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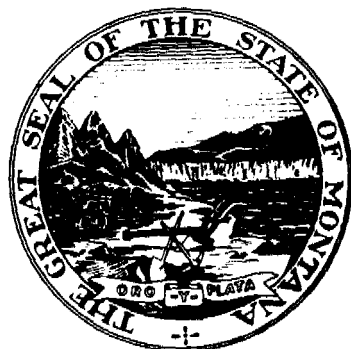
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APR 11 1991

OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

1991 ISSUE NO. 7  
APRIL 11, 1991  
PAGES 383-485



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APR 11 1991

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7 **OF MONTANA**

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
STATE OF MONTANA

|                                 |                        |
|---------------------------------|------------------------|
| In the matter of the proposed ) | NOTICE OF PROPOSED     |
| adoption of a New Rule )        | ADOPTION OF A NEW RULE |
| establishing Grading Standards) | PERTAINING TO HULLESS  |
| for Hulless Barley )            | BARLEY                 |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 11, 1991, the Department of Agriculture proposes to adopt a new rule relating to the grading standards for Hulless Barley.

2. The proposed new rule will read as follows:

RULE 1. STANDARDS FOR GRADING HULLESS BARLEY (1) Hulless barley submitted to the Montana state grain laboratory will be graded according to the procedures and standards set out in the Montana Grain Inspection Handbook, Book 1, Chapter 1, Hulless Barley.

(2) Chapter 1 of the Handbook generally describes the standards and process which will be used to grade hulless barley considering such factors as odor, moisture, dockage, and other factors affecting grade.

(3) Chapter 1 of the Handbook may be viewed at, and a copy obtained from the Montana State Grain Laboratory, P.O. Box 1397, Great Falls, MT 59403-1397.

AUTH: 80-4-704

IMP: 80-4-704, 705

REASON: This rule is being adopted to establish grading standards for the Montana State Grain Laboratory to use in providing a grading service for Hulless Barley to Montana producers, and thereby facilitating the promotion and sale of this Montana specialty crop.

3. Interested persons may present their data, views, or arguments either orally or in writing to Allen Williams, Unit Manager, Montana Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than May 9, 1991.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Allen Williams, Unit Manager, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than May 9, 1991.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.



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EVERETT M. SNORTLAND, DIRECTOR  
DEPARTMENT OF AGRICULTURE

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of the rule imposing) AMENDMENT OF RULE  
a fee on all mint oil ) 4.12.1504 RELATING  
producers ) TO ALL MINT OIL  
PRODUCERS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 11, 1991, the Department of Agriculture proposes to amend rule 4.12.1504 relating to the fee on all mint oil producers.

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

4.12.1504 FEE ON ALL MINT OIL PRODUCED (1) ~~As prescribed in 80-11-412-MCA, the assessment fee on all mint oil produced in this state from the 1989 crop shall be 10 cents a pound.~~ As allowed by statute, the committee sets the fee at 12 10 cents a pound for all mint oil produced in Montana.

AUTH: 80-11-403, MCA

IMP: 80-11-412, MCA

REASON: The first sentence is deleted because the 1989 season has passed and the rate is no longer applicable. The committee has decided to reduce the assessment because the cost of performing its inspection program has decreased and less revenue will be needed to maintain the IPM program.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Roy Bjornson, Administrator, Department of Agriculture, Capitol Station, Helena, Montana, 59620-0201, no later than May 9, 1991.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to Roy Bjornson, Administrator, the Department of Agriculture, no later than May 9, 1991.

5. If the Department receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is

less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.

  
EVERETT M. SNORTLAND, DIRECTOR  
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, April 1, 1991



BEFORE THE BOARD OF ATHLETICS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of a rules pertain- ) OF 8.8.3402 REFEREE  
to referees )  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 11, 1991, the Board of Athletics proposes to amend the above-stated rule.
2. The proposed amendment will read as follows:

"8.8.3402 REFEREE (1) through (7)(a) will remain the same.

(b) warn or remove cornermen or seconds for abusive language or unnecessary coaching or any other action detrimental to the safety of the participants.

(8) will remain the same.

Auth: Sec. 23-2-405, MCA; IMP, Sec. 23-3-405, MCA

**REASON:** This amendment is being proposed to provide for the safety of the boxing participants to prevent them from losing their concentration or slipping in water or other objects thrown into the ring. This rule has been recommended by the referees.


3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Athletics, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 9, 1991.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Athletics, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 9, 1991.

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

directly affected has been determined to be 15 based on the 150 licensees in Montana.

BOARD OF ATHLETICS  
ANDY VANDOLAH, CHAIRMAN

BY:   
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 1, 1991.

BEFORE THE FINANCIAL DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

|                                |   |                             |
|--------------------------------|---|-----------------------------|
| In the matter of the proposed  | ) | NOTICE OF PUBLIC HEARING ON |
| adoption of new rules pertain- | ) | THE PROPOSED ADOPTION OF    |
| ing to repurchase agreements   | ) | NEW RULES PERTAINING TO     |
| and fixed annuity sales        | ) | REPURCHASE AGREEMENTS AND   |
|                                | ) | FIXED ANNUITY SALES         |

TO: All Interested Persons:

1. On May 8, 1991, at 10:00, a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the adoption of rules pertaining to repurchase agreements and fixed annuity sales.

2. The proposed rules will read as follows:

**"I. REPURCHASE AGREEMENTS** (1) The Department may grant 90-day advance approvals for exceeding the 100% of capital stock and surplus limitation imposed by law under the following conditions:

(a) Exceeding the limitation must be as a result of repurchase agreements. Conventional borrowing activities which aggregate more than 100% of capital and surplus will require separate advance approvals from the financial division.

(b) The repurchase agreement program must have the characteristics of a service offered to customers rather than the characteristics of borrowings to fund:

- (i) seasonal needs;
- (ii) liquidity needs; or
- (iii) growth.

(c) Applications for advance approval of repurchase agreements must be made in writing, include a description of the program the bank proposes to operate, a copy of the agreement form to be used, and an explanation of why it is in the bank's best interest to offer such services.

(d) Approved repurchase programs will be reviewed periodically (at least every 90 days). Indications of adverse financial effects on the bank, or unsound actions by bank management may cause the approval to be revoked.

(e) Written application for approval of repurchase agreements must be made every 90 days. Extensions of approval for existing programs are not automatic, nor are they guaranteed.

(f) Repurchase agreements must contain, at a minimum, the following information and disclosures:

- (i) names of the parties to the agreement;
- (ii) the amount of the agreement;
- (iii) the interest rate on the agreement, and method of computation;
- (iv) the term of the agreement;

(v) a conspicuous statement that the instrument is not a deposit, is not insured by the FDIC, and is not guaranteed by the U.S. or state government or any agencies thereof;

(vi) disclosure that the repurchase agreement is an obligation of the bank;

(vii) a description of securities offered as collateral. Such securities are limited to those fully guaranteed as to principal and interest by the U.S. or state government or any agencies thereof.

(viii) disclosure that the customer does not have a perfected interest in the securities offered;

(ix) information on how the customer's interest in the securities may be perfected. Customers must have the opportunity for a perfected interest if they so desire.

(x) disclosure that even if the customer's interest in the securities is perfected, protection offered is limited to the market value of the securities; and

(xi) market value of the securities offered as collateral."

Auth: Sec. 32-1-218, MCA; IMP, Sec. 32-1-412, MCA

**REASON:** These rules are proposed to implement Title 32, chapter 1, section 32-1-412, MCA.

**"II. FIXED ANNUITY SALES** (1) Pursuant to section 32-1-362, MCA, with the consent of the department of commerce, a state chartered bank may directly market fixed annuities, provided that national banks are permitted to do so and that no state statute expressly prohibits such activity. Such approval having been given to national banks effective February 12, 1990, by the chief counsel of the office of the comptroller of the currency under the National Banking Act, the following conditions for approval for state chartered banks to engage in marketing fixed annuities are proposed:

(a) Department approval of fixed annuity sales is conditioned upon a state chartered bank obtaining a waiver statement from the customer before a sale is made which clearly states:

(i) the annuity product is an obligation of the issuing insurance company and not of the bank;

(ii) the bank is acting only as an agent for the insurance company; and

(iii) the obligation is not an FDIC insured deposit."

Auth: Sec. 32-1-218, MCA; IMP, Sec. 32-1-412, MCA

**REASON:** This rule is being proposed to implement Title 32, chapter 1, section 32-1-412, MCA.

3. Interested parties may present their data, views or arguments either orally or in writing at the hearing or by mailing the same to Mr. Donald W. Hutchinson, Commissioner of Financial Institutions, Room 50, Lee Metcalf Building, 1520 East 6th Avenue, Helena, Montana 59620-0542, no later than May 9, 1991.

4. Annie M. Bartos, Esq., of Helena, Montana, has been designated to preside over and conduct the hearing.

5. All persons appearing are entitled to be represented by counsel.

FINANCIAL DIVISION

BY: \_\_\_\_\_

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 1, 1991.

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

|                              |   |                              |
|------------------------------|---|------------------------------|
| In the Matter of Proposed    | ) | NOTICE OF PROPOSED AMENDMENT |
| Amendment of Rules Regarding | ) | OF ARM 38.5.3302, 38.5.3332  |
| Telecommunications Service   | ) | AND 38.5.3339                |
| Standards                    | ) |                              |
|                              | ) | NO PUBLIC HEARING            |
|                              | ) | CONTEMPLATED                 |

TO: All Interested Persons

1. On May 13, 1991 the Department of Public Service Regulation proposes to amend rules regarding the telecommunications service standards.

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

38.5.3302 DEFINITIONS In the interpretation of these rules, the following definitions shall be used: (1) through (16) No changes.

(17) "Nonregulated services" means telecommunications services that are not regulated by the commission or that have been deregulated under the provisions of the Montana Telecommunications Act.

~~(17)~~ (18) "Primary service order" means an application for voice grade telecommunications service to be provided at a customer location which does not have telecommunications service.

~~(18)~~ (19) "Private line" means a channel provided to furnish telecommunications service between two or more customer locations, and not having connection with central office switching apparatus.

~~(19)~~ (20) "Tariff" means the entire body of rates, tolls, rentals, charges, classifications and rules filed by the carrier and approved by the commission.

~~(20)~~ (21) "Telecommunications utility" means any person, firm, partnership or corporation engaged in the business of furnishing telecommunications services to the public by the authority of and under the jurisdiction of the Montana public service commission.

~~(21)~~ (22) "Traffic" means telecommunications volume, based on number of calls and duration of messages. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

38.5.3332 CUSTOMER BILLING (1)(a) through (iii) No changes.

(iv) a statement that regulated services may not be disconnected for nonpayment of unregulated nonregulated services or services provided by other carriers;

(1)(v) through (4) No changes.

(5) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment ~~of services deregulated by the~~

~~Montana Telecommunications Act for nonregulated services or services provided by other carriers. A telecommunications provider's bill to its customer shall clearly indicate regulated service and distinguish between tariffed and detariffed service distinguish between both regulated and nonregulated service and tariffed and detariffed service. Regulated and not-regulated nonregulated service may appear on the same bill but must be presented as separate line items.~~

(a) Undesignated partial payments of a bill shall be applied first to regulated local exchange service and then to service other than regulated local exchange service in such percentage as each service provider's charges represent of the total charges to the customer for services other than regulated local exchange service. Regulated service may not be affected by billing disputes over ~~not-regulated nonregulated service or service provided by other carriers.~~ AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-221, MCA

38.5.3339 TERMINATION OF SERVICE (1) through (3)(b)

No changes.

(c) Failure to pay for nonregulated service or service provided by other carriers.

(4) through (5)(b) No changes.

(6) Exception to seven-day notice requirement, excessive toll usage accompanied by risk of nonpayment. The seven-day notice requirement shall be excused when service is to be terminated for excessive toll usage and an identifiable risk of nonpayment exists, as defined herein.

(a) Toll usage. For purposes of this rule toll usage includes regulated toll charges whether already billed or as yet unbilled, but excludes all amounts owed or owing for nonregulated services or services provided by other carriers.

(b) Excessive toll usage. For purposes of this rule, "excessive toll usage" is defined as toll usage for a one month billing period that:

(i) exceeds 200 percent of the monthly average of the customer's toll charges from the preceding six months; and

(ii) is greater than \$100.

(c) Risk of nonpayment. For purposes of this rule, "risk of nonpayment" is established by the presence of any one of the following:

(i) No deposit. Risk of nonpayment exists when there is no customer deposit and ARM 38.5.1103 permits the requirement of such a deposit.

(ii) Historical deficiency. Risk of nonpayment exists when, during the preceding 12 months, any of the following conditions existed:

(A) the customer's telephone service was disconnected for failure to timely pay amounts owing;

(B) two or more delinquency notices were served on the customer; or

(C) payment was made with two or more dishonored checks.

(d) Contact with customer. The carrier shall not terminate service under the provisions of this rule without first contacting or making a diligent effort to contact the customer. Such contact will be for the purposes of:

(i) notifying the customer of the excessive toll usage;

(ii) notifying the customer of the possibility that service can be terminated on an expedited basis; and

(iii) providing the customer with the opportunity to supply adequate assurance of payment. In no event shall a diligent effort consist of less than three distinct attempts to contact the customer, either in person or by telephone. The carrier must keep a record showing the name of the employee, date, hour and type of each attempted contact.

(e) Adequate assurance of payment. For purposes of this rule, adequate assurance shall include:

(i) the establishment of satisfactory credit as defined by ARM 38.5.1101;

(ii) the existence of a deposit, such deposit being consistent in amount with ARM 38.5.1105; or

(iii) any other form of assurance mutually agreed upon by the customer and the carrier, including an oral or written promise to pay. If the customer supplies adequate assurance as defined herein, no further action may be taken to terminate service.

(f) Termination of service. If the carrier is unable to contact the customer it may terminate service three days (not including those days when there is no mail delivery) after the mailing of a notice consistent in form with the requirements of ARM 38.5.3339(5). If the carrier is able to contact the customer and no adequate assurance is supplied, the carrier may terminate service not less than 24 hours after such contact. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

3. Rationale: At the request of GTE Northwest Incorporated, the proposed amendment appearing at ARM 38.5.3339(6) establishes an exception to the seven-day notice requirement provided for by ARM 38.5.3339(5). This exception is intended to protect a telecommunications carrier from the risk of significant financial loss arising from a customer's nonpayment of an excessively high toll charge.

The remaining amendments appearing at ARM 38.5.3302, 39.5.3332 and 38.5.3339 are intended to 1) standardize the terminology used to describe services that are not regulated, deregulated, unregulated and nonregulated; and 2) distinguish between regulated services provided by a billing or terminating carrier and services, whether regulated or nonregulated, provided by other carriers.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Tim Sweeney, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than May 13, 1991.



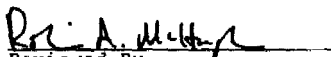
5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Tim Sweeney, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than May 9, 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 amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

  
HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 1, 1991.

  
Reviewed By

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                               |   |                                  |
|-------------------------------|---|----------------------------------|
| IN THE MATTER OF THE AMEND-   | ) | NOTICE OF PUBLIC HEARING on      |
| MENT of ARM 42.21.106;        | ) | the PROPOSED AMENDMENT of ARM    |
| 42.21.107; 42.21.113; 42.21.) | ) | 42.21.106; 42.21.107; 42.21.113; |
| 122; 42.21.123; 42.21.131;    | ) | 42.21.122; 42.21.123; 42.21.131; |
| 42.21.132; 42.21.137; 42.21.) | ) | 42.21.132; 42.21.137; 42.21.     |
| 138; 42.21.139; 42.21.140;    | ) | 138; 42.21.139; 42.21.140;       |
| 42.21.151; 42.21.155; 42.21.) | ) | 42.21.151; 42.21.155; 42.21.     |
| 161; 42.21.301; 42.21.302;    | ) | 161; 42.21.301; 42.21.302;       |
| 42.21.303; 42.21.304; 42.21.) | ) | 42.21.303; 42.21.304; 42.21      |
| 305; 42.21.307 and REPEAL of) | ) | 305; 42.21.307 and REPEAL        |
| ARM 42.21.114; 42.21.120;     | ) | of ARM 42.21.114; 42.21.120;     |
| 42.21.306; 42.21.311; and )   | ) | 42.21.306; 42.21.311; and        |
| 42.21.312 relating to Trend-  | ) | 42.21.312 relating to Trend-     |
| ing and Depreciation )        | ) | ing and Depreciation Schedules   |
| Schedules for Personal Pro-   | ) | for Personal Property Tax.       |
| erty Tax.                     | ) |                                  |

TO: All Interested Persons:

1. On May 8, 1991, at 2:00 p.m., a public hearing will be held in Room 212, State Library, 1515 East 6th Avenue, Helena, Montana, to consider the amendments of ARM 42.21.106; 42.21.107; 42.21.113; 42.21.123; 42.21.122; 42.21.123; 42.21.131; 42.21.132; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; 42.21.155; 42.21.161; 42.21.301; 42.21.302; 42.21.303; 42.21.304; 42.21.305; 42.21.307 and repeal ARM 42.21.114; 42.21.120; 42.21.306; 42.21.311 and 42.21.312 relating to Trending and Depreciation Schedules for Personal Property Tax.

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

42.21.106 TRUCKS (1) Market value for trucks rated over  $3\frac{1}{4}$  ton is 80% of the average retail value for the trucks, as shown in the "Truck Bluebook Official Used Truck Valuation," January 1 edition of the year of assessment. This guide may be reviewed in the department or purchased from the publisher National Market Report, Inc., 900 South Wabash Avenue, Chicago, Illinois 60600.

~~(2) If the above publication does not value these properties, the department of revenue shall develop trended depreciation tables schedules in which the percentages will approximate 80% of the average retail value of all trucks over  $3\frac{1}{4}$  ton as calculated from the guidebook listed in subsection (1).~~

~~(3) (2) For all trucks which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original FOB through old truck valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables schedule mentioned in subsection~~

(2) (4) to arrive at a value which approximates 80% of the average retail value. The trend factors shall be those contained in the January 1, 1989 the latest available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by Marshall and Swift Publication Company, 1617 Beverly Boulevard, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(4) (3) If the methods mentioned in subsections (1) and (3) (2) cannot be used to ascertain 80% of the average retail value of a truck, the owner or applicant must certify to the department of revenue or its agent the year acquired and the acquired price before that value can be applied to the table schedule mentioned in subsection (2) (4).

(5) (4) The percent good trended depreciation schedule referred to in subsections (2) through and (4) (3) is listed below and shall be used for the 1989 1990 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 & GOOD SCHEDULE

| <u>YEAR ACQUIRED</u> | <u>% GOOD</u> |
|----------------------|---------------|
| 1989                 | 80%           |
| 1988                 | 45%           |
| 1987                 | 41%           |
| 1986                 | 39%           |
| 1985                 | 34%           |
| 1984                 | 30%           |
| 1983                 | 27%           |
| 1982                 | 25%           |
| 1981                 | 21%           |
| 1980                 | 19%           |
| 1979                 | 16%           |
| 1978                 | 15%           |
| 1977                 | 14%           |
| 1976                 | 13%           |
| 1975                 | 12%           |
| 1974 and before      | 11%           |

TRUCK TRENDED DEPRECIATION SCHEDULE

| <u>YEAR ACQUIRED</u> | <u>% GOOD</u> |
|----------------------|---------------|
| 1991                 | 80%           |
| 1990                 | 45%           |
| 1989                 | 39%           |
| 1988                 | 34%           |
| 1987                 | 31%           |
| 1986                 | 26%           |
| 1985                 | 24%           |
| 1984                 | 21%           |
| 1983                 | 19%           |
| 1982                 | 18%           |

|                        |            |
|------------------------|------------|
| <u>1981</u>            | <u>17%</u> |
| <u>1980</u>            | <u>16%</u> |
| <u>1979</u>            | <u>15%</u> |
| <u>1978</u>            | <u>14%</u> |
| <u>1977</u>            | <u>13%</u> |
| <u>1976</u>            | <u>12%</u> |
| <u>1975 and before</u> | <u>11%</u> |

(6) For 1988 1-ton vans and trucks whose average retail price is not listed, the percent good shall be 70%.

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

(8) (6) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 and 15-6-140 MCA.)

42.21.107 TRAILERS (1) The market value for all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax, will be the estimated current value less repairs - high of such property as listed in "Boat Trailer Trade-In Guide" of the current year assessment. This guide may be reviewed in the department or purchased from the publisher. ABOS Marine Publications Division, Intertec Publishing Corp., P. O. Box 12901, Overland Park, Kansas 66212 the wholesale value as ascertained by the following methods:

(2) The market value for all trailers exceeding 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax, will be the quick sale value as shown listed in the "Green Guide", Equipment Guide Book Company, 2800 West Bayshore Road, P.O. Box 10113, Palo Alto, California 94303, will be the quick sale value. This guide may be reviewed in the department or purchased from the publisher.

(3) If the above named publications do not value these properties, for trailers not valued in the above publications, the department of revenue shall develop trended depreciation tables schedules in which the percentages will approximate.

(a) the estimated current value less repairs high for all trailers 18,000 gvw and under as calculated from the guidebook listed in subsection (1) and;

(b) the wholesale value for all trailers over 18,000 gvw as calculated from the schedule referred to in ARM 42.21.106.

(a) The estimated current value less repairs - high of such property as listed in "Boat Trailer Trade-In Guide" for the current year of assessment. This guide may be reviewed in the

department or purchased from the publisher: ABOS Marine Publications Division, Intertec Publishing Corp., P. O. Box 12901, Overland Park, Kansas 66212.

(b) Values as derived from department of revenue developed supplementary schedules. These schedules will be used in conjunction with the depreciation schedule in subsection (1)(e). The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(4) (c) For all trailers which cannot be valued under subsection (1) (a) and (2) (b), the department of revenue or its agent shall try to ascertain the original FOB through old valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables schedule mentioned in subsection (3) (1)(e) to arrive at a value which approximates wholesale market value.

(5) (d) If the methods mentioned in subsections (1), (2), and (4) (1)(a), (b), and (c) cannot be used to ascertain a wholesale market value for a trailer, the owner or applicant must certify to the department of revenue or its agent the year acquired and the acquired price before that value can be applied to the tables schedule in subsection (3) (1)(e).

(6) (e) The percent good trended depreciation schedule referred to in subsections (3) through (5) (1)(b), (c), and (d) are is listed below and shall be used for the 1989 1991 tax year.

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

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

|                        |            |
|------------------------|------------|
| <u>1971</u>            | <u>19%</u> |
| <u>1970</u>            | <u>17%</u> |
| <u>1969 and before</u> | <u>15%</u> |

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

| <u>YEAR NEW/ACQUIRED</u> | <u>% GOOD</u> |
|--------------------------|---------------|
| <u>1991</u>              | <u>80%</u>    |
| <u>1990</u>              | <u>62%</u>    |
| <u>1989</u>              | <u>58%</u>    |
| <u>1988</u>              | <u>53%</u>    |
| <u>1987</u>              | <u>49%</u>    |
| <u>1986</u>              | <u>45%</u>    |
| <u>1985</u>              | <u>42%</u>    |
| <u>1984</u>              | <u>40%</u>    |
| <u>1983</u>              | <u>39%</u>    |
| <u>1982</u>              | <u>37%</u>    |
| <u>1981</u>              | <u>35%</u>    |
| <u>1980</u>              | <u>33%</u>    |
| <u>1979</u>              | <u>31%</u>    |
| <u>1978</u>              | <u>29%</u>    |
| <u>1977</u>              | <u>27%</u>    |
| <u>1976</u>              | <u>25%</u>    |
| <u>1975</u>              | <u>23%</u>    |
| <u>1974</u>              | <u>21%</u>    |
| <u>1973</u>              | <u>19%</u>    |
| <u>1972</u>              | <u>17%</u>    |
| <u>1971 &amp; Before</u> | <u>15%</u>    |

(2) The wholesale value for all trailers over 18,000 gvw is:

(a) The wholesale value for trailers shall be the quick sale as listed in the "Green Guide", Equipment Guide Book Company, 2800 West Bayshore Road, P.O. Box 10113, Palo Alto, California 94303. This guide may be reviewed in the department or purchased from the publisher.

(b) The acquired cost as certified by the owner or applicant to the department of revenue, as applied to the depreciation schedule in subsection (2)(d).

(c) Values as derived from department of revenue developed supplementary schedules. These schedules will be used in conjunction with the depreciation schedule in subsection (2)(d). The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(d) The trended depreciation schedule mentioned in subsection (2)(b) and (c) is listed below and shall be used for the 1991 tax year. It is the same schedule as used in 42.21.106(4).

TRAILERS EXCEEDING 10,000 LBS. G.V.W.

| <u>YEAR ACQUIRED</u> | <u>% GOOD</u> |
|----------------------|---------------|
| 1989                 | 80%           |
| 1988                 | 45%           |
| 1987                 | 41%           |
| 1986                 | 39%           |
| 1985                 | 34%           |
| 1984                 | 30%           |
| 1983                 | 27%           |
| 1982                 | 25%           |
| 1981                 | 21%           |
| 1980                 | 19%           |
| 1979                 | 16%           |
| 1978                 | 15%           |
| 1977                 | 14%           |
| 1976                 | 13%           |
| 1975                 | 12%           |
| 1974 and before      | 11%           |

TRAILERS EXCEEDING 10,000 LBS. G.V.W.

| <u>YEAR ACQUIRED</u> | <u>% GOOD</u> |
|----------------------|---------------|
| 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%           |

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

(4)(3) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 and 15-6-139 MCA.)

42.21.113 LEASED AND RENTED EQUIPMENT (1) ~~Equipment leased or rented must meet all of the following criteria to qualify as class 6 property:~~

~~(a) the full and true value of the personal property is less than \$5,000.00;~~

~~(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and~~

~~(c) the lease of the personal property is generally on an hourly, daily, or weekly basis.~~

(2) (1) Leased or rental equipment which meets the criteria of subsection (1) 15-6-136(1)(b) will be valued in the following manner:

(a) For equipment that has an acquired cost of \$0 to \$500, the department shall prepare use a three-year trended depreciation schedule.

(b) For equipment that has an acquired cost of \$501 to \$1,500, the department shall prepare use a five-year trended depreciation schedule.

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

(3) (2) The trend factors and depreciation factors will be derived from the "Marshall and Swift Publication Company" schedules will be the same as ARM 42.21.155, categories 1, 2 and 6. The taxpayer must report the acquired cost, year acquired and an itemized description of each piece of equipment. The acquired cost will be applied to the above schedule in subsection (3) to arrive at market value.

(4) (3) The trended depreciation schedules referred to in subsections (2) and (3) (1) and (2) is are listed below and shall be used for tax year 1989 1991.

| Year           |           |              |               |  |  |
|----------------|-----------|--------------|---------------|--|--|
| Acquired       | \$0 - 500 | \$501 - 1500 | \$1501 - 5000 |  |  |
| 1988           | 70%       | 85%          | 85%           |  |  |
| 1987           | 45%       | 71%          | 70%           |  |  |
| 1986           | 20%       | 54%          | 52%           |  |  |
| 1985           | 20%       | 35%          | 46%           |  |  |
| 1984           | 20%       | 21%          | 37%           |  |  |
| 1983           | 20%       | 21%          | 33%           |  |  |
| 1982 and older | 20%       | 21%          | 30%           |  |  |

| 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% |

(4) For all other leased property not meeting the criteria of 15-6-136(1)(b), the valuation procedures shall be the same as all other furniture and fixtures.

(5) ~~Lease or rental equipment which does not meet all of the criteria of subsection (1), shall be assessed and taxed in the appropriate class of property in which it is specifically included.~~

(6) ~~Business inventories do not include goods held for lease and rent or goods leased or rented.~~

(7) (5) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-136 MCA.)

42.21.122 LIVESTOCK (1) and (2) remain the same.

(3) ~~The average market value for swine shall be determined pursuant to 15-24-931, MCA, using the U.S.D.A. Omaha quotation prices for the preceding 5 years, except market hogs 3 to 5 months which are exempt pursuant to 15-6-207(1)(e), MCA.~~

(4) (3) The average market value for horses shall be determined by multiplying the average price per 1,000 pounds for horses used for canning (killer horses), marketed in Montana during the preceding 12 month period, December through November, by established factors for each of the five categories of horses. The established factors are:

|  |      |
|--|------|
| mules, asses, shetland ponies, donkeys and burrows                           |      |
| - 24 months and older  | .75  |
| saddle horses, and brood mares - 24 months and older - 14 years              | 1.5  |
| work and pack horses, riding and pack mules - 24 months and older - 14 years | 1.75 |
| show, race and roping horses - 24 months and older - 14 years                | 2.5  |
| stallions - 24 months and older - 14 years                                   | 3.75 |
| horses - 15 years and older  | 1.00 |

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

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

(6) (5) This rule is effective for tax years beginning after December 31, 1987 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-137 and 15-6-207, MCA.)

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

(2) ~~If the above publication does not value these properties, the department of revenue shall develop a trended depreciation schedules 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, Technical Publications Division, Intertec Publishing Corporation, Box 12901, Overland Park, Kansas 66212, as the data base. These trended depreciation schedules will approximate wholesale loan value.

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

(4) If the methods mentioned in subsections (1) and (3) cannot be used to ascertain a wholesale value for farm machinery and equipment, the owner or applicant must certify to the department of revenue or its agents the year acquired and the acquired price before that value can be applied to the schedule in subsection (2).

(5) The trended depreciation schedules referred to in subsections (2) through (4) are listed below and shall be used for tax year 1990. may develop a manual to value the equipment. This manual will be used in conjunction with the depreciation schedule in subsection (5) in the valuation of farm equipment and machinery. The purpose of the department developed manual will be to arrive at values which approximate average loan value. The department of revenue's farm machinery manual is hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying at the Department of Revenue, Property Assessment Division, Helena, Montana 59620.

(3) For all farm machinery and equipment which cannot be valued under subsection (1) and (2), the department of revenue or its agent shall try to ascertain the original FOB through old farm machinery and equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (5) to arrive at a value which approximates average loan value. The trend factors shall be the same as those mentioned in ARM 42.21.106(2).

(4) If the methods mentioned in subsections (1) through (3) cannot be used to ascertain average loan value for farm machinery and equipment, the owner or applicant must certify to the department of revenue or its agents the year acquired and the acquired price before that value can be applied to the schedule in subsection (5).

(5) The trended depreciation schedule referred to in subsections (2) through (4) is listed below and shall be used for tax year 1991. 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, 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.

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

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

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

(7) (7) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

42.21.131 HEAVY EQUIPMENT (1) The wholesale market value of heavy equipment shall be the quick sale as shown in the "Green Guide" and "Green Guide for Older Equipment" for the current year of assessment. This guide may be reviewed in the department or purchased from the publisher: Equipment Guide Book Company, 2800 West Bayshore Road, P. O. Box 10113, Palo Alto, California 94303. the acquired cost, as certified by the owner or applicant to the department of revenue, applied to the depreciation schedule in subsection (5). The department may require proof from the taxpayer to certify the accuracy of the acquired cost. If the taxpayer fails to provide proof upon request of the department, the valuation of the equipment will be based on the other procedures herein listed.

(2) If the above named publications do not value these properties, the department shall develop trended depreciation tables in which the percentages will approximate the quick sale value as calculated from the guidebooks listed in subsection (1).

(2) If the heavy equipment cannot be valued under subsection (1), the wholesale market value of heavy equipment shall be the quick sale as shown in the "Green Guide" and "Green Guide for Older Equipment" for the current year of assessment. This guide may be reviewed in the department or purchased from the publisher: Equipment Guide Book Company, 2800 West Bayshore Road, P. O. Box 10113, Palo Alto, California 94303.

(3) For equipment that cannot be valued under subsections (1) and (2), the value for heavy equipment shall be ascertained by trending the quick sale as found in the guide in subsection (2), for the same make and model. The trend factors are the same as those mentioned in subsection (4).

(3) (4) For all heavy equipment which cannot be valued under subsections (1) through (3), the department of revenue or its

agent shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue or its agent may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation tables schedule mentioned in subsection (2) (5) to arrive at a value which approximates wholesale value. The trend factors are contained in the January 1, 1969 the most recent available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Company", 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(4) If the methods mentioned in subsections (1) and (3) cannot be used to ascertain a quick sale market value for the heavy equipment, the owner or applicant must certify to the department of revenue or its agent the year acquired and the acquired price before the value can be applied to the schedule mentioned in subsection (2).

(5) The percent good trended depreciation schedules referred to in subsections (2) through (1), (3) and (4) are is listed below and shall be used for tax year 1969 1991. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in subsection (2).

HEAVY EQUIPMENT % GOOD SCHEDULE

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

HEAVY EQUIPMENT TRENDING DEPRECIATION SCHEDULE

| <u>YEAR</u>   | <u>% GOOD<br/>WHOLESALE</u> |
|---------------|-----------------------------|
| 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%                         |

\* (6) This rule is effective for tax years beginning after December 31, ~~1980~~ 1990, 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.)

42.21.132 MINING EQUIPMENT (1)(a) All machinery and equipment used in the mining process is classified in taxable classification 8, 15-6-138(b), MCA. Mining machinery and equipment included in taxable classification 8 shall be that equipment engaged in the extraction, excavation, burrowing or otherwise freeing raw material from the earth. ~~(Coal and ore haulers are not considered to be mining equipment for purposes of taxable classification and valuation. They are classified in taxable class 10 (15-6-140(c), MCA)).~~

(b) Mining machinery and equipment, except that which is listed in the "Green Guide", is valued by trending the original installed cost to a current replacement cost, then depreciating on an age/life basis to compensate for ordinary physical wear and tear and obsolescence.

(2)(a) ~~Equipment~~ Mobile equipment used in the mining operation for extraction will be valued by using the procedures established for heavy equipment (ARM 42.21.131).

(3) Mobile mining equipment as found in the "Green Guide", is equipment that moves freely about under its own power and/or on its own wheels and chassis, including any attachments used with or attached to such equipment. Mobile equipment does not

include equipment that requires a foundation for the performance of the function for which it was designed and built. (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) and (2) remain the same.

(3) For wheeled seismograph units, an additional 80% wholesale factor shall be used in determining market value.

(4) The percent good trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year 1989 1991.

#### SEISMOGRAPH UNITS

| YEAR         |        | TREND  | TRENDED | WHOLESALE | TRENDED |
|--------------|--------|--------|---------|-----------|---------|
| ACQUIRED     | % GOOD | FACTOR | % GOOD  | FACTOR    | % GOOD  |
| 1989         | 100%   | 1.000  | 100%    | 80%       | 80%     |
| 1988         | 85%    | 1.000  | 85%     | 80%       | 68%     |
| 1987         | 69%    | 1.043  | 72%     | 80%       | 58%     |
| 1986         | 52%    | 1.054  | 55%     | 80%       | 44%     |
| 1985         | 34%    | 1.059  | 36%     | 80%       | 29%     |
| 1984         | 20%    | 1.074  | 21%     | 80%       | 17%     |
| 1983 & older | 5%     | 1.073  | 6%      | 80%       | 4%      |

#### SEISMOGRAPH ALLIED EQUIPMENT

| YEAR         |        | TREND  | TRENDED |
|--------------|--------|--------|---------|
| ACQUIRED     | % GOOD | FACTOR | % GOOD  |
| 1989         | 100%   | 1.000  | 100%    |
| 1988         | 85%    | 1.000  | 85%     |
| 1987         | 69%    | 1.043  | 72%     |
| 1986         | 52%    | 1.054  | 55%     |
| 1985         | 34%    | 1.059  | 36%     |
| 1984         | 20%    | 1.074  | 21%     |
| 1983 & older | 5%     | 1.103  | 6%      |

#### SEISMOGRAPH UNITS

| YEAR         |        | TREND  | TRENDED | WHOLESALE | TRENDED |
|--------------|--------|--------|---------|-----------|---------|
| ACQUIRED     | % GOOD | FACTOR | % GOOD  | FACTOR    | % 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%      |

SEISMOGRAPH ALLIED EQUIPMENT

| <u>YEAR</u><br><u>ACQUIRED</u> | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|--------------------------------|---------------|-------------------------------|---------------------------------|
| 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%                              |

(5) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

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

(3) The percent good trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year ~~1989~~ 1991.

OIL AND GAS FIELD PRODUCTION  
EQUIPMENT PERCENT GOOD SCHEDULE

| <u>YEAR</u><br><u>ACQUIRED</u> | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|--------------------------------|---------------|-------------------------------|---------------------------------|
| 1989                           | 100%          | 1.000                         | 100%                            |
| 1988                           | 95%           | 1.000                         | 95%                             |
| 1987                           | 89%           | 1.043                         | 93%                             |
| 1986                           | 83%           | 1.054                         | 87%                             |
| 1985                           | 77%           | 1.059                         | 82%                             |
| 1984                           | 71%           | 1.074                         | 76%                             |
| 1983                           | 65%           | 1.103                         | 72%                             |
| 1982                           | 58%           | 1.119                         | 65%                             |
| 1981                           | 51%           | 1.177                         | 60%                             |
| 1980                           | 45%           | 1.309                         | 59%                             |
| 1979                           | 39%           | 1.452                         | 57%                             |
| 1978                           | 33%           | 1.579                         | 52%                             |
| 1977                           | 28%           | 1.701                         | 48%                             |
| 1976                           | 23%           | 1.792                         | 41%                             |
| 1975 & older                   | 20%           | 1.894                         | 38%                             |

OIL AND GAS FIELD PRODUCTION  
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

| <u>YEAR</u><br><u>ACQUIRED</u> | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|--------------------------------|---------------|-------------------------------|---------------------------------|
| 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% |

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

- (a) sucker rods;
- (b) tubing;
- (c) casing; and
- (d) submersible pumps.

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

(5) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

42.21.139 WORKOVER AND SERVICE RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for workover and service rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company".

(3) and (4) remain the same.

(5) The percent good trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year 1989 1991.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

| YEAR         | % GOOD | WHOLESALE<br>FACTOR | WHOLESALE<br>% GOOD |
|--------------|--------|---------------------|---------------------|
| 1989         | 100%   | 80%                 | 80%                 |
| 1988         | 92%    | 80%                 | 74%                 |
| 1987         | 84%    | 80%                 | 67%                 |
| 1986         | 76%    | 80%                 | 61%                 |
| 1985         | 67%    | 80%                 | 54%                 |
| 1984         | 58%    | 80%                 | 46%                 |
| 1983         | 49%    | 80%                 | 39%                 |
| 1982         | 35%    | 80%                 | 28%                 |
| 1981         | 30%    | 80%                 | 24%                 |
| 1980         | 24%    | 80%                 | 19%                 |
| 1979 & older | 20%    | 80%                 | 16%                 |

| <u>YEAR</u>  | <u>% GOOD</u> | <u>WHOLESALE<br/>FACTOR</u> | <u>TRENDED<br/>WHOLESALE<br/>% GOOD</u> |
|--------------|---------------|-----------------------------|---|
| 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%                                     |

(6) This rule is effective for tax years beginning after December 31, ~~1988~~ 1990. (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 percent good trended depreciation schedule for tax year ~~1989~~ 1991 is listed below.

DRILL RIG % GOOD SCHEDULE

| <u>YEAR</u>               | <u>TRENDED<br/>% GOOD</u> |
|---------------------------|---------------------------|
| <del>1989</del>           | <del>100%</del>           |
| <del>1988</del>           | <del>92%</del>            |
| <del>1987</del>           | <del>84%</del>            |
| <del>1986</del>           | <del>76%</del>            |
| <del>1985</del>           | <del>67%</del>            |
| <del>1984</del>           | <del>58%</del>            |
| <del>1983</del>           | <del>49%</del>            |
| <del>1982</del>           | <del>35%</del>            |
| <del>1981</del>           | <del>30%</del>            |
| <del>1980</del>           | <del>24%</del>            |
| <del>1979 and older</del> | <del>20%</del>            |
| 1991                      | 100%                      |
| 1990                      | 92%                       |
| 1989                      | 84%                       |
| 1988                      | 76%                       |
| 1987                      | 67%                       |
| 1986                      | 58%                       |
| 1985                      | 49%                       |
| 1984                      | 35%                       |
| 1983                      | 30%                       |
| 1982                      | 24%                       |

1981 and older

20%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, 1988 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

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

(4) The percent good trended depreciation schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year 1989 1991.

TABLE 1: 5 YEAR "DISHES"

| <u>YEAR</u>  | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|--------------|---------------|-------------------------|---------------------------|
| 1988         | 85%           | 1.000                   | 85%                       |
| 1987         | 69%           | 1.014                   | 70%                       |
| 1986         | 52%           | 1.024                   | 53%                       |
| 1985         | 34%           | 1.039                   | 35%                       |
| 1984 & older | 20%           | 1.068                   | 21%                       |

TABLE 2: 10 YEAR "TOWERS"

| <u>YEAR</u>  | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|--------------|---------------|-------------------------|---------------------------|
| 1988         | 92%           | 1.000                   | 92%                       |
| 1987         | 84%           | 1.014                   | 85%                       |
| 1986         | 76%           | 1.024                   | 78%                       |
| 1985         | 67%           | 1.039                   | 70%                       |
| 1984         | 58%           | 1.068                   | 62%                       |
| 1983         | 49%           | 1.087                   | 53%                       |
| 1982         | 39%           | 1.138                   | 44%                       |
| 1981         | 30%           | 1.255                   | 38%                       |
| 1980         | 24%           | 1.381                   | 33%                       |
| 1979 & older | 20%           | 1.509                   | 30%                       |

TABLE 1: 5 YEAR "DISHES"

| <u>YEAR</u>  | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|--------------|---------------|-------------------------|---------------------------|
| 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%                       |

TABLE 2: 10 YEAR "TOWERS"

| <u>YEAR</u> | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|-------------|---------------|-------------------------|---------------------------|
| 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% |

(5) ~~The dishes are circular shaped pieces of equipment used to receive the television signal. The towers are structures (usually metal) used to support any receiving equipment.~~

(6) ~~All other television cable system equipment not valued from the above schedule will be valued according to guidelines in ARM 42.21.146(4).~~

(7) (5) This rule is effective for tax years beginning after December 31, 1988 1991. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-140 MCA.)

42.21.153 SKI LIFT EQUIPMENT (1) The average market value of ski lift equipment, which are classified as aerial lifts, surface lifts, portable lifts and tows and which include the towers, cables, ropes, sheave assemblies, the conveying devices, power units, and all accessories, shall be determined using depreciation tables schedules and procedures established by the department of revenue.

(2) The depreciation table schedules reflect the average remaining life of these properties.

(3) through (5) remains the same.

(6) This rule would be effective for tax years beginning after December 31, ~~1990~~ 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.)

42.21.154 VALUATION OF FURNITURE AND FIXTURES (1) The market value of furniture and fixtures is determined by multiplying an indexed depreciation factor times the installed acquired cost of the property. The Department has established 7 specific categories and 1 general category to determine specific trend factors for this type of property. Each specific category uses data particular to the type of property in the category. The indexed depreciation factor is the product of the trend factor (based on age and category of property) times the depreciation factor from the appropriate table.

(2) This rule is effective for tax years beginning after December 31, ~~1985~~ 1990. (AUTH: Sec. 15-1-201(1) MCA; IMP, Sec. 15-6-139 MCA.)

42.21.155 DEPRECIATION TABLES SCHEDULES (1) Depreciation Trended depreciation schedules of four, five, and 10 years have been established for each category of property. The number of years correspond to the useful life of the property taking into account physical obsolescence. The trended depreciation tables schedules reflect the remaining life of the property over the

term of years assigned with a 5% to 20% residual. The five and 10 year depreciation tables schedules "Percent Good" numbers were extracted from the Marshall and Swift Publication, "Fixtures and Equipment Table", 897, p. 4. The four-year table was derived from consultation with industry representatives. "Remaining Life" is a form of depreciation. The tables are appropriate because the four, five, and 10 year periods were incorporated through rule hearings.

(2) The percent good trended depreciation schedules for tax year 1989 1991 are listed below. The categories listed are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

| YEAR           | % GOOD | TREND<br>FACTOR | TRENDED<br>% GOOD |
|----------------|--------|-----------------|-------------------|
| 1988           | 70%    | 1.000           | 70%               |
| 1987           | 45%    | .996            | 45%               |
| 1986           | 20%    | 1.012           | 20%               |
| 1985 and older | 10%    | 1.001           | 10%               |

CATEGORY 2

| YEAR           | % GOOD | TREND<br>FACTOR | TRENDED<br>% GOOD |
|----------------|--------|-----------------|-------------------|
| 1988           | 85%    | 1.000           | 85%               |
| 1987           | 69%    | 1.020           | 71%               |
| 1986           | 52%    | 1.042           | 54%               |
| 1985           | 34%    | 1.042           | 36%               |
| 1984 and older | 20%    | 1.039           | 21%               |

CATEGORY 3

| YEAR           | % GOOD | TREND<br>FACTOR | TRENDED<br>% GOOD |
|----------------|--------|-----------------|-------------------|
| 1988           | 85%    | 1.000           | 85%               |
| 1987           | 69%    | 1.007           | 69%               |
| 1986           | 52%    | 1.025           | 53%               |
| 1985           | 34%    | 1.036           | 35%               |
| 1984 and older | 20%    | 1.001           | 22%               |

CATEGORY 4

| YEAR           | % GOOD | TREND<br>FACTOR | TRENDED<br>% GOOD |
|----------------|--------|-----------------|-------------------|
| 1988           | 85%    | 1.000           | 85%               |
| 1987           | 69%    | 1.015           | 70%               |
| 1986           | 52%    | 1.010           | 53%               |
| 1985           | 34%    | 1.037           | 35%               |
| 1984 and older | 20%    | 1.052           | 21%               |

CATEGORY 5

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|----------------|---------------|-------------------------------|---------------------------------|
| 1988           | 85%           | 1.000                         | 85%                             |
| 1987           | 69%           | 1.022                         | 71%                             |
| 1986           | 52%           | 1.034                         | 54%                             |
| 1985           | 34%           | 1.046                         | 36%                             |
| 1984 and older | 20%           | 1.064                         | 21%                             |

CATEGORY 6

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|----------------|---------------|-------------------------------|---------------------------------|
| 1988           | 85%           | 1.000                         | 85%                             |
| 1987           | 69%           | 1.043                         | 72%                             |
| 1986           | 52%           | 1.065                         | 55%                             |
| 1985           | 34%           | 1.089                         | 37%                             |
| 1984 and older | 20%           | 1.109                         | 22%                             |

CATEGORY 7

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|----------------|---------------|-------------------------------|---------------------------------|
| 1988           | 92%           | 1.000                         | 92%                             |
| 1987           | 84%           | 1.021                         | 86%                             |
| 1986           | 76%           | 1.037                         | 79%                             |
| 1985           | 67%           | 1.050                         | 71%                             |
| 1984           | 58%           | 1.086                         | 63%                             |
| 1983           | 49%           | 1.103                         | 54%                             |
| 1982           | 39%           | 1.145                         | 45%                             |
| 1981           | 30%           | 1.239                         | 37%                             |
| 1980           | 24%           | 1.389                         | 33%                             |
| 1979 and older | 20%           | 1.597                         | 31%                             |

CATEGORY 8

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND</u><br><u>FACTOR</u> | <u>TRENDED</u><br><u>% GOOD</u> |
|----------------|---------------|-------------------------------|---------------------------------|
| 1988           | 92%           | 1.000                         | 92%                             |
| 1987           | 84%           | 1.036                         | 87%                             |
| 1986           | 76%           | 1.062                         | 81%                             |
| 1985           | 67%           | 1.106                         | 74%                             |
| 1984           | 58%           | 1.143                         | 66%                             |
| 1983           | 49%           | 1.185                         | 58%                             |
| 1982           | 39%           | 1.248                         | 49%                             |
| 1981           | 30%           | 1.352                         | 41%                             |
| 1980           | 24%           | 1.463                         | 35%                             |
| 1979 and older | 20%           | 1.570                         | 31%                             |

CATEGORY 1

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 1990           | 70%           | 1.000                   | 70%                       |
| 1989           | 45%           | 0.985                   | 44%                       |
| 1988           | 20%           | 0.985                   | 20%                       |
| 1987 and older | 10%           | 0.982                   | 10%                       |

CATEGORY 2

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 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

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 1990           | 85%           | 1.000                   | 85%                       |
| 1989           | 69%           | 1.001                   | 70%                       |
| 1988           | 52%           | 1.026                   | 54%                       |
| 1987           | 34%           | 1.034                   | 36%                       |
| 1986 and older | 20%           | 1.052                   | 21%                       |

CATEGORY 4

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 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

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 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

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 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

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 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

| <u>YEAR</u>    | <u>% GOOD</u> | <u>TREND<br/>FACTOR</u> | <u>TRENDED<br/>% GOOD</u> |
|----------------|---------------|-------------------------|---------------------------|
| 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%                       |

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

42.21.156 CATEGORIES (1) remains the same.

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

(3) Category 2 consists of calculating and accounting machines, cash registers, typewriters, vending machines, jukeboxes, fax machines, addressing machines, time recording machines, check endorsing machines, postage machines, electronic games, transcribing equipment, and other office and store



machines. The index used will be the "Producer Price Index for Commodity Grouping, No. 1193, "Office and Store Machines and Equipment", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(4) through (6) remain the same.

(7) Category 6 consists of janitorial equipment, electronic testing equipment, coin-operated washers and dryers, video equipment and tapes (other than class 6 property), cameras, equipment used for beauty and barber shops (except beauty and barber chairs), tanning beds, tanning tables, and carpet and shampooing equipment. The index used will be the "Producer Price Index for Commodity Grouping", No. 15, "Miscellaneous Products," published by the United States department of labor, bureau of labor statistics. A 5-year depreciation table will be used.

(8) remains the same.

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

42.21.157 PREPARATION OF TREND FACTOR SCHEDULES (1) remains the same.

(2) The data used to compute the trend factors are the monthly values of the "Producer Price Indexes" (PPI) specified in subsections (2) through (8) of ARM 42.21.156. The values shall be taken from the most recent publications received by the Montana State Library as of ~~November~~ September 30.

(3) In order to compute the trend factors to be used in year Y for a given equipment group, it is first necessary to calculate average annual values of the appropriate PPI for as many years as are in the useful life attributed to the group. Average annual values of the PPI for year Y are calculated by adding together the 12 values of the PPI listed for the months ~~January~~ January July of year Y-2 through ~~December~~ June of the year Y-2 Y-1 and dividing the sum by 12.

(4) remains the same. (AUTH: Sec. 15-1-201(1) MCA; IMP, Sec. 15-6-139 MCA.)

42.21.158 PROPERTY REPORTING TIME FRAMES (1) Taxpayers having property in the state of Montana on January 1 of each year must complete the statement as provided for in 15-8-301, MCA. With the exception of livestock owners ~~who elect a March 1 reporting date~~, the taxpayer has 30 days from the date of receipt of any request for information to respond to the department of revenue or its agent's request for information. The department or its agent may grant a 30 day extension if the taxpayer requests

such an extension during the 30 day period.

(2) through (4) remain the same.

(5) A taxpayer who raises livestock and ~~elects the March 1~~ reporting date has 14 days from March 1 to respond to the department or its agent's request for information. The department or its agent may grant a 10 day extension if the taxpayer requests such an extension before March 15.

(6) This rule is effective for tax years beginning after December 31, ~~1984~~ 1990. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-8-303 MCA.)

42.21.161 PERSONAL PROPERTY TAXABLE SITUS (1) The taxable situs for personal property owned by a private individual shall be the levy district in which the owner has his principal or permanent residence. it is located on January 1 of the year of assessment. This includes both commercial and privately owned personal property.

(a) If taxable personal property is moved from one county to another and the county in which it is located on January 1 fails to assess the property, the county to which the property moves may assess the property for the entire year.

(2) The taxable situs for personal property of a business, partnership, or corporation shall be the levy district within the county in which the principal place of business is located. If the personal property of a business, partnership, or corporation meets either one of the following requirements, its taxable situs shall be the permanent location of the personal property rather than the principal place of business of its owner: If property enters the state after January 1, the taxable situs of the property shall be the levy district wherein the property comes to rest and becomes a part of the general property of the levy district.

(a) The owner of the personal property signs an affidavit stating that the personal property will be located in excess of one calendar year in a county other than the county where the principal place of business is located. In that case, the taxable situs of the personal property will be the levy district within the county in which the personal property is located as of the January 1 assessment date; or If the property is required to be immediately licensed, the taxable situs shall be the levy district wherein licensure is required.

(b) The personal property has been located in a county, other than the county where the principal place of business is located in excess of one calendar year. In that case, the taxable situs of the personal property will be the levy district within the county in which the personal property is located as of the January 1 assessment date. (AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-8-402, 15-8-404, 15-8-408, and 15-8-409 MCA.)

42.21.301 VALUATION PROCEDURE (1) To determine the market value for automobiles and trucks with a rated capacity of 3/4 tons or less, motorcycles and quadricycles, vehicle assessment staff will use the methods in ARM 42.21.302 through 42.21.306 in a sequential order until a definite value is determined;

(2) (1) To determine the market value for automobiles and trucks with a rated capacity of 3/4 tons or less, motorcycles and

quadracycles assessed under 61-3-503, MCA, vehicle assessment staff will use the methods in ARM 42.21.302 through ~~42.21.306~~ 42.21.305 in a sequential order until a definite value is determined. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

42.21.302 VEHICLES LISTED IN THE GUIDES (1) Automobiles and trucks with a rated capacity of 3/4 ton and less assessed under 61-3-503, MCA listed in the guides will be valued using:

(a) The "average trade-in" as listed in the January 1989 Mountain States Edition of the N.A.D.A. Official Used Car Guide for the year of assessment. ~~This book values automobiles and trucks with manufacturer's years 1982 through 1988.~~ For 1989 vehicles less than 1 year old that were first registered in 1988 the previous year, have already paid their new vehicle sales tax and that need to be reregistered, staff will use 80% of the manufacturer's suggested list price (M.S.R.P.) as the "average trade-in". Those M.S.R.P.'s can be found in the pink or yellow section of the above-listed guide.

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

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

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

(a) The "average trade-in" or wholesale as listed in the January through April, 1989 National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide for the year of assessment. ~~This book values motorcycles and quadracycles with manufacturers' years 1974 through 1989.~~ (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

42.21.303 VEHICLES PREVIOUSLY REGISTERED THAT ARE "SUBSEQUENTLY NOT LISTED" IN THE GUIDES (1) Automobiles, and trucks, with a rated capacity of 3/4 ton and less and licensed motorcycles, and licensed quadracycles assessed under 61-3-503, MCA, and previously registered and subsequently not listed in the guides will be valued as follows:

(a) For vehicles that do not have a market value for the preceding year, use the last known "average trade-in" for the same make and model vehicle (from the above N.A.D.A. guides) as the vehicle being assessed and depreciate that value at the rate of 10% per year for each year it has not been listed in the guide until it reaches the minimum value \$500.

(b) For vehicles that have established market values for the previous year, use 90% of last year's market as this year's market ("Average trade-in"). For vehicles that have established market values for the previous year from the N.A.D.A. guides, use 90% of last year's market value as this year's market. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202, MCA.)

42.21.304 VEHICLES NOT "ORIGINALLY" NEVER LISTED IN THE GUIDES (1) Automobiles, and trucks, with a rated capacity of  $3\frac{1}{4}$  ton and less and licensed motorcycles, and licensed quadricycles assessed under 61-3-503, MCA, and never not originally listed in the guides will be valued as follows:

(a) For vehicles that are less than 1 year of age and that have previously paid the new vehicle sales tax, the average trade-in value will be determined by depreciating the original f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price by 20%.

(b) For vehicles that are 1 year or older in age, the average trade-in value will be determined by depreciating the f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price, in accordance with the 1989 trended percent good schedules contained in ARM 42.21.305. The department will determine depreciation that approximates the average trade-in values from the NADA guides.

(c) Once a market value has been determined in subsection (b), the market value in subsequent years will be determined by applying 90% to the previous year's market value.

(2) If the prices in subsection (1) can't be obtained, the vehicle is valued using acquired cost, year of acquisition and the depreciation determined in subsection (1)(b). (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP: 15-8-202 MCA.)

42.21.305 TRENDED PERCENT GOOD DEPRECIATION SCHEDULES (1) ~~1989~~ 1991 trended percent good depreciation schedule for licensed motorcycles and licensed quadricycles\*

| <u>Year</u>             | <u>Trended % Good</u> |
|-------------------------|-----------------------|
| <u>1989</u>             | <u>88%</u>            |
| <u>1988</u>             | <u>56%</u>            |
| <u>1987</u>             | <u>47%</u>            |
| <u>1986</u>             | <u>36%</u>            |
| <u>1985</u>             | <u>30%</u>            |
| <u>1984</u>             | <u>28%</u>            |
| <u>1983</u>             | <u>27%</u>            |
| <u>1982</u>             | <u>25%</u>            |
| <u>1981</u>             | <u>22%</u>            |
| <u>1980</u>             | <u>21%</u>            |
| <u>1979</u>             | <u>22%</u>            |
| <u>1978</u>             | <u>23%</u>            |
| <u>1977</u>             | <u>19%</u>            |
| <u>1976</u>             | <u>20%</u>            |
| <u>1975</u>             | <u>19%</u>            |
| <u>1974 &amp; Older</u> | <u>21%</u>            |

| <u>Year</u> | <u>Trended % Good</u> |
|-------------|-----------------------|
| <u>1991</u> | <u>80%</u>            |
| <u>1990</u> | <u>51%</u>            |
| <u>1989</u> | <u>50%</u>            |
| <u>1988</u> | <u>45%</u>            |
| <u>1987</u> | <u>40%</u>            |
| <u>1986</u> | <u>32%</u>            |
| <u>1985</u> | <u>28%</u>            |
| <u>1984</u> | <u>25%</u>            |

|              |     |
|--------------|-----|
| 1983         | 22% |
| 1982         | 20% |
| 1981         | 19% |
| 1980         | 18% |
| 1979         | 19% |
| 1978         | 20% |
| 1977         | 19% |
| 1976 & Older | 20% |

(2) ~~1989~~ 1991 trended percent good depreciation schedule for automobiles and trucks with a rated capacity of  $3\frac{1}{4}$  ton and less\*

| Year         | Trended % Good |
|--------------|----------------|
| 1989         | 80% of F.O.B.  |
| 1988         | 80%            |
| 1987         | 73%            |
| 1986         | 64%            |
| 1985         | 56%            |
| 1984         | 45%            |
| 1983         | 37%            |
| 1982         | 31%            |
| 1981         | 26%            |
| 1980         | 24%            |
| 1979         | 21%            |
| 1978         | 18%            |
| 1977         | 15%            |
| 1976         | 14%            |
| 1975         | 14%            |
| 1974         | 14%            |
| 1973         | 16%            |
| 1972 & Older | 14%            |

| Year         | Trended % Good |
|--------------|----------------|
| 1991         | 80% of F.O.B.  |
| 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%            |

\*Note: The schedules are only used for vehicles not originally listed in a NADA book or CPI book. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

42.21.307 BASE VALUE ADJUSTMENTS (1) There will be no adjustment made to the base value to reflect optional equipment or low or high mileage except for diesel engines. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

3. The rules to be repealed are as follows:

42.21.114 ABSTRACT RECORD VALUATION as found at page 42-2114, ARM. (AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-140 MCA.)

42.21.120 TREATMENT OF AGRICULTURAL PRODUCTS as found at page 42-2121, ARM. (AUTH: Sec. 15-1-201, MCA; IMP, 15-6-136 and 15-6-207 MCA.)

42.21.306 MINIMUM VALUE as found at page 42-2163, ARM. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

42.21.311 REGISTRATION, EXPIRATION DATE PRIOR TO JUNE 30, 1987 as found at page 42-2164, ARM. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

42.21.312 ANNIVERSARY REREGISTRATION as found at page 42-2164, ARM. (AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.)

4. These amendments are necessary because 15-8-111, MCA, requires the department to assess all property at 100% of its market value except as provided in subsection (5) of 15-8-111 and in 15-7-111, 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 in arriving at market value for property in instances where the present market value is unknown.

The method by which trending and depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules. The schedule changes will, in most cases, lower valuations for those impacted by the rules. In some cases, the valuation decreases will result in a lowered tax bill.

Parts of ARM 42.21.113 and 42.21.122 are being deleted because the laws are clear and do not need clarification. ARM 42.21.122 is also being changed to add a new category of horses. Taxpayer complaints have indicated that old horses are not at current market values. The financial impact is of a decrease in values for taxpayers with older horses.

ARM 42.21.131 is being changed to allow for a more accurate method of calculating market value. In some cases, the affected taxpayer will realize a reduction in their assessed values.

ARM 42.21.157 changes the time-frame for the calculation of trend factors thus allowing rules to be adopted in a timely manner.

ARM 42.21.158 is being changed so that it remains consistent with legislation passed by the 1989 legislative session. Taxpayers no longer have the option of reporting livestock on an other than March 1 basis.

ARM 42.21.302 and 42.21.305 are also being changed to conform

with 61-3-504, MCA.

The amendment to ARM 42.21.303 modifies the procedures used to value cars that were listed in the previous year's edition of the valuation manual, but are dropped the following year. The amendment changes the rule to directly reference the NADA guides.

The amendments to ARM 42.21.304 are proposed to change the valuation scheme for vehicles that were never listed in a NADA guide. The proposed changes modify the procedures to reflect the language in 61-3-503, MCA.

ARM 42.21.114 is proposed to be repealed because title plant records are now exempt from taxation. Since they are exempt, a rule describing the method of assessment would be inappropriate.

ARM 42.21.120 and 42.21.311 are proposed to be repealed since existing statutes are ambiguous. Livestock are specifically listed as class 6 in statutes and the dates mentioned in ARM 42.21.311 are long since passed.

ARM 42.21.306 is proposed to be repealed since it is no longer necessary because a minimum value is unambiguously spelled out in the law.

ARM 42.21.312 is proposed to be repealed because the dates referred to in that rule have long since passed.

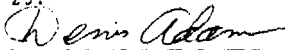
5. Interested parties may submit to their data, views, or arguments concerning the proposed amendment and repeal in writing to:

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

no later than May 17, 1991.

6. If a person who is directly affected by the proposed amendments and repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than May 17, 1991.

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

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State April 1, 1991.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION ) NOTICE OF PROPOSED ADOPTION  
OF RULE I relating to the use ) of RULE I relating to the  
of real property ) use of real property

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1991, the Department proposes to adopt RULE I relating to a definition for the use of real property.
2. The rule as proposed to be adopted provides as follows:

RULE I DEFINITION OF USE (1) When a property tax exemption depends on the use of a building, the exemption may be granted if, in addition to compliance with ARM 42.20.102:

(a) the foundation of the building has been completed by January 1 of the tax year; and

(b) the applicant supplies an affidavit to the department specifying the intended tax exempt use of the property and that the property will be placed in that use during the tax year.

(2) The property tax exemption will be reviewed as of January 1 of the next year to determine if the property was placed in the intended use. If it was not placed in the intended use, the department of revenue will rescind the exemption and tax the property for the previous tax year. (AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-201, 15-6-203 and 15-6-209, MCA.)

3. The rule is proposed to address the problem of exemptions for otherwise qualifying property that can't meet the use test because property is under construction on January 1.

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

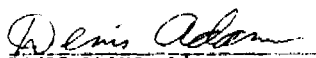
no later than May 17, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than May 17, 1991.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed



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

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State April 1, 1991.

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

|                              |   |                             |
|------------------------------|---|-----------------------------|
| In the matter of the         | ) | NOTICE OF PUBLIC HEARING ON |
| amendment of Rule 46.12.2003 | ) | THE PROPOSED AMENDMENT OF   |
| pertaining to physician      | ) | RULE 46.12.2003 PERTAINING  |
| services, reimbursement/     | ) | TO PHYSICIAN SERVICES,      |
| general requirements and     | ) | REIMBURSEMENT/GENERAL       |
| modifiers                    | ) | REQUIREMENTS AND MODIFIERS  |

TO: All Interested Persons

1. On May 1, 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 46.12.2003 pertaining to physician services, reimbursement/general requirements and modifiers.

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

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department hereby adopts and incorporates by reference the procedure code report (PCR) as amended through ~~July 1, 1990~~ June 30, 1991. The PCR is published by the Montana department of social and rehabilitation services and lists medicaid-payable physician procedure codes and descriptions as delineated in the CPT4 and/or the Health Care Financing Administration's common procedure coding system (HCPCS), fees assigned to relevant procedures and effective dates of fees assigned. A copy of the PCR may be obtained from the Medicaid Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604.

Subsections (1)(a) through (5) MODIFIERS -99 remain the same.

-TC Technical component of lab or x-ray service.

Subsections (5) MODIFIERS -AA through -AS remain the same.

AUTH: Sec. 53-6-101 MCA

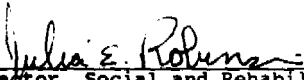
IMP: Sec. 53-6-113 MCA

3. This change is necessary to comply with the federally mandated use of a common procedure coding system by the Medicaid Management Information System (MMIS).

This rule change will be applied retroactive to March 1, 1991. HCPCS is updated no less than annually to reflect use of the most current procedure codes for reporting physician services. Complete information necessary to make this rule change was received February 28, 1991.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than May 9, 1991.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation  
Services

Certified to the Secretary of State April 1, 1991.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

|                                |   |                            |
|--------------------------------|---|----------------------------|
| In the matter of the amendment | ) | NOTICE OF THE AMENDMENT OF |
| of ARM 2.21.1812 relating to   | ) | ARM 2.21.1812 RELATING TO  |
| exempt compensatory time       | ) | EXEMPT COMPENSATORY TIME   |

TO: All Interested Persons.

1. On November 29, 1990, the department of administration published notice of the proposed amendment of ARM 2.21.1812 relating to exempt compensatory time, at page 2062 of the 1990 Montana Administrative Register, issue number 22.

2. The rule has been amended as proposed with the following exceptions:

2.21.1812 EXEMPT EMPLOYEES AND EXEMPT COMPENSATORY TIME

(1) - (4) Same as proposed rule.

(4)-(5) ACCRUED EXEMPT COMPENSATORY TIME MAY BE TAKEN OFF BY THE EMPLOYEE AT A MUTUALLY AGREEABLE LATER DATE DURING THE EMPLOYEE'S REGULAR WORKING HOURS, IF THE USE OF THE COMPENSATORY TIME DOES NOT UNDULY DISRUPT THE OPERATIONS OF THE AGENCY. WHERE THE INTEREST OF THE STATE REQUIRES THE EMPLOYEE'S ATTENDANCE, THE STATE'S INTEREST OVERRIDES THE EMPLOYEE'S INTEREST TO TAKE EXEMPT COMPENSATORY TIME OFF. AN AGENCY MAY REQUIRE AN EXEMPT EMPLOYEE TO TAKE ACCRUED EXEMPT COMPENSATORY TIME OFF DURING ANY WORKWEEK.

(5)-(6) A maximum of 120 hours of exempt compensatory time may be carried over from one calendar year to the next. A determination of excess exempt compensatory time will be made as of the end of the first pay period which extends into the next calendar year. The employee must take off all excess compensatory time during the first 90 days of the next calendar year or forfeit the excess hours, except when the department head or designee extends the forfeiture deadline provided in paragraph (6)-(7) or grants an exception provided in paragraph (7)-(8).

(6) Same as proposed rule but will be renumbered (7).

(7)-(8) Until October 1, 1991, a department head or designee may approve an exception to the forfeiture requirement provided in paragraph (5)-(6) of this rule. 1991 is the last year department heads or designees may make exceptions to the forfeiture requirement. The authority in paragraph (6)-(7) to make extensions to the forfeiture deadline will not be affected. Such an exception may be approved to deal with special and unique circumstances which represent periodic or temporary situations that can not be adequately addressed by other management actions. When an exception to the forfeiture requirement is approved in advance by the department head or designee, the employee shall not forfeit excess exempt compensatory time hours during the calendar year. All exceptions or extensions should be made in writing no later than March 31 each year.

(8) through (11) same as proposed rule but will be renumbered (9) through (12).

(12)-(13) A department head or designee may approve the use of exempt compensatory time to extend an employee's termination

date up to a maximum of 120 hours. Such extension may be approved when the department head or designee determines that:

(a) compensatory time was accrued upon management's request in order to complete projects or meet objectives, or

(b) the employee has been denied reasonable opportunity to take off accrued exempt compensatory time.

~~(13)~~ Same as proposed rule but will be renumbered (14).

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. A public hearing was conducted on December 20, 1990, to receive comments on these proposed rules. Written comments and testimony are summarized below. Eight comments were received.

**COMMENT:** One employee comment said it is unfair for a supervisor to deny accrual of exempt compensatory time after the hours are worked. The supervisor should at least advise the employee within the same time period so the employee can adjust his or her schedule to balance the excess hours.

**RESPONSE:** It is desirable for supervisors and employees to reach agreement on hours which will accrue as exempt compensatory time, but prior agreement may not always be possible. The final evaluation of the benefits from the work performed must rest with management. Management may not feel it was necessary to perform the work outside the 40-hour workweek or that the work accomplished was for the agency's benefit. Management should, when able to, take an active role in advising an employee concerning any hours which may result in exempt compensatory time and adjusting schedules when the accrual of the time is not desired.

**COMMENT:** Another agency suggested adding the deputy director as someone who can approve an exception or extension to the forfeiture requirement or use of exempt compensatory time to extend an employee's termination date.

**RESPONSE:** The department agrees. The term "or designee" will be added.

**COMMENT:** One comment was concerned about the consistent application of ARM 2.21.1812(4) which allows the employee's supervisor to decide whether hours in excess of 40 in a workweek which an exempt employee spends traveling or attending conferences, lectures, meetings, education, or training should be credited as exempt compensatory time. The comments indicated that there was little consistency between agencies let alone supervisors, and recommends that there be more of a definite stated policy if we are going to be consistent with the "one employer" concept. Specifically, the comment recommends that when the employee receives prior approval for one of these activities, that hours in excess of 40 in a workweek spent on the activity will be counted as exempt compensatory time.

**RESPONSE:** The nature of these activities requires that management have maximum flexibility to determine if the accrual of exempt compensatory time is appropriate. Each time an employee travels or attends a conference or training circumstances may differ. The accrual of exempt compensatory time must be examined in the context of the specific event, in the same way management should

examine the accrual of compensatory time for any work performed. Agencies may want to develop broad guidelines, but the department does not believe a rule is appropriate. Any prior agreement which management and employees can reach regarding the accrual of exempt compensatory time for these activities is desirable.

**COMMENT:** One agency commented that it still believes that agency heads should have the authority to grant an exception in order to exceed the accumulation of 120 hours of exempt compensatory time.

**RESPONSE:** The policy does not prohibit an employee from accruing more than 120 hours, but will prohibit employees carrying over more than 120 hours from year to year. The policy as revised will allow an employee nine months in which to decrease the excess accrued hours before the hours will be forfeited.

**COMMENT:** One comment recommended restoring the rule provision in ARM 2.21.1812(4) which allows management and the employee to determine a mutually agreeable time to take off exempt compensatory time.

**RESPONSE:** The department agrees. This was inadvertently deleted and will be restored.

**COMMENT:** Six agencies opposed a proposal to credit one hour of compensatory time for each two hours in a travel status. They consider travel by employees to be as much a part of the job as any other activity that an employee may perform and will continue to compensate them hour for hour.

**RESPONSE:** The proposal was advanced in a draft guide on the administration of exempt compensatory time and has never been part of the proposed changes to the rule itself.

**COMMENT:** One comment said that to stay in line with the "one company" concept, state employees should be able to transfer all of their exempt compensatory time between agencies.

**RESPONSE:** This comment goes beyond the scope of this rule notice. The department will take this comment under consideration in future notices of rule action.



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Bob Marks, Director  
Department of Administration

Certified to the Secretary of State April 1, 1991.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

|   |   |                            |
|---|---|----------------------------|
| In the matter of the proposed amendment of ARM 2.21.3802, | ) | NOTICE OF THE AMENDMENT OF |
| 2.21.3803, 2.21.3807,                                     | ) | ARM 2.21.3802, 2.21.3803,  |
| 2.21.3808, 2.21.3811,                                     | ) | 2.21.3807, 2.21.3808,      |
| 2.21.5006, 2.21.5007, the                                 | ) | 2.21.3811, 2.21.5006,      |
| repeal of ARM 2.21.3812 and                               | ) | 2.21.5007, THE REPEAL OF   |
| the adoption of ARM 2.21.3713                             | ) | ARM 2.21.3812 AND THE      |
| and 2.21.5009 relating to                                 | ) | ADOPTION OF ARM 2.21.3713  |
| probation, recruitment and                                | ) | AND 2.21.5009 RELATING TO  |
| selection, and reduction in                               | ) | PROBATION, RECRUITMENT AND |
| work force  | ) | SELECTION, AND REDUCTION   |
|   | ) | IN WORK FORCE              |

TO: All Interested Persons.

1. On November 15, 1990, the Department of Administration published notice of the proposed amendment of ARM 2.21.3802, 2.21.3803, 2.21.3807, 2.21.3808, 2.21.3811, 2.21.5006, 2.21.5007, the repeal of ARM 2.21.3812 and the adoption of ARM 2.21.3713 and ARM 2.21.5009 relating to probation, recruitment and selection and reduction in work force, at page 1982 of the 1990 Montana Administrative Register, issue number 21.

2. The rules have been amended, repealed or adopted with the following changes:

2.21.3811 PROMOTED OR REASSIGNED EMPLOYEES (1) An employee who has attained permanent status and who is INTER-NALLY promoted, reassigned or whose position is reclassified shall retain permanent status in the new position, as provided in ARM 2.21.3807, unless the employing agency has adopted a policy in compliance with ARM 2.21.1205, providing for a trial period as described in (2) below.

(2) - (3) Same as proposed rule.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.5006 DEFINITIONS (1) Same as proposed rule.

(2) "Preference period" means a period of time beginning from the date of the notice of anticipated lay-off and continuing for a period of one calendar year from the effective date of lay-off.

(3) - (5) Same as proposed rule.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.5007 POLICY (1) - (3) Same as proposed rule.

(4) An employee must be given written notice a minimum of 10 working days preceding the effective date of the lay-off. An employee should be counseled as much in advance of the anticipated action as possible regarding available options and reasons for lay-off. An employee must be given a written notice of anticipated lay-off at the time of

**counseling.** An employee becomes eligible for preference in state employment on the date he receives a written notice of anticipated lay-off or a formal notice of lay-off.

(5) - (6) Same as proposed rule.

(7) Each agency ~~shall make a concerted effort~~ must make other agencies aware of both the names of persons laid off and their job classifications within 15 working days from the effective date of lay-off, ~~and a~~ Agencies with vacancies shall give hiring preference over others of equal qualifications for a period starting the date the employee receives a notice of anticipated lay-off or the formal notice of lay-off and for one calendar year from the effective date of lay-off. The preference is provided to employees laid off from any state agency. It is the employee's responsibility to apply for vacant positions, to participate in the voluntary reduction in force registry created in ARM 2.21.5009 and to make his eligibility for reduction-in-force preference known to the hiring agency.

(8) - (18) Same as proposed rule.

(Auth. 2-18-02, MCA; Imp. 2-18-102, MCA)

3. A public hearing was conducted on December 10, 1990, to receive comments on these proposed rules. Written comments and testimony are summarized below.

**COMMENT:** Twelve comments were received concerning the proposed rule changes. Six generally supported the overall "one employer" concept. No comments were received specifically disagreeing with the general concept, although one comment disagreed with most of the proposed rule changes.

**RESPONSE:** Overall, it appears that agencies are in support of the "one employer" concept, although there was disagreement over specific portions of the proposed rule changes that are elaborated upon below.

**COMMENT:** Six comments objected to allowing permanent status to remain with a transferring employee. In general, agencies did not want to lose the ability to place newly-transferred employees on probation in order to appraise their performance. Comments suggested managers might be reluctant to select current employees from other agencies and would opt to select employees who would be new to state government, so they could be placed on probation.

**RESPONSE:** Section 2-18-101 (11), MCA, defines permanent status as "the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position." Upon attaining permanent status, ARM 2.21.3807 provides that the discipline handling, grievance, and reduction in work force rules apply to an employee. This means the employee must be disciplined for just cause, may file a grievance over a disciplinary action, and is subject to lay-off during a reduction in force. Under the current Probation rules, an employee who transfers from one state agency to another, regardless of the employee's length of



service with the state, loses permanent status and these benefits. The amendment will allow the state to handle transferring employees between departments in the same manner as moving between positions or divisions in the same department. Loss of permanent status represents a major difference in how we treat employees and may inhibit employees from applying for positions in other agencies. The department recognizes that allowing a transferring employee to exercise these employment rights may create some added burden for an agency in meeting the standards to take a personnel action described here. Allowing employees to retain permanent status must be balanced with the additional burden that would be created for departments. Agencies recognize that before disciplining or terminating any employee, even one on probation, they must be prepared to defend their decision by showing at a minimum that the employee was treated fairly. In practice, the number of transferring employees who are terminated during a new probationary period is extremely small. To suggest that supervisors would be unwilling to hire a transferring employee because he or she could exercise these employment rights flies in the face of the policy of the state of Montana regarding treatment of current employees.

The department continues to be concerned about current practice as it pertains to the Wrongful Discharge From Employment Act (39-2-904 et seq., MCA). This statute provides that "A discharge is wrongful only if . . . (2) The discharge was not for good cause and the employee had completed the employer's probationary period of employment." There have been no cases challenging the practice of removing of permanent status from a transferring employee. However, retaining current practice could represent a potential liability in a wrongful discharge claim, if the transferred employee could make the argument that he already had completed a probationary period and was not discharged for good cause.

**COMMENT:** Some comments suggested that we retain the probationary period on transfer. If it is not successful we would guarantee the employee his previous or a comparable position in the agency from which he transferred. Some comments suggested modifying the proposed rule changes including:

1. The agency with the position vacated by a transferring employee would either hold that position open or temporarily fill the position until the employee has obtained permanent status in the new agency, or

2. A related comment suggested shortening the probationary period to three months instead of six months.

**RESPONSE:** The department disagrees. There must be a point when an agency's obligations end to an employee who voluntarily transfers. The clear and consistent point is the date the transfer is complete. It is not reasonable to expect another agency to keep a position vacant for six months to a year, the normal length of a probationary period.

**COMMENT:** One agency said its hiring requirements are unique and require that all "new" employees be placed in a probationary status until they pass a background check and successfully complete a three week basic pre-service training.

**RESPONSE:** Nothing in these proposed amendments prevents an agency from making an offer of continuing employment contingent on meeting any special requirements, even those which are to be completed after the employee begins work. An employee who transfers and retains permanent status could still be removed for cause for failing to meet the special agency requirements.

**COMMENT:** One comment recommended retaining the word "internally" in ARM 2.21.3811 to avoid confusion about an agency's flexibility to create a trial period for an internal promotion or reassignment.

**RESPONSE:** The department agrees.

**COMMENT:** The proposed changes to the Reduction in Work Force rules also elicited a variety of comments. One comment opposed the changes and raised the following problems:

1. The definition of length of service would be a problem due to existing agreements with unions.

2. The proposed notice of anticipated layoff will create a problem related to who knew what and when.

3. When agencies choose not to use the registry, they will be in a position of answering why they did not use it.

**RESPONSE:** Because the subchapter includes a rule which defers to provisions of union contracts when they are not consistent with the rules, there should be no problems with determining length of service, according to labor relations experts. If, for example, the contract requires counting only time in the bargaining unit when making a reduction in force decision, that would apply. However, if the employee moves to a position which is not covered by a bargaining unit then total state service time would be used in making RIF decisions.

The department agrees in part with the second comment involving an open-ended anticipated notice of lay off. The reduction in force rules currently require agencies to counsel employees as far in advance as possible of lay-off. The rule will be amended to require that an anticipated notice of lay-off be issued at that time. The notice will be written and specifically extend RIF preference to an employee.

Whether failure to consult the registry will result in additional exposure for agencies remains to be seen. Agencies are asked to justify or explain a range of decisions related to recruitment, such as the choice to recruit internally or externally or to simply promote an employee, to justify the qualifications for a job or the types of selection devices used and to defend the final choice. The department recognizes that checking the registry adds a step to a recruitment

and selection process which some already view as cumbersome. This is another change in which competing interests must be balanced. Offering this opportunity for consideration for reemployment to state employees who have lost jobs through no fault of their own is a change which will meet the "one company" objective. Consulting the registry is another option which will be available to agencies.

**COMMENT:** A comment recommended increasing the minimum period for notice of lay-off from 10 to 20 days in the Reduction in Force rules.

**RESPONSE:** The rules adopted by the department represent minimum standards which agencies must follow. In an internal policy, a department could adopt a longer minimum period for the notice of lay-off.

**COMMENT:** Three comments suggested that the proposed rule changes, specifically use of a registry, be mandatory rather than optional. The comments equated flexibility with inconsistent treatment. There was concern that if there is no vehicle for enforcement, there would not be universal application of the rules and agencies would have no accountability. The department should create a central hearings board to which RIF decisions could be appealed.

**RESPONSE:** The department does not have enforcement authority over agencies' administration of these rules or the authority to create an appeals process beyond that now available within agencies. Until resources are available to give all departments direct or "on-line" access to the registry, making its use mandatory in all cases is not practical. Agencies are in the best position to determine that consulting the registry for a specific opening is appropriate.

**COMMENT:** A comment suggested eliminating the term "concerted effort" in ARM 2.21.5007(6), as it is ambiguous. This rule requires personnel officers to notify other departments about employees who have been laid off, but the rule does not prescribe how this is to take place.

**RESPONSE:** The department agrees that this term is ambiguous and will amend the rule to delete the term "concerted effort" and substitute a requirement to circulate a written notice to all agencies within a specific timeframe.

**COMMENT:** A comment requested clarification of when the one-year preference period begins.

**RESPONSE:** The reduction in force rules will be amended to provide that the preference period begins with the notice of anticipated layoff, and continues for one year following the effective date of the layoff.

**COMMENT:** One comment requested deleting the word "reorganization" from the definition of "reduction in force," or to specifically define the term to establish a set of criteria for qualification as a legitimate "reorganization." The

comment indicated the term is too ambiguous without additional definition and leaves open the possibility of reorganization for the purpose of eliminating an unwanted employee.

**RESPONSE:** The term "reorganization" covers a variety of situations. The department is not aware of the term "reorganization" being abused for the purpose of simply eliminating an undesirable employee and does not believe additional definition is necessary.

**COMMENT:** A comment said a RIF action is a type of selection process and there should be written criteria, prepared in advance for evaluating employees' skills, similar to those required in the Recruitment and Selection rules. Related to this was the comment that agencies should be required to have written documentation concerning this selection process. Two comments also suggested that the rules be more specific about the requirement for agencies to conduct an adequate skills assessment. One comment said reinstatement should emphasize skill match rather than job classification. The comment provided examples of positions, managers for instance, which have very similar types of skills but can be classified under a variety of different classifications.

**RESPONSE:** The Reduction in Force rules (see ARM 2.21.5007) require agencies to examine skill and length of service in selecting employees to retain. Four factors which evaluate specific skill, specific and general qualifications and performance are used to make an overall assessment of skill. If these factors do not differentiate between employees, then length of service is considered. In the analysis of skill, the first element examined is "Qualifications and experience to perform the duties of a specific position which will be retained." The department believes the RIF rules already require criteria to be used in the selection of employees for retention or for lay-off. The department always recommends documentation of any personnel action and believes in most cases agencies meet this objective without the creation of a rule requiring it.

The Reduction in Force rules currently require departments to look at both skill and job classification when reinstating employees. Many jobs will have overlapping skills, as the comment points out. These need to be examined, but in the context of the job classification. An agency must look not only at commonly held skills, for example, budgeting, staffing, and planning, which managers will have, but also must focus on the occupation in which the manager applies those skills. Reinstatement means restoring an employee to a job he has demonstrated he is able to perform. He possesses both the skills needed at entry for a specific job, but also the skills which must be acquired on the job. He has sufficient technical knowledge of the area to perform his management tasks and to evaluate the work of this staff. The department believes both skill and job classification must be considered in offering reinstatement to an employee.

**COMMENT:** One comment suggested that agencies notify the department if an employee rejects a reinstatement offer so his or her name can be removed from the central registry and eligibility for further preference.

**RESPONSE:** The department will address this comment in the development of operating procedures for the registry.

**COMMENT:** It was suggested that any time there is more than one qualified employee obtained from the central registry that a competitive process be used.

**RESPONSE:** The proposed rules on the registry allow agencies to use a competitive process or to apply the usual selection devices for the position when considering persons on the registry for employment.

**COMMENT:** One comment questioned how applications in the central registry would be sorted.

**RESPONSE:** The department will develop procedures for use of the registry, as provided in the proposed rule, which will address this and other issues.

**COMMENT:** Four comments completely agreed with the changes, while another six comments proposed some sort of modification. Three comments suggested that the proposed rule changes be applicable to all three branches of state government, including the university system.

**RESPONSE:** The department would encourage all of state government to participate, but does not have rule authority over the other branches of government or the university system.

**COMMENT:** The department received a number of comments proposing changes in these three subchapters which go beyond the scope of this rule notice. The department will take these comments under consideration in future notices of rule action. The comments include:

1. Make a state employee's previous performance appraisals available to the hiring agency to compensate for not having a probation period.

2. Allow unconditional transfers only for employees with generally acceptable performance appraisals.

3. Create a new preference for employees who are not successful in new positions, but who have been capable employees in other positions.

4. Amend the grievance policy to all those in a RIF status to be eligible to file a grievance.



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Bob Marks, Director  
Department of Administration

Certified to the Secretary of State April 1, 1991.

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Montana Administrative Register

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

|                                 |                      |
|---------------------------------|----------------------|
| In the matter of the amendment) | NOTICE OF AMENDMENT  |
| of rule 4.12.1229 fees )        | OF ARM 4.12.1229     |
| established for service )       | FEES ESTABLISHED FOR |
| samples )                       | SERVICE SAMPLES      |
| )                               |                      |

TO: All Interested Persons

1. On November 29, 1990, the Department of Agriculture published a notice of public hearing on the proposed amendment to increase the sex ratio and percent emergence lab fee. The notice was published at page 2065 of the 1990 MAR Register, issue number 22.

3. No comments or testimony were received.

2. No public hearing was held nor was one requested. The department has amended the rule as proposed.

By: O. Roy Bjornson  
O. ROY BJORNSEN, ADMINISTRATOR  
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State March 26, 1991.

BEFORE THE MILK CONTROL BUREAU  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT OF RULE  
amendment of Rule 8.79.301 ) 8.79.301  
regarding licensee )  
assessments ) LICENSEE ASSESSMENTS  
)  
) DOCKET #5-91

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:

1. On February 14, 1991, the Montana milk control bureau  
of the Department of Commerce published notice of a proposed  
amendment to rule 8.79.301 concerning assessments to be levied  
upon licensees, to be effective July 1, 1991. It was published  
at page 178 of the 1991 Montana Administrative Register, issue  
No. 3, as MAR Notice No. 8-79-28.

2. The bureau has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is 81-23-104 and 82-23-202,  
MCA, and implements 81-23-202, MCA.

DEPARTMENT OF COMMERCE

By:

  
Andy J. Poole, Deputy director  
Montana Department of Commerce

Certified to the Secretary of State April 1, 1991.

BEFORE THE FINANCIAL DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) AMENDED NOTICE OF AMENDMENT  
of a rule pertaining to credit ) OF 8.80.401 CREDIT UNIONS -  
unions ) SUPERVISORY AND EXAMINATION  
 ) FEES

TO: All Interested Persons:

1. On October 1, 1990, the Financial Division published a notice of proposed amendment at page 1872, 1990 Montana Administrative Register, issue number 19 and an adoption notice at page 292, 1991 Montana Administrative Register, issue number 5 of the above-stated rule.

2. Language from 8.80.401(2) was inadvertently omitted in the original proposal and from the adoption notice. That section should have been amended as follows:

(2) Examination fees will be billed upon completion of each examination and based on the following:

(a) Examiner time spent at credit union site and in office will be billed based on total examiner hours times examiner hour compensation. The fee for the regular, annual examination will be calculated according to the following schedule:

(b) Office staff and supervisory review will be based on staff hours used times hourly compensation of staff involved in review and analysis.

(c) Examiners in training will not be included in hourly billing until such time as supervisors are assured of the individuals capability.

| <u>Total Assets</u>                              | <u>Fee</u>   |
|--|--|
| \$25,000 or less                                 | \$37.50 (minimum fee):   |
| Over \$25,000 and not over \$500,000             | \$37.50 plus 9 cents per \$100 in assets over \$25,000               |
| Over \$500,000 and not over \$1,000,000          | \$310 plus 2.75 cents per \$100 in assets over \$500,000.            |
| Over \$1,000,000 and not over \$5,000,000        | \$670 plus 3 cents per \$100 in assets over \$1,000,000              |
| Over \$5,000,000                                 | 1,070 plus 1.10 per \$100 in assets over \$5,000,000                 |
| <u>\$500,000 or less</u>                         | <u>0.00078 x total assets</u>  |
| <u>Over \$500,000 but not over \$1,000,000</u>   | <u>\$390 plus 0.0003575 x total assets in excess of \$500,000</u>    |
| <u>Over \$1,000,000 but not over \$5,000,000</u> | <u>\$568.75 plus 0.00026 x total assets in excess of \$1,000,000</u> |



Over 5,000,000

\$1,608.75 plus 0.0000975 x  
total assets in excess of  
\$5,000,000

(b) A charge of \$10-50 \$10.00 per hour per examiner engaged in the examination will be made in addition to the above charges. The number of hours charged for examiners in training will be adjusted to exclude time devoted to training.

(\*) (c) Newly chartered credit unions will receive an one examination at no cost during the first year at no cost of operation. A newly chartered credit union is defined as a credit union which began operation within the past twelve months.

(d) If a credit union is examined by the Department more than once during a calendar year, subsequent examination(s) will be based on examiner(s) time spent at the credit union site and in department offices preparing the examination report. The fee will equal actual working hours, net of any training time, multiplied by the hourly rate of compensation for the personnel involved."

Auth: Sec. 32-3-201, MCA; IMP, Sec. 32-3-201, MCA

3. The replacement pages for this amendment were submitted to the Secretary of State for the March 31, 1991 deadline.

FINANCIAL DIVISION

BY: 

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 1, 1991.

BEFORE THE BOARD OF LAND COMMISSIONERS  
AND THE DEPARTMENT OF STATE LANDS  
OF THE STATE OF MONTANA

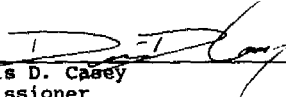
|                        |   |                     |
|------------------------|---|---------------------|
| In the matter of the   | ) | NOTICE OF AMENDMENT |
| amendment of Rule      | ) | OF RULE 26.3.149    |
| 26.3.149 pertaining to | ) |                     |
| mortgaging of state    | ) |                     |
| leases and licenses    | ) |                     |
|                        | ) |                     |

TO: All Interested Persons

1. On January 31, 1991, the Department of State Lands and Board of Land Commissioners published notice of the proposed amendment of the above-stated rule at page 109, 1991 Montana Administrative Register, Issue No. 2.

2. No comments were received.

3. The Department of State Lands and Board of Land Commissioners have amended the rule exactly as proposed.

  
Dennis D. Casey  
Commissioner

Certified to the Secretary of State April 1, 1991.

BEFORE THE BOARD OF LAND COMMISSIONERS  
AND THE DEPARTMENT OF STATE LANDS  
OF THE STATE OF MONTANA

In the Matter of the Adoption ) NOTICE OF ADOPTION OF  
of Rules I through X regarding ) SMALL MINER PLACER  
bonding small miner placer ) AND DREDGE AND  
and dredge operations and permit ) CYANIDE RULES  
requirements for small miner )  
cyanide ore processing operations. )

TO: All Interested Persons

1. On November 29, 1990, the Department of State Lands and Board of Land Commissioners published notice of public hearing on proposed adoption of rules pertaining to bonding of small miner placer and dredge operations and permit requirements for small miner cyanide ore processing operations, on page 2092 of the Montana Administrative Register, Issue No. 22.

2. The rules have been adopted as proposed with the following changes:

RULE I (26.4.180) DEFINITIONS As used in Rules II through X, unless the context indicates otherwise, the following definitions apply:

(1) "Commence reclamation within 6 months" means to commence reclamation within 6 months or the first seasonal opportunity after mining is not resumed after a seasonal closure;

(2) "Live stream" means a stream with flowing water;

~~{2}~~(3) "Pay gravel" means gravels containing sufficient mineralization to be economic;

~~{3}~~(4) "Plant" means a support facility, including a wash or processing plant, for a placer or dredge operation;

~~{4}~~(5) "Sedimentation" means the movement of soils or other fine surface materials from their site of origin as a result of water erosion. This term usually refers to movement and settling of sediments into streams. solid material settled from suspension in a liquid; mineral or organic solid material that is being transported or has been moved from its site of origin by air, water, or ice, and has come to rest on the earth's surface either above or below sea level; or inorganic or organic particles originating from weathering, chemical precipitation or biological activity. AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-305, 82-4-335, MCA.

RULE II (26.4.181) SMALL MINER PLACER AND DREDGE BONDING

(1) (a) A small miner who operates a placer or dredge mine shall post a \$5,000 bond unless the department approves a lower amount based on the criteria below or unless it is documented that adequate a bond for reclamation is posted with another government agency.

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(b) Bond must be filed in the form of a surety, payable to the state of Montana or to the state and the appropriate federal agency, a cash deposit, an assignment of certificate of deposit, letter of credit, or other surety acceptable to the department.

(c) The bond must be accompanied by an appropriate map showing the location of the mine, anticipated disturbances, and perennial streams ~~which would be affected in the vicinity.~~

(2) The department shall reduce the required bonding amount if the small miner submits an operating plan documenting that the cost of reclamation to the department would be less than \$5,000. The information needed to make such a determination includes the following:

(a) a description of the proposed mining operation and foreseeable expansion;

(b) a description of mine support facilities;

(c) the type of equipment and capacity of the plant;

(d) an estimate of pit and pond sizes and volumes of all soil, overburden and placer gravel stockpiles;

(e) description of mining sequence and maximum acreage to be disturbed and unreclaimed at any one time at the mine being bonded;

(f) a description of any water diversions required by the operation;

(g) a topographic map locating mine pit, ponds, diversions, roads, process area, and stream drainages and materials storage sites. This map should include a reference to existing locatable monuments or landmarks on the ground, be 1 inch to 100 feet unless a different scale is approved by the department, and be based on fixed reference points so that all mapped information is interchangeable;

(h) the depth of soil, overburden and pay zones to be excavated;

(i) the average and maximum rate of pay gravel removal;

(j) the length and width of roads and average size of the plant area;

(k) any proposal to use suitable settling pond sediments as soil amendment if limited soil is available;

(l) a proposed permanent seed mixture and rate of application (lbs/ac);

(m) characterization of stream channel and riparian conditions for locations where disturbance is proposed;

(n) identification of the construction method and materials to be used to reclaim soils, overburden, gravel stockpiles, and other disturbances and to reestablish functioning streams and associated floodplains where stream channels have been disturbed;

(o) an erosion control plan which contains the appropriate elements from Rule III; and

(p) whenever applicable, a description of the status of 404 permits issued pursuant to the federal Clean Water Act and plans of operation required by federal land management agencies;

~~(p)~~(q) status of 310 permit compliance, pursuant to 75-7-101, MCA, et seq., and status of Montana pollution discharge elimination permit compliance pursuant to 75-5-401, MCA, et seq.  
AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-305(1), MCA.

RULE III (26.4.182) (INTERPRETIVE RULE) OPERATIONAL REQUIREMENTS RECOMMENDATIONS FOR SMALL MINERS

(1) In order for SMES placer and dredge operators to meet the requirements of 82-4-305 (1), MCA, which requires that the small miner agree in writing not to pollute or contaminate any stream, the department recommends the following best management practices as minimally necessary to assure that operations do not result in water quality violations:

(a) Mining equipment should not be operated in a live stream or diversion, or in any manner to cause bank caving or erosion of the bank of any live stream or diversion.

(b) The amount of make-up water should be limited to only the amount required to operate the wash plant with spent water being recirculated back to the wash plant.

(c) Runoff from undisturbed areas should be minimized through use of temporary berms.

(d) Adequate temporary berms and/or natural undisturbed areas of vegetation should be placed or left as a buffer zone around diversion ditches and live streams to prevent water quality degradation and erosion of disturbed areas as a result of runoff from a 10-year, 24-hour precipitation event.

~~(d)~~(e) During operations, care should be taken to protect streambanks and streambank vegetation. stream banks, ditches, and diversions should be lined, riprapped, or otherwise stabilized to prevent excess erosion.

~~(e)~~(f) Roads should:

(i) be constructed to provide controlled drainage, include culverts, waterbars, and slash filters necessary to facilitate drainage and minimize erosion and be constructed to reduce concentrated flows;

(ii) be located on well-drained soils and located back from stream bottoms in order to provide a buffer zone for preventing road sediments from washing into stream channels;

(iii) be located outside slide-prone areas characterized by seeps, steep slopes, highly weathered bedrock, clay beds, concave slopes, hummocky topography, and rock layers that dip parallel to the slope;

(iv) be constructed to stabilize sloped exposed surfaces by seeding, compacting, riprapping, benching, mulching or other suitable means prior to fall or spring runoff;

(v) not be left in a ~~pioneer~~ an erosive condition over a winter season; and

(vi) be used only minimally during wet periods and spring breakup when damage to the roads, which would result in increased sedimentation, is likely to occur.

~~(f)~~(g) Cut-and-fill slopes should be constructed at a stable angle and stabilized by seeding, mulching, benching or other suitable means during the same season as construction.

~~(g)~~(h) Clearing, grubbing or logging debris should not be placed in streams or used for diversions or cause water quality degradation.

~~(h)~~(i) Diversions and impoundments should be sized to pass the 10-year, 24-hour precipitation event. Diversions should be constructed with drop structures or energy dissipators whenever

necessary to prevent erosion. Diversion ditch berms should be sloped to account for site-specific conditions, including soils, climate, height of structure and existing natural slopes, and should be revegetated, riprapped, or otherwise stabilized to minimize stream sedimentation.

~~(i)(j)~~ Before winter shutdown, a small miner should take the following precautions:

(i) Diversions should be sized to pass spring runoff (minimum 10-year, 24-hour event) or streams should be returned to original channels.

(ii) Ponds should have adequate freeboard to prevent overtopping during spring runoff from direct precipitation and overland flow. Whenever ponds are located within a flood plain and diversions are not sized to pass the 10-year, 24-hour precipitation event, ponds should be filled and reclaimed prior to onset of winter.

(iii) Soil, overburden, and tailings stockpiles should not be placed near streams, unless necessary, and, or if so placed, should be bermed at the toe to prevent erosion of sediments into streams.

(iv) Fuel storage tanks should be drained before winter shut down and should be drained and disposed of in a manner which protects adjacent streams.

(k) Dikes should be constructed around fuel storage areas to prevent a spill or discharge of fuel to any waters.

(2) A placer or dredge operator who proposes a "project", as that term is defined in 75-7-103, MCA, on a perennial stream, must comply with the requirements of the Natural Streambed and Land Preservation Act, as amended, by obtaining a permit required by the appropriate Conservation District.

(3) In order for a SMES placer or dredge operator to meet the reclamation requirements for bond release, the following reclamation planning guidelines should be followed:

(a) A reclamation plan, or appropriate waiver, for all roads is necessary.

(b) The post-mine land use should be identified and a reclamation timetable should be established.

(c) Soil should be salvaged from all areas to be disturbed and should be stockpiled for use in reclamation.

(d) Site disturbances should be recontoured to a minimum of 3:1 slopes or flatter by backfilling excavated material, unless otherwise approved by the department as achieving comparable stability and utility in the postmining landscape.

(e) Soil and approved soil amendments should be redistributed over all areas disturbed by mining.

(f) The site should be seeded with perennial non-weedy species.

(g) Stream channels should be reconstructed, using coarse placer tails as necessary to dissipate energy. Riprap, temporary synthetic erosion control, or biodegradable revegetation fabrics in combination with permanent vegetation should be used to stabilize streambanks, as necessary. Streams should be reconstructed with grades, pools, and meanders comparable to pre-mine drainage.

(h) Clays and fines available on-site should be used to

create a relatively impermeable layer beneath reclaimed channels and floodplains.

(i) The floodplain should be returned to original contour with the gravel, overburden, and soils replaced to resemble their original stratigraphy. AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-305(1), (3), (4) and (5), MCA.

RULE IV (26.4.183) COMPARABLE UTILITY AND STABILITY OF RECLAIMED AREAS - STANDARDS FOR BOND RELEASE FOR SMALL MINERS

(1) In order for the department to release bond, the area must be reclaimed to a post-mining land form and land use that are at least comparable to that of adjacent areas. Reclamation must provide for comparable stability and utility as that of adjacent areas, insure public safety, and prevent pollution of air and water and the degradation of adjacent lands.

(2) Bond may not be released unless the following reclamation standards for placer and dredging operations are achieved:

(a) Pits must be backfilled with overburden and washed gravels unless otherwise approved by the department as part of an alternate postmining land use that provides comparable stability and utility.

(b) Excess overburden must also have been appropriately placed and graded.

(c) Soils and soil substitutes must have been respread and graded on the backfilled, regraded overburden surface.

(d) Slopes must have been reduced to a ~~3+1~~ grade or flatter, ~~unless otherwise approved by the department as which achieving achieves~~ comparable utility and stability in the postmining landscape.

(e) Disturbed areas must have been revegetated with appropriate perennial non-weedy species similar to that of adjacent areas.

(f) Roads must have been reclaimed to approximate original contour consistent with the postmining land form and land use in compliance with section (1) above unless otherwise approved by the department and concurred with by the landowner.

(g) Stream and floodplain disturbances must be reclaimed to their approximate premining condition so that comparable beneficial uses, such as fisheries, comparable flow capacity, and fluvial functions are restored and comparable flow capacity. In most instances, this will require removal of berms.

(h) Noxious weeds must have been controlled, consistent with county weed board requirements.

~~(3) Additional standards may be imposed by the department for site-specific situations when such conditions are necessary to assure that reclamation provides for comparable utility and stability as that of adjacent areas, to insure public safety, and to prevent the pollution of air or water or the degradation of adjacent lands (see 82-4-336(7), MCA).~~ AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-305(3), (4) and (5), MCA.

RULE V (26.4.184) SMALL MINER BOND FORFEITURE AND SMES REVOCATION

Adopted as proposed.

RULE VI (26.4.190) SMALL MINER CYANIDE APPLICATIONS

Adopted as proposed.

RULE VII (26.4.191) SMALL MINER CYANIDE BASELINE INFORMATION

(1) An application for a small miner cyanide processing facility permit must include the following baseline information on the existing conditions at the site:

(a) a map showing all wells and springs and surface water that may be impacted by the proposal within one mile of the proposed permit area;

(b) a map showing all known significant cultural resources in the proposed permit area;

(c) analysis of surface and groundwater samples for background parameters determined by the department, from selected sites chosen in consultation with department staff;

(d) a map delineating soil units for the proposed permit area based on available information, including that available from the soil conservation district;

(e) a listing of species of game fish within one mile of the proposed permit area;

(f) identification of any hatcheries in the vicinity of the proposed permit area;

(g) baseline precipitation records;

(h) flow data for surface and groundwater identified in ~~(b)~~(a) and (c) above from available sources and water depth for identified wells; and

(i) identification of public water supply systems that withdraw water within five miles downstream from the ore processing facility. AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-305(7), 82-4-335(2), MCA.

RULE VIII (26.4.192) SMALL MINER CYANIDE OPERATING PLANS

(1) through (w) adopted as proposed.

(x) for facilities that are exposed to precipitation flows and that carry cyanidated solution, a plan that provides for adequate passage of a 50-year 24-hour storm even flow; and

(y) a plan for preventing wildlife access to facilities with cyanidated solutions. AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-305(7), 82-4-335(2), MCA.

RULE IX (26.4.193) SMALL MINER CYANIDE RECLAMATION PLANS

Adopted as proposed.

RULE X (26.4.194) SMALL MINER CYANIDE PROCESSING FACILITIES PERFORMANCE STANDARDS AND BONDING

Adopted as proposed.

3. The following persons submitted comments on the proposed rules:



| <u>NAME</u>                                       | <u>REPRESENTING</u>                             |
|---|---|
| Montana Chapter of the American Fisheries Society | Self  |
| Tom Eggert  | Department of Health and Environmental Sciences |
| United States Environmental Protection Agency     | Self  |
| Jack Thomas                                       |   |
| Tom Reid  | Department of Health and Environmental Sciences |
| Montana Department of Fish, Wildlife & Parks      | Self  |
| Bill Hand   | Self  |
| Clark Fork Coalition                              | Self  |
| Pegasus Gold Corporation                          | Self  |
| Troy McGee  | Self  |

The following is a summary of comments received and the agency's responses to those comments:

#### Rule I

1. COMMENT: Additional definitions should be given, including those for "live stream", "small miner", "pioneer", "adequate reclamation", and "comparable stability and utility". (Montana Chapter of the American Fisheries Society; Tom Eggert; United States Environmental Protection Agency). The definition of "sedimentation" should refer to ARM 16.20.603(20). (Jack Thomas)

RESPONSE: The term "small miner" is defined in the Act. "Sedimentation" has been redefined consistent with ARM 16.20.603(20). The term "pioneer" has been replaced by the term "erosive". A definition of "live stream" has been added to Rule I. The standards for comparable utility and stability are set forth in Rule IV, therefore a definition of the term is unnecessary. "Adequate reclamation" is not defined because it is not used in the rules. In general, however, the term means compliance with 82-4-302, 82-4-336 and these rules.

#### Rule II

2. COMMENT: The \$5,000.00 maximum bond can generally be expected to be inadequate to reclaim many small mining operations. Small mining operations should be permitted only in increments which can be reclaimed for \$5,000.00. (Montana Chapter of the American Fisheries Society; United States Environmental Protection Agency; Tom Reid; Jack Thomas; Montana Department of Fish, Wildlife, and Parks)

RESPONSE: The department's authority under the Act is limited to requiring a maximum bond of \$5,000 (82-4-305(3), MCA). The Act does not authorize the department to limit the acreage disturbed to less than 5 acres (82-4-303(14), MCA). However, the Act does provide for cost recovery if a bond is forfeited and actual reclamation costs exceed the bond amount. On federal lands, a

larger bond may be held by the federal land managing agency which is required to cover the actual cost of reclamation under federal statutes.

3. COMMENT: The mine plan should include a description of how soils, overburden, and gravel stockpiles will be reclaimed to re-establish a natural, functional floodplain. (Montana Chapter of the American Fisheries Society)

RESPONSE: Rule II(2)(n) has been rewritten to better describe this process.

4. COMMENT: The mine plan should include a temporary seasonal reclamation plan to be implemented at the time of winter shutdown. (Tom Reid)

RESPONSE: Rule II addresses only bonding, including factors and procedures to reduce the miner's bonding obligation for reclamation below \$5,000. A temporary seasonal shutdown plan is an operation plan and is not appropriate for Rule II. Recommendations for seasonal shutdown are set forth in Rule III(1)(i).

5. COMMENT: The small miner placer and dredge bond should be accompanied by a map showing the location of the mine, anticipated disturbances, perennial, and intermittent streams which would be affected. (United States Environmental Protection Agency) The scale of the map should be one inch = 400 feet. (Bill Hand)

RESPONSE: Subsection (2)(g) already requires stream drainages to be submitted on a topographic map. This would include all of the information referenced in the comment. A 1:400 map scale would, in most instances, not provide the detail for a small operation necessary to evaluate reclamation feasibility. However, to allow flexibility in those instances in which a smaller scale would suffice, language that allows the department to grant variances from the 1:400 requirement has been added to (2)(g).

6. COMMENT: The department should develop a standardized form explaining how small miners may plan, design, and implement their permit application to qualify for less than the maximum \$5,000.00 reclamation bond. (United States Environmental Protection Agency)

RESPONSE: Rule II as currently written attempts to lay the groundwork for such guidance.

7. COMMENT: Rule II(2)(f) should be amended to ask for information on the miner's proposed methods for stabilizing and preventing excessive erosion in diversion channels. (United States Environmental Protection Agency)

RESPONSE: Rule II(2)(o) requires the submission of an erosion control plan. This plan applies to all facilities.

8. COMMENT: Rule II(2)(g) should be amended to also ask for identification of material storage sites (including topsoil stockpile areas), proposed stream relocations, and siting of excavations on a map. (United States Environmental Protection Agency)

RESPONSE: Rule II(2)(g) has been so modified.

9. COMMENT: The small miner operating plan should include in Rule II(2)(a) "a description of existing disturbances at the site." (Clark Fork Coalition)

RESPONSE: The purpose of Rule II is to identify, without imposing an undue burden on the small miner, information necessary to set bond. Therefore, the department is limited to information related to materials volumes, materials handling, and distance and locational questions. The department's inspections would provide this information. Therefore, it is unnecessary to place the requirement in Rule II.

10. COMMENT: The small miner operating plan should include in Rule II(2)(b) "when applicable, a description of the status of 404 permits pursuant to the federal Clean Water Act, and plans of operation pursuant to the Code of Federal Regulations for appropriate federal land-holding agencies." (Clark Fork Coalition)

RESPONSE: Your suggestion has been incorporated into Rule II(2)(p)

11. COMMENT: Rule II(2)(l) should be amended to include a statement concerning the use of soil amendments or fertilizers to accelerate humus layer development, improve moisture retention and obtain effective reclamation. (United States Environmental Protection Agency)

RESPONSE: Use of such amendments is not the kind of data which would be used to reduce bond obligations below that required by the statute and therefore is inconsistent with the intent of this rule. Your suggestion has been incorporated into Rule III(3)(e), which contains operational recommendations.

12. COMMENT: The small miner operating plan should include in Rule II(2)(l) a plan for replacing the disturbed vegetation community, to include but depending upon department discretion, hardy, well-adapted species of grasses, forbs, shrubs, and trees. (Clark Fork Coalition; United States Environmental Protection Agency; Montana Department of Fish, Wildlife and Parks)

RESPONSE: The revegetation criteria for these sites is set forth in Rule IV(2)(d), (e), and (h). If hardy, well-adapted species are not used, the site will not meet the criteria for bond release.

13. COMMENT: Rule II(2)(m) should be amended to require the small miner applicant for a dredge or placer operation to provide data on the character of the stream channel and riparian area, as well as stream flows, surveys of stream bottom substrate, channel sinuosity, pool/riffle sequences, channel bank composition, channel cross-sections, valley slope, channel grade, large organic debris loading, reclaimed stream channel design, existing streamside canopy cover, and riparian vegetation. The applicant should further provide data on buffer zones intended to preserve existing vegetation and protect stream environments from poten-

tial sedimentation. (United States Environmental Protection Agency)

RESPONSE: The enabling legislation for these rules limits the department to asking for data which directly affects bond reduction. Therefore this data cannot be requested, although such data would certainly form a sound basis from which to develop a detailed reclamation plan.

14. COMMENT: Rule II(1)(c) requires the applicant to submit a map showing the location of the mine, anticipated disturbances, and perennial streams that would be affected. This rule allows the applicant to decide what streams would be affected and should be changed. (Tom Eggert)

RESPONSE: Because the department has no authority under subsection (1) to require modifications to the small miner's operation, the map required in (1)(c) provides locational information only. To reflect this purpose, the phrase "which would be affected" has been replaced with "in the vicinity."

15. COMMENT: The map to be submitted under Rule II(1)(c) should show what "state waters which would be affected" instead of merely perennial streams. (Jack Thomas)

RESPONSE: The purpose of the map required under II(1)(c) is to enable the department to locate the mine, not to prepare impact analyses. Therefore the rule has not been modified to make this change. See response to the previous comment, however.

16. COMMENT: Rule II(2)(p) should be amended to require disclosure of the "status of all applicable state and federal permits and authorizations for disturbances of streambeds or banks." (Jack Thomas)

RESPONSE: This rule has been modified as suggested in Comment 11. The intent of the rule language is to identify for the small miner which state and federal permits may be applicable.

17. COMMENT: Rule II(1)(a) should be clarified to define an "adequate bond" held by another agency. "Adequate bond" should be defined as an amount ensuring sufficient funding to create a stable biologically functional stream and riparian environment. The standards set for adequate site reclamation will determine the adequacy of any reclamation bond. (United States Environmental Protection Agency; Montana Department of Fish, Wildlife and Parks)

RESPONSE: A closer review of 82-4-305, MCA, upon which this rule is based, reveals that the small miner is exempt from the bonding requirement "if the small miner has posted a bond for reclamation with another government agency . . ." The rule has therefore been amended to use the statutory language.

18. COMMENT: Rule II(2)(n) should be amended to require reestablishment of biologically functioning streams where stream channels have been disturbed. Reclamation should include establishment of habitat for fisheries if fisheries existed prior to mining. (United States Environmental Protection Agency; Tom Reid)

**RESPONSE:** The reclamation criteria suggested are comparable to that set forth in Rule IV(2)(g). Rule II establishes bonding guidelines, not reclamation standards.

19. **COMMENT:** Rule II(2)(o) should be amended to reference best management practices found in Rule III. (United States Environmental Protection Agency)

**RESPONSE:** The suggested cross-reference has been adopted.

### Rule III

20. **COMMENT:** This rule is redundant because the small miner has already stated in his Small Miner Exclusion Statement that he will cause no pollution. (Bill Hand)

**RESPONSE:** The intent of this rule is to provide the small miner with suggested methods to implement this commitment.

21. **COMMENT:** The rule should be rewritten to make mandatory the requirements contained within it. A rule which "recommends" rather than requires something is practically unenforceable. The rule should be clarified to define the "minimally necessary" management practices. (Montana Chapter of the American Fisheries Society; Tom Eggert; Tom Reid)

**RESPONSE:** The department agrees recommendations are not enforceable. However, the statutory language authorizing these rules does not allow the department to require these recommendations to be implemented. In accordance with the principle that rulemaking cannot exceed Legislative intent and statutory authority, mandatory language has not been added. Instead, the department has provided an interpretation of how a small miner is most likely to be able to fulfill the SMES commitment to cause no pollution. For clarification, the title of this rule has been amended by substituting "RECOMMENDATIONS" for "REQUIREMENTS."

22. **COMMENT:** Rule III(3), which provides recommendations for bond release, conflicts with Rule IV which provides the actual standards for bond release. (Tom Eggert)

**RESPONSE:** The commenter has not indicated any specific inconsistencies. Upon close review, the department has not been able to identify any inconsistencies. Therefore no change in the rules has been adopted.

23. **COMMENT:** Rule III(1)(b) should be amended to state that: "The amount of make-up water should be limited to only the amount required to operate the wash plant, with spent water being recirculated back to the wash plant." (Tom Reid)

**RESPONSE:** The suggested clarification has been adopted.

24. **COMMENT:** A minimum distance should be set for the placement of stockpiles. (Montana Chapter of the American Fisheries Society)

**RESPONSE:** A minimum distance would be dependent on stream characteristics. The rule requires prevention of excessive erosion

and sediments - the reason for the distance. Therefore a fixed distance is unnecessary.

25. COMMENT: The management practices should state how fuel is to be drained and disposed of from storage tanks on site, without disposing of fuel in nearby streams. (Montana Chapter of the American Fisheries Society)

RESPONSE: Additional language has been added to Rule III-(1)(h)(iv).

26. COMMENT: The placement of berms or riprap next to streams may disturb the natural fluvial processes within streams. Overbank stream flows serve ecologically important functions such as bank and floodplain building. A better mitigation measure would be to require a belt of undisturbed vegetation next to the stream. Ten feet of undisturbed vegetation should be an adequate buffer zone. (Montana Chapter of the American Fisheries Society; United States Environmental Protection Agency; Tom Reid) Berms, if absolutely necessary, should be utilized on a temporary basis and later removed and re-seeded. (United States Environmental Protection Agency)

RESPONSE: The department agrees. Appropriate language has been added to (1)(c) and Rule IV (2)(g).

27. COMMENT: The floodplain should be returned to original contour with the gravel, overburden, and soils replaced to resemble their original stratigraphy. (Montana Chapter of the American Fisheries Society; Tom Eggert)

RESPONSE: The department accepts this comment and has added subsections (h) and (i) to Section (3).

28. COMMENT: Stream channels should not be reconstructed with the use of coarse tails. (Montana Chapter of the American Fisheries Society; Tom Eggert)

RESPONSE: Coarse placer tails are washed, graded alluvial rock that will not degrade water quality. Language clarifying that (3)(g) refers to placer tails has been added.

29. COMMENT: Rule III(1)(d) should be revised to allow riprapping only as a last resort because streambank erosion is a natural, continuous, dynamic process which seeks its own equilibrium. (United States Environmental Protection Agency)

RESPONSE: The language in Rule III(1)(d), which is now Rule III(1)(e), is limited to the use of riprap "during operations" and not during reclamation.

30. COMMENT: Rule III(1)(d) should be revised to state that: During operations care should be taken to protect streambanks and streambank vegetation from disturbance. (United States Environmental Protection Agency)

RESPONSE: Subsection (1)(d) (now (1)(e)) has been amended to recommend protection of streambanks and streambank vegetation.

31. COMMENT: Permanent diversions should be designed and maintained to create a stable naturally functioning stream system. (United States Environmental Protection Agency)

RESPONSE: The use of permanent diversions would not meet the requirements of Rule IV (2)(g).

32. COMMENT: Rule III(1)(e)(v) should be amended to state that "roads should not be left in a pioneer or erosive condition over a winter season", to clarify that the intent of the rule is that roads not be left susceptible to erosion during spring runoff. (United States Environmental Protection Agency; Jack Thomas)

RESPONSE: Because erosivity is the condition to be prevented, the term "erosive" has been substituted for "pioneer" in (1)(f)(v).

33. COMMENT: Rule III(1)(e)(vi) should be amended to prohibit use of roads during spring breakup. (Jack Thomas)

RESPONSE: The department does not have the statutory authority to prohibit use during spring breakup.

34. COMMENT: Rule III(1)(h) should be amended to require construction of diversion berms to prevent, not just minimize, sedimentation. (Jack Thomas)

RESPONSE: The department is unaware of any acceptable methodology which can prevent sedimentation.

35. COMMENT: Rule III(1)(i)(iii) should flatly provide that "Soil, overburden, and tailings stockpiles should not be placed near streams." (Jack Thomas)

RESPONSE: Site-specific situations may not provide the small miner the option of precluding placement near streams. Language that indicates such placement should occur only where necessary has been added to (1)(j)(iii).

36. COMMENT: Rule III should be amended to incorporate EPA oil pollution prevention standards found in 40 CFR Part 112 which require that oil tanks whose storage capacity exceeds 1,320 gallons or individual containers with capacities exceeding 660 gallons have dikes built around them to contain or otherwise prevent a spill or discharge of oil to any waters. (United States Environmental Protection Agency)

RESPONSE: Language recommending dikes for fuel storage areas has been added as (1)(k).

37. COMMENT: Rule III(3)(g) should be amended to assure that stream reconstruction creates a stable stream channel with grades, pools, riffles, meanders, bottom substrate, organic debris, streamside vegetation, and other natural channel habitat features conducive to a biologically functional stream channel. (United States Environmental Protection Agency; Jack Thomas)

RESPONSE: Subsection (2)(g) requires reclamation to approximate premining conditions and uses. These general requirements would result in reconstruction in accordance with the suggested amendments.

38. COMMENT: Revegetation should include native species of woody shrubs, trees, and grasses. (Montana Chapter of the American Fisheries Society)

RESPONSE: Rules IV(2)(e) and (h) impose this requirement as a requirement for bond release.

39. COMMENT: Streams should be reconstructed to ensure that streams can support the same aquatic species at the same population levels as prior to mining. (Montana Chapter of the American Fisheries Society)

RESPONSE: Rule IV(2)(g) makes this a requirement for bond release by requiring restoration to comparable beneficial uses.

40. COMMENT: Diversions and impoundment under this rule are to be sized to withstand a 10-year, 24-hour precipitation event. If the mining operations are expected to last longer than 10 years, the diversions and impoundments should be engineered for precipitation events of greater severity. (Tom Eggert)

RESPONSE: The 10-year, 24-hour event estimates a discharge quantity that would be exceeded from a storm that would occur once in a 10-year period. This amount could reasonably be expected to be exceeded once in 10 years. This risk of flooding is a reasonable trade off against the volume and area of increased disturbance that would result from the construction of larger structures.

41. COMMENT: Diversions must be located to prevent runoff from flowing into disturbed areas. (Tom Reid)

RESPONSE: The proposed change has been made by adding new section (c).

#### Rule IV

42. COMMENT: The floodplain should be returned to original contour with the gravel, overburden, and soils replaced to resemble their original stratigraphy. (Montana Chapter of the American Fisheries Society)

RESPONSE: Per your previous suggestion, this language has been added to Rule III(3). Rule IV(2)(g) has also been amended to require reclamation of functional floodplains.

43. COMMENT: Rule IV(2)(a) should read: "Pits must be backfilled with overburden and washed gravels unless otherwise approved by the department as part of an alternate postmining land use that provides comparable stability and utility of adjacent lands." (Clark Fork Coalition)

RESPONSE: The reference to adjacent lands is provided in Rule IV(1).

44. COMMENT: Section 82-4-336(7), MCA, limits the administrative discretion of the department to requiring the "...reclamation of disturbed land to comparable utility and stability as that of adjacent areas except for open pits and rock faces which may not be feasible to reclaim". Accordingly, Rule IV(2)(a)



cannot be adopted by the department because it has not been given this authority. (Pegasus Gold Corporation)

RESPONSE: Section 82-4-336(7) is limited to situations in which reclamation is not feasible. Pits created by small placer mining activities are quite different from other types of mine pits in that they can be backfilled readily. Unless backfilled, they will likely permanently impair the stability and utility of adjacent lands within the floodplain.

45. COMMENT: Rule IV, which concerns reconstruction of stream channels, should require rehabilitation of historically degraded aquatic habitats to allow mined streams to be biologically functional, regardless of the condition of the stream caused by previous mining. The Montana Constitution, the Montana Environmental Policy Act, and the Federal Clean Water Act all provide a legal basis for requiring the improvement, enhancement, or restoration of historically degraded streams. These policies should be incorporated into this rule. (United States Environmental Protection Agency)

RESPONSE: None of the authorities cited grant the department authority to burden the individual small miner with the financial cost of reclaiming disturbances not of that individual's making.

46. COMMENT: Rule IV(2)(g) should be amended to add that: "Stream reclamation must create a stable stream channel with grades, pools, riffles, meanders, bottom substrate, organic debris, streamside vegetation, and other channel habitat features found in a natural, biologically functional stream channel". (United States Environmental Protection Agency; Jack Thomas)

RESPONSE: See response to Comment #37.

47. COMMENT: Rule IV(3) is ambiguous. It allows the department considerable administrative discretion and may be potentially costly to the small miner. (Bill Hand; Pegasus Gold Corporation)

RESPONSE: The department agrees that the ability to impose additional standards is not appropriate. Section (3) has therefore been eliminated. However, the general requirements, absent language authorizing additional standards, has been added to (1) to notify the small miner of these general requirements.

48. COMMENT: Rule IV(2)(d) requires a 3:1 grading on reclaimed slopes. Sometimes a 3:1 grade is more difficult to attain than a greater slope and can cause more damage. (Bill Hand). Reclamation of slopes steeper than 3:1 grade is feasible and should be allowed. Rule IV(2)(d) should be stricken because the department has no factual justification for the rule. (Pegasus Gold Corporation; Troy McGee)

RESPONSE: The department agrees that slopes should be established on a case-by-case basis. The rule has been modified accordingly.

### Rule V

49. COMMENT: The \$5,000.00 maximum bond can generally be expected to be inadequate to reclaim many small mining operations. Small mining operations should be permitted in increments which can be reclaimed for \$5,000.00. (Montana Chapter of the American Fisheries Society; Jack Thomas)

RESPONSE: See response to Comment 2.

50. COMMENT: Rule V(7)(c) allows the department to bill the small miner for reclamation costs in excess of the reclamation bond. Satisfactory reclamation of streams may require that billing be done frequently. What legal authority exists to bill a small miner for reclamation costs in excess of the bond amount? (United States Environmental Protection Agency)

RESPONSE: 82-4-305(4), MCA.

51. COMMENT: Rule V(7)(c) is unduly harsh and will frighten many operators with the prospect of litigation and potential liability which threatens their economic life. (Bill Hand)

RESPONSE: Rule V(7)(c) merely provides a mechanism to implement 82-4-305(4), MCA, which provides that the small miner is liable to the state for the amount that its reclamation costs exceed the bond amount.

52. COMMENT: Rule V should require concurrent reclamation as mining occurs, not just at the conclusion of active mining operations. (Tom Reid; Montana Department of Fish, Wildlife, and Parks)

RESPONSE: Section 82-4-305(5) allows the small miner six months after cessation of operations to commence operation. The suggested amendment is therefore beyond the scope of the department's authority.

53. COMMENT: If the reclamation bond is insufficient to cover reclamation costs, all persons having ownership and control of the mining operation should be barred from obtaining any mining permit under the Montana Metal Mine Reclamation Act until the remaining reclamation costs are repaid to the state. (Tom Reid)

RESPONSE: This requirement is already contained in 82-4-360, MCA.

54. COMMENT: Any bond amount remaining after bond forfeiture and reclamation by the State or its agent should be deposited into a revolving fund to be used for future reclamation projects. (Tom Reid)

RESPONSE: The Legislature has not granted the department this authority.

### Rule VI

55. COMMENT: Rule VI and the following rules should also provide regulation of mercury and other chemical reagent extraction processes. (Tom Reid).

**RESPONSE:** The department's authority to regulate small miner extraction processes is limited to processes that use cyanide.

56. **COMMENT:** The rule should emphasize protection of public health and the environment rather than rapid permitting of cyanide-leaching operations. (Montana Chapter of the American Fisheries Society)

**RESPONSE:** Before 1989, small miners who used cyanide were not regulated. The 1989 Legislature authorized regulation by passing House Bill 680, under which these rules are being adopted. House Bill 680 contained a Statement of Intent, which provided in pertinent part as follows:

"A statement of intent is provided for this bill to elaborate on the type and extent of review that the department of state lands shall give to a small-miner application for an operating permit for a cyanide ore-processing facility. Moreover, the legislature anticipates that implementation of this bill will require rulemaking by the board of land commissioners.

"While an operating permit is required for these operations, the legislature intends that, because of the size and limited scope of the operation, the application requirements in general may be substantially less rigorous than the requirements for larger proposed mine operations not under the small-miner exclusion. The department of state lands shall also attempt to review these applications in a shorter timeframe than currently needed to review operating permit applications for larger mines.

"To encourage expedited review, the department of state lands shall provide clear guidance to permit applicants concerning requirements for a complete application. In particular, the guidance must help applicants prepare adequate operating and reclamation plans, while the legislature recognizes plan requirements may vary with the site and characteristics of the proposed operation, the department shall attempt to guide the applicant in a manner that minimizes applicant costs while also meeting metal mine reclamation requirements."

The department therefore has two goals - reclamation and expedited permitting.

57. **COMMENT:** Rule VI(3) is unclear. Does this mean that the department staff will be consultants? (Clark Fork Coalition)

**RESPONSE:** The staff will not be consultants. The staff will provide assistance. To the extent that the small miner has neither the experience nor the understanding of complex permitting regulations, the Legislature intended the department to assist the small miner with enough information to enable him to get through the process without being unduly burdened.

58. COMMENT: Rule VI(3) states that these permits shall be processed as expeditiously as possible. It should be made clear that these permits are to be easier to obtain than an operating permit. (Bill Hand)

RESPONSE: This is the intent of Rule VI(3). In addition Rules VII-X are intended to clearly define what is expected in order that the process may be expedited.

#### Rule VII

59. COMMENT: This rule, which addresses baseline information required in an application for a small miner cyanide processing facility, is internally inconsistent. The baseline information for flow data for surface and groundwater should be required for those water sources identified in Rule VII(1)(a) and (c) not for Rule VII(b), which identifies known significant cultural resources. (Clark Fork Coalition)

RESPONSE: This incorrect cross reference has been corrected.

60. COMMENT: Baseline inventory areas required in Rule VII(1)(a) and (e) should be based on the topography of the project area as well as the distance. Many areas of consideration under the rule as currently drafted may be up-gradient or in separate drainages. (Pegasus Gold Corporation)

RESPONSE: Subsection (a) has been amended to require baseline data only for waters and game fish that can be affected by the proposal. No change to (e) has been made because fish are mobile within and between drainages.

61. COMMENT: Rule VII(1)(h) should be amended to require submission of "... (flow) data that generally characterizes historical seasonal and annual flow trends." This would ensure that the administrative agency consider data for low and high flow years. (Clark Fork Coalition)

RESPONSE: The language in the proposed rule includes data that generally characterizes historical and annual flow trends.

#### Rule VIII

62. COMMENT: An application for a small miner cyanide processing facility should include a proposal for "...preventing wildlife from entering facilities that contain cyanidated solutions." (Clark Fork Coalition)

RESPONSE: The requested modification has been made.

63. COMMENT: The department should include in Rule VIII(1)(f) general temporal and spatial guidelines for well monitoring for small miner cyanide processing facilities. (Clark Fork Coalition)

RESPONSE: The department believes these guidelines are best left to guidelines for site-specific circumstances, as affected by size, location, and geologic and hydrologic conditions.

64. COMMENT: Rule VIII(1)(r) is unclear. It would allow an operator either to submit a plan for prevention of damage to heritage properties or merely document the features and later destroy them. Only a historic preservation officer may authorize the destruction of heritage properties. (Tom Eggert)

RESPONSE: The requirement for a plan is not meant to preclude SHPO authority. However, SHPO has no such authority on private lands where no federal authorizations are involved. Pursuant to an agreement with SHPO, all such plans are forwarded to SHPO for review and comment, as were these rules.

65. COMMENT: The parameters listed for monitoring wells in Rule VIII(1)(f) sometimes only detect groundwater characteristics. Sometimes the quantities are not sufficient for anything but a pH test. A pH test can be helpful in determining "protective alkalinity". Electrical conductivity should not be required. Portable cyanide detection kits are unreliable. (Bill Hand)

RESPONSE: These parameters are needed because changes in pH or electrical conductivity are indicative of cyanide leaks under certain conditions when cyanide may not be detectable. Portable kits, although not as reliable as laboratory testing, provide a reasonable, fairly inexpensive field method of testing for cyanide.

#### Rule IX

66. COMMENT: Diversions and impoundments under this rule are to be sized to withstand a 10-year, 24-hour precipitation event. If the mining operations are expected to last longer than 10 years, the diversions and impoundments should be engineered for precipitation events of greater severity. (Tom Eggert)

RESPONSE: The 10-year 24-hour event estimates a discharge quantity that would be exceeded from a storm that would occur once in a 10-year period. This amount would reasonably be expected to be exceeded once in 10 years. This risk is a reasonable trade off against the volume and area of increased disturbance that would result from the construction of larger structures.

67. COMMENT: There is growing concern with the release of sodium into the environment. The cyanide ion is an efficient fertilizer once it breaks down into carbon dioxide and ammonia. No untreated solution should be allowed to reach groundwater. (Bill Hand)

RESPONSE: The intent of Rules VIII-X is to assure no untreated cyanide solution is allowed to reach groundwater.

#### Rule X

68. COMMENT: The mandatory inspection requirement in Rule X(1) should be amended to make inspection discretionary instead of mandatory for each phase of the operation. (Bill Hand)

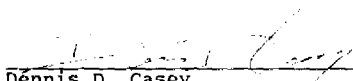
RESPONSE: The alternative to these inspections is for the small miner to submit an inspection report prepared by a registered professional engineer. It was agreed by the Independent Montana

Miners and others that this was too burdensome, given legislative intent. However, inspections are necessary to assure that quality control is documented and that future problems either do not occur or are minimized.

GENERAL COMMENTS

69. COMMENT: The rules are too lengthy and complex. They should be written in a more easily understandable manner. (Troy McGee).

RESPONSE: The department has attempted to make the rules understandable. Greater elaboration would create a problem by unduly lengthening the rules. The department will meet with anyone to clarify or elaborate on any provision of the rules.

  
\_\_\_\_\_  
Dennis D. Casey  
Commissioner

Certified to the Secretary of State April 1, 1991.

BEFORE THE BOARD OF LAND COMMISSIONERS  
AND THE DEPARTMENT OF STATE LANDS  
OF THE STATE OF MONTANA

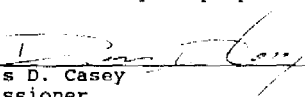
|                           |   |                     |
|---------------------------|---|---------------------|
| In the matter of the      | ) | NOTICE OF AMENDMENT |
| amendment of Rule         | ) | OF RULE 26.4.1301A  |
| 26.4.1301A pertaining     | ) |                     |
| to the modification of    | ) |                     |
| existing coal and uranium | ) |                     |
| permits                   | ) |                     |

TO: All Interested Persons

1. On January 31, 1991, the Department of State Lands and Board of Land Commissioners published notice of the proposed amendment of the above-stated rule at page 111, 1991 Montana Administrative Register, Issue No. 2.

2. No comments were received.

3. The Department of State Lands and Board of Land Commissioners have amended the rule exactly as proposed.

  
Dennis D. Casey  
Commissioner

Certified to the Secretary of State April 1, 1991.

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

In the Matter of Adoption of Proper) NOTICE OF ADOPTION OF  
Accounting Treatment for Acceptable) A NEW RULE REGARDING  
Conservation Expenditures. ) CONSERVATION ACCOUNTING

TO: All Interested Persons

1. On October 25, 1990 the Department of Public Service Regulation published notice of the proposed adoption of a new rule regarding proper accounting treatment for acceptable conservation expenditures at page 1931, issue number 20 of the 1990 Montana Administrative Register.

2. The Commission has adopted the new rule with the following addition.

RULE 1. 38.6.301 PROPER ACCOUNTING TREATMENT FOR AC-  
CEPTABLE CONSERVATION EXPENDITURES (1)(a)(i)(A) through  
(i)(B) No changes.  
(C) Measures installed at company's expense; ;  
(D) Customer conservation investment decision assis-  
tance.  
(ii) through (3) No changes.

AUTH: Sec. 69-3-102, MCA; IMP, Sec. 69-3-103, MCA

3. Comments: Montana Power Company (MPC) made two specific comments on the proposed rule: First, MPC stated that Rule 1 (1)(a)(i) should be expanded to include a category for costs incurred for providing assistance to customers in their conservation investment decisions; Second, MPC stated that the rule should allow for recovery of amortization costs which have not been recovered in rates. The Administrative Code Committee staff indicated that the Rationale for the proposed rule did not contain a statement sufficient to demonstrate that the rule is reasonably necessary.

Response: The Commission agrees that a category for costs incurred for providing assistance to customers in their conservation investment decisions should be included in the rule. The Commission has added such a category as indicated in paragraph 2. The Commission disagrees that the rule should allow for recovery of amortization costs which have not been recovered in rates. Whether or not to allow such costs is a policy determination that is outside the scope of this rule. The adoption of this rule is necessary to ensure consistent accounting treatment for conservation expenditures by gas and electric utilities. Consistent accounting treatment is necessary to facilitate the Commission's investigation and supervision of public utilities pursuant to 69-3-102 and 69-3-103, MCA.

  
HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 1, 1991.

Montana Administrative Register

7-4/11/91



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                 |                            |
|---------------------------------|----------------------------|
| IN THE MATTER OF THE AMENDMENT) | NOTICE OF THE AMENDMENT of |
| of ARM 42.12.115 relating to )  | ARM 42.12.115 relating to  |
| Liquor License Renewal )        | Liquor License Renewal     |

TO: All Interested Persons:

1. On January 31, 1991, the Department of Revenue published notice of proposed amendment of ARM 42.12.115, relating to liquor license renewal at page 115 of the 1991 Montana Administrative Register, issue no. 2.

2. No written comments were received. Therefore, the Department amends ARM 42.12.115 as proposed.



DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State April 1, 1991.

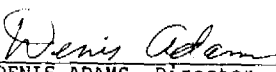
BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                 |                            |
|---------------------------------|----------------------------|
| IN THE MATTER OF THE AMENDMENT) | NOTICE OF THE AMENDMENT of |
| of ARM 42.27.118 relating to )  | ARM 42.27.118 relating to  |
| Prepayment of Motor Fuels )     | Prepayment of Motor Fuels  |
| Tax )                           | Tax                        |

TO: All Interested Persons:

1. On January 31, 1991, the Department of Revenue published notice of a public hearing to consider the proposal for an amendment of ARM 42.27.118, relating to prepayment of motor fuel taxes at page 114 of the 1991 Montana Administrative Register, issue no. 2.

2. No one appeared at the hearing and no written comments were received. Therefore, the Department amends ARM 42.27.118 as proposed.

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State April 1, 1991.

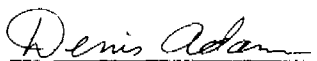
BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                 |                           |
|---------------------------------|---------------------------|
| IN THE MATTER OF THE ADOPTION ) | NOTICE OF THE ADOPTION of |
| of Rule I (ARM 42.28.408) )     | Rule I (ARM 42.28.408)    |
| relating to Special Fuel )      | relating to Special Fuel  |
| Dealers Bond )                  | Dealers Bond              |

TO: All Interested Persons:

1. On February 14, 1991, the Department of Revenue published notice of the proposed adoption of new Rule I (ARM 42.28.408) SPECIAL FUEL DEALER'S BOND, relating to special fuel dealers at page 192 of the 1991 Montana Administrative Register, issue no. 3.

2. No written comments were received. Therefore, the Department adopts ARM 42.28.408 as proposed.

  
DENIS ADAMS, Director  
Department of Revenue

Certified to Secretary of State April 1, 1991.

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

In the matter of the )  
adoption of Rules I, II and )  
III, the amendment of Rules )  
46.12.1401 through )  
46.12.1409, 46.12.1411, )  
46.12.1412, 46.12.1425, )  
46.12.1431, 46.12.1432, )  
46.12.1435 through )  
46.12.1440, 46.12.1450 )  
through 46.12.1455, )  
46.12.1469, 46.12.1475, )  
46.12.1476, 46.12.1480 )  
through 46.12.1482, and the )  
repeal of 46.12.1410 )  
pertaining to medicaid home )  
and community based program )  
for elderly and physically )  
disabled persons )

CORRECTED NOTICE OF  
ADOPTION, AMENDMENT  
AND REPEAL

TO: All Interested Persons

1. On December 13, 1990, the Department of Social and Rehabilitation Services published notice of the adoption of Rules I, II and III, the amendment of Rules 46.12.1401 through 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 through 46.12.1440, 46.12.1450 through 46.12.1455, 46.12.1469, 46.12.1475, 46.12.1476, 46.12.1480 through 46.12.1482, and the repeal of 46.12.1410 pertaining to medicaid home and community based program for elderly and physically disabled persons at page 2184 of the 1990 Montana Administrative Register, issue number 23.

2. The notice of adoption for Rules 46.12.1415 [Rule I], 46.12.1417 [Rule II], amendment for Rules 46.12.1401, 46.12.1402, 46.12.1403, 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1431, 46.12.1435, 46.12.1438, 46.12.1450, 46.12.1480, and the repeal of Rule 46.12.1410 incorrectly listed 53-6-111, MCA as an authorizing and implementing statute. These citations are being removed.

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

3. The notice of adoption of Rules I, II and III, the amendment of Rules 46.12.1401 through 46.12.1409, 46.12.1411, 46.12.1412, 46.12.1425, 46.12.1431, 46.12.1432, 46.12.1435 through 46.12.1440, 46.12.1450 through 46.12.1455, 46.12.1469,

repeal of 46.12.1410 pertaining to medicaid home and community based program for elderly and physically disabled persons incorrectly listed 53-6-101, MCA as an authorizing statute. This citation is being removed.

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

4. In the adoption of those new rules and amendment and repeal of existing rules the department was unaware of comments made by reviewers for the Legislative Council and consequently did not address those comments in the notice. This notice is to publish those comments with departmental responses and to give notice of further changes made in response to those comments.

COMMENT: 53-6-111, MCA which contains authority relating to penalties was cited as authority for numerous rules not relating to penalties.

RESPONSE: 53-6-111, MCA provides authority for the development of a vendor program for medicaid and further provides authority for penalties and sanctions for vendors violating the program. This citation has been removed as an authority for those adoptions, amendments and repeals where the rule does or did not concern vendor relationships and reimbursements.

COMMENT: 53-6-101, MCA which is cited as an authority for the adoptions, amendments and repeals contains authority only by implication and that implied authority is not authority for rules other than interpretative rules.

RESPONSE: The Department agrees that 53-6-101, MCA which relates to the services that may be provided under the medicaid program is not an appropriate authority for rule-making. All references to 53-6-101, MCA as rule making authority have been deleted.

COMMENT: The statement of reasonable necessity asserts that the rules are needed to provide that the requirements for home and community based services for persons who are elderly and physically disabled do not apply to the home and community based services for persons who are developmentally disabled. Not all of the rules, however, relate to this.

RESPONSE: The statement of reasonable necessity has been rewritten to encompass all the rule changes.

These rule changes are necessary for the following reasons:

1. to provide that the requirements for home and community based services for persons who are elderly and physically disabled do not apply to the home and community based services for persons who are developmentally disabled. The home and community based services program for persons who are developmentally disabled differs significantly from the program for persons who are elderly and physically disabled. The program for persons who are developmentally disabled is being removed from the governance of these rules so that rules specific to that program can be adopted. Several amendments remove references and requirements relating to persons who are developmentally disabled;

2. to provide references to the governing federal statutory authorities;

3. to provide that in certain circumstances providers of home and community based services may provide services to other family members in the recipient's household. This change allows in appropriate circumstances for the household as a whole to be a more stable setting for the recipient of the home and community based services;

4. to revise the cost of the plan of care procedures and criteria. This change is necessary to provide specific criteria for exceptions to the plan of care cost limitations;

5. to prohibit recipients of hospice care from receiving home and community based services. This eligibility change is necessary to meet a federal requirement;

6. to delete criteria relating to the requirements for adult day care settings. The Department of Health and Environmental Sciences now licenses adult day care facilities. Thus the criteria is unnecessary;

7. to redefine medical alert environmental modification and adaptive equipment services. This change clarifies the nature of these services;

8. to provide that adaptive equipment may include modifications to a personal vehicle. This change allows for more vehicular use by recipients and therefore increases their independence;

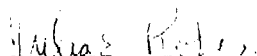
9. to allow the case management teams discretion in selecting providers of habilitation. This change provides needed flexibility that will improve the array and availability of providers;

10. to conform the health and safety provisions with the federal regulations. This change provides more flexibility and discretion to the recipient in the selection of residential and service settings;

11. to change the reimbursement methodologies for habilitation, respiratory therapy, and dietitian services. These changes conform the reimbursement methodologies for habilitation services, respiratory therapy, and dietitian services with the reimbursement methodology generally used for the other services available through the program;

12. to remove the requirement that respite care provided in a hospital be prior authorized. This limitation upon such care is not necessary to assure the appropriate use of the facilities for that service; and

13. to clarify language. Terms and provisions were redefined or changed to make the rules more understandable and to conform with current usage.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State \_\_\_\_\_ April 1 \_\_\_\_\_, 1991.

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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>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 December 31, 1990. This table includes those rules adopted during the period January 1, 1991 through March 31, 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 December 31, 1990, 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 1990 and 1991 Montana Administrative Register.

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