~~68%~~
~~1989~~	~~69%~~	~~1.026~~	~~71%~~	~~80%~~	~~57%~~
~~1988~~	~~52%~~	~~1.084~~	~~56%~~	~~80%~~	~~45%~~
~~1987~~	~~34%~~	~~1.131~~	~~38%~~	~~80%~~	~~30%~~
~~1986~~	~~20%~~	~~1.143~~	~~23%~~	~~80%~~	~~18%~~
~~1985 & older~~	~~5%~~	~~1.148~~	~~6%~~	~~80%~~	~~5%~~
1992	100%	1.000	100%	80%	80%
1991	85%	1.000	85%	80%	68%
1990	69%	1.020	70%	80%	56%
1989	52%	1.046	54%	80%	43%
1988	34%	1.105	38%	80%	30%
1987	20%	1.153	23%	80%	18%
1986 & older	5%	1.166	6%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~100%~~	~~1.000~~	~~100%~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~1.026~~	~~71%~~
~~1988~~	~~52%~~	~~1.084~~	~~56%~~
~~1987~~	~~34%~~	~~1.131~~	~~38%~~
~~1986~~	~~20%~~	~~1.143~~	~~23%~~
~~1985 & older~~	~~5%~~	~~1.148~~	~~6%~~
1992	100%	1.000	100%
1991	85%	1.000	85%
1990	69%	1.020	70%
1989	52%	1.046	54%
1988	34%	1.105	38%
1987	20%	1.153	23%
1986 & older	5%	1.166	6%

(5) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) and (2) remain the same.

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year ~~1991~~ 1992.

OIL AND GAS FIELD PRODUCTION
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~100%~~	~~1.000~~	~~100%~~
~~1990~~	~~95%~~	~~1.000~~	~~95%~~
~~1989~~	~~89%~~	~~1.026~~	~~91%~~
~~1988~~	~~83%~~	~~1.084~~	~~90%~~
~~1987~~	~~77%~~	~~1.131~~	~~87%~~
~~1986~~	~~71%~~	~~1.143~~	~~81%~~
~~1985~~	~~65%~~	~~1.148~~	~~75%~~
~~1984~~	~~58%~~	~~1.165~~	~~68%~~
~~1983~~	~~51%~~	~~1.196~~	~~61%~~
~~1982~~	~~45%~~	~~1.213~~	~~55%~~
~~1981~~	~~39%~~	~~1.277~~	~~50%~~
~~1980~~	~~33%~~	~~1.420~~	~~47%~~
~~1979~~	~~28%~~	~~1.575~~	~~44%~~
~~1978~~	~~23%~~	~~1.712~~	~~39%~~
~~1977 & Older~~	~~20%~~	~~1.845~~	~~37%~~
1992	100%	1.000	100%
1991	95%	1.000	95%
1990	89%	1.020	91%
1989	83%	1.046	87%
1988	77%	1.105	85%
1987	71%	1.153	82%
1986	65%	1.166	76%
1985	58%	1.171	68%
1984	51%	1.188	61%
1983	45%	1.219	55%
1982	39%	1.237	48%
1981	33%	1.302	43%
1980	28%	1.448	41%
1979	23%	1.606	37%
1978 & Older	20%	1.746	35%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year ~~1991~~ 1992.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

YEAR	% GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
~~1991~~	~~100%~~	~~80%~~	~~80%~~
~~1990~~	~~92%~~	~~80%~~	~~74%~~
~~1989~~	~~84%~~	~~80%~~	~~67%~~
~~1988~~	~~76%~~	~~80%~~	~~61%~~
~~1987~~	~~67%~~	~~80%~~	~~54%~~
~~1986~~	~~58%~~	~~80%~~	~~46%~~
~~1985~~	~~49%~~	~~80%~~	~~39%~~
~~1984~~	~~35%~~	~~80%~~	~~28%~~
~~1983~~	~~30%~~	~~80%~~	~~24%~~
~~1982~~	~~24%~~	~~80%~~	~~19%~~
~~1981 & Older~~	~~20%~~	~~80%~~	~~16%~~
1992	100%	80%	80%
1991	92%	80%	74%
1990	84%	80%	67%
1989	76%	80%	61%
1988	67%	80%	54%
1987	58%	80%	46%
1986	49%	80%	39%
1985	35%	80%	28%
1984	30%	80%	24%
1983	24%	80%	19%
1982 & Older	20%	80%	16%

(6) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The trended depreciation schedule for tax year ~~1991~~ 1992 is listed below.

DRILL RIG % GOOD SCHEDULE

YEAR	TRENDED % GOOD
~~1991~~	~~100%~~
~~1990~~	~~92%~~
~~1989~~	~~84%~~
~~1988~~	~~76%~~
~~1987~~	~~67%~~
~~1986~~	~~58%~~
~~1985~~	~~49%~~

~~1984~~	~~35%~~
~~1983~~	~~30%~~
~~1982~~	~~24%~~
~~1981 and older~~	~~20%~~

1992	100%
1991	92%
1990	84%
1989	76%
1988	67%
1987	58%
1986	49%
1985	35%
1984	30%
1983	24%
1982 and older	20%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

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

(4) The trended depreciation schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year ~~1991~~ 1992.

TABLE 1: 5 YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~1.027~~	~~71%~~
~~1988~~	~~52%~~	~~1.082~~	~~56%~~
~~1987~~	~~34%~~	~~1.128~~	~~38%~~
~~1986 & older~~	~~20%~~	~~1.144~~	~~22%~~
1991	85%	1.000	85%
1990	69%	1.018	70%
1989	52%	1.045	54%
1988	34%	1.101	37%
1987 & older	20%	1.148	23%

TABLE 2: 10 YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1990~~	~~92%~~	~~1.000~~	~~92%~~
~~1989~~	~~84%~~	~~1.027~~	~~86%~~

~~1988~~	~~76%~~	~~1.082~~	~~82%~~
~~1987~~	~~67%~~	~~1.128~~	~~76%~~
~~1986~~	~~58%~~	~~1.144~~	~~66%~~
~~1985~~	~~49%~~	~~1.155~~	~~57%~~
~~1984~~	~~39%~~	~~1.172~~	~~46%~~
~~1983~~	~~30%~~	~~1.204~~	~~36%~~
~~1982~~	~~24%~~	~~1.226~~	~~29%~~
~~1981 & older~~	~~20%~~	~~1.283~~	~~26%~~
1991	92%	1.000	92%
1990	84%	1.018	86%
1989	76%	1.045	79%
1988	67%	1.101	74%
1987	58%	1.148	67%
1986	49%	1.165	57%
1985	39%	1.176	46%
1984	30%	1.193	36%
1983	24%	1.226	29%
1982 & older	20%	1.248	25%

(5) This rule is effective for tax years beginning after December 31, ~~1990~~ 1991. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-140 MCA.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~1991~~ 1992 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

~~CATEGORY 1~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~70%~~	~~1.000~~	~~70%~~
~~1989~~	~~45%~~	~~0.985~~	~~44%~~
~~1988~~	~~20%~~	~~0.985~~	~~20%~~
~~1987 and older~~	~~10%~~	~~0.982~~	~~10%~~

~~CATEGORY 2~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~1.017~~	~~71%~~
~~1988~~	~~52%~~	~~1.043~~	~~54%~~
~~1987~~	~~34%~~	~~1.070~~	~~36%~~
~~1986 and older~~	~~20%~~	~~1.085~~	~~21%~~

~~CATEGORY 3~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~1.081~~	~~70%~~
~~1988~~	~~52%~~	~~1.026~~	~~54%~~
~~1987~~	~~34%~~	~~1.034~~	~~36%~~
~~1986 and older~~	~~20%~~	~~1.052~~	~~21%~~

~~CATEGORY 4~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~0.997~~	~~69%~~
~~1988~~	~~52%~~	~~1.011~~	~~53%~~
~~1987~~	~~34%~~	~~1.027~~	~~35%~~
~~1986 and older~~	~~20%~~	~~1.022~~	~~20%~~

~~CATEGORY 5~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~1.030~~	~~71%~~
~~1988~~	~~52%~~	~~1.063~~	~~55%~~
~~1987~~	~~34%~~	~~1.086~~	~~37%~~
~~1986 and older~~	~~20%~~	~~1.099~~	~~22%~~

~~CATEGORY 6~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~85%~~	~~1.000~~	~~85%~~
~~1989~~	~~69%~~	~~1.059~~	~~73%~~
~~1988~~	~~52%~~	~~1.107~~	~~58%~~
~~1987~~	~~34%~~	~~1.155~~	~~39%~~
~~1986 and older~~	~~20%~~	~~1.179~~	~~24%~~

~~CATEGORY 7~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~92%~~	~~1.000~~	~~92%~~
~~1989~~	~~84%~~	~~1.042~~	~~88%~~
~~1988~~	~~76%~~	~~1.082~~	~~82%~~

~~1987~~	~~67%~~	~~1.105~~	~~74%~~
~~1986~~	~~58%~~	~~1.122~~	~~65%~~
~~1985~~	~~49%~~	~~1.145~~	~~56%~~
~~1984~~	~~39%~~	~~1.176~~	~~46%~~
~~1983~~	~~30%~~	~~1.194~~	~~36%~~
~~1982~~	~~24%~~	~~1.239~~	~~30%~~
~~1981 and older~~	~~20%~~	~~1.341~~	~~27%~~

~~CATEGORY 8~~

~~YEAR~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1990~~	~~92%~~	~~1.000~~	~~92%~~
~~1989~~	~~84%~~	~~1.039~~	~~87%~~
~~1988~~	~~76%~~	~~1.087~~	~~83%~~
~~1987~~	~~67%~~	~~1.126~~	~~75%~~
~~1986~~	~~58%~~	~~1.155~~	~~67%~~
~~1985~~	~~49%~~	~~1.202~~	~~59%~~
~~1984~~	~~39%~~	~~1.242~~	~~48%~~
~~1983~~	~~30%~~	~~1.288~~	~~39%~~
~~1982~~	~~24%~~	~~1.357~~	~~33%~~
~~1981 and older~~	~~20%~~	~~1.469~~	~~29%~~

CATEGORY 1

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	70%	1.000	70%
1990	45%	0.979	44%
1989	20%	0.964	19%
1988 and older	10%	0.964	10%

CATEGORY 2

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	85%	1.000	85%
1990	69%	.990	68%
1989	52%	1.007	52%
1988	34%	1.033	35%
1987 and older	20%	1.060	21%

CATEGORY 3

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	85%	1.000	85%

1990	69%	.998	69%
1989	52%	1.000	52%
1988	34%	1.024	35%
1987 and older	20%	1.032	21%

CATEGORY 4

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	85%	1.000	85%
1990	69%	1.008	70%
1989	52%	1.006	52%
1988	34%	1.019	35%
1987 and older	20%	1.036	21%

CATEGORY 5

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	85%	1.000	85%
1990	69%	1.016	70%
1989	52%	1.046	54%
1988	34%	1.079	37%
1987 and older	20%	1.103	22%

CATEGORY 6

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	85%	1.000	85%
1990	69%	1.057	73%
1989	52%	1.120	58%
1988	34%	1.171	40%
1987 and older	20%	1.221	24%

CATEGORY 7

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	92%	1.000	92%
1990	84%	1.039	87%
1989	76%	1.083	82%
1988	67%	1.125	75%
1987	58%	1.148	67%
1986	49%	1.166	57%
1985	39%	1.190	46%
1984	30%	1.222	37%
1983	24%	1.241	30%

1982 and older	20%	1.288	26%

CATEGORY 8

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1991	92%	1.000	92%
1990	84%	1.027	86%
1989	76%	1.067	81%
1988	67%	1.116	75%
1987	58%	1.156	67%
1986	49%	1.186	58%
1985	39%	1.234	48%
1984	30%	1.276	38%
1983	24%	1.323	32%
1982 and older	20%	1.393	28%

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

42.21.305 TRENDED DEPRECIATION SCHEDULES (1) ~~1991~~ 1992 trended percent depreciation schedule for licensed motorcycles and licensed quadricycles*

Year	Trended % Good
~~1991~~	~~80%~~
~~1990~~	~~51%~~
~~1989~~	~~50%~~
~~1988~~	~~45%~~
~~1987~~	~~40%~~
~~1986~~	~~32%~~
~~1985~~	~~28%~~
~~1984~~	~~25%~~
~~1983~~	~~22%~~
~~1982~~	~~20%~~
~~1981~~	~~19%~~
~~1980~~	~~18%~~
~~1979~~	~~19%~~
~~1978~~	~~20%~~
~~1977~~	~~19%~~
~~1976 & Older~~	~~20%~~
1992	80%
1991	57%
1990	51%
1989	49%
1988	44%
1987	40%
1986	31%
1985	27%
1984	24%
1983	21%

1982	17%
1981	18%
1980	16%
1979	19%
1978	16%
1977 & Older	16%

(2) ~~1991~~ 1992 trended depreciation schedule for automobiles and trucks with a rated capacity of 1 ton and less*

Year	Trended % Good
~~1991~~	~~80% of FOB~~
~~1990~~	~~74%~~
~~1989~~	~~66%~~
~~1988~~	~~59%~~
~~1987~~	~~52%~~
~~1986~~	~~44%~~
~~1985~~	~~36%~~
~~1984~~	~~28%~~
~~1983~~	~~23%~~
~~1982~~	~~20%~~
~~1981~~	~~18%~~
~~1980~~	~~17%~~
~~1979~~	~~15%~~
~~1978~~	~~13%~~
~~1977~~	~~12%~~
~~1976~~	~~11%~~
~~1975~~	~~12%~~
~~1974 & Older~~	~~12%~~

1992	80% of FOB
1991	77%
1990	60%
1989	54%
1988	47%
1987	41%
1986	34%
1985	27%
1984	19%
1983	16%
1982	14%
1981	12%
1980	10%
1979	9%
1978	9%
1977	8%
1976	8%
1975 & Older	8%

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.

3. The new rules as proposed provide as follows:

RULE I PERSONAL PROPERTY TAX REFUND (1) A person removing migratory property from the state before the end of the calendar year of assessment may apply for a refund of property tax paid. Application must be made with the treasurer of the county where the property was assessed. The application must be made by January 31 following the year of assessment.

(2) The application must contain:

(a) the name and current mailing address of the applicant;

(b) a complete description of the property;

(c) the Montana property tax bill for the migratory property under consideration with proof of full payment;

(d) the date the property was removed from the state;

(e) the location of the property upon removal from the state; and

(f) proof that tax was paid on the property in another state; such as a verified tax paid receipt. AUTH: Secs. 15-1-201 MCA; IMP: 15-16-613 MCA.

RULE II REQUEST FOR REVIEW (1) If the owner of any personal property is dissatisfied with the assessment as it reflects the market value of the property, he may object in writing by submitting a property adjustment form (AB-26) to the property assessment division office in the county where the property is located and/or by filing an appeal with the local County Tax Appeal Board. The AB-26 form must be submitted within 15 days of receipt of the valuation notice. The department will consider:

(a) the market value definitions contained in 15-8-111, MCA;

(b) the actual sales price of the property if it is an arms-length sale within the preceding 12 months;

(c) the actual sales price of property of the same age, make and model in similar condition if it is an arms-length sale within the preceding 12 months;

(d) an independent appraisal conducted by an individual who has expertise in valuation of the personal property under consideration; or

(e) other relevant information presented by the taxpayer as evidence of the market value of the property.

(2) The property owner must provide the department with one of the following to substantiate a sales price:

(a) an invoice signed by the seller stating the sales date, buyer, and the full price including all compensation and trade-in value received by the seller;

(b) a notarized affidavit signed by the seller stating the complete terms of the sale including the sales date, buyer and all compensation and trade-in value received by the seller; or

(c) copy of the owner's most recent federal or state income tax return with the attached depreciation schedules or asset ledger/listing which specifically lists the property.

(3) The submission of the AB-26 form will not delay submission of the values to the county under 15-8-201 and 15-8-706, MCA.

(4) This rule does not apply to property valued pursuant to 15-8-111(3)(a), 61-3-503, MCA or valuation guidebooks mandated by the legislature pursuant to 15-8-111(2)(c), MCA, and further identified in ARM 42.21.106 and 42.21.107. AUTH: Secs. 15-1-201 MCA; IMP: 15-8-111 MCA.

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

The method by which trending and depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules. The schedule for ARM 42.21.131 was derived by using 1991 information since 1992 information was not available. That is consistent with the development of all other schedules.

ARM 42.21.113 has new (5) added. Previously, rental video tapes were depreciated using the schedule in ARM 42.21.113(3). A separate schedule for video tapes was added in subsection (5). Information provided by taxpayers at county and state tax appeal board hearings indicates that the valuation procedure for video tapes produced a value that exceeded market value. Taxpayers provided sales prices, trade magazine articles and testimony that used video tapes were worth only $5 - $12 after 1-2 years. The new schedule will arrive at market values that more closely reach those values.

5. The Department is proposing new Rule I because migratory property owners are now allowed a refund of property taxes paid if the property is removed before year end. This change was made by the 1991 Legislature with the passage of House Bill 151.

A new rule is proposed to specify the information needed to process the refund. This will ensure that refund requests are processed timely. The new law is retroactive for tax year 1991. Therefore, the rule must be applied retroactively.

The Department is proposing new Rule II to enable taxpayers to present evidence to the department indicative of market value. Pursuant to 15-8-111, MCA, the department is obligated to reach market value on all property. This rule affords the taxpayer the opportunity to provide evidence towards that end.

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

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

no later than October 11, 1991.

7. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State September 3, 1991.

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

In the matter of the amendment of Rule 46.10.409 pertaining to transitional child care	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.409 PERTAINING TO TRANSITIONAL CHILD CARE

TO: All Interested Persons

1. On October 3, 1991, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.409 pertaining to transitional child care.

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

46.10.409 SLIDING FEE SCALE FOR TRANSITIONAL CHILD CARE

(1) The following is a sliding fee scale which indicates the amount the family will contribute towards child care costs; ~~at the established reimbursement rate in accordance with ARM 46.10.404:~~

~~(a) for the first six (6) months of the transitional child care eligibility period, 10% of established reimbursement rates, for the appropriate type of care (such as day care center, family home or group home) or 10% of actual cost (whichever is less) per child;~~

~~(b) for the 7th and 8th months, 25% of established reimbursement rates or 25% of actual cost (whichever is less) per child;~~

~~(c) for the 9th and 10th months, 50% of established reimbursement rates or 50% of actual cost (whichever is less) per child; and~~

~~(d) for the 11th and 12th months, 75% of established reimbursement rates or 75% of actual cost (whichever is less) per child.~~

~~(2) In addition, the family is also required to pay an additional fee per child based on family income. The following scale indicates what the family share is:~~

~~(a) SLIDING FEE SCALE~~

~~for~~

~~TRANSITIONAL CHILD CARE (TCC)~~

~~OCTOBER 1, 1990~~

~~Family Share~~
~~Projected Gross Annual Family Income~~

~~TCC Month~~	~~$0-10,000~~	~~$10,001-15,000~~	~~$15,001-20,000~~	~~$20,001 and Over~~
~~1~~	~~10%~~	~~10% + $5 p/c~~	~~10% + $10 p/c~~	~~10% + $20 p/c~~
~~2~~	~~10%~~	~~10% + 5 p/c~~	~~10% + 10 p/c~~	~~10% + 20 p/c~~
~~3~~	~~10%~~	~~10% + 5 p/c~~	~~10% + 10 p/c~~	~~10% + 20 p/c~~
~~4~~	~~10%~~	~~10% + 5 p/c~~	~~10% + 10 p/c~~	~~10% + 20 p/c~~
~~5~~	~~10%~~	~~10% + 5 p/c~~	~~10% + 10 p/c~~	~~10% + 20 p/c~~
~~6~~	~~10%~~	~~10% + 5 p/c~~	~~10% + 10 p/c~~	~~10% + 20 p/c~~
~~7~~	~~25%~~	~~25% + 5 p/c~~	~~25% + 10 p/c~~	~~25% + 20 p/c~~
~~8~~	~~25%~~	~~25% + 5 p/c~~	~~25% + 10 p/c~~	~~25% + 20 p/c~~
~~9~~	~~50%~~	~~50% + 5 p/c~~	~~50% + 10 p/c~~	~~50% + 20 p/c~~
~~10~~	~~50%~~	~~50% + 5 p/c~~	~~50% + 10 p/c~~	~~50% + 20 p/c~~
~~11~~	~~75%~~	~~75% + 5 p/c~~	~~75% + 10 p/c~~	~~75% + 20 p/c~~
~~12~~	~~75%~~	~~75% + 5 p/c~~	~~75% + 10 p/c~~	~~75% + 20 p/c~~

~~p/c means "per child"~~

(a) SLIDING FEE SCALE FOR
TRANSITIONAL CHILD CARE (TCC)
November 1, 1991

Family Size	Monthly Income	Copayment (1 child)	Copayment (2 children)	Copayment (3 children)*
2	0 - 740	4		
	741 - 840	17		
	841 - 940	28		
	941 - 1040	42		
	1041 - 1140	57		
	1141 - 1240	74		
	1241 - 1340	93		
	1341 - 1440	115		
	1441 - 1540	139		
	1541 - 1640	148		
	1641+- ineligible			
3	0 - 928	6	8	
	929 - 1028	20	26	
	1029 - 1128	34	44	
	1129 - 1228	49	64	
	1229 - 1328	66	86	
	1329 - 1428	86	113	
	1429 - 1528	107	140	
	1529 - 1628	130	170	
	1629 - 1728	138	181	
	1729 - 1828	165	216	
	1829+- ineligible			
4	0 - 1117	6	8	10
	1118 - 1217	24	31	41
	1218 - 1317	40	52	68
	1318 - 1417	57	75	98
	1418 - 1517	76	100	131
	1518 - 1617	97	107	140
	1618 - 1717	120	157	206
	1718 - 1817	145	190	249
	1818 - 1917	153	200	262
	1918 - 2017	182	238	312
	2018 - 2117	191	250	328
	2118+- ineligible			

Note: There will be no additional charge if a family places more than 3 children in child care.

(32) The department will pay the portion of the family's child care costs, based on the established reimbursement rates for the appropriate type of care, which the family is not required to pay pursuant to subsection (1) ~~and (2)~~ of this rule ~~above~~.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-4-701 and 53-4-716 MCA

3. The Department, as mandated by the Family Support Act of 1988, provides transitional child care assistance (TCC) to participants of the Aid to Families with Dependent Children

(AFDC) program who lose their financial assistance because of increased hours of, or earnings from, employment or as a result of the loss of income disregards used in computing eligibility due to the expiration of time limits on such disregards. Transitional child care assistance is available for 12 months from the date of termination of AFDC financial assistance.

During the TCC period, the Department pays most of the former recipient's child care costs but also requires the client to contribute toward those costs based on the client's ability to pay. ARM 46.10.409 sets forth a sliding fee scale used to determine the amount of each client's contribution.

The Department is amending the sliding fee scale to decrease the client's contribution in the latter months of the TCC period. Under the current rule, during the first six months of TCC the client pays 10 per cent of the actual cost of care or of the established reimbursement rate, whichever is less, plus a fixed dollar amount per child receiving care. For the 7th and 8th months, the percentage paid by the client increases to 25 percent; for the 9th and 10th months, to 50 percent; and for the 11th and 12th months, to 75 per cent.

This rule change is necessary because the Department has found that many recipients of transitional child care assistance (TCC) have difficulty paying the significantly increased share of child care costs required after the 6th month under the current fee scale. The amended fee scale does not increase the recipient's contribution during the TCC period unless the recipient's income increases during that time. Also, the client will pay not a percentage but a fixed amount more closely related to the client's income than the percentages in the previous sliding fee scale.

This makes it easier for former AFDC clients who have become ineligible due to income from a job to make the transition from having their child care paid for or subsidized by the Department when they are receiving AFDC to paying it themselves. It is the purpose of TCC to help the client make this transition, and the amended fee scale makes the transition smoother for the client.

The amended fee scale is also closely aligned with the sliding fee scale to be used beginning October 1, 1991, in Montana's Child Care Development Block Grant program. This is a separate program which provides child care assistance to persons who may not qualify for AFDC or TCC assistance. It is envisioned that many families going off TCC will be eligible for the Block Grant program, which requires contributions from the recipient very similar to the amounts TCC recipients will pay under the new fee scale.

Finally, the amended fee scale will be easier to administer. Agencies involved in making payments will not have to compute percentages or make comparisons between the actual cost of care and the established reimbursement rate to determine which is less.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than October 11, 1991.

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

Julia E. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1991.

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

In the matter of the amendment of Rules 46.12.102, 46.12.583 and 46.12.584 pertaining to organ transplantation	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.102, 46.12.583 AND 46.12.584 PERTAINING TO ORGAN TRANSPLANTATION

TO: All Interested Persons

1. On October 7, 1991, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.102, 46.12.583 and 46.12.584 pertaining to organ transplantation.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (2)(e)(i) remain the same.

(A) Experimental services are procedures and items, including prescribed drugs, considered experimental or investigational by the U.S. department of health and human services, including the medicare program, or the department's designated review organization or procedures and items approved by the U.S. department of health and human services for use only in controlled studies to determine the effectiveness of such services.

Subsections (2)(e)(ii) through (38) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 MCA

46.12.583 ORGAN TRANSPLANTATION, DEFINITIONS Subsection (1) remains the same.

(2) ~~"Procedure" refers to an operation~~ Organ transplantation includes the transplant surgery and those activities directly related to the transplantation. These activities must be performed at a transplant facility if required by medicare. These activities include:

Subsections (2)(a) through (2)(d) remain the same.

(3) ~~"Heart t~~Transplant facility" means a medical facility which:

(a) has received medicare certification as a ~~heart~~ transplant facility, unless medicare does not certify facilities to perform transplants of a particular organ or system; and

(b) participates in the Montana medicaid program.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 MCA

46.12.584 ORGAN TRANSPLANTATION, REQUIREMENTS

(1) This rule provides the requirements for medicaid coverage of organ transplantations. The requirements in this rule are in addition to those contained in ARM 46.12.301 through 46.12.~~308~~309.

(2) General requirements for medicaid coverage of organ transplantations are as follows:

Subsection (2)(a) remains the same.

(b) Prior authorization for referral to an out-of-state facility for an evaluation and organ transplantation must be obtained from the department or its designated review organization.

Subsection (2)(c) remains the same.

(d) The medicaid program covers only the following organ ~~Covered~~ transplantation services, ~~as described in~~ subject to the provisions of subsections (2)(e) and (2)(f) ~~of this rule, are~~:

(i) allogenic and autologous bone marrow;

(ii) liver ~~transplantation for children under the age of 18 years~~;

Subsections (2)(d)(iii) through (2)(d)(vii) remain the same.

(e) For purposes of more specifically defining coverage or non-coverage of various types of organ transplantations, including bone marrow, liver, kidney/renal, pancreas and neurovascular, the department hereby adopts and incorporates by reference the following sections of the ~~H~~health ~~I~~insurance ~~M~~manual 10 and federal register notices published by the health care financing administration of the United States department of health services. A copy of the cited sections of the ~~H~~health ~~I~~insurance ~~M~~manual 10 and federal register notices may be obtained from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(i) Section 35-30, as amended through ~~June 1985~~ April 28, 1989, defining coverage of allogenic ~~bone marrow transplantation~~ and ~~non-coverage of~~ autologous bone marrow transplantation.

(ii) ~~Section 35-53, as amended through July 1984~~ Final notice published at volume 56 of the federal register, no. 71, pages 15006 through 15018 dated April 12, 1991, defining coverage of liver transplantation ~~with respect to children under the age of 18 years~~.

Subsections (2)(e)(iii) through (2)(e)(viii) remain the same.

(f) For coverage of heart transplants, the department hereby adopts and incorporates by reference the criteria published in volume 52, no. 65 of the federal register of

Monday, April 6, 1987, at pages 10935 through 10951. The medicare limit of one year reimbursement for immunosuppressive drugs does not apply to this rule. A copy of pages 10935 through 10951 of the federal register dated April 6, 1987, may be obtained from the Department of Social and Rehabilitation Services, ~~Economic Assistance~~ Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 MCA

3. The proposed rule changes are necessary to implement those provisions of 53-6-101, MCA which give the department the authority to establish the scope and medical necessity of services provided by the medicaid program.

The proposed changes to ARM 46.12.102 are necessary to clarify that the term "experimental" services includes services considered either experimental or investigational by the United States Department of Health and Human Services, including the medicare program. These terms are synonymous for purposes of medicare coverage determinations.

The proposed changes to ARM 46.12.583 are necessary to clarify definitions relating to organ transplantation, particularly to clarify that organ transplantation must be performed at a medicare-certified transplant facility. This requirement would not apply if medicare does not certify facilities to perform the type of transplant in question. Changes to this section are also necessary to limit definitions to terms used elsewhere in the transplant rules.

The proposed changes to ARM 46.12.584 are necessary to update the department's rules to adopt medicare coverage changes with respect to liver and autologous bone marrow transplantation. This change will allow life-saving medical treatment for a small number of medicaid recipients. Other changes to this section are necessary to update incorporations by reference of medicare policy statements regarding liver and autologous bone marrow transplantation, to standardize terms used in the transplant rules, to correct an erroneous citation to other department rules, to rewrite sections (2)(d) and (e) for clarity, and to update the reference to the department division from which incorporated materials may be obtained.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than October 10, 1991.

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

Julia E. Rolene
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1991.

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

In the matter of the amendment of rule 16.24.104 concerning eligibility requirements for the handicapped children's services program	)))))	NOTICE OF AMENDMENT OF RULE (Handicapped Children)

To: All Interested Persons

1. On July 25, 1991, the department published notice at page 1184 of the Montana Administrative Register, Issue No. 14, to consider the amendment of the above-captioned rule which concerns eligibility requirements for the services offered by the handicapped children's services program.

2. The department has amended the rule as proposed with no changes.

DENNIS IVERSON, Director

Certified to the Secretary of State September 3, 1991

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

In the Matter of Adoption of New Rules Pertaining to the New Class E Motor Carrier Status (transportation of logs) and Amendment of Existing Rules to Accommodate the New Class E Motor Carrier Status.	)))))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH XV AND AMENDMENT TO RULES 38.3.401, 38.3.402 38.3.702 AND 38.3.2001

TO: All Interested Persons

1. On June 27, 1991 the Department of Public Service Regulation published notice of the proposals identified in the above titles at page 982, issue number 12 of the 1991 Montana Administrative Register.

2. The Department has adopted the following rules as proposed:

RULE II. 38.3.1402 APPLICATIONS FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS -- DEFINITIONS

RULE III. 38.3.1403 APPLICATIONS FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS -- MINIMUM PROOF REQUIRED

RULE IV. 38.3.1406 CONTRACT FOR CLASS E SERVICES

RULE VII. 38.3.1409 CONTRACT FOR CLASS E SERVICES -- CONTINUING PERFORMANCE, MULTIPLE LOADS

RULE IX. 38.3.1414 CLASS E USUAL BUSINESS OPERATION

RULE X. 38.3.1415 CLASS E REGULAR BASIS

RULE XI. 38.3.1416 RETAINING CLASS E CERTIFICATE

RULE XII. 38.3.1417 OTHER CIRCUMSTANCES ALLOWING RETENTION OF CLASS E CERTIFICATE

RULE XIII. 38.3.1418 CLASS E REPORTS

RULE XIV. 38.3.1419 ADDITIONAL INFORMATION REQUIRED BY THE COMMISSION

RULE XV. 38.3.1420 SHOW CAUSE ORDER

38.3.401 COMPLETION OF APPLICATIONS

38.3.402 APPLICATION FEES

38.3.702 BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE

38.3.2001 LEASING OF POWER EQUIPMENT - GENERAL

3. The Department has adopted and amended the rules as proposed with the following changes:

RULE I. 38.3.1401 APPLICATION FOR CLASS E AUTHORITY ON PROOF OF BEING ENGAGED IN THE BUSINESS (1) and (2) No changes.

(3) An application must be legibly and fully completed, signed, notarized, and accompanied by the required fee of $25 ~~$100~~. Incomplete applications will not be processed by the commission.

(4) No changes.

RULE V. CONTRACT FOR CLASS E SERVICES -- DEFINITIONS
Not Adopted.

RULE VI. 38.3.1408 CONTRACT FOR CLASS E SERVICES -- REQUIRED PROVISIONS (1) (a) through (c) No changes.

(d) the name, address, and phone number of the party (shipper) engaging the services of the class E carrier;

(e) the duties of the class E motor carrier including the place of loading, ~~any special conditions of loading,~~ the route demanded for transportation, and ~~any special conditions of the route demanded,~~ the place of unloading~~; and any special conditions of unloading;~~

(f) through (h) No changes.

(2) The requirements of (1)(f), rates, may be set forth by written appendix to the contract. Such appendix shall be subject to inspection by the commission, but is not subject to ARM 38.3.1410.

RULE VIII. 38.3.1410 CONTRACT FOR CLASS E SERVICES -- DOCUMENTATION (1) through (2)(a) No changes.

(b) a contract record card on a form approved by the commission for this purpose and showing the name of the carrier and shipper, loading and unloading points, routes demanded, date signed card and date of performance.

4. Written and oral comments to the proposals were received. Written comments were received from: Vernon and Dorothy Fredricks, Kila, MT; Richard Coverdell, Columbia Falls, MT; Edward Schrader, Libby, MT; Gordon Sanders for Champion International, Missoula, MT; Jeanette Hahn, Bozeman, MT; and Jerry Boggess, Missoula, MT. Written and oral comments were received at the public hearing from: Sherman Anderson, Deer Lodge, MT, President of and for the Montana Logging Association; Jacque Christofferson, Missoula, MT; Lyle Doty, Kalispell, MT, President of and for the Montana Log Truckers Association; and Representative Dave Wanzenried, Kalispell, MT, sponsor of HB 192, log haul regulation. Oral comments were received at the public hearing from: Bart Cooper, Boulder, MT; Pete Merkes, Elliston, MT; Bill Leaphart, Helena, MT, attorney for the Montana Log Truckers Association; Larry Copenhaver, Seeley Lake, MT; Karen Elliot, Bozeman, MT; Harold Ostler, Helmsville, MT; Arvon Fielding, Kalispell, MT; R.T. Adkins, Kalispell, MT; Don Allen, Helena, MT, Executive Vice President of and for the Montana Woodproducts Association; Ed Hankinson, Kalispell, MT; Clarke Russell, Elliston, MT; Gene Phillips, Kalispell, MT, attorney for Montana Logging Association; Doug Mote, Helena, MT; Carol Williams, Livingston, MT; George Booth, Thompson Falls, MT; Harold Williams, Livingston, MT; Charles Keller, Kalispell, MT; Harley Jones, Missoula, MT; and Virgil Stahl, Libby, MT. Unless otherwise noted above, all persons commenting were log haulers or loggers or both or were engaged in some aspect of the logging or log processing industry. One or more of the persons commenting commented as follows. All comments have been considered by the Department, are summarized below, and are ruled upon as indicated.

COMMENTS (legislative intent): A number of persons commented on legislative intent. The most prevalent comment in

this regard was that the legislature intended to preserve traditional business relationships in the log hauling industry. Other comments included an intent to stop undercutting (one carrier agreeing to haul for less than another, even if the rate is less than compensatory, simply to get the job), intent that the PSC not be in the rate business, intent not to require written contracts and an intent that oral agreements are legal, and an intent that there be written contracts and that the PSC's regulatory role be directed primarily at the written contracts.

RESPONSE: With all respect, the comments on legislative intent are overruled. The PSC determines that the language of the statutes regulating the transportation of logs is clear and unambiguous in all relevant parts pertaining to the proposed rules. The intent of the legislature can be determined from the plain words used and it takes no extrinsic proof or comment to determine the goals, directions, and authority that the PSC is charged with. It is unnecessary, if not improper, to consider comments on intent of the legislature in this matter. When the intent of the legislature can be determined from the plain meaning of the words utilized in a statute, one will not go further and apply any other means of interpretation. See, Phelps v. Hillhaven Corp., 231 Mont. 245, 251, 45 St. Rptr. 582, 586, 752 P.2d 737, 741 (1988). Additionally, so there is no doubt about it, in regard to legislative intent in general, the PSC determines that, from the plain meaning of the words used in HB 192, now Ch. 481, L. 1991, the transportation of logs is to be regulated by the PSC as an integral part of its regulation of motor carriers under Title 69, Chapter 12, MCA. Incorporated into this regulation is all applicable laws including statutes and rules and case law and administrative rulings interpreting and applying the same. In this regard the PSC is also fully cognizant that the regulation of Class E motor carriers is subject to specific provisions unique to it, just as are other classes of motor carriers.

COMMENTS (regulation in general): A number of comments were received that pertain to regulation in general or the administrative or procedural aspects of regulation. Several persons commented that they did not receive information. Several persons commented that the PSC should be sure to send all necessary forms and paperwork to all persons. A number of persons commented that regulation should be kept simple, and the PSC should not become involved more than necessary. Some persons are opposed to any regulation, feeling that the regulation is more paperwork and the privilege of paying for what has been done for years, is not needed, will put the independent logger and hauler out of business, is just more red tape, or that competition keeps logging alive and prices down and that the rules might compound rather than solve problems. Some commented that there is unneeded paperwork or duplication of paperwork. One felt that the PSC could obtain all necessary information by merely going to the "state computers." At least one was concerned about the PSC's power to take away a

right to do business. At least one felt that safety in hours of work should be regulated.

RESPONSE: In regard to not receiving information, the legal requirement for notice of administrative rules is that the rules be published in the Montana Administrative Register and mailed to all persons properly requesting notice. See, Section 2-4-302, MCA. As a matter of courtesy the PSC does make every attempt to compile a complete mailing list of interested persons. However, log haulers are new to the PSC and it is difficult, if not impossible, to discover all potential interested persons in such case. The PSC will continue to attempt to reach all interested persons. As regulation proceeds, the PSC will develop a more complete mailing list. However, it is now, and will remain, the responsibility of interested persons to take the proper steps to know the law, monitor activities of concern, and obtain necessary forms. In regard to regulation of log haulers, the PSC will make every attempt to keep it as simple as possible. However, regulation now exists by law, duties have been imparted, and there is nothing that will change this short of court action for cause or subsequent legislation. So long as the law directs regulation of log haulers and places that responsibility with the PSC, the PSC will so regulate. In regulation a certain amount of paperwork is necessary and a certain amount of information is required. In regulation a certain amount of authority is necessary and it includes authority to revoke certificates. This, however, is not exercised without considerable thought and due process. In regards to safety in hours of work, such is not presently within the authority of the PSC.

COMMENTS (Rule I and ARM 38.3.402, fees): Several persons commented that the fee for grandfather application is too high. Suggestions for a fee centered on one in the $25 range. Reasons given included that the PSC's oversight is minimal. One person extended the comment to ARM 38.3.402, standard application fees.

RESPONSE: The PSC does not view its regulatory role in regard to Class E motor carriers as involving minimum oversight. However, the PSC anticipates a smooth transition for log haulers into motor carrier regulation under the grandfather provision. Although the extent of PSC activity necessary in this area is unpredictable with absolute certainty, it is expected to be minimal. The comments on reducing the fee for grandfather applications are granted and the fee is reduced to $25. The contrary is true for standard applications governed by ARM 38.3.402, and the comment is overruled as it pertains to this provision.

COMMENTS (Rules I through III, "grandfather" and meaning of authority in general): Several persons asked or commented on whether a logger who purchases timber and owns and operates trucks has to have a Class E authority. Some persons commented that loggers and other prime contractors should be permitted to hold authority. Several persons commented that the grandfather provisions should be applied generously, particularly for those presently incidentally engaged. One person

commented that loggers, mills, and others similarly situated should be able to obtain Class E authority if the criteria is otherwise met. Several persons commented that "incidental" and "incidentally engaged" should be defined. Several commented that the rules limit the ability to earn a living for those incidentally engaged. One person asked whether the October, 1991 deadline could be extended to permit more opportunity to engage in the transportation of logs (presumed to have meant extended for loggers or other primary contractors contractually bound to other functions during the grandfather period). Several noted that the PSC should be sensitive to traditional business relationships. One person asked whether, given the effective date of January, 1992, the rules statement that grandfather applications may be made until October, 1992 is in error. One person suggested a separate test for carriers and loggers or those incidentally engaged. Some persons expressed that the grandfather provisions place too much emphasis on conforming Class E to other motor carrier classifications. Some believe the requirements are too strict, suggesting that if one owns a truck and holds himself or herself out as a carrier it is not merely a "hobby." Others commented that the requirements are too lenient and suggested 40-60 percent of income, six months in business, or 150 loads for the qualifying period. There were several comments that out-of-state log haulers have been recently operating in Montana to qualify for grandfather entry. One person suggested that there be an entry residency requirement. Most persons expressing a view on the point felt that new entries should not be allowed in, commenting that the provisions are too lenient in allowing new entries equal access with long time experienced carriers. One person commented that the rules should clarify that the authority under the grandfather provisions is statewide.

RESPONSE: It is generally the case that motor carrier laws, including Class E provisions, do not apply to one transporting his or her own property or transporting property in the furtherance of his or her primary nontransportation business. Although each case must be evaluated on its own facts, it appears that loggers are engaged in a primary nontransportation business to which transportation is merely incidental. If this is the case, loggers are not required to have authority to transport in furtherance of their logging business. The PSC respectfully overrules all comments that those presently engaged in transportation incidental to their primary nontransportation business should be permitted to qualify for a Class E authority. Such activity is not "engaged in the business" within the scope of Ch. 481, L. 1991. "Incidental" and "incidentally engaged" need not be defined by rule as they are terms with an established meaning in motor carrier regulation. However, in general terms, "incidental" means in the scope of a nontransportation business, done in furtherance of a nontransportation business, and clearly subordinate in relation to the principal nontransportation business. See generally, In the Matter of the Department of Commerce, et al., ¶¶ 37 through 47, PSC Docket No. T-9597 (1991). The PSC

cannot extend the October, 1991 deadline as it is fixed by statute. The rule's reference to October, 1992 as being the final date for application under the grandfather provision is correct. See, Section 9, Ch. 481, L. 1991. The standards for the grandfather provision will remain the same, the primary reason being that Section 9, Ch. 481, L. 1991, only requires an applicant to be engaged in the business at any time during the required period. There is no compelling reason to view this language as meaning anything but intending a liberal grant for those so engaged. The PSC does intend to require, by the minimum proof set forth, evidence that in reality the applicant is truly engaged in the business. In regard to out-of-state haulers, in most cases and certainly in the case of Class E motor carriers, the Federal Constitution (equal protection) prohibits residency requirements. The rules need not clarify that the grandfather authority is statewide because such is mandated by statute anyway.

COMMENTS (Rules IV through VIII, contracts): One person commented that no written contract is required, another commented that it is an absolute requirement. A number of persons expressed concerns about the contract rate being disclosed as part of a contract subject to public scrutiny. The concern here is based on privacy and competition. Suggestions to resolve the problem included having a master contract summarized without rates or a contract with an appendix of rates not public. Some persons thought that carrying the contract was unnecessary and would require a file cabinet in the power unit. There is an apparent lack of clarity in Rule V and VI's "ordinary" and "special conditions," as a number of persons commented that these should be clarified. Several persons asked that Rule VIII's "contract record card" be explained. One person commented that time of performance should be whenever God and mother nature allow it. One person commented that the "contract before performance" provision might be unworkable under circumstances where business is done by phone and particularly where a self-loader is involved. There is also apparently a general uncertainty in the contract rules. One person asked whether there must be a separate contract for each load or whether there can be a master contract. Another asked for clarification on whether a contract can allow for different or several loading or delivery points. One person commented that a carrier might haul for more than one shipper in a day. A number of persons commented that "shipper" be defined, however it is fairly clear from the discussions and presentations that the request is that the shipper be designated or prescribed. The shipper of choice appears to be the owner of the logs, but some persons did suggest that it be the mill or the one that takes the logs off the truck. Others are opposed to the owner of the logs being the shipper, maintaining that title to logs is not always clear in any given case. One person advised that title to logs is governed by the Uniform Commercial Code, but can be varied by agreement. From the comments received there is apparently some reluctance to contract

with log haulers for fear of liability. Several persons cautioned that care should be taken in the contract provisions not to create an employment situation and not to violate the conventional test of "control." In regard to the owner of logs or the mills being the contracting party, one person commented that the logger can still choose a carrier but it would have to be one contracting with the owner and the question of liability does not exist as an exemption from coverage or coverage can be required by the owner. One person commented that the present common situation where the mills or owners contract with a logger, who may contract with a loader, who contracts with the carrier has too many people involved. A suggestion was made that all parties' signatures be on the log hauling contract.

RESPONSE: The comment that no written contract is required is overruled. The law is clear that Class E carrier contracts must be in writing. See, Sections 7 and 8, Ch. 481, L. 1991. The comments concerning the disclosure of rates in "public" contract documentation are granted and the rule has been changed accordingly. The PSC believes that the rules do not require the carrying of the contract as there is a provision for a contract record card option. The comments concerning further definition of "ordinary" and "special conditions" are granted. It is obvious that the terminology is problem ridden and is removed from the rules. The comments concerning "contract record card" are granted and the rules are amended to accommodate these concerns. The comment concerning time of performance is overruled. There is actually a great deal of truth concerning God and mother nature controlling performance of certain contracts. "Acts of God" and weather can be legally recognized impossibilities of performance. However, it is unnecessary and impractical to codify the details of these as being required provisions of Class E contracts. The comment concerning the "contract before performance" provision is overruled as Section 7, Ch. 481, L. 1991, is clear in its requirement that there be a contract before the carrier picks up the load. There must be a contract for each and every load, however it does not have to be a separate contract. One contract can govern a number of loads and varying pickup and delivery points. All comments concerning designating the shipper are overruled. In law the shipper is the one contracting with the carrier. The PSC has no authority to proscribe or prescribe who this is. However, Rule VI has been amended to clarify the meaning of "shipper."

COMMENTS (rates): Comments were made that the legislature did not allow the PSC to set rates. Comments were made that the legislature mandated the PSC to set rates. One person commented that Section 7, Ch. 481, L. 1991, mandates the setting of rates. Comments were made that the PSC has discretion to set rates. The most prevalent comment was that the PSC should set a fair and compensable minimum or base rate. The recommended rate is a base rate on tons per mile with adjustments for road classifications and load and right-of-way limits. Example rates and formulas were submitted. One person commented that the rate should be required to be paid with-

in 10 days with a 12 percent annual penalty for late payment. From the comments it appears that there are at least two problems causing the expressed need for set rates. One is undercutting, hauling at less than compensatory rates. The other is skimming, prime contractors agreeing to rates for transportation with the owners, but paying the subcontracting carrier less and "skimming" the profit. One person asked whether the PSC endorses skimming. One person commented that the PSC cannot implement Section 3, Ch. 481, L. 1991, without first defining "best interests of public transportation."

RESPONSE: The comments regarding no authority in the PSC to set rates and the comments regarding a legislative mandate to the PSC to set rates are respectfully overruled. Particularly in regard to Section 7, Ch. 481, L. 1991, there is no mandate to set rates -- this provision only requires that one of the terms of the contract be the rate to be charged and has nothing to do with what the rate will be. Section 3, Ch. 481, L. 1991, provides the PSC's authority to set rates. It allows the PSC, in its discretion, to set minimum or maximum rates or both when the same are required for the best interests of public transportation. The PSC sees no compelling reason to further define "best interests" as the meaning is self-evident in motor carrier law. In regard to "skimming," the PSC has no control over it under the circumstances in which it exists today. This would change, to a certain degree, if there were rate regulation in effect. The PSC also determines that if it will set a rate, such must be done in a separate proceeding -- set rates were not the subject of this proceeding and cannot result from it.

COMMENTS (Rules IX through XV, "use it or lose it" and reporting): One person asked whether a Class E carrier would have to carry on demand or lose the authority. Apparently the concern is being required to carry for an unsuitable shipper. Several persons commented that down times or seasons should be considered in the retention of authority provisions. Apparently there are times or seasons or years when log hauling is not in demand and, to keep the power unit producing, conversion is made for other loads during such times. Several persons commented that Rule IX's "incidental," and Rule XIV's "additional information," should be defined. One commented that Section 7, Ch. 481, L. 1991's "uniform system of accounts" should be described or identified. Some persons thought that the retention rules are too strict and merely owning a truck and holding out as a carrier is not a "hobby." One commented that the $5,000 requirement is a "hobby." At least one person supported the 20 load, $5,000 standard. One commented that 20 loads can be hauled in three days and suggested that the standard be 100 percent of the income. Several persons suggested that the standard be 50 percent of the income in 12 months or 18 months. On reporting, several persons commented that financial disclosure should be kept to a minimum. One person commented that reports should be done in September, not during spring breakup.

RESPONSE: The question of whether a Class E carrier must haul on demand will have to be answered later. An answer is unnecessary for purposes of this proceeding. The PSC believes, however, that if a carrier complies with all appropriate procedures to obtain reasonable assurance from a shipper and the shipper cannot comply, carriage need not occur. In regard to considering down times for purposes of retaining authority, no fixed rule can establish firm criteria -- the rules accommodate special circumstances and each case will have to be decided on its own facts. Rule IX's "incidental" need not be further defined as it has an established meaning in motor carrier law. Rule XIV's "additional information" cannot be clarified in the rules and provides the flexibility necessary to accommodate the purpose. Section 7, Ch. 481, L. 1991's "uniform system of accounts" is available to all motor carriers by PSC forms. All comments concerning the standard for retention of authority are overruled -- there is no compelling reason to amend the proposed standard to any other standard. In regard to financial disclosure, the PSC will not require any information it does not need to fulfill its regulatory role. However, the necessary information will include financial information and such will be public record. The date for filing reports is fixed by statute and cannot be amended by rule.

COMMENTS (ARM 38.3.2001, leasing): Several persons commented that ARM 38.3.2001 is too concerned with individual business relationships. Several persons thought that the owner operator's name should be allowed to remain on the power unit.

RESPONSE: ARM 38.3.2001 is amended in this proceeding for the sole purpose of accommodating Class E carriers into the existing rules of the PSC. Its substantive requirements of this rule are merely a restatement of Section 69-12-211, MCA, and cannot be changed. The comments are respectfully overruled.

COMMENTS (miscellaneous): Some persons commenting felt that the elimination of the commonplace subcontracting is disruption of traditional business relationships. Several persons commented that each truck should have authority. There is some feeling that too many trucks has caused the industry's problems. One person asked what would happen in an emergency where a load of logs was dumped on a highway and a carrier with a self-loader was called to assist but had no contract.

RESPONSE: In regard to subcontracting the PSC does not agree that it is being eliminated so long as each person doing a regulated haul is certified as a Class E carrier. Insofar as each truck having to have authority, such is not a characteristic of motor carrier regulation or the scheme of Class E regulation provided by statute. In regard to there being too many trucks, it is quite possible that it is a cause of industry problems. Concerning the emergency situation of an accidental dumping of logs, the PSC believes that the person called to retrieve the logs operates as a Class E carrier only after reaching the first reasonable point after the emergency

at which the logs can be transferred to the contracting carrier or a new contract be made.

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 27, 1991.

Reviewed By:
Robin A. McHugh
Chief Legal Counsel

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

In the matter of the amendment of Rules 46.10.314 and 46.12.3402 pertaining to assignment of child support/ medical support rights	)))))	NOTICE OF THE AMENDMENT OF RULES 46.10.314 AND 46.12.3402 PERTAINING TO ASSIGNMENT OF CHILD SUPPORT/ MEDICAL SUPPORT RIGHTS

TO: All Interested Persons

1. On July 11, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.10.314 and 46.12.3402 pertaining to assignment of child support/medical support rights at page 1135 of the 1991 Montana Administrative Register, issue number 13.

2. The Department has amended Rules 46.10.314 and 46.12.3402 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: It has been noted that the Department's statement of reasonable necessity was overly technical and difficult to understand.

RESPONSE: This rule amendment is necessary to comply with section 1912 of the Social Security Act (42 USC 1396k) and 42 CFR 435.604, which require recipients of Medicaid to assign their rights to medical support to the agency administering the Medicaid program and to cooperate in establishing paternity and obtaining medical support. The current rule requires persons receiving both cash assistance and Medicaid benefits under the Aid to Families with Dependent Children (AFDC) program to assign their rights to child support to the Department but imposes no requirement on persons receiving only Medicaid and not cash assistance through the AFDC Program. The amended rule requires recipients of AFDC-related Medicaid only benefits to assign their right to medical support to the Department and to cooperate in establishing paternity and obtaining medical support.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1991.

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

In the matter of the amendment of Rule 46.10.404 pertaining to Title IV-A day care increase	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.404 PERTAINING TO TITLE IV-A DAY CARE INCREASE

TO: All Interested Persons

1. On July 25, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.404 pertaining to Title IV-A day care increase at page 1206 of the 1991 Montana Administrative Register, issue number 14.

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

46.10.404 TITLE IV-A DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Subsections (1) through (2)(g)(ii) remain as proposed.

(~~j~~h) Title IV-A day care is available only for care provided ~~in~~ by licensed or registered day care facilities ~~only~~ or by a day care provider who is legally operating pursuant to Montana law as set forth in 52-2-703 (2)(a) and (b) and 52-2-721(1)(a) and (b), MCA. Title IV-A payments are available for in-home care furnished by a provider who is licensed or registered or is not required to be licensed or registered, including care provided by a person related to the child by blood or marriage. However, no payments shall be made to any person who is in the AFDC assistance unit for which care is being provided OR WHOSE INCOME IS DEEMED TO THE ASSISTANCE UNIT (FOR EXAMPLE, A STEPPARENT).

Subsection (2)(i) remains as proposed.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 and 53-4-716 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: It has been noted that the proposed amendment would allow payments to a stepparent who is providing in-home care for a stepchild.

RESPONSE: The Department is changing ARM 46.10.404(2)(h) to exclude payments to any person whose income is deemed to the assistance unit, such as a stepparent.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1991.

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

In the matter of the amendment of Rules 46.25.725, 46.25.726 and 46.25.744 pertaining to general relief medical income and resources	)))))	NOTICE OF THE AMENDMENT OF RULES 46.25.725, 46.25.726 AND 46.25.744 PERTAINING TO GENERAL RELIEF MEDICAL INCOME AND RESOURCES

TO: All Interested Persons

1. On July 25, 1991 the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.25.725, 46.25.726 and 46.25.744 pertaining to general relief medical income and resources at page 1209 of the Montana Administrative Register, issue number 14.

2. The Department has amended Rules 46.25.725, 46.25.726 and 46.25.744 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: The Department's statement of reasonable necessity indicates that ARM 46.25.725 and 46.25.744 are being amended in order to incorporate into rule the Department's long-standing policy of disallowing depreciation as a deduction in computing self-employment income. A comment was received noting that the Department ought not to have any unwritten policies but should incorporate into the administrative rules all policies related to the determination of eligibility for General Relief Assistance.

RESPONSE: The Department does not address in rule matters on which the statute is clear. The issue of depreciation was not previously addressed in the rules because it was felt that the statutory definition of income at 53-3-109(7), MCA, was sufficiently clear without further elucidation. The Department amended its rules to specifically state that there is no deduction for depreciation when it became apparent that there was confusion on this point.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1991.

VOLUME NO. 44 OPINION NO. 19

SOLID WASTE - Issuance of revenue bonds payable from service charges assessed by joint solid waste management district;
MONTANA CODE ANNOTATED - Section 7-13-233;
MONTANA LAWS OF 1991 - Chapter 770, sections 12, 18, 22, 23.

HELD: A joint solid waste management district may not issue revenue bonds payable from service charges placed on property tax notices to property owners and collected with property taxes.

August 23, 1991

Selden S. Frisbee
Cut Bank City Attorney
P.O. Box 1998
Cut Bank MT 59427-1998

Dear Mr. Frisbee:

You have requested my opinion on a question which I have rephrased as follows:

> May a joint solid waste management district issue revenue bonds payable from service charges placed on property tax notices to property owners and collected with property taxes?

Senate Bill (hereinafter SB) 189, passed by the Montana Legislature during the 1991 session, revises the laws relating to refuse disposal districts. SB 189 changes the term "refuse disposal" district to "solid waste management" district and authorizes the creation of a solid waste management district by resolution of the county commissioners pursuant to the procedures outlined in Title 7, chapter 13, part 2 of the Montana Code Annotated. 1991 Mont. Laws, ch. 770. It additionally allows for the creation of joint districts made up of two or more counties for the purpose of providing solid waste management for those counties involved in the joint district. 1991 Mont. Laws, ch. 770, § 18.

Your question refers specifically to the issuance of revenue bonds payable from service charges assessed by a joint solid waste management district. Section 12 of SB 189 amends section 7-13-233, MCA, and authorizes a solid waste management district to assess a service charge and to collect the amount of the service charge by either (1) causing the service charge to be placed on the property tax notices and collected with the property taxes or (2) establishing a separate system for collecting the service charges, allowing collection of the fees

more frequently than is provided for in the collection of property taxes. 1991 Mont. Laws, ch. 770, §§ 12, 22.

Section 23 of SB 189 authorizes a joint district to borrow money and to issue revenue bonds under the following conditions:

> (1) A joint district may borrow money for any purpose provided in [sections 17 through 26] and issue bonds, including refunding bonds, in a form and upon terms as it may determine, payable from any revenue of the joint district, including revenue from:
>
> (a) service charges authorized in [section 22] that are collected other than through tax notices and a lien upon property;
>
> (b) grants or contributions from the state or federal government; or
>
> (c) other sources.
>
> (2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.
>
> (3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in [sections 17 through 26], bonds issued pursuant to [sections 17 through 26] by a joint district may be payable in principal and interest solely from revenues of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.
>
> ....
>
> (5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from

> any revenue referred to in [sections 17 through 26] prior to the payment of current costs of operation and maintenance of the solid waste management system. [Emphasis added.]

1991 Mont. Laws, ch. 770, § 23.

Section 23 provides that a joint district may borrow money and issue revenue bonds for any purpose provided in sections 17 through 26. Section 23(1) provides that the obligations and bonds are payable from any revenue of the joint district and then provides a nonexhaustive list of the particular kinds of revenue from which the bonds are payable. The language used in section 23(1)(a), however, is restrictive in nature. It provides that a district may use revenue from service charges authorized in section 22 that are collected other than through tax notices and a lien upon the property. 1991 Mont. Laws, ch. 770, § 23(1)(a).

The fundamental rule of statutory construction is that the intention of the Legislature controls. § 1-2-102, MCA; Missoula County v. American Asphalt, Inc., 216 Mont. 423, 426, 701 P.2d 990, 992 (1985). The phrase "other than through tax notices and a lien upon the property" was intentionally added to section 23(1)(a) by the Montana Legislature. See Free Conference Committee on Senate Bill No. 189, Report No. 1, April 23, 1991. Even though section 23 contains language which initially indicates that the revenue bonds or other obligations are payable from any revenue source, the effect of section 23(1)(a) is to specifically exclude as a revenue source those service charges which are collected through tax notices and a lien upon property. When general and particular provisions of a statute are inconsistent, the particular takes precedent over the general. City of Billings v. Smith, 158 Mont. 197, 211, 490 P.2d 221, 229 (1971).

Although section 23(1)(a) prohibits as a source of payment for revenue bonds those service charges that are collected through tax notices, there is no such prohibition on the use of service charges collected through other methods. As already noted, section 12 of SB 189 permits a waste management district to collect service charges by means other than by placing the charge on property tax notices. Such charges, if not paid, become delinquent and a lien on the property subject to the same penalties and rate of interest as property taxes. There is nothing in SB 189 which suggests that service charges, other than those collected through property tax notices, may not be used as a source of payment for revenue bonds issued by the district. With respect to revenue from liens, pursuant to section 23(1)(a) of SB 189 the only revenue derived from a lien that may not be used for payment of revenue bonds is that which results from failure to pay service charges through property tax notices.

In light of the above discussion, it would appear that the intent of the Montana Legislature was to authorize a joint solid waste management district to issue revenue bonds, but to exclude those service charges which are collected through tax notices as a possible revenue source from which revenue bonds are payable.

THEREFORE, IT IS MY OPINION:

> A joint solid waste management district may not issue revenue bonds payable from service charges placed on property tax notices to property owners and collected with property taxes.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 20

ELECTIONS - Submission of ballot issue at primary election;
INITIATIVE AND REFERENDUM - Submission of ballot issue at primary election;
MONTANA CODE ANNOTATED - Sections 13-1-101, 13-1-104, 13-1-107, 13-27-104, 13-27-310(2), 13-27-311(1), 13-27-410(1);
MONTANA CONSTITUTION - Article II, section 2; Article III, section 6; Article XIV, sections 8, 9;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 50 (1982), 19 Op. Att'y Gen. No. 412 (1942).

HELD: A constitutional amendment proposed by initiative pursuant to Article XIV, section 9, of the Montana Constitution may be submitted to the voters at a regular statewide primary election.

August 30, 1991

The Honorable Mike Cooney
Secretary of State
State Capitol
Helena MT 59620

Dear Mr. Cooney:

You have requested my opinion on the following question:

> May an initiative for a constitutional amendment be submitted to the voters at a statewide primary election?

Your inquiry arises out of the presentation by the Montana Shooting Sports Association of an initiative petition which would amend the Montana Constitution to guarantee individuals a right to hunt game animals. The Association has requested that the petition be processed in time for the measure to be placed on the ballot for the statewide primary election to be held in June 1992.

By adoption of the 1972 Montana Constitution, the people of Montana "reserved unto themselves the exclusive right of governing themselves, and to alter or abolish the constitution whenever they deemed it necessary." State ex rel. Montanans for the Preservation of Citizens' Rights v. Waltermire, 231 Mont. 406, 412, 757 P.2d 746, 750 (1988); 1972 Mont. Const. Art. II, § 2. Amendment of the Constitution by initiative is expressly permitted by Article XIV, section 9, which provides:

> (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed

by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise. [Emphasis added.]

Resolution of your inquiry turns on the meaning of "next regular state-wide election" as used in section 9(2) of Article XIV.

When construing a provision of the constitution, the same rules used in statutory construction are applied. Keller v. Smith, 170 Mont. 399, 404, 553 P.2d 1002, 1006 (1976). In either case, the intent of the framers is controlling. Id. at 405. "Such intent shall first be determined from the plain meaning of the words used, if possible, and if the intent can be so determined, the courts may not go further and apply any other means of interpretation." Id. In construing statutes or constitutional provisions, words employed should be given such meaning as is required by the context, and as is necessary to give effect to the purpose of the provision. In re Shun T. Takahaski's Estate, 113 Mont. 490, 129 P.2d 217, 220 (1942). Finally, "[l]egislative intent must be ascertained from an examination of all of the statutes on one subject matter as a whole, not just the wording of one particular section." 39 Op. Att'y Gen. No. 50 at 193 (1982) (quoting Vita-Rich Dairy Inc. v. Department of Business Regulation, 170 Mont. 341, 533 P.2d 980, 984 (1976)).

The term "regular state-wide election," as used in Article XIV of the Montana Constitution, has not been interpreted by the Supreme Court of Montana. See Marbut v. Secretary of State, 231 Mont. 131, 752 P.2d 148, 151 (1988) (expressing "no opinion" as to whether "regular state-wide election" includes a statewide primary). The meaning of "regular election" has, however, been analyzed by the courts of many other states. Generally speaking, "[a] regular election is an election which recurs at stated intervals as fixed by law." Robb v. City of Tacoma, 175 Wash. 580, 28 P.2d 327, 332 (1933). "The word regular means conformable to an established rule, law, or principle, and the

exact literal signification [sic] of the phrase 'next regular election,' is the next election held conformable to established rule or law." State ex rel. Watson v. Cobb, 2 Kan. 32, 54 (1863).

As applied to elections, "regular" is often used interchangeably with "general," both as distinguished from a "special" election. See 25 Am. Jur. 2d Elections § 3, at 692 (1966). "Any election which is not regularly held for the election of officers, or for some other purpose which shall come before the electors at regular fixed intervals, is necessarily a special election." Robb, 28 P.2d at 332.

Some courts have found that the term "regular election" does not embrace a primary election. For example, in People v. Holzman, 5 Ill. 2d 405, 125 N.E.2d 498 (1955), the Supreme Court of Illinois found that a primary election for the nomination of candidates of mayor, city clerk and city treasurer, and at which aldermen were elected for their individual wards, was not a "regular municipal, judicial or other general election" as required by statute. The court first concluded that insofar as the election pertained to the selection of nominees for particular offices, it clearly was a primary election as distinguished from a general election. "It 'is an election only in the qualified sense that it is moulded, in general, on the plan of an election and is conducted as an election is conducted, but for the purpose, only, of selecting candidates of a political party, with the right in no one else to participate therein.'" Id., 125 N.E.2d at 499-500 (citation omitted).

The court further found that the selection of aldermen in particular districts did not transform the election into the "regular municipal" or "other general" election contemplated by the statute. The court reasoned:

> [In determining whether an election is special or general, r]egard must be had to subject-matter as well as the date of election. ... [I]f an election occurs throughout the state uniformly by direct operation of law, it is a general election. On the other hand, if it depends upon the employment of some special preliminary proceeding peculiar to the process which may or may not occur, and the election is applicable only to a restricted area, less than the whole state, it is a special election.

Id. at 500 (quoting Norton v. Coos County, 113 Or. 618, 233 P. 864, 866 (1925)). Because the election of aldermen was confined to their respective wards, the election was found to be a local election which did not meet the definition of "regular" or "general." Id.

Distinguishing between a "primary" and a "regular" election, the Supreme Court of North Carolina has held:

> There is a well defined distinction between a primary election and a regular election .... "A primary election is a means provided by law whereby members of a political party select by ballot candidates or nominees for office; whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, where as [sic] a regular election is the final choice of the entire electorate."

Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143, 148 (1964) (quoting Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913, 919 (1953) (construing meaning of "regular election for county officers")).

The Supreme Court of Michigan also has followed this rationale, holding that the submission at a primary election of a city charter amendment proposed by initiative petition rendered the election null and void where the statute required submission to the voters at a "regular municipal or State election." Millard ex rel. Reuter v. City of Bay City, 334 Mich. 514, 54 N.W.2d 635 (1952). "A primary election is not a regular election in any sense of the term. ... [A] primary election is merely the selection of candidates for office by the members of a political party in a manner having the form of an election." Id., 54 N.W.2d at 636.

This line of cases reflects the principle that a primary election is not an election in the true sense of the word, because primaries were unknown at common law and derived from the traditional party nominating conventions and caucuses. Therefore, the rationale for excluding "primary" from the meaning of "election" is based on the fact that an election is historically understood as the final act of the voters in casting their ballots at the polls for the election of public officers. See, e.g., In re Jamestown Caucus Law, 43 R.I. 421, 112 A. 900, 901 (1921); Walton v. Olson, 40 N.D. 571, 170 N.W. 107, 109-10 (1918); Opinion of the Justices, 295 A.2d 718, 720-21 (Del. 1972); Davis v. Delahanty, 551 S.W.2d 227, 229 (Ky. 1977); Wagner v. Gray, 74 So. 2d 89, 91 (Fla. 1954). Accord Op. Att'y Gen. No. 83-149 (Ky. 1983); Op. Att'y Gen. Mar. 17, 1982 (S.C. 1982).

> "Whether primary elections are within the intent and meaning of the term 'election,' as used in the constitutional and statutory provisions, often depends on the manner in which the term is used and the purpose of the provisions, and also on the factor

of whether primary elections were in existence at the time the provisions were adopted or enacted."

Cox v. Peters, 208 Ga. 498, 67 S.E.2d 579, 583 (1951) (quoting 29 C.J.S. Elections § 112, at 150 (1965)). Thus, it has been held that primary elections could not have been intended within the meaning of constitutional provisions regarding elections where primaries were not in existence at the time the constitution was adopted. State ex. rel. Miller v. O'Malley, 342 Mo. 641, 117 S.W.2d 319, 322 (1938).

On the other hand, the United States Supreme Court has held that, to the extent a state "has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice," constitutional rights regarding voting are equally applicable to primary elections as to general elections. United States v. Classic, 313 U.S. 299, 318 (1941). Applying this rationale, courts have held that "[p]rimary election laws and laws governing general elections are so interwoven that together they comprise the election machinery of the state, and the rights, duties, privileges, and powers granted or imposed by one are equivalent to those granted or imposed by the other, in so far as the processes of the courts may be invoked to enforce or protect them." State ex rel. Merrill v. Gerow, 79 Fla. 804, 85 So. 144, 146 (1920).

A number of courts have held that a primary election is included within the term "regular" or "general" election. In O'Connor v. Superior Court, City and County of San Francisco, 90 Cal. App. 3d 107, 153 Cal. Rptr. 306, 309 (1979), the court found that submission of a proposition at a statewide primary election was proper where the statute allowed submission "at a regular election, or a special election ... called ... for the purpose of voting on a proposition." Because a "regular election" was defined as "an election, the specific time for the holding of which is prescribed by law," the court held that a direct primary constituted a regular election. Id. Likewise, the court in Dysart v. City of St. Louis, 321 Mo. 514, 11 S.W.2d 1045, 1052 (1928), held that a primary could not be distinguished from any other regular or general election prescribed by law, since "a special election is one called for a special purpose, not one fixed by law to occur at regular intervals."

The Supreme Court of Oregon has held that where a primary election was required by law to be held biennially on a particular date, the primary election was a general election at which a proposition for the issuance of county bonds could be submitted. Taylor v. Multnomah County, 119 Or. 123, 248 P. 167, 168 (1926). A like result was reached by the Supreme Court of Nebraska, which held that a statewide primary election constituted a "general election" within the meaning of state law for the submission of bonds.

> The state-wide primary is part of the election system of Nebraska and is commonly understood to be a general election. The general law, operating automatically as to time, fixes the date of the state-wide primary without any other intervening cause. The public interest in the nomination of candidates for office is an inducement to the exercise of the elective franchise.

State ex rel. City of Lincoln v. Marsh, 107 Neb. 607, 187 N.W. 88 (1922).

Prior to adoption of the 1972 Montana Constitution, the Montana Supreme Court construed on several occasions the meaning of the phrase "general election" as used in the 1889 Constitution. In State ex rel. Diederichs v. State Highway Commission, 89 Mont. 205, 296 P. 1033 (1931), the court construed the meaning of the constitutional provision requiring submission of any debt or liability exceeding $100,000 to the people "at a general election." 1889 Mont. Const. Art. XIII, § 2. The court held: "We think, considering the subject matter of the section, the term 'general election' does not mean necessarily the general biennial election. ... We think the 'general election' named means a state-wide election at which all the people entitled to vote may vote upon a question affecting them as a whole." Id., 296 P. at 1036.

Following Diederichs, the court stated in Arps v. State Highway Commission, 90 Mont. 152, 300 P. 549, 553-54 (1931),

> that a general election "is one that regularly recurs in each election precinct of the state on a day designated by law for the selection of officers, or is held in such entire territory pursuant to an enactment specifying a single day for the ratification or rejection of one or more measures submitted to the people by the Legislative Assembly, and not for the election of any officer, ... for the election having been simultaneously held in every voting precinct of the state conclusively establishes the fact that the election was 'general,' and not 'special,' which latter term ... would appear to mean an election held in only a subdivision or a part of the state."

(quoting Bethune v. Funk, 85 Or. 246, 166 P. 931, 932 (1917)). Accord Pioneer Motors v. State Highway Commission, 118 Mont. 333, 165 P.2d 796, 800 (1946).

In addition, one of my predecessors in office held expressly that the term "next regular election" used in a statute concerning the adoption of a county manager form of government included the next primary nominating election. 19 Op. Att'y Gen. No. 412 at 696 (1942). The opinion relied on the conclusion that "[a] regular election is an election recurring

at stated times, fixed by law; while a special election is one arising from some exigency outside the usual routine." Id. Since the date of primary elections was established by law, the opinion concluded that the primary constituted a regular election within the meaning of the statute. Id.[1]

With these authorities as a backdrop, I turn to the language in question. Article XIV, section 9, is unique in its use of the term "next regular state-wide election." Of the two other constitutional provisions that pertain to submission of ballot issues by initiative or referendum, both refer to the "general election." See Mont. Const. Art. III, § 6; Art. XIV, § 8. The constitution includes several other references to the "general election," see, e.g., Mont. Const. Art. III, § 7; Art. V, § 4; Art. VI, § 2; Art. VI, § 6. It cannot be said that the framers did not contemplate the occurrence of primary elections. Article IV, pertaining to suffrage and elections, refers to "elections," with no distinction between or definition of primary and general elections. Article VI, section 2, expressly refers to primary elections in its discussion of the election of governor and lieutenant governor.

The statutes that flesh out these constitutional provisions are noteworthy in interpreting the meaning of "election." Although legislative determination of constitutional intent is not binding in the construction of constitutional provisions, it is entitled to some deference. Keller v. Smith, supra, 553 P.2d at 1007. See also Davis v. City of Berkeley, 51 Cal. 3d 227, 794 P.2d 897, 906 (1990). Section 13-1-101, MCA, includes the following definitions:

> (4) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose.
>
> ....
>
> (8) "General election" means an election held for the election of public officers throughout the state at times specified by law, ... For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1).

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[1]Although the Supreme Court of Montana has not interpreted the meaning of "regular election," it noted in Montanans for the Preservation of Citizens' Rights v. Waltermire, supra, 231 Mont. at 409, 757 P.2d at 748, that the district court had concluded that the "next regular state-wide election" contemplated by Article XIV, section 9, of the Montana Constitution included a state-wide primary election.

....

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. ...

....

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law[.]

....

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

There is no statutory definition of "regular election."

The times for holding statewide general and primary elections are specified by law. **SS** 13-1-104, 13-1-107, MCA. The provisions regarding initiative and referendum procedures do not refer to either a general or a primary election, but simply use a phrase such as "election at which they are to be voted upon by the people."[2] See **SS** 13-27-104, 13-27-310(2), 13-27-311(1), 13-27-410(1), MCA.

Of most importance to the resolution of your inquiry are the definitions of "general election" and "special election." In particular, elections on constitutional amendments submitted pursuant to Article XIV, section 9, are specifically excluded from the definition of "general election." **S** 13-1-101(8), MCA. Additionally, primary elections are specifically excluded from the definition of "special election." **S** 13-1-101(17), MCA.

Finally, the framers of the constitution obviously were aware of the existence of primary elections when Article XIV, section 9, was drafted. As noted, the constitution expressly refers to primary elections on at least one occasion. Further, state law at the time the 1972 constitution was drafted provided for the

[2]Likewise, although section 13-27-207, MCA, refers to the "general" election, I do not find that section controlling in light of other constitutional and statutory provisions, particularly since it is intended to be only an example of the form for a petition for a constitutional amendment.

regular holding of primary elections at specified times. See § 23-3301, R.C.M. 1947 (1969).

Viewing the language of Article XIV, section 9, in the context of other constitutional provisions, and giving due deference to the interpretation reflected in subsequent legislation, the conclusion is evident that the framers intended the phrase "next regular state-wide election" to be given a different meaning than "general election." Applying the ordinary definition of "regular,"[3] I conclude that "regular state-wide election" encompasses the statewide primary election held biennially as required by law. This conclusion is bolstered by the broad interpretation given by the Montana Supreme Court to like provisions of law. Arps, supra.

I find the contrary authorities unpersuasive in view of the unique wording of the Montana Constitution. Unlike the provisions of other states' constitutions, in which "election" is used with no frame of reference, Montana's constitution expressly recognizes the existence of primary elections and was written during a time when primaries had become well established. Where the framers used the term "general election" in other provisions, including the immediately preceding section concerning constitutional amendments proposed by the Legislature, their choice of a different term in section 9 carries considerable weight in my determination.

Montana law allows the Secretary of State to certify that a primary election is unnecessary for a party which does not have candidates for more than half of the offices on the ballot if no more than one candidate files for nomination by that party for any office on the ballot. § 13-10-209(2), MCA. This does not affect the fact that the statewide primary is prescribed by law to occur at regular intervals. Further, section 13-10-209(4), MCA, expressly provides for the printing of ballot issues on primary ballots, and permits the printing of a separate ballot or the printing of the ballot issue on the nonpartisan ballot.[4] Accordingly, nothing in section 13-10-209, MCA, affects my conclusion that the primary is a regular election.

You suggest that public policy concerns counsel a different conclusion. In particular, a ballot issue proposing to amend the constitution is of major significance to the state and should be submitted to the voters at a time when it is likely to receive the most voter attention. You point out that voter

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[3]See 19 Op. Att'y Gen. No. 412 at 696 (1942), supra.

[4]Section 13-14-115, MCA, which allows the governing body of a political subdivision to determine that a nonpartisan primary election need not be held, has no application here since it does not authorize the cancellation of a statewide primary election.

turnout is much lower during the primary elections, and therefore that not as many voters will take the opportunity to vote on a ballot issue submitted at a primary.

Although that concern and other policy considerations you have presented are unmistakenly worthy of consideration if and when the constitutional and statutory provisions circumscribing this question are ever reviewed in the future, I am obliged at this moment to construe those provisions as I find them and not as I may prefer them to be. White v. White, 195 Mont. 470, 636 P.2d 844, 846 (1981). "In determining the public policy of this state, legislative enactments must yield to constitutional provisions, and judicial decisions must recognize and yield to constitutional provisions and legislative enactments. ... Judicial decisions are a superior repository of statements about public policy only in the absence of constitutional and valid legislative declarations." First Bank (N.A.)-Billings v. Transamerica, 209 Mont. 93, 679 P.2d 1217, 1219 (1984). I find the constitutional and statutory provisions sufficiently clear in expressing the public policy of the state.

THEREFORE, IT IS MY OPINION:

> A constitutional amendment proposed by initiative pursuant to Article XIV, section 9, of the Montana Constitution may be submitted to the voters at a regular statewide primary election.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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

* * * * *

IN THE MATTER of the Application Of the MONTANA POWER COMPANY for Authority to Establish New Rates Required to Implement its Gas Transportation Plan.	)))))	UTILITY DIVISION DOCKET NO. 90.1.1 DECLARATORY RULING

Introduction

1. Petitioner Montana Oil and Gas Association (Petitioner or MOGA) filed a petition with the Montana Public Service Commission (Commission) for a declaratory ruling in this Docket on April 3, 1990. Assuming that the Commission grants Montana Power Company's request to implement gas transportation, MOGA questions whether §§ 69-3-101 and 69-3-102, MCA, would apply to members of the association selling gas to selected industrial end-users while using facilities owned by Montana Power Company (MPC) to transport the gas. MOGA requests a ruling on whether its members, independent gas producers, would come under the supervision and regulation of the Commission as public utilities for sales relying upon gas transportation facilities owned by MPC.

2. On April 10, 1990 the Commission issued a Notice of Petition for Declaratory Ruling and served copies upon the intervenors and interested persons to the Docket. Timely comments to the Petition were filed by MPC, Montana Consumer Counsel (MCC) and Montana-Dakota Utilities Co. (MDU).

The Question Presented

3. Petitioner poses the following question based upon a prospective and unknown outcome in Docket No. 90.1.1.

4. Would the sale of gas by MOGA's gas-producer members to (a) noncore industrial end-users formerly purchasing gas from MPC or (b) local distribution companies utilizing the transportation facilities of MPC constitute the gas-producers as "public utilities" under Montana statutes and PSC rules, where Petitioner does not hold itself out to the public in general as a supplier of natural gas?

Facts Presented

5. MPC in Docket No. 90.1.1 has applied for authority to establish rates for gas transportation. Independent gas-producers would have the right to use MPC's system to transport gas to customers, possibly including some of MPC's present customers. If so, independent producers represented by MOGA would be competing with MPC for sales of natural gas.

6. If the Commission were to determine, based upon these assumed facts, that selling gas on a selective basis

would constitute independent producers as "public utilities," then MOGA's members would not sell their gas in this market. MOGA does not want a long-term commitment to sell gas at a regulated price.

Applicable Law

7. Petitioner seeks a ruling that independent gas producers selling gas to former MPC customers, and transporting the gas on MPC transportation facilities would not be "public utilities" subject to the jurisdiction of the Public Service Commission, pursuant to §§ 69-3-101 and 69-3-102, MCA. The text of these statutes follows:

> 69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court, whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:
>
> (a) heat;
>
> (b) street-railway service;
>
> (c) light;
>
> (d) power in any form or by any agency;
>
> (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;
>
> (f) regulated telecommunications service.
>
> (2) The term "public utility" does not include:
>
> (a) privately owned and operated water, sewer, or combination systems that do not serve the public;
>
> (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; or
>
> (c) a person exempted from regulation as a public utility as provided in 69-3-111.
>
> 69-3-102. Supervision and regulation of public utilities. The commission is hereby invested with full power of supervi-

sion, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

Summary of Comments

8. Montana Power Company. MPC filed a Brief in Support of Petitioner's Motion for Declaratory Ruling. MPC maintains that the transactions as proposed by MOGA do not result in a public utility status for the sellers. The sellers do not intend, and in fact do not have the resources, to serve the general public. The sellers simply will find a limited number of customers and contract with them based on market price, demand, location and load shape.

9. Further, MPC asserts that independent gas producers would not have "public utility" status because production of gas is not monopolistic. Regulation of natural monopolies developed as a substitute for competition, in order to achieve lower costs through economies of scale. The "natural monopoly" under this scenario is the gas transportation "because of the economies of scale inherent in providing pipelines and distribution systems to the general public." By contrast, the sale of natural gas by producers is naturally competitive, as recognized by the federal government in its deregulation of wellhead prices and removal of Federal Energy Regulatory Commission (FERC) jurisdiction over prices for new gas supplies. FERC in Order No. 436, Docket No. RM85-1-000 (Parts A-D). Therefore, MPC believes the Commission should grant the petition and rule that MOGA's "proposed business" is not a public utility.

10. Montana Consumer Counsel. MCC questions whether MOGA has standing to file for a declaratory ruling as an association of independent gas and oil producers. The association would not itself be subject to, or exempt from, regulation. Declaratory rulings must be binding between the agency and the Petitioner concerning the facts set forth in the petition. ARM 1.3.229. MCC questions further, whether MOGA has set forth sufficient facts to show how MOGA and not its members will be affected by a ruling.

11. MCC also questions what bearing Commission approval of MPC's proposed transportation plan in Docket No. 90.1.1 would have upon the regulatory status of the independent gas producers. "If they cease selling to the gas utility and begin selling to end-users using the Montana Power system to deliver gas to those end-users they are no more or less a public utility than before." MCC Comments, pp. 2-3. A declaratory ruling would be unnecessary if the producer members remain simply producer/sellers.

12. MCC recommends a Commission denial of the requested ruling, or alternatively, establishment of a factual record before ruling.

13. Montana-Dakota Utilities Co. MDU is a public utility providing gas and electric service within four states, including eastern Montana. Only MPC sells more natural gas at retail in Montana. MDU already has flexible gas transportation rates approved by the Commission. Some MDU customers now purchase natural gas in the field which is transported on MDU facilities.

14. MDU maintains that the key component to public utility status of a seller of natural gas is whether the seller delivers the product to the end user on facilities the seller owns, operates or controls.

Discussion and Analysis

15. In their analyses, MPC, MCC and MDU generally agree that MOGA's members would not become "public utilities" simply by selling natural gas and delivering the product on gas transportation facilities owned, operated and controlled by MPC. MPC recommends, therefore, that the Commission grant MOGA's Petition. Paradoxically, MCC and MDU conclude that the Commission should not grant the declaratory relief requested. Alternatively, MCC states that the Commission should first establish a factual record on which to base a declaratory ruling.

16. MOGA contends that pursuant to Lockwood Water Users Association v. Anderson, 168 Mont. 303, 542 P.2d 1217 (1975), Petitioner would not be a public utility. MDU contends that Lockwood does not apply to the hypothetical situation outlined by MOGA. The Lockwood Water Users Association was a nonprofit association formed to provide water to members of the association. In Lockwood the court found that an entity serving itself does not come under the definition of a public utility. (After Lockwood, the Legislature amended § 69-3-101, MCA, to clarify that the term "public utility" does not include privately owned water and/or sewer systems that do not serve the public.) In Lockwood the association also contracted to furnish water to Anderson, a trailer court developer, on a contract limited to 60 trailer hook-ups.

17. The court in Lockwood concluded that the users association was not a public utility in supplying water to its members on a nonprofit basis through contractual agreements. Lockwood, 168 Mont. at 310. Lockwood does not stand for the principle asserted by Petitioner that any contractual agreements with selected individuals automatically preclude a public utility status. Petitioner's proposed facts are not analogous to those in Lockwood. MOGA is not a nonprofit users association providing service (e.g. water or natural gas) to itself; it is an association of producers and sellers of natural gas. MOGA's members, and not the association itself, propose to enter into contracts to provide natural gas. MDU is correct that Lockwood does not apply to the facts proposed by MOGA.

18. Both MCC and MDU point out that the Commission has not previously regulated these independent gas producers as

public utilities. According to MCC a declaratory ruling is unnecessary as long as the producer members continue to act like producers. MDU states that the determinative factor is whether the producer delivers gas to the end user. MDU cites Gallatin Natural Gas Company v. Public Service Commission, 79 Mont. 269, 279-280, 256 P. 373 (1927), which determined the following question on appeal to be critical: "[d]oes [Gallatin Natural Gas Company] own, operate or control the plant or equipment of the Billings Gas Company for the delivery of or for furnishing, for or to other persons, heat, light or power?" (Emphasis added.) The Commission has not regulated natural gas producers for the production and sale of gas, notwithstanding the appearance of the term "production" in connection with "delivery" and "furnishing" in § 69-3-101, MCA. (See ¶ 20 following.) The operative words are "delivery of" and "furnishing, for or to other persons." Further determinative of public utility status, the natural gas producer must "own, operate, or control the plant and equipment" used to deliver or furnish the natural gas to the end-user, to be a "public utility." § 69-3-101, MCA.

19. Production and sale of natural gas, without the service component of furnishing or delivery on pipeline facilities owned, operated or controlled by the producer, has not been regulated by the Commission. The United States Supreme Court commented as follows:

> Producers of natural gas cannot usefully be classed as public utilities. They enjoy no franchises or guaranteed areas of service. They are intensely competitive vendors of a wasting commodity they have acquired only by costly and often unrewarded search. Their unit costs may rise or decline with the vagaries of fortune. Permian Basin Area Rate Cases, 390 U.S. 755, 756-57 (1968).

20. "Production" of natural gas for sale as a commodity does not mean the same as the term "production" in conjunction with "delivery" and "furnishing" in § 69-3-101, MCA. Under the statute, "production" implies the service component of producing "heat," "light," or "power" for other persons. Producers of natural gas, however, are in the business of selling their product to others who make arrangements for delivery, furnishing and production of heat, power and light. Omission of the term "production" in Gallatin Natural Gas Company, with subsequent emphasis upon "delivery" and "furnishing," suggests that "production" in § 69-3-101, MCA, is subsumed under the classification of service, i.e., the act of providing to others on a system under the control of the utility. Congress reserved to the states the power to regulate the production and gathering of natural gas. Northwest Pipeline v. F.E.R.C., 905 F.2d 1404, 1407 (10th Cir. 1990). However, in regulating rates and service, this state Commission has not regulated the production of natural gas or the sale of this commodity, without the component of service, that is, transpor-

tation to and/or distribution to the consumer(s) or purchasers.

21. Petitioner and MPC incorrectly focus upon the issue of limiting service on a contractual basis as the deciding factor in a public utility determination. Section 69-3-101, MCA, provides that a "public utility," pursuant to Title 69, Chapter 3,

> shall embrace every corporation, ... company, individual, association ..., their lessees, trustees, or receivers ... that ... own, operate, or control any plant or equipment, any part of a plant or equipment ... within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations ... (a) heat; ... (c) light; [or] (d) power in any form or by any agency[;] ....

Pursuant to this definition an entity may be a public utility if it provides service to only one person other than itself or its members on facilities owned, controlled or operated wholly or in part by the entity selling the commodity.

DECLARATORY RULING

1. An entity undertakes public utility service subject to Commission regulation if it engages in activity within the meaning of § 69-3-101, MCA. If the entity owns, operates or controls plant or equipment, or a part of such facilities, in order to provide (produce for, furnish for or deliver to) others heat, light or power in any form, then it is providing public utility service. There are two key elements to public utility status under this definition: (1) the entity owns, operates or controls the facilities; and (2) the facilities are used to provide service to someone other than the entity.

2. If the independent gas producer does not own, operate or control the delivery facilities or engage in furnishing or delivering the natural gas to the purchaser(s), it will not be subject to Commission regulation under § 69-3-102, MCA, for a sale of natural gas. Therefore, if it sells the gas to be delivered on the facilities of another (e.g., MPC), it will not come under the definition of "public utility" in § 69-3-101, MCA, provided that it does not operate or control these facilities by some sort of agreement with the owner of the facilities.

3. If producer/sellers continue to act like producer/sellers, their nonregulated status should remain the same. A producer/seller engaging in its traditional function of producing and selling gas in the field has not been regulated as a public utility, without engaging in the business of delivery to the end-user. The quantity is immaterial, provided that the sale is made in the field and the producer/seller has no control over any service component of delivery. Whether the sale is to one customer or a limited number of customers, as

opposed to "the public in general," is also immaterial to a determination of public utility status. A producer may potentially be subject to regulation for a contractual agreement to sell to one other entity, if the producer owns, operates or controls facilities and engages in delivery of the gas to the end-user/purchaser. Whether the agreement involves public service and dedication of property to the use of even one member of the public would be a question of fact.

4. In conclusion, if the natural gas producers are merely selling their commodity and not engaging in service and delivery to the end-user, then they should not come within the definition of "public utility" in § 69-3-101, MCA, nor be subject to Commission regulation pursuant to § 69-3-102, MCA. Their continued unregulated status based upon use of transportation/delivery facilities they do not own requires that they also do not operate or control these facilities or the delivery of their product.

Done and Dated this 6th day of August, 1991 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1991. This table includes those rules adopted during the period July 1, 1991 through September 30, 1991 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, 1991, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1991 Montana Administrative Register.

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