MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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TO: All Interested Persons:

1. On April 16, 1992, the Board of Dentistry published a notice of proposed amendment at page 723, 1992 Montana Administrative Register, issue number 7. That notice was published as No Public Hearing Contemplated.

2. The Board will hold a public hearing to consider these proposed amendments at 10:00 a.m. on July 9, 1992 in the conference room, Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620. This hearing will be held at the request of the Denturist Association of Montana representing 13 denturists. While the statutes require an agency to hold a hearing at the request of an association representing at least 25 members, the Board has decided to honor the denturists' request for a public hearing because of the direct impact of these proposed amendments on them.

3. The text of the proposed amendments and the reasons for those amendments will remain the same as proposed in the original notice.

4. Interested persons may present their data, views or arguments at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than 5:00 p.m., July 9, 1992.

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

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

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 1, 1992.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to fees and the proposed adoption of new rules pertaining to wholesale drug distributors licensing	NOTICE OF PROPOSED AMENDMENT OF 8.40.404 FEE SCHEDULE AND PROPOSED ADOPTION OF NEW RULES PERTAINING TO WHOLESALE DRUG DISTRIBUTORS LICENSING

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 11, 1992, the Board of Pharmacy proposes to amend and adopt the above-stated rules.

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

"8.40.404 FEE SCHEDULE (1) through (14) will remain the same.

(15) Wholesale drug distributor license	$150.00
(16) Annual wholesale drug distributor renewal	$ 75.00
(17) Wholesale drug distributor late renewal fee	$150.00"

Auth: Sec. 37-7-201, 37-7-610, MCA; IMP, Sec. 37-7-604, MCA

3. The proposed new rules will read as follows:

"I WHOLESALE DRUG DISTRIBUTOR LICENSING (1) Every person engaged in manufacturing, wholesale distribution, or selling of drugs, medicines, chemicals, or poisons for medicinal purposes other than to the consuming public or patient, in the state of Montana, shall be licensed annually by the board. Each applicant shall:

(a) File an application on a form prescribed by the board;

(b) Pay the appropriate licensing fee;

(c) Meet the requirements of Sec. 37-7-604, MCA.

(2) The wholesale drug distributor license shall be posted in a conspicuous place in the wholesaler's place of business for which it is issued.

(3) The wholesaler drug distributor license shall expire on March 31 of each year, and shall be renewed annually upon the filing of an application on a form prescribed by the board, together with the appropriate renewal fee.

(4) No license may be issued to any wholesale distributor whose intended place of business is a personal residence.

(5) A separate license is required for each separate location where drugs are stored within the state of Montana.

(a) Out-of-state wholesale drug distributors who do not maintain or operate a physical facility within the state of Montana are not required to license separate locations from which drugs are shipped to Montana, but may instead obtain licensure for the primary location of the parent entity and any divisions, subsidiaries, or affiliated companies.

(6) Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations. Wholesale drug distributors who deal in controlled substances shall register with the board of pharmacy and with the drug enforcement administration, and shall comply with all applicable state, local and drug enforcement administration regulations."

Auth: Sec. 37-7-201, 37-7-610, MCA; IMP, Sec. 37-7-603, 37-7-604, 37-7-605, 37-7-606, MCA

"II MINIMUM INFORMATION REQUIRED FOR LICENSURE (1) The following information shall be supplied by each applicant for wholesale drug distributor licensure or renewal:

(a) the name, full business address, and telephone number of the licensee;

(b) all trade or business names used by the licensee;

(c) addresses, telephone numbers, and the name of contact persons for all facilities used by the licensee for the storage, handling, and distribution of drugs;

(d) whether the ownership or operation is a partnership, corporation, or sole proprietorship, and;

(e) the name of the owner and operator of the licensee, including:

(i) if an individual, the name of the individual;

(ii) if a partnership, the name of each partner, and the name of the partnership;

(iii) if a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

(iv) if a sole proprietorship, the full name of the sole proprietor, and the name of the business entity;

(f) written documentation in compliance with the information required under 37-7-604, MCA.

(2) Any changes in information contained in items (a) through (e) above shall be submitted to the board within 30 days of the change."

Auth: Sec. 37-7-201, 37-7-610, MCA; IMP, Sec. 37-7-604, 37-7-605, MCA

"III PERSONNEL (1) Each wholesale drug distributor shall require each person employed in any prescription drug wholesale activity to have sufficient education, training and experience in any combination, sufficient for that person to:

(a) complete assigned work in a manner which maintains the quality, safety and security of the drug products in accordance with chapter 37, MCA;

(b) assume responsibility for compliance with the licensing requirements of chapter 37, MCA."

Auth: Sec. 37-7-201, 37-7-610, MCA, IMP, Sec. 37-7-604, MCA

"IV MINIMUM REQUIREMENTS FOR STORAGE AND HANDLING OF DRUGS (1) All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(c) have a physically separate area for storage of all prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(d) be maintained in a clean and orderly condition; and

(e) be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) All facilities used for wholesale drug distribution shall be secure from unauthorized entry as provided for in 37-7-604, MCA, and as follows:

(a) access from outside the premises shall be kept to a minimum and be well-controlled;

(b) the outside perimeter of the premises shall be well-lighted; and

(c) entry into areas where prescription drugs are held shall be limited to authorized personnel.

(3) All facilities shall be equipped with a security system to detect entry after hours.

(4) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(5) All drugs shall be stored at temperatures and under conditions in accordance with the requirements, if any, in the labeling of such drugs, or with requirements in the current edition of the United States Pharmacopeia/National Formulary, published by the United State Pharmacopeia Convention Inc., which is available for inspection at the pharmacy library at the University of Montana School of Pharmacy and Allied Health Sciences, Missoula, Montana 59812-1075.

(a) If no storage requirements are established for a drug, the drug may be held at "controlled room temperature," as defined in the United States Pharmacopeia/National Formulary, to help ensure that its identity, strength, quality and purity are not adversely affected.

(b) Manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be used to document proper storage of prescription drugs.

(c) The record keeping requirements in these rules shall be followed for all stored drugs."

Auth: Sec. 37-7-201, 37-7-610, IMP, Sec. 37-7-604, MCA

"V MINIMUM REQUIREMENTS FOR ESTABLISHMENT AND MAINTENANCE OF DRUG DISTRIBUTION RECORDS (1) Wholesale drug distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution of or other disposition of drugs. These records shall include the following information:

(a) the source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

(b) the identity and quantity of the drugs received and distributed or disposed of; and

(c) the dates of receipt and distribution or other disposition of the drugs.

(2) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two years following disposition of the drugs.

(3) Records described in this part that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at central locations apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(4) Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory and distribution of drugs. They must include policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(5) Wholesale drug distributors shall include the following written policies and procedures:

(a) a procedure where the oldest approved stock of a drug product is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of drugs. The procedure shall be adequate to deal with recalls and withdrawals due to:

(i) an action initiated at the request of the food and drug administration, or other federal, state or local law enforcement or other government agency, including the board of pharmacy;

(ii) any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(c) a procedure to ensure that wholesale drug distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

(d) a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of the drugs. This documentation shall be maintained for two years after disposition of the outdated drugs.

Auth: Sec. 37-7-201, 37-7-610; IMP, Sec. 37-7-604, 37-7-609, MCA

"VI NATIONAL CLEARINGHOUSE FOR WHOLESALE DRUG DISTRIBUTOR LICENSING (1) Any wholesale drug distributor may apply for a license in Montana through a national clearinghouse for licensing of wholesale drug distributors, which has been approved by the board, by meeting the minimum requirements for licensure in chapter 37, MCA, and complying with all requirements of the approved national clearinghouse."

Auth: Sec. 37-7-201, 37-7-610, MCA; IMP, Sec. 37-7-604, 37-7-605, 37-7-606, 37-7-607, MCA

REASON: The amended and new rules are being proposed to implement licensing of wholesale drug distributors as required by Title 37, Chapter 7, MCA, as mandated by the 1991 Legislature, and the federal Prescription Drug Marketing Act (PDMA).

4. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Pharmacy, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than 5:00 p.m., July 9, 1992.

5. If a person who is directly affected by the proposed adoption or amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Pharmacy, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than July 9, 1992.

6. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption or 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 11, based on the 105 licensees in Montana.

BOARD OF PHARMACY
ROBERT KELLEY, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 1, 1992.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examinations, education requirements and fees	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF PUBLIC ACCOUNTING

TO: All Interested Persons:

1. On August 3, 1992, at 1:00 p.m., a public hearing will be held in the Rimini Room, Park Plaza, 22 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of rules pertaining to the practice of public accounting.

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

"8.54.402 EXAMINATIONS (1) through (3) will remain the same.

~~(a) Those applicants who wish to defer the examination until a later date shall notify the board in writing prior to the date of the examination for which they are scheduled.~~

(4) A candidate who is unable for any reason to sit for an examination for which he has been approved shall notify the board office in writing prior to the commencement of the examination in order to receive a refund of fees paid less an administrative fee as provided for in ARM 8.54.410.

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

(6) Misconduct of an applicant during an examination is cause to expel the applicant from further participation in the examination and suspend the applicant's right to take the examination again for a period of five years. No grade shall be given for the examination of an expelled applicant. Acts of misconduct during an examination session may include but are not limited to any of the following:

(a) communication between candidates inside or outside of the examination room, copying another's answers, or allowing one's answers to be copied;

(b) communication with others outside the examination room;

(c) substitution by an applicant of another person to sit in the examination room in his stead and write one or more of the examination papers for him;

(d) reference to crib sheets, textbooks, or other material inside or outside the examination room; or

(e) failure to cooperate with testing officials."

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-308, MCA

REASON: The board is proposing to delete subsection (3)(a) because deferring of an examination is not feasible administratively. A new subsection (4) is being proposed to provide that applicants must cancel from an examination for

which they were scheduled and will be assessed an administrative fee for the registration if they are unable to take the scheduled examination.

The board is proposing to add subsection (6) to provide rules for the orderly conduct of the examination as provided for in section 37-50-308, MCA. These provisions have been adopted by the board in policy format but never included in the administrative rules. The board became aware of this when it was cited by an oversight body reviewing the examination administration procedures.

"8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION (1) will remain the same.

(2) A candidate whose application to sit for the C.P.A. examination as a Montana resident has been approved, and who subsequently moves out of the state, will be considered a Montana resident until he affirmatively establishes residency in another state~~,~~ ~~and t~~The board ~~will~~ may request the state board of the state to which the candidate has moved to proctor the examination for Montana ~~for~~ after timely payment of the required fees to Montana ~~for:~~.

~~(a) six consecutive examinations on the original application, or~~

~~(b) five consecutive examinations after the candidate has been "conditioned" in accordance with regulations under section 37-50-204, MCA, including extensions.~~

(3) will remain the same."

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-308, MCA

REASON: The board is proposing to amend this rule to clean up language in subsection (2) and delete repetitive language in subsection (2)(a) and (b) that is stated in ARM 8.54.405.

"8.54.405 CONSECUTIVE EXAMINATIONS AND REEXAMINATION REQUIREMENTS (1) Prior to the examination scheduled for May, 1994, ~~A~~an approved application to sit for the C.P.A. examination shall entitle the candidate to sit for the 6 consecutive examinations on the application beginning with the first examination after the approved date of said application if the required fees are paid timely except as follows:

(a) through (c) will remain the same.

(2) Effective with the May, 1994, examination:

(a) A candidate who has been awarded conditional credit during examinations taken in preceding years for the accounting practice section shall be awarded conditional credit for the accounting and reporting - taxation, managerial, and governmental and not-for-profit organizations (ARE) section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires pursuant to (1) above, whichever occurs first.

(b) A candidate who has been awarded conditional credit during examinations taken in preceding years for either auditing (AUDIT) or business law, renamed business law and

professional responsibilities (LPR) section, or both, shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires pursuant to (1) above, whichever occurs first.

(c) A candidate who has been awarded conditional credit during examinations taken in preceding years for the accounting theory section shall be awarded conditional credit for the financial accounting and reporting - business enterprises (FARE) section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires pursuant to (1) above, whichever occurs first.

(3) Effective with the May, 1994, examination, an approved application to sit for the examination shall entitle the candidate to sit for the six consecutive examinations beginning with the first examination after the approved date of said application except as follows:

(a) A candidate who passes all sections of the examination in one sitting shall have passed the examination.

(b) A candidate who passes two or more, but not all sections of the examination, shall receive credit for those sections passed, and need not sit for reexamination in those sections, provided that the candidate:

(i) wrote all sections of the examination at that sitting;

(ii) attained a minimum grade of 50 on each section not passed at that sitting unless a hardship exception is approved by the board;

(iii) passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

(iv) at each subsequent examination at which the candidate seeks to pass any additional sections, the candidate writes all sections not yet passed; and

(v) in order to receive credit for passing additional sections in any such subsequent sitting, attains a minimum grade of 50 on sections written but not passed on such sitting unless a hardship exception is approved by the board.

(c) A candidate who misses one or more consecutive examinations because of hardships may apply to the board for an extension of the conditional credits. An extension may be granted at the board's discretion on an individual basis.

(d) Hardship exceptions will include illness, death in the immediate family, or other extenuating circumstances as determined by the board.

~~(2)~~ (4) Candidates who fail to pass or condition the ~~uniformed certified public accountants~~ examination under an approved original application may apply to the board for reexamination ~~for the next 6 consecutive examinations~~.

(a) The board, upon receiving the application, shall ~~accept or~~ reject the application.

~~(a) The application shall be rejected~~ if the average score from the previous two examinations is below 50.

(b) ~~Any~~ applicant who has been rejected by the board for reexamination may reapply for the next regularly scheduled examination by submitting with his application for reexamination evidence of further educational preparation for the ~~uniform certified public accountants~~ examination. The evidence considered by the board shall consist of:

(i) through (iii) will remain the same."

Auth: Sec. 37-50-203, 37-50-204, 37-50-308, MCA; IMP, Sec. 37-50-204, 37-50-308, MCA

REASON: The board is proposing the amendments to respond to the new structure and format of the uniform CPA examination that is scheduled commencing with the May, 1994 exam. The proposal provides for transition to the new exam format by allowing candidates to be awarded conditional credit for the new sections of the exam depending on conditional credit granted under the previous examination.

The proposed addition of subsection (3) provides for the terms and conditions for which a candidate can receive conditional credit under the new structure and format.

The proposed amendment to subsection (4) is a general cleanup and deletes unnecessary language.

"8.54.408 EDUCATION REQUIREMENTS (1) Prior to July 1, 1997:

(a) A candidate for certification as a certified public accountant or licensing as a licensed public accountant who submits an application for an examination administered prior to July 1, 1997, or a candidate whose approved application for examination is still current under the provisions of ARM 8.54.405, or a candidate who applies by transfer of grades, must have graduated from a college or university accredited to offer a baccalaureate degree, with a concentration in accounting, or

(a) and (b) will remain the same but will be renumbered (i) and (ii).

~~(2) Accredited schools -- The board may recognize as accredited any school in any state recognized as accredited by the state's board of public accountants or similar regulating body, or by comparison of academic standards to those of the university systems schools of business.~~

(3) will remain the same but will be renumbered (b).

~~(4)~~ (c) Supplemental experience will be interpreted by the board to be 5 years of employment by a public accounting firm, or 5 years of employment in industry or government in a responsible financial position, and the board determines that an equivalent accounting education has been achieved.

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

(2) A candidate submitting an application for an examination administered after July 1, 1997, or a candidate whose approved application for examination has expired and is making reapplication for an examination administered after July 1, 1997, or a candidate who applies by transfer of grades

after July 1, 1997, for certification as a certified public accountant or licensing as a licensed public accountant must:

(a) have graduated from a college or university accredited to offer a baccalaureate degree:

(i) with an accounting concentration or its equivalent as determined by the board; and

(ii) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

(b) A concentration in accounting or its equivalent is determined to have been met if the applicant:

(i) has at least 24 semester hours of upper division or graduate level accounting courses including at least one course in each of the following subject areas:

(A) financial accounting;

(B) auditing,

(C) taxation, and

(D) management accounting; and

(ii) has at least 24 semester hours in upper division or graduate level business related courses. Examples of business related courses include information systems, business law, finance, economics, marketing, ethics, organizational behavior, quantitative applications in business, and communication skills.

(c) An upper division course is normally defined as a course taken at the junior or senior level and would exclude introductory courses in accounting and economics.

(3) An accredited school is one that is accredited by the American assembly of collegiate schools of business, or one of the following regional accrediting agencies:

(a) middle states association of colleges and secondary schools,

(b) new england association of schools and colleges,

(c) north central association of colleges and secondary schools,

(d) northwest association of schools and colleges,

(e) southern association of schools and colleges, or

(f) western association of schools and colleges.

(4) Graduates of foreign schools shall have their education evaluated by an advisory evaluation service specified by the board.

(5) One quarter unit or hour of credit is equivalent to two-thirds of a semester unit or hour."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, 37-50-302, 37-50-303, 37-50-305, MCA

REASON: The board is proposing to amend this rule to implement the new educational requirements that were passed by the 1989 Legislature and become effective July 1, 1997. The proposal was recommended by a committee of certified public accountants in active practice, representatives of the University of Montana, Eastern Montana College, Carroll

College and Montana State University and are reflective of the model language and guidelines that promote uniformity and ensures mobility across state lines.

"8.54.410 FEE SCHEDULE

(1) Certified public accountant application for uniform C.P.A. examination - All original Montana applications.....~~$100.00~~ $130.00

(2) Certified public accountant application by reciprocity..... ~~70.00~~ 100.00

(3) Transfer of grades (all parts)..... ~~70.00~~ 100.00

(4) Reexamination fee -- for each separate part to be reexamined (Accounting Practice I and II are two parts) through the November, 1993 exam..... ~~20.00~~ 26.00

(5) Reexamination fee -- for each separate part to be reexamined beginning with the May, 1994 exam..... 32.50

~~(5)~~ (6) Annual fee for non-permit holder..... ~~25.00~~ 35.00

~~(6)~~ (7) Annual fee for permit to practice..... ~~50.00~~ 70.00

~~(7)~~ (8) Candidates cancelling their examinations ~~and requesting a refund~~ will be charged a maximum fee of ~~$25.00~~ $30.00 to cover administrative costs.

(a) will remain the same.

~~(8)~~ (9) Reissue of certificate or license..... ~~10.00~~ 15.00

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

(9)(a) and (b) will remain the same.

(10) and (11) will remain the same but will be renumbered (11) and (12)."

Auth: Sec. 37-1-134, 37-50-203, MCA; IMP, Sec. 37-1-134, 37-50-204, 37-50-314, 37-50-317, MCA

REASON: The board is proposing to amend the fee schedule to establish fees commensurate with costs in administering its program. The last adjustment to the fee schedule was made in 1989 and resulted in the decrease of some fees in response to a surplus of its special revenue account fund balance. The board's fund balance has decreased and is projected that at the current level of spending and revenue collection, the board's account balance would be in a deficit by 1996. The proposed changes are needed now to effectively administer its duties and responsibilities.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Public Accountants, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than July 17, 1992.

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

BOARD OF PUBLIC ACCOUNTANTS
SHIRLEY J. WAREHIME, C.P.A.,
CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 1, 1992.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to reports, alternatives and exemptions and reviews and enforcement	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF PUBLIC ACCOUNTING

TO: All Interested Persons:

1. On August 3, 1992, at 2:00 p.m., a public hearing will be held in the Rimini Room, Park Plaza, 22 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of rules pertaining to the practice of public accounting.

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

"8.54.904 FILING OF REPORTS AND/OR WORKPAPERS (1) through (1)(d) will remain the same.

(2) The board may require a permit holder to submit workpapers prepared in support of the reports issued in (1) above.

(2) and (3) will remain the same but will be renumbered (3) and (4)."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA

REASON: The board is proposing to amend the rules to provide that a permit holder may be required to submit workpapers in addition to the report. This would serve as a means of upgrading the program to become more compatible with those licensees who participate in a peer or quality review to allow for a more thorough review of the work product of licensees. This also allows for the monitoring of the profession by ensuring that the workpapers, in addition to the report, are being prepared in accordance with professional standards.

"8.54.905 ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone an AICPA or board-sanctioned peer or quality review within 3 calendar years may satisfy the requirements of ARM 8.54.904 by filing a copy of the unqualified peer or quality review report including acceptance of the review report by the AICPA or other oversight agency. If the report is other than unqualified, then a complete copy of the report, including all findings and recommendations and the practice unit's responses to such findings and recommendations, may be filed in order to satisfy the requirement.

(2) Upon receipt of an other than unqualified peer or quality review report, the board may require the practice unit to also file a report and/or workpapers pursuant to ARM 8.54.904.

(2) will remain the same but will be renumbered (3)."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA

REASON: The board is proposing to amend the rule to require that, in addition to the quality or peer review report, a practice unit must also file a copy of the acceptance letter to ensure that there is an oversight agency monitoring the process of the review.

The board is proposing to provide that a practice unit may be required to submit a report for review under its program if there has been a modified peer or quality review. This will allow for the board to monitor the work product of the licensee in instances where deficient reporting was noted in previous years and the practice unit is issued a modified peer or quality review report.

"8.54.906 REVIEWS AND ENFORCEMENT (1) Reports submitted shall be classified as either acceptable~~, acceptable with comments, marginal or deficient~~ or not acceptable. Definitions of these terms are as follows:

~~(a) "Acceptable" means in compliance with professional standards (no significant departures from professional standards noted).~~

~~(b)~~ (a) "Acceptable ~~with comments~~" means in compliance with professional standards (no significant departures from professional standards noted), but reviewers ~~did~~ may have minor comment(s) for the practitioner's consideration.

~~(c) "Marginal" means noticeable departures from professional standards, and the report is generally not in compliance.~~

~~(d) "Deficient" means serious departures from, or omissions of, compliance with professional standards noted, so that the reviewer believes the report is basically not in compliance with professional standards and is materially inaccurate or misleading.~~

(b) "Not acceptable" means not in compliance with professional standards as the reviewers have noted significant departures from such standards and/or the report is significantly inaccurate.

(2) Responses are required from those practice units whose reports are classified as ~~deficient~~ not acceptable or from practice units that have submitted a peer or quality review report that is other than unqualified. The board may also require a written comprehensive statement of future procedures to be followed that will insure an improvement in the quality of future reports.

~~(3) The board may require responses from practice units which have consecutive reports classified as marginal or a combination of marginal and deficient.~~

~~(4)~~ (3) For those practice units which are required to submit responses under (2) ~~or (3)~~ above, the board may require one or more of the following actions~~:~~

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

~~(5) For those practice units whose reports are classified as deficient for more than one year, the board may require:~~

~~(a) the practice unit to submit a written comprehensive statement of future procedures to be followed that will insure an improvement in the quality of future reports.~~

(6) will remain the same but will be renumbered (4)."
Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA

REASON: The board is proposing to amend the rule to change the classifications and definitions used in the Profession Monitoring Program. While the current definitions have been satisfactory for the past six years, it is now time to initiate changes that will provide practice units with a definitive statement regarding the quality of the financial reporting and allow the board to actually center its attention on monitoring those practice units that are issuing reports on financial statements that are not in compliance with professional standards.

The Board is also proposing to require practice units that have had a peer or quality review that is other than unqualified to submit written responses to provide for the monitoring of those practice units. This will clarify the rules to cover current practice and place all practice units in the program under similar monitoring requirements."
Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Public Accountants, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than July 17, 1992.

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

BOARD OF PUBLIC ACCOUNTANTS
SHIRLEY J. WAREHIME, C.P.A.,
CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 1, 1992.

**BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA**

In the matter of proposed amendments of Rule 8.86.301 as it relates to class I wholesale prices	)))))	**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF RULE 8.86.301-PRICING RULES** **DOCKET #13-92**

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

1. On Tuesday, July 21, 1992, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the Department of Transportation auditorium, 2701 Prospect Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to a petition submitted by Ed McHugh, Clover Leaf Dairy, Helena, Montana.

3. The rule as proposed to be amended by Clover Leaf Dairy provides as follows: (Full text of the rule is located at pages 8-2539 thru 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)-(6)(h) remains the same.

(i) The minimum full service wholesale price for retail grocery stores will be calculated by multiplying the minimum retail prices by a factor of eighty-seven percent (87%). The minimum wholesale prices charged to retail grocery stores by distributors and paid by retail grocery stores to distributors shall be at this price if the distributor provides any ordering services, ~~shelf-stocking services,~~ outdated product credit services, or retail price marking services to the retail grocery store. All fluid milk purchased by retail grocery stores pursuant to this subsection (i) must be paid within fifteen (15) days after invoicing.

(ii) The minimum drop shipment wholesale price for retail grocery stores that purchase their fluid milk without the provision of any of the services outlined in (i) shall be calculated by multiplying the minimum retail prices by a factor of eighty-three percent (83%). Distributors selling fluid milk to retail grocery stores at this price will not be

allowed to provide any of the services listed in subsection (i) above to retail grocery stores, ~~other than delivery of the fluid milk products to the back room refrigerated storage area of the retail stores.~~ In the event the distributor or his agents provide any of the ~~other~~ services listed above to the retail grocery store, the minimum wholesale price paid for the milk products by the retail grocery store to the distributor shall be the full service wholesale price as set forth in subsection (i) above. Distributors selling fluid milk to retail grocery stores at this price will be allowed to make deliveries of fluid milk products no more than four (4) times per week, and each delivery must be for a minimum of $150.00. In the event a distributor or his agents provide delivery of fluid milk products more than four (4) times per week, the minimum wholesale price paid for the fluid milk products by the retail grocery store to the distributor shall be the full service wholesale price set forth in subsection (i) above. All fluid milk purchased by retail grocery stores pursuant to this subsection (ii) must be paid within fifteen (15) days after invoicing.

(iii) The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the distributor's dock. The retail grocery store can pick up milk at the distributor's dock with its own equipment or by a contract hauler retained by and paid by the retail grocery store or can have the milk delivered by the distributor. If the distributor delivers the milk to the retail grocery store a delivery charge based upon the cost of delivery, which shall be a minimum of three and one-half percent (3.5%) of the retail grocery store's invoice. The distributor shall not provide ~~any service of any type~~ shelf-stocking services or any of the services listed in subsection (i) above to retail grocery stores purchasing milk pursuant to this subsection (iii). In order for a retail store to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a minimum of one thousand (1000) gallons of fluid milk products per week.

(iv)-(14)(b) remains the same."

4. The rationale for the proposed change in ARM 8.86.301(6)(h)(i),(ii) and (iii) would permit dairy personnel to restock store shelves when clerks are unavailable to do stocking. Permitting such activity will insure that store customers may purchase the brand of milk they want from the grocer's shelf.

5. Persons known to have a possible interest in this proposal are distributors, jobbers and retailers.

6. Specific factors which the board will take into consideration in these proceedings will include, but not be limited to the following:

a. The cost factors of stocking store coolers and shelves.

b. The cost factors of all other service related factors.

c. The cost factors in distributing milk, which shall include among other things the price paid by distributors for equipment of all types required to process and market milk, and prevailing wage rates in the state.

d. The cost factors in retailing milk, which shall include among other things that part of general administrative costs which may be properly allocated to the handling of milk, equipment of all types required to market milk, and the cost of wages in the state.

7. Interested persons may participate and present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than July 17, 1992.

8. Dennis Moreen, Attorney at Law, 208 N. Montana Avenue - Suite 101, Helena, MT 59601-3837, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

9. Authority for the board to make the proposed amendment is based on section 81-23-302, MCA, and the rule implements section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: _____
Andy J. Poole, Deputy Director
Department of Commerce

By: _____
Annie M. Bartos, Chief Legal Counsel
Department of Commerce Rule Reviewer

Certified to the Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.18.107, 11.18.113, 11.19.103, and 11.19.107 pertaining to licensing of community homes for the developmentally and physically disabled	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 11.18.107, 11.18.113, 11.19.103, AND 11.19.107 PERTAINING TO THE LICENSING OF COMMUNITY HOMES FOR THE DEVELOPMENTALLY AND PHYSICALLY DISABLED

TO: All Interested Persons

The notice of proposed agency action published in the Montana Administrative Register on April 16, 1992, is amended as follows because the Montana Department of Social and Rehabilitation Services requested a public hearing:

1. On July 7, 1992, at 1:30 p.m., a public hearing will be held in the conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of Rules 11.18.107, 11.18.113, 11.19.103, and 11.19.107 pertaining to licensing of community homes for the developmentally and physically disabled.

2. The rules as proposed to be amended and the rationale are the same as original notice found on page 741 of the 1992 Montana Administrative Register, issue 7.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 9, 1992.

4. The Office of Legal Affairs, Department of Family Services, has been designated to preside over and conduct the hearing.

5. The authority of the department to amend the rules is based on Sections 52-4-205, and 53-20-305, MCA. The proposed amendments implement Sections 52-4-203, and 53-20-305, MCA.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, June 1, 1992.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of a New Rule concerning the encroachment of mailboxes and newspaper delivery boxes on highway rights-of-way, and proposed amendment of Rule 18.7.105	))))))	NOTICE OF PROPOSED ADOPTION OF A NEW RULE AND THE AMENDMENT OF RULE 18.7.105 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 27, 1992, the Department of Transportation proposes to adopt a new rule pertaining to encroachments on highway rights-of-way, and to amend Rule 18.7.105. The new rule and the amendment are made necessary by amendments to section 60-6-101, MCA. More specifically, the amendments to the statute added mailboxes and newspaper delivery boxes to the list of items that are considered encroachments. See 1991 Montana Laws, chapter 287, section 1. Also, 1991 Montana Laws, chapter 512, section 3 changed the name from the Department of Highways to the Department of Transportation.

2. Section 1 of said Chapter 287 granted the Department rule making authority pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way.

3. The rules, as proposed to be adopted and amended, will read as follows (in the amended rule, new material is underlined and the material to be deleted is interlined):

18.7.105 ENCROACHMENTS ON NON-CONTROLLED ACCESS HIGHWAY RIGHT-OF-WAY (1)(a) - (1)(c) Remain the same.

(d) Mail boxes and newspaper deliver boxes that comply with the rules in this sub-chapter.

AUTH: 60-6-101, MCA; IMP: 60-6-101, MCA

NEW RULE I MAILBOXES AND NEWSPAPER DELIVERY BOXES (1) No mailbox or newspaper delivery box (hereafter referred to as "mailbox") will be allowed to exist on any highway under the jurisdiction of the highway commission if it interferes with the safety of the traveling public or the function, maintenance, or operation of the highway system. A mailbox installation that does not conform to the provisions of this regulation is an unauthorized encroachment under Title 60, Chapter 6, Part 1, MCA. The location and construction of mailboxes shall conform to the rules and regulations of the U.S. Postal Service as well as the standards established by the department. The standards of the department for the location and construction of mailboxes are available from:

Montana Department of Transportation
2701 Prospect Avenue
Helena, MT 59620

(2) A mailbox installation that conforms to the following criteria will be considered acceptable unless in the judgment of the department the installation interferes with the safety of the traveling public or the function, maintenance, or operation of the highway system.

(a) No mailbox will be permitted where access is obtained from the lanes of a freeway or where access is otherwise prohibited by law or regulation.

(b) Mailboxes shall be located on the right-hand side of the roadway in the direction of the delivery route except on one-way streets where they may be placed on the left-hand side. The bottom of the box shall be set at an elevation established by the U.S. Postal Service, usually between 3'6" and 4'0" above the roadway surface. The roadside face of the box shall be offset from the edge of the traveled way a minimum distance of the greater of the following: 8 feet (where no paved shoulder exists), the width of the all-weather shoulder present plus 8 to 12 inches, or the width of an all-weather turnout specified by the department plus 8 to 12 inches.

(c) Exceptions to the lateral placement criteria above will exist on residential streets and certain designated rural roads where the department deems it in the public interest to permit lesser clearances or to require greater clearances. On curbed streets, the roadside face of the mailbox shall be set back from the face of curb a distance between 6 and 12 inches. On residential streets without curbs or all-weather shoulders that carry low-traffic volumes operating at low speeds, the roadside face of a mailbox shall be offset between 8 and 12 inches behind the edge of pavement. On very low-volume rural roads with low-operating speeds, the department may find it acceptable to offset mailboxes a minimum of 6'8" from the traveled ways and under some low-volume, low-speed conditions may find clearances as low as 2'8" acceptable.

(d) Where a mailbox is located at a driveway entrance, it shall be placed on the far side of the driveway in the direction of the delivery route.

(e) Where a mailbox is located at an intersecting road, it shall be located a minimum of 100 feet beyond the center of the intersecting road in the direction of the delivery route. This distance shall be increased to 200 feet when the average daily traffic on the intersecting road exceeds 400 vehicles per day.

(3)(a) Mailboxes shall be of light sheet metal or plastic construction conforming to the requirements of the U.S. Postal Service. Newspaper delivery boxes shall be of light sheet metal or plastic construction of minimum dimensions suitable for holding a newspaper.

(b) No more than two mailboxes may be mounted on a support structure unless the support structure and mailbox arrangement have been shown to be safe by crash testing. However,

lightweight newspaper boxes may be mounted below the mailbox on the side of the mailbox support.

(c) Mailbox supports shall not be set in concrete unless the support design has been shown to be safe by crash tests when so installed.

(d) A single 4-inch x 4-inch or 4½-inch diameter wooden post or a metal post with a strength no greater than a 2-inch diameter standard strength steel pipe and embedded no more than 24 inches into the ground will be acceptable as a mailbox support. A metal post shall not be fitted with an anchor plate, but it may have an anti-twist device that extends no more than 10 inches below the ground surface.

(e) The post-to-box attachment details should be of sufficient strength to prevent the box from separating from the post top if the installation is struck by a vehicle. The May 24, 1984 edition of the AASHTO (American Association of State Highway and Transportation Officials) publication "A Guide for Erecting Mailboxes on Highways" has been used as a guide for this rule and is incorporated by reference. Please refer to Figures I, III, and V of said document for acceptable attachment details, and Figures II, IV, and V, which show acceptable mailbox support assemblies. (Copies of all AASHTO publications referenced in these rules are available for inspection and copying at the department's offices in Helena. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capital Street, NW, Washington, DC 20001.)

(f) The minimum spacing between the centers of support posts shall be three-fourths the height of the posts above the groundline.

(g) Mailbox support designs not described in this regulation may be acceptable if specifically approved by the department.

(4) It will be the responsibility of the postal patron to inform the department of any new or existing mailbox installation where shoulder construction is inadequate to permit all-weather vehicular access to the mailbox.

(5) Any mailbox that is found to violate the intent of this regulation shall be subject to the notification and removal provisions found in sections 60-6-101 through 60-6-105, MCA.
AUTH: 60-6-101, MCA; IMP: 60-6-101, MCA

4. The primary purpose of the new rule is to strike a balance between the need for mail deliveries to be accomplished in an efficient manner and the need to protect the traveling public from unsafe encroachments upon the highway right-of-way. Injury from striking a mailbox is only one of the risks associated with mailboxes. The postman's maneuvers in collecting and delivering mail and the patron's activities, as pedestrian or motorist, in depositing and collecting mail, create opportunities for traffic conflict and human error. Reducing the number and severity of these conflicts while accommodating the need for the efficient flow of mail is the primary objective of these rules.

5. Interested persons may submit their data, views or arguments in writing to Gary Gilmore, Montana Department of Transportation, 2701 Prospect, Helena, MT 59620, delivered no later than 5:00 p.m. July 10, 1992.

6. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, that person must make written request for a hearing and submit this request along with any written comments to Gary Gilmore, Montana Department of Transportation, 2701 Prospect, Helena, MT 59620, no later than July 10, 1992.

7. 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 Administration Code Committee of the legislature, from a governmental agency or subdivision or from any association having 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.

John Rothwell, Director
Department of Transportation

Lyle Manley, Rule Reviewer

Certified to the Secretary of State May 29, 1992.

BEFORE THE FIRE PREVENTION AND INVESTIGATION BUREAU
OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 23.7.105 pertaining to the adoption of the Uniform Fire Code, International Conference of Building Officials and the 1991 edition of the UFC Standards and rule 23.7.110 pertaining to correction of MCA cites	))))))	NOTICE OF THE PROPOSED AMENDMENT OF RULE 23.7.105 AND 23.7.110. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 11, 1992, the Fire Prevention and Investigation Bureau proposes to amend and adopt the 1991 edition of the Uniform Fire Code and correct 23.7.110 MCA cites.

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

23.7.105 ADOPTION OF UNIFORM FIRE CODE AND DEFINITIONS

(1) The fire prevention and investigation bureau hereby adopts and incorporates by reference the Uniform Fire Code, International Conference of Building Officials, ~~1988~~ 1991 edition, and the ~~1988~~ 1991 edition of the UFC Standards. Copies of the Uniform Fire Code and related materials may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90602, or from the Building Codes Bureau of the State of Montana Department of Commerce, 1218 East Sixth Avenue, Helena, MT 59620. Information is available upon request from the Fire Prevention and Investigation Bureau, Department of Justice, 303 North Roberts, Helena MT 59620.

(2) through (5) remain the same.

(AUTH: 50-3-102, 50-61-102, MCA; IMP: Sec. 50-3-102, 50-61-102, MCA)

23.7.110 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) This rule shall govern certification for fire and life safety of all community homes for the developmentally disabled, in accordance with section ~~53-19-204~~ 53-20-307, MCA, and of all community homes for persons with severe disabilities, in accordance with section ~~53-19-204~~ 52-4-204, MCA.

(2) through (7) remain the same.

(AUTH: 53-20-307, 52-4-204, MCA; IMP: Sec. 53-20-307, 52-4-204, MCA)

By: Marc Racicot
MARC RACICOT, Attorney General

Judy Browning
Rule Reviewer

Certified to the Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.32.104, 42.32.105, 42.32.106, 42.32.107 relating to Resource Indemnity Trust Taxes	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.32.104, 42.32.105, 42.32.106, 42.32.107 relating to Resource Indemnity Trust Taxes

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1992, the Department of Revenue proposes to amend ARM 42.32.104, 42.32.105, 42.32.106, 42.32.107 relating to Resource Indemnity Trust Taxes.

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

42.32.104 RESPONSIBILITY FOR FILING FORMS AND PAYING TAX (1) and (2) remain the same.

(3) A producer who has filed a metal mines license tax return pursuant to Title 15, chapter 37, part 1, MCA, does not also need to file a resource indemnity trust return. Not filing a resource indemnity trust return does not relieve the producer from the obligation to pay the tax. A producer of gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones who does not file a metal mines license return must file a resource indemnity trust tax return.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-38-104 MCA

42.32.105 SUPPLEMENTAL INFORMATION (1) Attachments may be made to the resource indemnity trust tax statement of gross yield ~~(Form No. RITT-600)~~ if space is not adequate on the form to provide complete information. Companies using data processing equipment may provide computer printouts to supply the production information if columns and/or totals are properly identified.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-38-105 MCA

42.32.106 MINIMUM TAX AND ANNUAL EXEMPTION (1) The minimum annual tax of $25 is due only once each year from each individual, partnership, firm, association, joint-stock company, syndicate, or corporation who engages in or carries on the business of mining, extracting, or producing a ~~material~~ mineral. Likewise the $5,000 reduction of gross value of product may be claimed only once each year by a producer.

~~(2) If a producer files more than one statement of gross yield for resource indemnity trust tax purposes, he must number each statement in the upper left-hand corner starting with the number one each year and indicate on the second and all succeeding statements that the $25 minimum annual tax was paid~~

~~and the $5,000 reduction of gross value of product was claimed on statement number one.~~

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-38-104 MCA

42.32.107 COMPUTATION OF GROSS VALUE ~~FOR ALL MINERALS EXCEPT OIL AND GAS~~ (1) For all minerals except oil and gas, ~~G~~gross value of product for purposes of the resource indemnity trust tax will be determined at the time of extraction from the ground. The time of extraction is after loading the raw mineral product and before any hauling or transportation occurs.

(2) Gross value of product at the time of extraction will be determined using one of the following methods ~~which are listed in the order they are to be considered.~~ for each product produced as noted:

(a) For coal, the gross value of the product is defined as the "contract sales price" for the coal severance as stated in 15-35-102 MCA times the tons produced; except the tonnage exemption defined in 15-35-103(4) MCA cannot be claimed in computing the resource indemnity trust tax.

(i) If the department imputes a value for coal pursuant to 15-35-107 MCA the same imputed value will be used in computing the resource indemnity trust tax.

(b) For talc, the gross value of the product is defined as the tons produced in the year for which a return is filed times the value stated in 15-23-515(2) MCA.

(c) For vermiculite, the gross value of the product is defined as the tons produced in the year for which a return is filed times the value stated in 15-23-516(2) MCA.

(d) For gold, silver, copper, lead, or any other metal or metals, or precious, semiprecious gems or stones, of any kind for which a resource indemnity trust tax return is filed the gross value of the product are the "receipts received" as defined in 15-23-801(5) MCA.

(e) For lime rock, granite, marble, travertine, phosphate, bentonite, barite and other minerals, rock or stone extracted from underground mines, quarries, or open pits gross value at the time of extraction will be determined using one of the following methods which are listed in the order they are to be considered:

~~(a)~~(i) The producer's actual sales prices for mineral products sold at the time of extraction will be considered the best evidence of value provided the sales are arm's-length and represent ~~approximately~~ more than 30% of total mineral production. Sales of less than 30% of total production may be acceptable indicators of value if the sales price per unit is corroborated with other representative market data for minerals of like kind and grade. Documentation for this method must be provided by the producer to the department on request.

~~(b)~~(ii) If the producer does not have the sales information discussed in ~~(a)~~(e)(i), a market survey of other producers' sales of like kind and grade mineral products may be done. If this method is used, the producer must obtain market

data for 3 or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for minerals of comparable quality sold in quantities approximating the producers level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. All information obtained by the producer to support this method must be provided to the department on request.

~~(c)~~(iii) If the information required by ~~(a)~~(e)(i) or ~~(b)~~(ii) is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is stated below.

$$\text{Taxable value/unit} = \frac{\text{Direct costs through extraction}}{\text{Total direct costs}} \times \text{Sales price/unit}$$

~~(i)~~(A) Direct costs through extraction will include overburden removal, drilling, blasting, loading, mine reclamation, royalties and any other direct costs incurred through the loading process.

~~(ii)~~(B) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products which have not been manufactured or fabricated. These costs will typically include hauling, sorting, crushing, grinding, drying, smelting, refining, etc. Final reclamation costs related to dismantling facilities may also be included in total direct costs.

~~(iii)~~(C) The sales price per unit will be the weighted average price of the first marketable product or group of substantially similar products sold in significant quantities by the producer. The first marketable product or group of products will not include manufactured products. For example, a cement producer must use the sales price of bulk cement not the price of concrete blocks he may manufacture from the cement.

~~(iv)~~(D) Only direct costs may be used in computing the cost ratio for the formula. No costs that benefit the operation as a whole or are not directly related to a specific phase of the mining or processing of the mineral product will be included in the ratio.

~~(d)~~(iv) The department may use an alternative valuation method if warranted by an unusual situation.

(3) For oil and gas, gross value of product for the purposes of the resource indemnity trust tax will be determined at the time of extraction at the wellhead. The gross value of product is defined as the total value of all petroleum and other mineral or crude oil or natural gas produced each year determined by taking the total number of barrels or cubic feet thereof produced each month during such year at the average

value at the mouth of the well during the month the same is produced. However, the total value shall be reduced for royalties paid to the United States, the state of Montana, Indians and Indian tribes, county or municipal government.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-38-104 and 15-38-105, MCA

3. These rules are proposed to be amended in order to implement 1991 statutory changes and for housekeeping purposes.

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

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

no later than July 10, 1992.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 10, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.454 relating to Market Value for Property	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.20.454 relating to Market Value for Property
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1992, the Department of Revenue proposes to amend ARM 42.20.454 relating to market value for property.

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

42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property adjusted by the sales assessment ratio study, the department may consider the actual selling price of the property as evidence of the market value of the property. For the actual selling price to be considered in lieu of the sales ratio adjusted value, a taxpayer or his/her agent must meet the following requirements:

(a) through (g) remain the same.

(h) Must provide ~~a minimum of three~~ two comparable sales of similar property ~~to support the market value under consideration~~ in the same general geographic area to where the taxpayers property is situated. If there are not two sales, one sale may suffice. The department will use its sales records to identify the sales prices and determine if the sales were valid, arm's-length sales. Taxpayers will be permitted to examine the sales information for the comparable property if they agree to keep the information confidential; and

(i)(i) through (4) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-102 MCA.

3. ARM 42.20.454 is proposed to be amended in order to make the objection to the appraisal of property procedure easier for taxpayers. It will allow the taxpayers a chance to express their points of view by making it less cumbersome to gather the evidence needed to appeal their tax assessments.

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

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

no later than July 10, 1992.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 10, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.23.211; 42.23.311; 42.23.403; 42.23.411; 42.23.514; 42.23.515; 42.23.604; and 42.23.605; REPEAL of ARM 42.23.523; and ADOPTION of NEW RULES I through V relating to the Corporation License Tax Division	NOTICE OF PROPOSED AMENDMENT of ARM 42.23.211; 42.23.311; 42.23.403; 42.23.411; 42.23.514; 42.23.515; 42.23.604; 42.23.605; REPEAL of ARM 42.23.523; and ADOPTION of NEW RULES I through V relating to the Corporation License Tax Division

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1992, the Department of Revenue proposes to amend ARM 42.23.211; 42.23.311; 42.23.403; 42.23.411; 42.23.514; 42.23.515; 42.23.604 and 42.23.605; repeal ARM 42.23.523; and adopt new rules I through V relating to the Corporation License Tax Division.

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

42.23.211 USE OF SEPARATE ACCOUNTING METHOD (1) In applying the separate accounting method, each item of income is segregated and directly allocated according to its source. Any expense or other deductible items, including a reasonable allowance for general overhead expenses, attributable to the earning of such income are likewise segregated and deducted from such income. Items of nonbusiness income are to be allocated as provided for under ~~{42-2.6(1)-S6310 through 42-2.6(1)-S6350 of these rules}~~ Section 15-31-304, MCA.

AUTH: Sec. 15-31-313 and 15-31-501, MCA; IMP, 15-31-301 through 15-31-326 MCA.

42.23.311 FILING REQUIREMENTS UPON MERGER OR CONSOLIDATION (1) In case of either a merger or a consolidation of corporations, the absorbed corporations must file final returns covering the period between the close of the preceding reporting period and the date of merger or consolidation. For taxable years beginning after December 31, 1990, the final return filed on a separate company basis for the period prior to the consolidation is due on the fifteenth day of the fifth month following the close of the first taxable period for which a return is filed on a consolidated basis. A merger will have no effect on the reporting period of the continuing corporation, and it will file its next return on the basis of its regularly established period. However, in the case of a consolidation of

corporations, the consolidated company is treated as a new corporate entity and files its first return for the period commencing with the date of the consolidation.

(2) remains the same.

AUTH: Sec. 15-31-501, MCA; IMP: Sec. 15-31-141, MCA

42.23.403 TREATMENT OF OTHER TAXES PAID (1) remains the same.

(2) With the exception of the contractor's gross receipts tax, ~~and the business inventory property tax,~~ taxes may be claimed only as deductions in determining net income and cannot be converted into a credit against the corporation license tax. See ARM 42.23.501 for details concerning the credit allowed with respect to the contractor's gross receipts tax. ~~Payments for business inventory property tax may be taken a deduction or a credit, but not both, as provided in ARM 42.23.523.~~

AUTH: Secs. 15-31-313 and 15-31-501, MCA; IMP: Sec. 15-31-114, MCA

42.23.411 LOSSES NOT COMPENSATED FOR (1) All losses actually sustained and charged off within the year and not compensated for by insurance or otherwise. A capital loss, which may be subject to carryover provisions for federal purposes must be deducted in the year incurred and not carried over for state purposes. A loss must have been sustained within the year in the sense that the full measure of the loss was ascertained within the year. The determination of the year in which a loss is sustained must be made on the basis of the facts as they exist at the close of the reporting period.

(2) remains the same.

AUTH: Sec. 15-31-501, MCA; IMP: Sec. 15-31-114, MCA

42.23.514 NEW CORPORATION (1) For taxable years beginning after December 31, 1991, ~~A~~ a "new corporation" ~~is one~~ means a corporation engaging in manufacturing for the first time in this state and includes:

(a) ~~which has never done business in Montana in any corporation prior to the taxable year for which the credit is claimed; a corporation which reported or should have reported any state or federal agency or officer authorized to collect taxes measured by net income shall not be eligible;~~ a manufacturing corporation existing outside of Montana that enters into manufacturing in the state.;

(b) ~~which manufactures a product which was not manufactured in Montana prior to that time.~~ a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(c) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(2) A new corporation does not include:

(a) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(b) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation.

~~(2)~~ (3) A corporation reorganized pursuant to Title 35, chapter 1, MCA, as amended, shall not be eligible for credit under 15-31-124 through 15-31-127, MCA.

~~(3) No credit shall be allowed if 50% of a corporation's stock is owned or controlled by the same individual, corporation, or association of individuals or corporations. In this instance, the department presumes dependent corporate status. If less than 50% of a corporation's stock is owned or controlled by the same individual or corporation or association of individuals or corporations, an applicant for credit under 15-31-124 through 15-31-127, MCA, shall demonstrate its independent corporate existence to the satisfaction of the department before credit may be granted.~~

(4) A corporation formed as a joint venture, combination, subsidiary, parent, affiliate, merger, or any other kind of cooperative action between two or more corporations which cannot demonstrate an independent corporate existence shall not be accepted as a new corporation by the department for purposes of 15-31-124 through 15-31-127, MCA.

AUTH: Sec. 15-31-127 and 15-31-501, MCA; IMP, Sec. 15-31-124, MCA.

42.23.515 EXPANDING CORPORATION (1) For taxable years beginning after December 31, 1991, ~~A~~an expanding corporation is one which:

(a) was registered to do business in Montana at least 1 year prior to claiming a credit under 15-31-124 through 15-31-127, MCA;

(b) has at all times prior to claiming credit under 15-31-124 through 15-31-127, MCA, complied with the requirements of Title 35, chapter 1, MCA, as amended; and

(c) has at all times prior to claiming credit under 15-31-124 through 15-31-127, MCA, complied with the requirements of Title 15, chapter 31, MCA, as amended~~; and~~

~~(d) manufactures a product during the period of eligibility which was not manufactured in Montana prior to that time~~.

(2) remains the same.

AUTH: Sec. 15-31-127 and 15-31-501, MCA; IMP, Sec. 15-31-124, MCA.

42.23.604 INTEREST ON DEFICIENCIES (1) and (2) remain the

same.

(3) An interest assessment may be appealed by the taxpayer under the provisions of ARM 42.2.601 through 42.2.612.

AUTH: Sec. 15-31-501, MCA; IMP, Sec. 15-1-222, 15-31-503, MCA.

42.23.605 PENALTY ON DEFICIENCY ASSESSMENTS (1) remains the same.

(2) A penalty assessment may be appealed by the taxpayer under the provisions of ARM 42.2.601 through 42.2.612.

AUTH: Sec. 15-31-501, MCA; IMP, Sec. 15-1-222, 15-31-502, 15-31-503, MCA.

3. ARM 42.23.211 is proposed to be amended to correct references to rules that do not exist. The provisions for allocating nonbusiness income are found in Section 15-31-304 MCA. This amendment should eliminate any confusion resulting from an incorrect reference.

The amendments to 42.23.311 will bring it into conformity with the statute change to Section 15-31-141, MCA, which was made during the 1991 legislative session.

The amendment to 42.23.403 eliminates reference to the business inventory tax. This tax was eliminated in 1982 and therefore does not need to be listed in this regulation.

The amendment to 42.23.411 clarifies the department's position regarding capital losses. The amendment is not a change in the Department's position but rather is intended to respond to any questions the public may have regarding the Department's treatment of capital losses.

The amendment to 42.23.514 brings the rule into conformity with the changes to Section 15-31-124, MCA, which were made during the 1991 legislative session. The amendments are effective for taxable years beginning after December 31, 1991.

The amendment to 42.23.515 brings the regulation into conformity with the change to Section 15-31-124, MCA, which was made during the 1991 legislative session. The statute eliminated the requirement of subsection (1)(b) of ARM 42.23.515. This change is effective for taxable years beginning after December 31, 1991.

The amendments to 42.23.604 and 42.23.605 further inform taxpayers of their appeal rights.

4. The department is proposing to repeal the following rule:

42.23.523 BUSINESS INVENTORY TAX as found on page 42-2361 of the Administrative Rules of Montana, is being repealed in its entirety.

AUTH: Sec. 15-31-501, MCA; IMP: 15-7-501, MCA

5. The department is proposing to eliminate this rule because business inventories have not been taxed since 1982. Therefore, retaining this rule can only cause confusion to taxpayers.

6. The department is proposing to adopt the following new rules:

RULE I DISABILITY INSURANCE PREMIUMS CREDIT (1) Effective for tax years beginning after December 31, 1990, disability insurance premiums paid by an employer for his employees may entitle the employer to a credit against the corporation license tax. To qualify for the credit, the employer must have:

(a) been in business in Montana for at least 12 months;

(b) employed 20 or fewer employees working at least 20 hours per week; and

(c) paid at least 50% of each employee's insurance premium.

(2) The amount of credit that may be allowed is $25 per month, per each employee, up to a maximum of 10 employees, for whom the employer pays 100% of the premium. If the employer pays less than 100% of the premium, the percentage of the premium paid by the employer multiplied by $25 per month would constitute the credit. In either case, the total credit claimed per employee may not exceed 50% of the total premium cost. This credit may not be claimed for a period of more than 36 consecutive months.

(3) This credit is not refundable nor is it eligible for carryover or carryback provisions.

(4) The insurance policy must meet the definition of a "limited benefit disability insurance policy" as defined in 33-22-1202 through 33-22-1204, MCA, before the insurance premiums paid by the employer are eligible for the credit.

(5) If a corporation qualifies for the credit and has elected S-corporation status, the credit may be claimed by the individual shareholders based upon the percentage of stock ownership in the corporation.

(6) Form DIPC-CT must be completed and attached to form CLT-4 in the year in which the credit is claimed.

AUTH: Sec. 15-31-501, MCA; IMP: Sec. 15-31-132, MCA

RULE II QUARTERLY ESTIMATED TAX PAYMENTS (1) Effective for tax years beginning after December 31, 1989, every corporation which can reasonably expect as provided in rule IV, its annual corporation tax to be $5,000 or more must submit quarterly estimated tax payments.

(2) The $5,000 threshold includes any applicable surtax.

(3) A corporation is not required to submit quarterly payments until they have reached the $5,000 threshold. For

example, if a taxpayer's liability has not reached $5,000 by the end of the first three months of the taxable year, the taxpayer would not be required to submit a payment on the fifteenth day of the fourth month. If a taxpayers's liability has not reached $5,000 by the end of the fifth month, a payment would not be required on the fifteenth day of the sixth month. The first payment would be required on the first quarterly payment date following the month that the taxpayer has reached the $5,000 threshold. Section 15-31-502, MCA provides the percentages that must be used in submitting payments.

(4) If the $5,000 threshold is met, the taxpayer has the option of submitting 80% of the current year's tax liability in estimated payments or 100% of last year's liability.

AUTH: Sec. 15-31-501, MCA; IMP: Sec. 15-31-502, MCA

RULE III COMPUTATION OF QUARTERLY ESTIMATED TAX UNDERPAYMENT INTEREST PENALTY (1) Except as provided in (2), a taxpayer is presumed to have earned its income evenly throughout the year. Accordingly, if the tax liability is in excess of $5,000 at the end of the year, the total tax liability must be divided by 12 to determine which month the $5,000 threshold was met. The first quarterly payment date after the month the taxpayer reached the $5,000 threshold will be the date the first payment would be required. If payment was not submitted on that date, the underpayment interest penalty as described in 15-31-510, MCA, will begin to accrue.

(2) The provisions of (1) will not apply if the taxpayer can establish that it did not earn its income evenly throughout the year. To do so, the taxpayer must complete form CLT-4-UT indicating when the income was earned. Approval of the calculations shown on the form rests with the department which can request additional information to support the calculations.

(3) If estimated payments are required to be submitted and those payments are either not submitted or are not submitted timely, the 20% per annum underpayment interest penalty will be computed on either 80% of the current years' liability or 100% of last years' liability, whichever is less.

AUTH: Sec. 15-31-501, MCA; IMP: Sec. 15-31-510, MCA

RULE IV BASIS FOR WAIVING THE QUARTERLY ESTIMATED TAX UNDERPAYMENT INTEREST PENALTY (1) Section 15-31-502, MCA, requires that a corporation compute its tax liability at the end of the third, fifth, eighth and eleventh months. If the tax liability has reached $5,000 on any of those dates, estimated payments must be submitted beginning with the fifteenth day of the following month. The requirement that a taxpayer must submit payments if it reasonably expects its tax liability to exceed $5,000 is based on these calculations. If a taxpayer can show that it performed these calculations during the year and the calculations reflect that the taxpayer did not reach the

$5,000 threshold or that it began submitting quarterly payments at the point the calculations indicated that it did reach the $5,000 threshold, the underpayment interest penalty would not apply.

(2) The fact that a taxpayer's liability did not exceed $5,000 in the previous year is not support for not reasonably expecting this year's tax liability to exceed $5,000.

(3) A taxpayer is not immune from the quarterly estimated payment requirement simply because it did not compute its tax liability at the end of the third, fifth, eighth and eleventh months and consequently did not know its tax liability until the end of the year.

(4) Lack of knowledge about the estimated payment requirement is not a basis for having the underpayment interest penalty waived.

(5) A taxpayer may submit four equal quarterly payments totalling 100% of last year's tax liability. This will eliminate the requirement of computing a tax liability at the end of the third, fifth, eighth and eleventh months and will also ensure that no underpayment interest penalty will accrue regardless of the current year's tax liability. This provision is only available if the prior tax period covered twelve months.

AUTH: Sec. 15-31-501, MCA; IMP: Secs. 15-31-502 and 15-31-510, MCA

RULE V SHORT PERIOD RETURNS (1) If a taxpayer has a tax period of less than twelve months, the payment dates listed in 15-31-502, MCA, would still apply to the extent the tax period covered that many months. For example, if the tax period was six months, the taxpayer would be subject to two installment payments, one on each of the fifteenth day of the fourth and sixth months.

(2) If the tax period was three months or less, there would be no quarterly estimated payment requirement.

(3) The percentage of estimated payment that must be submitted for a short period would be based upon the number of payments required to be submitted and the percentages listed in 15-31-502, MCA. For example, if the tax period was six months, two payments of 50% would be required. If the tax period was four months, one payment of 100% would be required.

AUTH: Sec. 15-31-501, MCA; IMP: Sec. 15-51-501, MCA.

7. New rule I is being proposed to clarify the provisions of 15-31-132, MCA, which was passed during the 1991 legislative session. The rule lists the qualifications which must be met in order to qualify for the credit, the amount of credit which may be claimed, how the credit will be claimed for S-corporations, and what form should be used to report the credit.

Rule II is being proposed to clarify who is required to submit quarterly estimated payments, when the payments are

required, and in what amount. This rule will clarify the statute. The rule also clarifies the fact that the surtax should be included in determining whether the $5,000 threshold has been met. Since a surtax is part of a corporation's total tax liability, it must be included in the $5,000 threshold.

Rule III is being proposed to clarify how the interest penalty should be calculated. The rule also provides information on how a taxpayer may avoid the interest penalty.

Rule IV is being proposed to clarify what does and does not constitute an acceptable reason to waive the interest penalty. The rule explains what is meant by the phrase 'reasonably expects'. The statute and the rule are intended to establish a systematic way of measuring the taxpayers' activities through quarterly financial reporting. The rule will allow the taxpayer to make timely decisions regarding their final Montana corporation tax liability.

Rule V is being proposed to clarify quarterly payment dates and percentages of estimated tax payments for short period tax returns.

8. 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 July 10, 1992.

9. If a person who is directly affected by the proposed adoptions 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 July 10, 1992.

10. If the agency receives requests for a public hearing on the proposed adoptions 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.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.31.110, the ADOPTION of NEW RULE I, and the AMENDMENTS of 42.31.107 and 42.31.131 relating to Untaxed Cigarettes Under Tribal Agreements	NOTICE OF THE REPEAL of ARM 42.31.110, the ADOPTION of NEW RULE I, and the AMENDMENTS of 42.31.107 and 42.31.131 relating to Untaxed Cigarettes Under Tribal Agreements NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1992, the Department of Revenue proposes to repeal ARM 42.31.110, adopt new rule I, and amend ARM 42.31.107 and 42.31.131 relating to untaxed cigarettes under tribal agreements.

2. The department is proposing to repeal the following rule, found on page 42-3107 of the Administrative Rules of Mt.

42.31.110 WHOLESALE/RETAIL PRICES

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-111 MCA.

3. New rule I as proposed to be adopted provides as follows:

NEW RULE I WHOLESALE/RETAIL PRICES (1) Wholesaler prices to the retailer could be affected by tax increases enacted by the Montana legislature.

(2) When tax increases occur, audits may be done on cigarette inventories located at the wholesaler's and/or retailer's premises in order to comply with the tax increase. These audits may be done by the Montana department of revenue or on a voluntary system basis by the wholesaler.

(3) Field or voluntary audits may also be required on inventories located at retail businesses in order to comply with tax increases.

(4) The minimum price computation for Montana taxed cigarettes is:

	Manufacturer's base cost.....	xxxxx
(ADD)	Federal tax.....	xxxxx
	State tax.....	xxxxx
	Manufacturer base cost plus taxes...	xxxxx

Multiply the manufacturer base cost
plus tax by wholesale presumed cost
of doing business and by cartage.
(ADD)
Presumed cost of doing business.....xxxxx
Cartage.....xxxxx

The minimum wholesale cost/
cost to retailer.....xxxxx

Multiply the minimum wholesale
cost by the retail presumed cost of
doing business.
(ADD)
Presumed cost of doing business.....xxxxx

The minimum retail cost/
cost to consumer.....xxxxx

(5) The minimum price computation for Montana untaxed cigarettes is:

Manufacturer's base cost.....xxxxx
(ADD)
Federal tax.....xxxxx

Manufacturer base cost plus tax.....xxxxx

Multiply the manufacturer base cost
plus tax by wholesale presumed cost
of doing business and by cartage.
(ADD)
Presumed cost of doing business.....xxxxx
Cartage.....xxxxx

The minimum wholesale cost/
cost to retailer.....xxxxx

Multiply the minimum whole sale
cost by the retail presumed cost of
doing business.
(ADD)
Presumed cost of doing business.....xxxxx

The minimum retail cost/
cost to consumer.....xxxxx

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-111 MCA.

4. ARM 42.31.107 and 42.31.131 are proposed to be amended as follows:

42.31.107 ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION
(1) and (2) remain the same.

(3) Sales of cigarettes made to cigarette retailer(s) on a reservation under a quota agreement between the tribe and the department of revenue will be reported on Form CT-206. The quota for these sales will be defined in the agreement. The tribe shall provide the department with a list showing the names of qualified retailers and their portion of the quota. The tribe must notify the department of any change to the list.

(4) Wholesaler(s) must contact the department prior to all non-taxed sales on a reservation covered by a quota agreement. The department will issue permission to ship the cigarettes, will track quota allocations, and notify the wholesalers when the quota has been reached. Once the quota portion for any particular retailer has been reached, sales to that retailer will include tax.

AUTH: Sec. 16-11-103 MCA; IMP: Secs. 16-11-104 and 16-11-111 MCA.

42.31.131 CIGARETTE TAX REFUNDS (1) Cigarette tax refunds will be issued ~~only to cigarette manufacturers,~~ as provided in subsections (2), (3) and ~~to Indian Tribes, as provided in subsection (3)~~ (4). All cigarette refunds will be calculated assuming a 3% discount rate.

(2) and (3) remain the same.

(4) Cigarette tax credits or refunds for sales made on an Indian reservation with a quota agreement are made to wholesalers pursuant to the quota established in the agreement between the tribe and the department and the list provided by the tribe. The wholesaler can request a credit payable in stamps or a cash refund by filing CT-207. Upon receipt of CT-207 the department will mail the tax stamps within the next business day or mail a refund within ten (10) working days.

(5) No credit or refund will be allowed to a wholesaler for sales made to a retailer once the retailer has depleted his/her quota amount. (See ARM 42.31.107 for qualifying sales.) Amounts on CT-207 received during the month will be reconciled with amounts on Form CT-206 filed at the appropriate time. Any discrepancies found will be added to or subtracted from the amount requested for stamps/refunds of the current month. Added/subtracted amounts will be applied to the request of the wholesaler that causes the discrepancy to develop.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 15-1-503 and 16-11-112 MCA.

5. The above rules are proposed to be repealed, adopted, and amended because an agreement entered into between the Fort Peck Tribe and the Department of Revenue requires administrative rules to be adopted which comply with the agreement and the statutes. The rules also address limited reorganization and the computation of the minimum price.

6. 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 July 10, 1992.

7. If a person who is directly affected by the proposed adoptions 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 July 10, 1992.

8. If the agency receives requests for a public hearing on the proposed adoptions 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.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.18.105, 42.18.108 42.18.111, 42.18.114, 42.18.123, 42.19.102 42.22.1304 and the REPEAL of ARM 42.19.101, 42.19.103 relating to the Montana Appraisal Plan for Residential and Commercial Property	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.18.105, 42.18.108, 42.18.111, 42.18.114, 42.18.123, 42.19.102, 42.22.1304 and the REPEAL of ARM 42.19.101, 42.19.103 relating to the Montana Appraisal Plan for Residential and Commercial Property

TO: All Interested Persons:

1. On July 8, 1992, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.18.105, 42.18.108, 42.18.111, 42.18.114, 42.18.123, 42.19.102, 42.22.1304 and the repeal of ARM 42.19.101, 42.19.103, relating to the Montana Appraisal Plan for Residential and Commercial Property.

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

42.18.105 MONTANA REAPPRAISAL PLAN (1) Remains the same.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and timberland property, and industrial property. A new computer assisted mass appraisal system (CAMAS) will be implemented to assist in the valuation process. The department will determine a new appraised value for each parcel of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement by December 31, 1992. Existing agricultural land valuation schedules will be reviewed and updated, as provided in 15-7-201, MCA. Taxpayers will receive a notification of their new appraised value by ~~April 30~~ June 15, 1993. Taxpayer review and appeal of the new values will take place during tax year 1993. The department will enter the new appraised values on the tax rolls for tax year 1994.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-7-111 and 15-7-133 MCA.

42.18.108 RESIDENTIAL APPRAISAL PLAN (1) through (5) remain the same.

(6) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as a neighborhood. The CALP models ~~are initially developed using~~

~~1987 or a more current year base land data and sales information. During subsequent years, sales information will be analyzed and an ongoing review of the CALP models will be made. The review of the CALP models will take place from January 1 through January 31 of each year. The review will determine whether each CALP model is accurate or requires adjustment~~ reflect January 1, 1992, land market values.

(7) through (9) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.111 COMMERCIAL APPRAISAL PLAN (1) The reappraisal of commercial property consists of limited field reviews; comprehensive field reviews; data conversion and collection; collection, verification and analysis of sales and income information; data entry of sales and income information; development and review of computer assisted land pricing (CALP) models; development of ~~market and~~ income models/benchmarking; generation and review of inventory contents sheet; and a final determination of market values. Multiple field reviews will be kept to an absolute minimum. Workplans must reflect that position.

(2) through (4) remain the same.

(5) The collection, verification, analysis and data entry of sales and income information is an important component of CAMAS. Procedures for collection, verification, and validation of sales and income information shall be formulated by the department of revenue. Accuracy of sales information and income information is critical to accurate sales assessment ratio studies for annual appraisal updates; land valuation; to benchmarking; to the development of accurate ~~market and~~ income models; to individual property final value determinations; and to the defense of final value estimates.

(6) Commercial lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as a neighborhood. The CALP models ~~are initially developed using 1987 or a more current year base land data and sales information. During subsequent years, sales information will be analyzed and an ongoing review of the CALP models will be made. The review of the CALP models will take place from January 1 through January 31 of each year. The review will determine whether each CALP model is accurate or requires adjustment~~ reflect January 1, 1992, land market values.

(7) The development of ~~market and~~ income models using CAMAS is a requirement for property valuation during the reappraisal cycle. ~~The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis.~~ Primary ~~market and~~ income model templates will be developed. Appraisal staff ~~will~~ may develop separate ~~market and~~ income models for each neighborhood following the primary ~~market and~~ income model templates.

(8) remains the same

(9) A final determination of market values is conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using: the cost approach, ~~the market data approach, and~~ the income approach~~;~~ and, when possible, the market data approach. The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.18.114 AGRICULTURAL/~~TIMBER~~ FOREST LANDS APPRAISAL PLAN

(1) Agricultural and ~~timberlands~~ forest lands are valued in accordance with administrative rules adopted by the department of revenue. Use changes are kept current annually on both agricultural and ~~timber land~~ forest lands. For agricultural land the valuation methodology and agricultural land valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands ~~The~~ the valuation methodology ~~for valuation of timber land will not change; lumber values minus logging costs are applied to stand volume tables to value the standing timber. The land under the timber is valued according to its grazing capacity~~ and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. ~~The timber~~ agricultural and forest lands values ~~are based on data for the period January 1, 1987 through December 31, 1991~~ reflect January 1, 1992 productivity values. Agricultural and ~~timber land~~ forest lands will be put on the tax rolls for tax year 1994.

(2) The appraisal of agricultural/~~timber property~~ forest lands consists of limited field reviews; comprehensive field reviews of agricultural/~~timber~~ forest lands improvements; agricultural/~~timber~~ forest lands property data conversion and collection; the data entry of agricultural/~~timber~~ forest lands information; the generation and review of inventory contents sheets; and a final determination of values. Multiple field reviews of each property will be kept to an absolute minimum. Workplans must reflect that position.

(3) Limited field reviews were conducted from January 1, 1987 through December 31, 1989. Limited field review consists of an external observation to determine accuracy of existing information on the property record card; to observe condition; to review grade and depreciation assignment; to review agricultural and ~~timberland~~ forest lands classification; and to collect additional data required to implement CAMAS. After May 1, 1989, limited field reviews will only be undertaken when a comprehensive field review or an inventory contents sheet review is not contemplated.

(4) Comprehensive field reviews will be conducted from January 1, 1989 through June 30, 1990. Appraisal staff will identify specific areas of the county where the data is questionable. The comprehensive field review consists of an internal inspection, when possible, and external inspection of the agricultural ~~timber~~ /forest lands improvements. No call-

backs will be made to the property unless specifically requested by the taxpayer, the appraisal supervisor or the area manager.

(5) Agricultural/~~timber~~ forest lands property data conversion and collection consists of electronically moving all agricultural ~~property~~ /forest lands property data to the department of revenue computer. The conversion and collection process also consists of reviewing edits which result from the conversion process, the manual entry of agricultural/forest lands information to the department of revenue computer, the addition of improvement data (outbuildings and residences) to CAMAS; and sketch vectoring. (6) Inventory contents sheets are generated and reviewed by appraisal staff. The inventory contents sheets include component information for agricultural/~~timber~~ forest lands improvements; productivity information for agricultural/forest lands; ~~classification information for timberland;~~ basic ownership information; and valuation information. The review consists of analyzing; collecting component information on improvements; and reviewing productivity information on agricultural/forest lands.; ~~and classification criteria on timberland.~~ The review is the first opportunity for the appraiser to review and compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(7) A final determination of values is conducted once all required field and program needs of CAMAS are met. The appraised value for agricultural/~~timber~~ forest lands property improvements includes an estimate of market value using the cost approach and, when possible, the market data approach.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.123 MANUALS (1) For residential and agricultural /~~timber~~ forest lands new construction, the January 1, 1982 Montana Appraisal Manual will be used through tax year 1993.

(2) For the reappraisal cycle ending December 31, 1992, the Montana Appraisal Manual developed by the firm of ~~Cole, Layer and Trumble Co.~~ Cole-Layer-Trumble Company will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will ~~initially~~ reflect ~~1987~~ January 1, 1992 cost information. ~~Those cost schedules will be reviewed and if necessary updated on an annual basis to reflect current cost conditions specific to Montana. The final review and update of that cost appraisal manual will be made effective January 1, 1992.~~

~~(2)~~ (3) For commercial ~~new construction~~ and industrial ~~property~~ new construction the January 1, 1982 Marshall Valuation Service Manual will be used if the property is listed. If not, other construction cost manuals such as Boeckh or Means will be used with a publication date as close to Marshall Valuation Service as possible.

(4) For the reappraisal cycle ending December 31, 1992,

the Montana Appraisal Manual developed by the firm of ~~Cole, Layer and Trumble Co.~~ Cole-Layer-Trumble Company will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" ~~Means~~ will be used with a publication date as close as possible to the Montana Appraisal Manual developed by the firm of ~~Cole, Layer and Trumble Company~~ Cole-Layer-Trumble Company. The cost base schedules will ~~initially~~ reflect ~~1987~~ January 1, 1992 cost information. ~~Those cost schedules will be reviewed and if necessary updated on an annual basis to reflect current cost conditions specific to Montana. The final review and update of that cost appraisal manual will be made effective January 1, 1992.~~

(5) Copies of the valuation manuals used by the department of revenue may be reviewed in the county appraisal offices or purchased from the department at the Property Assessment Division, Helena, Montana 59620.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.19.102 COMMERCIAL APPRAISAL FIRMS (1) In order to comply with the provisions of ~~15-2-201~~ 15-1-201 and 15-7-103, MCA, all contracts for reappraisal or reclassification between commercial appraisal firms or individuals and the various counties of this state must be approved by the department of revenue. Specifications for the work to be accomplished must be related in detail in the contract.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-103 MCA

42.22.1304 VALUATION OF INDUSTRIAL IMPROVEMENTS (1) All property determined by the department to be an improvement to the land shall be valued by the use of the ~~Marshall Valuation Service~~ 1992 Montana Appraisal Manual, developed by the firm Cole-Layer-Trumble Company.

(2) If the property is not listed in the ~~Marshall Valuation Service~~ 1992 Montana Appraisal Manual, developed by the firm Cole-Layer-Trumble Company, then the department may use other appropriate cost manuals such as, ~~"Means or "Boeckh"~~ Boeckh entitled "Marshall Valuation Service"; R.S. Means Company, Inc., entitled "Building Construction Cost Data"; or Richardson Engineering Services, Inc. entitled "Process Plant Construction Estimating Standards" to obtain the best estimate of reproduction costs.

(3) The department appraiser shall use his best judgement to establish the ~~effective age~~ condition, desirability and utility of the property.

(4) Upon the determination of the property's ~~effective age~~ condition, desirability and utility, it shall be depreciated according to Cole-Layer-Trumble Computer Assisted Mass Appraisal System, or schedules published by the Marshall Valuation Service.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-134 MCA.

3. The following rules are proposed to be repealed:

42.19.101 MARSHALL VALUATION SERVICE, found at page 42-1905 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-103 MCA

42.19.103 MONTANA APPRAISAL MANUAL found at page 42-1905 of the Administrative Rules.
AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 through 15-7-114 MCA.

4. The Department is proposing to amend and repeal the above rules in order to comply with the implementation of the 1992 reappraisal plan.

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

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

no later than July 17, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I through V relating to Forest Land Property Taxes	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of NEW RULES I through V relating to Forest Land Property Taxes

TO: All Interested Persons:

1. On July 8, 1992, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of new rules I through V, relating to forest land property taxes.

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

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

RULE I FOREST LAND ASSESSMENT (1) Effective January 1, 1994, the department of revenue shall assess land as forest lands according to the following basic determinations.

(a) Forest lands are:

(i) contiguous land of 15 acres or more in the same ownership that is capable of producing timber that can be harvested in commercial quantity;

(ii) land which is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire;

(iii) land that has a dedicated use evidenced by a statement of intent by the owner for the eventual harvest of timber; and

(iv) land which is not classified or used for agricultural, industrial, commercial or residential purposes.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101 through 15-44-102, MCA.

RULE II FOREST LAND CLASSIFICATION DEFINITIONS (1) Effective January 1, 1994, the department of revenue shall use the following definitions to determine forest land classification and the productive capacity of land to grow timber:

(a) The phrase "capable of producing timber that can be harvested in commercial quantity" means, forest land that can produce 30 cubic feet or more of stemwood per acre per year in live softwood trees, 1.0 inch in diameter at breast height, at the culmination of the mean annual increment (the point of maximum wood production) for fully-stocked, natural stands; and

(i) is at least 10 percent stocked with softwood timber of any size on an area at least 120 feet in width; or

(ii) has been converted from another use and exhibits a

minimum stocking rate of 300 seedlings and/or saplings per acre (12 foot average spacing); or

(iii) meets the stocking requirement specified in (i) and (ii) of this rule, but has had the trees removed by man through timber harvest or by fires and other natural disasters, and has or will be, naturally or artificially regenerated within 10 years.

(b) The term "producing timber" is defined as including trees removed through harvest, clearcut or by natural disaster such as fire.

(c) The term "contiguous land" means land that touches or shares a common boundary or that would have shared or touched a common boundary had the lands not been separated by rivers and streams, county boundaries, local taxing jurisdiction boundaries, roads, highways, power lines and railroads.

(d) The term "diameter at breast height" (d.b.h.) means the average stem diameter, outside bark, at a point 4.5 feet above the ground.

(e) The term "stocked" means a measure of the degree to which an area is effectively covered with living trees.

(f) The term "fully-stocked" means the highest degree in which a stand could fully utilize the site's capacity to grow trees.

(g) The term "natural stands" means fully-stocked, even-aged softwood stands which are naturally regenerated.

(h) The term "ornamental trees" means trees grown commercially to ornament and decorate or for use as shade trees or windbreaks.

(i) The term "site" means the capacity of at least 15 contiguous acres to grow timber.

(j) The term "stemwood" means the bole or trunk of the tree, excluding the roots, branches and needles.

(k) The phrase "forest site productivity class" means the range of site quality which expresses the timber production potential of a site in terms of cubic-foot volume growth per acre at culmination of mean annual increment (the point of maximum wood production) in fully-stocked natural stands.

(l) The phrase "mean annual increment" is a measure of the average yearly increase in volume produced on one acre. This increment can be calculated by dividing total stand volume by the total age. Mean annual growth increases as the stand matures, attains a maximum growth increment at a later age, then decreases as the growth rate decreases. Volume is expressed in cubic feet.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101 through 15-44-102, MCA.

RULE III EXCEPTIONS TO FOREST LAND ASSESSMENT

(1) Effective January 1, 1994, the following land shall not be classified and assessed as forest land:

(a) land that is incapable of yielding commercially marketable wood products because of adverse site conditions or

which are so physically inaccessible as to be unavailable economically now or prospectively;

(b) land withdrawn from timber utilization by statute, ordinance, covenant, court order, easement, or administrative order, or other operation of law;

(c) land used in the production of cultivated christmas tree plantations which produce commercially marketable christmas trees; and

(d) land used in the production of ornamental trees and trees grown for the sole purpose as shade trees and windbreaks.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101 through 15-44-102, MCA.

RULE IV FOREST LAND OWNERSHIP (1) The department of revenue shall use the following ownership criteria in its assessment of forest land:

(a) one ownership exists in two or more contiguous parcels of land when:

(i) the parcels are all owned by the same party(ies) and titled identically in their name or names;

(ii) the party(ies) have received title in the parcels by a transferring instrument such as a deed, contract for deed or judgment; and

(iii) the party(ies) have the present right to possess and use the parcels.

(b) Proof that non-identical names are for the same party(ies), (i.e. John W. Smith is the same person as John Smith) can be provided through the filing of an affidavit. The affidavit will be available in the local appraisal/assessment office.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101 through 15-44-102, MCA.

RULE V FOREST SITE PRODUCTIVITY CLASSES (1) Effective January 1, 1994, the department of revenue shall assign all forest land to one of the following forest site productivity class designations:

(a) forest site productivity class VII (25 through 44.9 cubic feet of wood per acre per year);

(b) forest site productivity class VI (45 through 64.9 cubic feet of wood per acre per year);

(c) forest site productivity class V (65 through 84.9 cubic feet of wood per acre per year);

(d) forest site productivity class IV (85 through 104.9 cubic feet of wood per acre per year);

(e) forest site productivity class III (105 through 124.9 cubic feet of wood per acre per year);

(f) forest site productivity class II (125 through 144.9 cubic feet of wood per acre per year); and

(g) forest site productivity class I (145+ cubic feet of wood per acre per year).

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101 through 15-

44-102, MCA.

4. The Department is proposing these rules because the Forest Lands Tax Act of 1991 (Chapter 783, Laws of 1991, Title 15, Chapter 44, part 1, MCA) requires major changes in the manner in which private forest lands are to be taxed beginning in 1994. The law requires that private forest be taxed based on forest productivity values rather than on the value of standing timber which is the current practice. These rules are necessary to reflect the intent of the legislative changes. These rules are also intended to provide definitions of new terms which will become part of the forest land valuation process, as well as procedures to be used in classifying and assessing private forest lands in Montana.

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

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

no later than July 17, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

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

In the matter of the adoption of Rules I through VIII pertaining to the passport to health program	)))))	NOTICE OF EXTENSION OF COMMENT PERIOD

TO: All Interested Persons

1. On May 14, 1992, the Department of Social and Rehabilitation Services published a notice of public hearing on the proposed adoption of Rules I through VIII pertaining to the passport to health program, at page 998 of the 1992 Montana Administrative Register, Issue No. 9, as MAR Notice No. 46-2-702.

2. The notice of proposed rulemaking referred to in paragraph number 4 provided that public comments to the record would be received through June 11, 1992.

3. Because of requests received from persons who wish to submit comments for the public record on the proposed adoption of rules, the Department has determined to extend the public comment period through June 22, 1992.

4. Written data, views, or arguments may therefore be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 22, 1992.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.6607 and 2.21.6609, the amendment of ARM 2.21.6606, 2.21.6608, and the adoption of new rules relating to record keeping	)))))	NOTICE OF THE REPEAL OF ARM 2.21.6607 AND 2.21.6609, THE AMENDMENT OF ARM 2.21.6606, 2.21.6608, AND THE ADOPTION OF NEW RULES RELATING TO RECORD KEEPING

TO: All Interested Persons.

1. On December 26, 1991, the department of administration published notice of the repeal of ARM 2.21.6607 and 2.21.6609, the amendment of ARM 2.21.6606, 2.21.6608, and the adoption of new rules relating to record keeping on pages 2516-2520 of the Montana Administrative Register, issue number 24.

2. The rules have been repealed as proposed.

3. The rules proposed to be amended have been amended with the following changes:

2.21.6606 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to collect and maintain employee personnel records while protecting an employee's right of privacy pursuant to Article II, Section 10 of the constitution of the state of Montana; and

(a) Same as proposed amendments.

(b) to restrict access to confidential employee personnel records to only those with a job-related purpose for viewing or using the records. Others may have access to confidential records only with the informed and voluntary consent of the employee or with a ~~constitutionally~~ valid legal order.

(2) It is the objective of this policy to provide minimum standards for employee record keeping and to require the adoption of a policy on employee record keeping by each department ~~or agency~~. The department ~~or agency~~ policy must be adopted in compliance with this policy and in accordance with Title 2, Chapter 6, Montana Code Annotated, related to records management.

2.21.6608 DEFINITIONS (1) - (3) Same as proposed amendments.

(4) "Employee personnel record" means information relating to an employee's employment with the state of Montana or an ~~agency~~ department of the state~~.~~ and is appropriate for preservation as evidence of employment policies, practices and decisions. An employee personnel record may be a paper document or it may be information maintained in an information system such as the payroll/personnel/position control system (P/P/P system).

Other programs including, but not limited to, Public Employees Retirement System (PERS), worker's compensation or unemployment insurance, develop records relating to an employee which are not ~~part of the~~ an employee personnel record as defined in this policy.

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

4. The proposed new rules have been adopted with the following changes:

2.21.6610 ADOPTION OF ~~AGENCY~~ DEPARTMENT POLICY (1)(a) - (c) Same as proposed rule.

(d) the acceptable location of records in the ~~agency~~ department; and,

(e) Same as proposed rule.

(2) The policy must be adopted and approved by the ~~D~~department of ~~A~~administration, as provided in ARM 2.21.1203, no later than 90 days after the effective date of this policy.

2.21.6611 ACCESS TO EMPLOYEE PERSONNEL RECORDS (1) All employee personnel records are confidential and access is restricted, except an employee's position title, dates and duration of employment and salary which are public information and must be released on request. ~~An agency~~ department may not require justification for the request. ~~An agency~~ department may require that the request be in writing.

(2) ~~Agencies~~ A department must restrict access to confidential records to protect individual employee privacy.

(3) Same as proposed rule.

(a) The employee has access to all of his or her employee personnel records. An employee may file a written response to information contained in employee personnel records which becomes a permanent part of the record. The response must be filed within 10 working days of the date on which an employee is made aware of the information by the ~~immediate supervisor~~ department.

(b) Same as proposed rule.

(c) Nothing in this rule prohibits those having authorized access to employee personnel records as provided in this rule or in any ~~agency~~ department policy, from relying on the content of those records when responding to a request for employment information from organizations to which the employee has applied for employment.

(d) The office of the legislative auditor has access to employee personnel records pursuant to 5-13-309, MCA, for purposes of auditing state ~~agencies~~ departments.

(e) Same as proposed rule.

(f) The professional staff of the state personnel division has access to confidential records when gathering summary data on personnel programs or systems or to provide technical assistance at the request of a~~n agency~~ department.

(g) Employee personnel records, as defined in this policy, do not include documents, information or other evidence developed as part of an investigation. Investigations may include, but

are not limited to, grievance investigations, violation of ~~agency~~ department rules, policies and procedures, or matters which may result in civil or criminal prosecution. Access to such documents ~~shall~~ will be determined on a case by case basis, balancing the constitutional guarantees of The Right to Privacy, Article~~,~~ II, ~~S~~section~~,~~ 10, and The Public's Right to Know, Article~~,~~ II, ~~S~~section~~,~~ 9.

(h) Some governmental entities have authority under federal or state laws to access information in employee records. Others may obtain access to employee personnel records only with the employee's informed and written permission or with a valid legal order. The ~~agency~~ department will inform the employee when a valid legal order has been received ~~allowing~~ requiring access to an employee's personnel records.

(i) Same as proposed rule.

5. A public hearing was conducted on January 22, 1992, to receive testimony on these proposed rules and amendments. Written comments received and testimony are summarized below.

COMMENT: A comment proposed maintaining language currently found at ARM 2.21.6606(2) (c) relating to the need to inform employees about personnel data that is collected.
RESPONSE: New language in ARM 2.21.6606(1)(a) refers to insuring an employee's awareness of and access to records.

COMMENT: A comment suggested preserving language in ARM 2.21.6606(2)(g) which makes reference to "not (making) decisions...on the basis of secret files." This language is repealed in the new version of the rules.
RESPONSE: The new rules state an employee has access to all of his or her employee personnel records. Other records, such as those developed as part of an investigation, are not considered employee personnel records under the provisions of this policy and access is determined on a case-by-case basis. Other policies covering situations in which an employee should be made aware of records, including performance appraisals and grievances, address this issue, also.

COMMENT: ARM 2.21.6608(4) should be revised to clarify that this policy does not necessarily suggest that other program records must be maintained separately from employee personnel records as defined in this policy.
RESPONSE: This paragraph has been amended to clarify that "Other...records..." are not considered employee personnel records as defined in this policy.

COMMENT: In ARM 2.21.6608(6), the definition of "record" is vague.
RESPONSE: ARM 2.21.6608(6) deals with records in general. The department agrees that the language in ARM 2.21.6608(4) "Employee Personnel Record" was vague and it has been amended.

COMMENT: A comment was received that employees should have longer than 10 days (ARM 2.21.6611(3)(a)) to respond to information in an employee personnel records. Specifically, employees who work in the field or away from the central personnel office may need additional time to respond.
RESPONSE: The 10-day time frame begins when an employee is made aware of the information, not from the time the information was placed in the employee personnel record.

This was the only comment received regarding the time frame for responses. However, the department feels additional review of the time frame is warranted. The department will be reviewing time schedules in all current rules.

COMMENT: There is a need for additional guidance regarding a department's obligation to regulatory agencies who request information about state employees.
RESPONSE: Similar to investigations, requests for employee personnel records from regulatory agencies are treated on a case by case basis or as required by legal requests. The department has added language indicating that federal or state law may provide some agencies or departments with the authority to access employee personnel records.

Dal Smilie, Chief Legal Counsel
Department of Administration

Bob Marks, Director
Department of Administration

Certified to the Secretary of State June 1, 1992.

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

In the matter of the amendment of rules pertaining to temporary employment, type of sidearm and regulations of uniform	))))))	NOTICE OF AMENDMENT OF 8.50.424 TEMPORARY EMPLOYMENT WITHOUT IDENTIFICATION, 8.50.432 REGULATIONS OF UNIFORM AND 8.50.506 TYPE OF SIDEARM

TO: All Interested Persons:

1. On February 13, 1992, the Board of Private Security Patrol Officers and Investigators published a notice of proposed amendment of the above-stated rules at page 178, 1992 Montana Administrative Register, issue number 3.

2. The Board has amended ARM 8.50.424 and 8.50.506 exactly as proposed. The Board has amended ARM 8.50.432 as proposed but with the following amendments:

"8.50.432 REGULATIONS OF UNIFORM (1) and (2) will remain the same as proposed.

(3) All uniformed security guards shall wear a patch on their uniforms no less than one inch by three inches in size with the word(S) 'security', 'SECURITY OFFICER' OR 'SECURITY GUARD' in block letters of contrasting colors on the left breast pocket."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-407, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto are as follows:

COMMENT: The amendment of ARM 8.50.432 should allow the use of terms "security officer" and "security guard" in subsection (3) as alternatives to "security."

RESPONSE: The Board concurs and 8.50.432(3) will be amended as shown above.

COMMENT: The Board should accept existing private corporation emblems as sufficient identification of private security officers.

RESPONSE: The emblems of private corporations vary greatly in format, terminology and location on the uniform. The Board is designating a standard format and terminology

patch located over the left breast pocket to assist the public in identifying private security officers.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
GARY GRAY, PRESIDENT

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 1, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of rule relating to special accounting practices	)))	CORRECTED NOTICE OF AMENDMENT OF ARM 10.10.301, FORMULA FOR CALCULATING REGULAR EDUCATION TUITION

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment and adoption of rules pertaining to special accounting practices at page 2334 of the 1991 Montana Administrative Register, issue number 23.

2. On February 13, 1992, the Superintendent of Public Instruction published notice of amendment and adoption of these rules at page 209 of the 1992 Montana Administrative Register, issue number 3.

3. The notice of ARM 10.10.301 is incorrect because certain Revenue Codes cited in the rule were omitted but were not shown as having been deleted. The codes do not pertain to the amended formula. The corrected notice is as follows, deleted material interlined.

10.10.301 FORMULA FOR CALCULATING REGULAR EDUCATION TUITION

(1) remains the same as noticed.

(2) - H) remains the same as noticed.

I) Guaranteed Tax Base for General Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY) ~~(Rev. Code 101-3120)~~

J) - N) remains the same as noticed.

(3) - H) remains the same as noticed.

I) Guaranteed Tax Base for General Fund [Statewide mill value per high school ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY) ~~(Rev. Code 201-3120)~~

J) - N) remains the same as noticed.

(4) - (6) remains the same as noticed.

(AUTH: 20-5-305, 20-5-312, MCA; IMP: 20-5-305, 20-5-312, 20-6-702, MCA)

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends the rule.

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State June 1, 1992.

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

In the matter of the adoption of new rule I concerning a categorical exclusion from EIS requirements for state revolving fund loan assistance for wastewater systems	NOTICE OF ADOPTION OF NEW RULE I (Water Quality - State Revolving Fund)

To: All Interested Persons

1. On March 26, 1992, the board published notice at page 468 of the 1992 Montana Administrative Register, Issue No. 6, of the proposed adoption of the above-captioned rule.

2. After consideration of the comments received on the proposed rule, the board has adopted the rule as proposed with the following changes (new material is underlined; material to be deleted is interlined):

16.18.311 STATE REVOLVING FUND PROJECTS ELIGIBLE FOR CATEGORICAL EXCLUSION FROM EIS REQUIREMENT (1) Same as proposed.

(2) Actions consistent with any of the following categories are eligible for the categorical exclusion:

(a) actions that are solely directed toward projects involving minor rehabilitation of existing facilities, functional replacement of equipment, or construction of ~~non-mechanical,~~ new ancillary facilities adjacent or appurtenant to existing facilities. These improvements may not decrease the degree of treatment of the existing facility; and

(b) Same as proposed.

(3) A categorical exclusion may not be granted if:

(a) Same as proposed.

(b) The action will result in ~~a 30% or greater~~ an increase ~~in~~ above permit levels established for the facility under the Montana pollutant discharge elimination system or Montana ground water pollution control system for either volume of discharge or loading rate of pollutants ~~from an existing source or from new facilities~~ to receiving waters;

(c)-(e) Same as proposed.

(4)-(5) Same as proposed.

AUTH: 75-5-201, 75-5-1105, MCA; IMP: 75-1-201, 75-5-1105, MCA

3. No comments were received other than those from the Department of Health and Environmental Sciences. The department proposed the above amendments to the rule in order to clarify that certain limited mechanical facilities could qualify for a categorical exclusion, to ensure that no action receiving a categorical exclusion would result in an exceedance of a Montana pollutant discharge elimination system or Montana groundwater pollution control system permit level by the affected facility, and in the case of the last phrase

deleted from paragraph (3)(b), to eliminate unnecessary language.

DAVID W. SIMPSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
DENNIS IVERSON, Director

Certified to the Secretary of State June 1, 1992.

Reviewed by:

_____
Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rules 16.20.1303-1304, 16.20.1308, 16.20.1310, 16.20.1313-1314, 16.20.1317-1318, 16.20.1320-1321, 16.20.1323, 16.20.1327-1328, 16.20.1332, 16.20.1402, 16.20.1404-1405, 16.20.1407-1410, 16.20.1412, 16.20.1415-1416, dealing with the Montana pollutant discharge elimination system and pretreatment rules	NOTICE OF AMENDMENT OF RULES

(Water Quality Bureau)

To: All Interested Persons

1. On March 26, 1992, the board published notice at page 471 of the Montana Administrative Register, Issue No. 6, to consider the amendment of the above-captioned rules.

2. After consideration of the comments received on the proposed rules, the board has adopted the rules as proposed with no changes.

3. The following comment was received and the department's comment follows:

COMMENT: Patrick Graham of the Montana Department of Fish, Wildlife and Parks stated that the definition of chronic violation is quite liberal in favor of the discharger and that the standard for exceedances should be 25% instead of 66%.

RESPONSE: The discharger in this rule is an industry which discharges pretreated wastewater into a city's wastewater treatment system. The EPA's standard definition of significant noncompliance (SNC) defines a SNC as a discharger that exceeds a permit limit in 66% or more of the values measured over a six month period. These state rules are required to be at least as stringent as the federal rules. The city which administers the pretreatment must be at least as strict, but may also choose a more strict definition of SNC. Because these dischargers are indirect and are projected to have minimal impact on the receiving stream, the EPA definition of SNC is adopted in our rules.

Reviewed by:

DAVID W. SIMPSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

Eleanor Parker, DHES Attorney

DENNIS IVERSON, Director

Certified to the Secretary of State June 1, 1992.

BEFORE THE ATTORNEY GENERAL
OF THE STATE OF MONTANA

In the matter of the amendment of Model Rules 1.3.206, 1.3.207, 1.3.208, 1.3.209, 1.3.212, 1.3.213, 1.3.214, 1.3.218, 1.3.219, 1.3.224, and 1.3.227, and the amendment of the forms attached to the model rules.	)	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On April 16, 1992, the Attorney General published notice of proposed amendments to model rules 1.3.206, 1.3.207, 1.3.208, 1.3.209, 1.3.212, 1.3.213, 1.3.214, 1.2.218, 1.3.219, 1.3.224, and 1.3.227, and proposed amendments to the sample forms attached to the model rules for the guidance of state agencies, at page 770 of the 1992 Montana Administrative Register, issue number 7.

2. The Attorney General has amended the rules as proposed, and has amended the sample forms as proposed with minor editorial changes.

3. No comments or testimony were received suggesting changes in the amendments to the model rules. The chief of the Administrative Rules Bureau of the Secretary of State's Office and legal counsel for the Insurance Commissioner suggested minor editorial changes to the sample forms. Their suggestions have been incorporated into the sample forms.

By: Marc Racicot
MARC RACICOT
Attorney General

Judy Browning
Rule Reviewer

Certified to the Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I (42.3.120) relating to Delinquent Tax Accounts and Non-Collection Actions	NOTICE OF THE ADOPTION of NEW RULE I (42.3.120) relating to Delinquent Tax Accounts and Non-Collection Actions

TO: All Interested Persons:

1. On March 26, 1992, the Department published notice of the proposed adoption of Rule I (42.3.120) relating to delinquent tax accounts and non-collection actions at page 532 of the 1992 Montana Administrative Register, issue no. 6.

2. No public comments were received regarding this rule.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I (ARM 42.12.108) and RULE II (ARM 42.12.106); and AMENDMENT of ARM 42.12.101, 42.12.126, 42.12.128, 42.12.130, 42.12.208, 42.13.107; and REPEAL of ARM 42.11.101, 42.11.102, 42.11.112, 42.11.113, 42.11.114, 42.11.232, 42.11.242, 42.12.113, 42.12.203, 42.12.221, 42.13.104 and 42.13.303 relating to Liquor Licenses	NOTICE OF THE ADOPTION OF NEW RULE I (ARM 42.12.108) and RULE II (ARM 42.12.106); and AMENDMENT of ARM 42.12.101, 42.12.126, 42.12.128, 42.12.130, 42.12.208, 42.13.107; and REPEAL of ARM 42.11.101, 42.11.102, 42.11.112, 42.11.113, 42.11.114 42.11.232, 42.11.242 42.12.113, 42.12.203, 42.12.221, 42.13.104 and 42.13.303 relating to Liquor Licenses

TO: All Interested Persons:

1. On March 26, 1992, the Department published notice of the proposed adoption of new rule I (ARM 42.12.108) and new rule II (ARM 42.12.106); the amendment of ARM 42.12.101, 42.12.126, 42.12.128, 42.12.130, 42.12.208, 42.13.107; and the repeal of ARM 42.11.101, 42.11.102, 42.11.112, 42.11.113, 42.11.114, 42.11.232, 42.11.242, 42.12.113, 42.12.203, 42.12.221, 42.13.104, 42.13.303 relating to liquor licenses at page 537 of the 1992 Montana Administrative Register, issue no. 6.

2. A Public Hearing was held on April 16, 1992, to consider the proposed adoption, amendments, and repeal. No one appeared to testify and no written comments were received.

3. The Department has adopted the rules as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.116 relating to Net Operating Loss Computations)	NOTICE OF THE AMENDMENT of ARM 42.15.116 relating to Net Operating Loss Computations

TO: All Interested Persons:

1. On April 16, 1992 the Department published notice of the proposed amendment of ARM 42.15.116 relating to net operating loss computations at pages 775 of the 1992 Montana Administrative Register, issue no. 7.

2. No public comments were received regarding these rules.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I (42.35.405) relating to Imposition of Generation-Skipping Transfer Tax	NOTICE OF THE ADOPTION of NEW RULE I (42.35.405) relating to Imposition of Generation-Skipping Transfer Tax

TO: All Interested Persons:

1. On March 26, 1992, the Department published notice of the proposed adoption of Rule I (42.35.405) relating to imposition of generation-skipping transfer tax at page 535 of the 1992 Montana Administrative Register, issue no. 6.

2. No public comments were received regarding this rule.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State June 1, 1992.

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

In the matter of the amendment of rule 46.10.302 pertaining to aid to families with dependent children provision for living with a specified relative	)))))	NOTICE OF THE AMENDMENT OF RULE 46.10.302 PERTAINING TO AID TO FAMILIES WITH DEPENDENT CHILDREN PROVISION FOR LIVING WITH A SPECIFIED RELATIVE

TO: All Interested Persons

1. On April 30, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.302 pertaining to aid to families with dependent children provision for living with a specified relative at page 899 of the 1992 Montana Administrative Register, issue number 8.

2. The Department has amended rule 46.10.302 as proposed.

3. No written comments or testimony were received.

Dawn Sliva
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1992.

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

In the matter of the adoption of rules 46.12.1945 through 46.12.1951 and the amendment of rule 46.12.1902 pertaining to targeted case management for children and adolescents	))))))	NOTICE OF THE ADOPTION OF RULES 46.12.1945 THROUGH 46.12.1951 AND THE AMENDMENT OF RULE 46.12.1902 PERTAINING TO TARGETED CASE MANAGEMENT FOR CHILDREN AND ADOLESCENTS

TO: All Interested Persons

1. On March 26, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules 46.12.1945 through 46.12.1951 and the amendment of rule 46.12.1902 pertaining to targeted case management for children and adolescents at page 548 of the 1992 Montana Administrative Register, issue number 6.

2. The Department has adopted the following rules as proposed with the following changes:

[RULE I] 46.12.1945 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE: DEFINITIONS Subsection (1) remains as proposed.

(2) "Assessment" means the act of identifying the resources and services needed to carry out the therapeutic case plan ~~developed with the assistance of the client or the parent or the surrogate parent~~. Assessment includes identifying the strengths, abilities, potentials, skills and aspirations of the client and the client's family. This is not a psychiatric, medical or other specialized evaluation which is traditionally completed by other qualified professionals. Assessment enables the case manager to determine the nature and extent of brokering, coordination, transportation and advocacy needed.

Subsection (3) remains as proposed.

(4) "Crisis assistance and intervention" means the act of assessing the nature and severity of the client's crisis, identifying appropriate resources to provide the support service which will alleviate the crisis, and arranging for delivery of services in a timely manner. Crisis assistance and intervention does not include direct provision of service to eliminate THE CRISIS or stabilize THE CIRCUMSTANCES OF the client, ~~or the client's family in crisis~~ THE PARENT OR THE SURROGATE PARENT.

(5) "Monitoring" means the ongoing act of:

(a) assessing the impact of services being provided to a client according to the established case plan~~,~~;

(b) identifying services included in the plan but not currently provided, and the reasons for services not being provided~~,~~; and

(c) ensuring that the services are provided. Monitoring includes identifying needed changes and the provision of reports or feedback to the providers, the client and the ~~client's family~~ PARENT OR SURROGATE PARENT.

(6) "Record maintenance" means the act of recording essential information promptly in client files to document the provision of case management services. This information must be in a form which can be easily understood by the client and ~~professionals~~ PROVIDERS.

Subsection (7) remains as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE II] 46.12.1946 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE, ELIGIBILITY (1) A person is eligible for case management as a ~~person under eighteen years of age~~ YOUTH with severe emotional disturbance if the person:

Subsections (1)(a) through (3)(r) remain as proposed.

(4) A PERSON WHO HAS NOT REACHED 21 YEARS OF AGE IS ELIGIBLE FOR CASE MANAGEMENT FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE IF THAT PERSON:

(a) IS "EMOTIONALLY DISTURBED" AS DEFINED BY 20-7-401 (5), MCA;

(b) IS BEING SERVED BY AN EDUCATION AGENCY; AND

(C) IS RECEIVING MEDICAID.

Subsection (4) remains as proposed but will be renumbered subsection (5).

(5~~6~~) A person who is a victim of sexual or physical abuse has severe emotional disturbance when the abuse results in emotional disturbance manifested by the characteristics described in subsection (2).

(7) A person with a character and personality disorder including sexual behaviors which is abnormal and prohibited by statute does not have severe emotional disturbance unless the behavior results from emotional disturbance.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE III] 46.12.1947 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE, SERVICE COVERAGE (1) Reimbursable case management services for ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance are:

Subsections (1)(a) through (1)(g) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE IV] 46.12.1948 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE, CASE MANAGEMENT PLAN (1) A case management plan must:

(a) identify AND DEFINE measurable objectives for the client and the client's family;

Subsection (1)(b) remains as proposed.

(c) specify strategies ~~to~~ FOR achieveING defined objectives;

Subsection (1)(d) remains as proposed.

(e) identify agencies, service providers and contracts which will assist in ~~meeting~~ ACHIEVING the DEFINED objectives and specify how they will assist;

(f) identify natural, family and community supports to be utilized and developed in achieving THE defined objectives; and

(g) identify the role and duties of the client, the parent or the surrogate parent and all participants in the delivery of a comprehensive and coordinated service to the client and the client's family; and

(h) specify monitoring procedures and timeframes.

Subsection (2) remains as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE V] 46.12.1949 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS Subsection (1) remains as proposed.

(2) Case management services for ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance must be provided by a licensed mental health center that is under contract with the Montana department of corrections and human services to provide mental health services, or in cases where the community mental health center is unwilling or unable to provide the required case management services, the service may be provided by a provider designated by and under contract with the department of corrections and human services.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE VI] 46.12.1950 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE, GEOGRAPHICAL COVERAGE (1) Case management services for ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance are available only ~~in~~ FOR RESIDENTS OF the geographic areas beginning on the effective dates specified as follows:

(a) Missoula county - ~~May~~ JUNE 15, 1992; AND

(b) Helena and Helena valley of Lewis and Clark county - ~~May~~ JUNE 15, 1992~~;~~.

~~(c) Great Falls (city) -- July 1, 1992;~~

~~(d) Havre (city) -- July 1, 1992;~~
~~(e) Gallatin county -- August 1, 1992;~~
~~(f) Park county -- August 1, 1992; and~~
~~(g) Silver Bow county -- August 1, 1992.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE VII] 46.12.1951 CASE MANAGEMENT SERVICES FOR YOUTH ~~PERSONS UNDER EIGHTEEN YEARS OF AGE~~ WITH SEVERE EMOTIONAL DISTURBANCE, REIMBURSEMENT (1) Case management services provided for ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance and their families are reimbursed based on a cost per service unit. A service unit is a fifteen minute increment.

(2) The department will pay the lower of the following for case management services for ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance:

Subsections (2)(a) and (2)(b) remain as proposed.

(3) The fee schedule for case management services for ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance is the following:

Subsections (3)(a) and (3)(b) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The Department has amended the following rule as proposed with the following changes:

46.12.1902 CASE MANAGEMENT SERVICES, GENERAL ELIGIBILITY

Subsections (1) through (1)(c) remain as proposed

(d) ~~persons under 18 years of age~~ YOUTH with severe emotional disturbance.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: [Rule VI] 46.12.1950, concerning geographical coverage, should include more areas of eastern Montana. While there may be financial constraints there is a need for this service in other areas of the state.

RESPONSE: The state matching funds available at this time for the implementation of targeted case management are not adequate to fund services in all the geographical areas indicated in [Rule VI(1)] 46.12.1950 as proposed. The Department, therefore, has revised the rule to limit coverage areas to Missoula County, Helena and the Helena Valley. When matching funds are available, the Department may seek amendment to the rule to expand the geographic coverage area.

COMMENT: [Rule VI(1)] 46.12.1950 should be changed as follows:

Subsection (b)	change May 15, 1992, to June 15, 1992;
Subsection (e)	change August 1, 1992 to October 1, 1992;
Subsection (f)	change August 1, 1992 to October 1, 1992; and
Subsection (g)	delete entirely.

RESPONSE: The Department has revised [Rule VI(1)] 46.12.1950 to alter the effective dates of implementation. Missoula County, Helena and the Helena Valley will begin June 15, 1992. As stated above, the Department has revised the rule to delete subsections (c), (d), (e), (f) and (g) in their entirety.

COMMENT: Gallatin and Park Counties should be covered by targeted case management.

RESPONSE: Currently, there are no matching funds available for targeted case management services in Gallatin and Park Counties. Coverage of these and other areas will occur when matching funds become available. The rules will be amended to provide for such coverage at the time the funds are available.

COMMENT: [Rule V] 46.12.1949, concerning provider requirements, should not limit targeted case management to licensed mental health centers contracted with the Montana Department of Corrections and Human Services. Needs may be more effectively met outside of these mental health centers.

RESPONSE: The various state service agencies and service providers are working to improve the new system within the funding available for this service and recognize that alternative approaches for the delivery of targeted case management may be available and may be used in the future.

COMMENT: The definition of "advocacy" in [Rule I] 46.12.1945, should include the client advocate.

RESPONSE: The purpose of the definition of "advocacy" in [Rule I] 46.12.1945 is to define the service provided by the targeted case manager. Targeted case management is a service to the client rather than to all parties adjunct to the client. The definition does not prohibit the involvement of "client advocates." The inclusion of a client advocate is a decision made on a case by case basis.

COMMENT: Surrogate parent should be included in the definition of "advocacy" and a definition of "surrogate parent" should be included. The definition for purposes of the Education of the Handicapped could be used.

RESPONSE: The rules acknowledge the primary role and responsibility of parents in the planning and delivery of services to their child. Foster parents or other substitute parents providing the day to day care of the youth are included in planning activities. The inclusion of regulations attendant to the Education of the Handicapped law to define surrogate parent would be inappropriate for the purposes of these rules.

COMMENT: The definition of "assessment" in [Rule I] 46.12.1945 should include "client advocate."

RESPONSE: The definition of "assessment" is not intended to be a totally inclusive listing of persons who may be appropriately involved in the assessment, nor to imply those not listed are excluded. The term concerns the limited act of assessing what resources and services are needed to carry out the therapeutic case plan. Therefore, the phrase "developed with the assistance of the client or the parent or the surrogate-parent" has been deleted. This modification clarifies the intent of the rule.

COMMENT: "Client advocates" should be included whenever "parent or surrogate parent" is referred to. The definition of "case planning" in [Rule I] 46.12.1945 includes the term "client advocate". The rules are inconsistent without the inclusion of the term.

RESPONSE: The role of the client advocate does not equate with the role of the parent. It would not be appropriate to provide the client advocate with the same authorities and privileges of a parent in all circumstances and procedures addressed in the rules.

COMMENT: The definition of "monitoring" in [Rule I] 46.12.1945 refers to "the client and the client's family." It is confusing to interchange terms such as parent, surrogate parent and client's family. The terms should be used consistently. The definition should read, "to the client's parent, surrogate parent or client advocate." It seems inconsistent to name the parent, surrogate parent or client advocate as those "assessing and participating in case planning" and then provide monitoring reports only to the client's family. The client's family may be different if there is a surrogate parent and the definition does not allow for information to go to a client advocate.

RESPONSE: The rule has been revised as suggested.

COMMENT: In the definition of "record maintenance" in [Rule I] 46.12.1945 the term "provider" should be used rather than "professionals."

RESPONSE: The rule has been revised as suggested.

COMMENT: The definition of "service coordination" in [Rule I] 46.12.1945 should include the act of linking the client with advocacy services.

RESPONSE: The term service providers includes advocacy services. The intent of the rule is to retain flexibility for the case manager in identifying client and family specific services. The inclusion of the advocacy services would appear to limit the services with which the case manager may link the client or family.

COMMENT: [Rule II] 46.12.1946, concerning eligibility, should include an explanation or clarification of the process of challenging eligibility determinations.

RESPONSE: The Department under Rule 46.2.202 provides a right to fair hearing for applicants for Medicaid services.

COMMENT: [Rule III] 46.12.1947, concerning service coverage, should explain or clarify the reason for delineating various levels of case management services and the manner in which eligibility for those services will be determined. In its current form, it appears that if a person meets the eligibility requirements of [Rule II] 46.12.1946, that person qualifies for all levels of case management services.

RESPONSE: [Rule III] 46.12.1947 is not a description of levels of targeted case management, but rather it is a listing of which services can be provided and reimbursed by Medicaid. A child or adolescent who meets the requirements of [Rule II] 46.12.1946 and is Medicaid eligible may receive all of the targeted case management services listed in [Rule III] 46.12.1947. The specific service is dependent upon the specific child or adolescent and the situation.

COMMENT: [Rule II(1)] 46.12.1946 should be changed to include children or adolescents up to 21 years of age identified and currently being served by an education agency as "emotionally disturbed" according to Section 20-7-401(5), MCA.

RESPONSE: [Rule II(1)] 46.12.1946 has been revised to provide that targeted case management services may be provided to a youth who is identified and served by a special education program as "emotionally disturbed" under the authority of 20-7-401(5), MCA. Because of the inclusion of certain persons of more than 18 years of age the term "persons under 18 years of age" has been replaced with the term "youth" through the rules.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1992.

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

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

TO: All Interested Persons

1. On April 30, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.3803 pertaining to medically needy income standards at page 905 of the 1992 Montana Administrative Register, issue number 8.

2. The Department has amended rule 46.12.3803 as proposed.

3. No written comments or testimony were received.

Dawn Sliva
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1992.

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

In the matter of the amendment of rule 46.25.742 pertaining to eligibility requirements for general relief medical	))))	NOTICE OF THE AMENDMENT OF RULE 46.25.742 PERTAINING TO ELIGIBILITY REQUIREMENTS FOR GENERAL RELIEF MEDICAL

TO: All Interested Persons

1. On April 16, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.25.742 pertaining to eligibility requirements for general relief medical at page 787 of the 1992 Montana Administrative Register, issue number 7.

2. The department has amended rule 46.25.742 as proposed.

3. The department has thoroughly considered all commentary received:

COMMENT: A provider of medical services expressed several concerns:

a) Managed care would become a method to deny eligibility and suggested the department find a more effective means of gaining compliance or alternative sanctions short of denial of eligibility.

b) The provider felt that the penalties were too severe and that noncompliance may result from misunderstanding rather than intent to undermine managed care. They felt education necessary.

c) They suggested an appeal process, other than that already in place, to such adverse actions.

d) A final comment suggested expanding the definition of good cause to recognize noncompliant behavior caused by a medical condition.

RESPONSE: Montana law 53-3-318(4), MCA mandates participation in a managed care system, for those required by the department, as a requirement for eligibility for General Relief Medical (GRM). The department will impose sanctions on noncomplying individuals only after a period of conciliation and education. In the managed care process presently in place, the client is given notice on his monthly authorization letter that he or she must comply with the managed care program. If a client receives a letter and fails to meet with managed care

when requested, a conciliation process takes place. An appointment is set up for the client to meet with managed care and along with the medical provider come to an agreement on the best method of treatment. This meeting provides information and education to the client concerning the program and his/her need to comply to achieve health. Only after an agreement is reached and signed by the client and after the client has once again been informed that compliance is necessary to maintain GRM eligibility is the client subject to future sanction periods.

Clients are informed that state medical will be closed and the authorization letter will be withheld until they meet for conciliation. If the client refuses to meet for conciliation during the applicable month, another letter is sent informing the client that he is now under sanction from the program for the next calendar month. The client must participate in order to maintain eligibility for the program. As with any adverse action, the client has the right to appeal and the department feels that the present appeal process is fair and adequate to meet the needs of those denied GRM in any circumstance.

The definition of "good cause" in the rule is broad enough to recognize that medical conditions may affect behavior. What constitutes good cause will be determined jointly by the county and the managed care contractor.

COMMENT: A provider of medical services had several comments:

a) The proposed rule change will make it impossible for the recipient to re-apply and become eligible on a retrospective basis. They felt that this change would eliminate recipients and reduce payment of medical bills to providers.

b) They felt we were denying eligibility based on any infraction and that we were not limiting this rule change to managed care program compliance.

RESPONSE: This rule amendment, when taken out of context, may be misconstrued. When one reads the entire rule and not just the additions of (a) and (b), it is very clear that sanction periods apply only to managed care compliance. The client is given an opportunity for conciliation and education. Only if a client refuses conciliation, will not sign a managed care agreement, or is in noncompliance with a signed agreement, does a sanction period apply.

Therefore, it is not anticipated that a large number of recipients will be sanctioned, and it is not expected that many providers will go unpaid for their services because of

sanctions. However, the provider is correct in stating that once a recipient has been sanctioned, GRM cannot be retroactively approved for that recipient for the period when the sanction was in effect.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 1, 1992.

VOLUME NO. 44 OPINION NO. 34

CITIES AND TOWNS - Authority of self-governing local government to enact ordinance providing that delinquent solid waste charges become lien on property served;
COUNTIES - Authority of self-governing local government to enact ordinance providing that delinquent solid waste charges become lien on property served;
LIENS - Authority of self-governing local government to enact ordinance providing that delinquent solid waste charges become lien on property served;
SOLID WASTE - Authority of self-governing local government to enact ordinance providing that delinquent solid waste charges become lien on property served;
MONTANA CODE ANNOTATED - Sections 7-1-106, 7-1-111, 7-1-113, 7-1-114, 7-13-233(5);
MONTANA CONSTITUTION - Article XI, section 6;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 53 (1990), 43 Op. Att'y Gen. No. 41 (1989), 43 Op. Att'y Gen. No. 1 (1989), 40 Op. Att'y Gen. No. 45 (1984), 40 Op. Att'y Gen. No. 7 (1983), 37 Op. Att'y Gen. No. 68 (1977).

HELD: A local government with self-governing powers may enact an ordinance which provides that delinquent solid waste management service charges become a lien on the property served.

May 19, 1992

Robert M. McCarthy
Silver Bow County Attorney
155 West Granite Street
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion on the following question:

> May the city-county of Butte-Silver Bow, under its self-government charter, enact an ordinance which provides that delinquent solid waste management service charges become a lien on the property served?

Your letter of inquiry sets forth the factual background for your request. On November 2, 1976, the voters in the City of Butte and the County of Silver Bow approved consolidation of the city and county under a charter form of government with self-government powers. Prior to consolidation the County of Silver Bow had provided solid waste disposal services through garbage and ash collection districts, and the City of Butte had provided such services to the city residents, using the county landfills. The consolidated city-county has continued to provide solid

waste disposal services and is currently undertaking the establishment of a new landfill facility that will meet state and federal requirements. The city-county has enacted an ordinance establishing standards and regulations for the use of the new facility and providing a system of fees and charges for the facility. In order to secure financing for the landfill facility, it is necessary for the city-county to have in place an enforceable system of collecting the fees and charges.

Butte-Silver Bow's charter provides that the city-county shall have self-government powers, which are "all powers not prohibited by the Constitution of the State, the laws of the State or this Charter." Consistent with section 7-1-106, MCA, the charter provides that "the powers and authority of this self-government unit shall be liberally construed" and that "[e]very reasonable doubt as to the existence of this government's power shall be resolved in favor of the existence of that power or authority."

Concerning solid waste management, the charter provides as follows:

> All existing special improvement districts, lighting districts and garbage collection districts, shall continue to exist and levies for such special services shall continue to be the obligation of the owners of the property beneficially served in said districts, provided that the Council of Commissioners may change the boundaries or abolish garbage districts.

In determining whether a self-government power is authorized, previous opinions from this office have engaged in a three-part analysis:

> 1) consult the charter and consider constitutional ramifications; 2) determine whether the exercise is prohibited under the various provisions of [Title 7, chapter 1, part 1, MCA] or other statute specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by section [7-1-113].

43 Op. Att'y Gen. No. 41 at 130, 132 (1989), citing 37 Op. Att'y Gen. No. 68 at 272, 274 (1977).

Consideration of the first factor does not suggest any reason why Butte-Silver Bow would not be authorized to enact the proposed ordinance. The city-county has reserved the full spectrum of self-governmental powers permitted by law, and I am aware of no provision in the charter which would limit the commissioners' authority to enact such an ordinance. The charter expressly authorizes the city-county to provide solid waste management services, to charge the owners of the

properties beneficially served, and to change or abolish the districts which were carried over to the consolidated city-county government. There would be no apparent constitutional ramifications of the proposed ordinance unless its enactment amounts to the exercise of a power prohibited by law. Mont. Const. Art. XI, § 6.

The second factor requires an examination of sections 7-1-111 and 7-1-114, MCA, to determine if enactment of the proposed ordinance is prohibited by law. As noted in 43 Op. Att'y Gen. No. 41, the powers denied to a self-governing local government by section 7-1-111, MCA, consist largely of matters committed to a state agency or affecting statewide concerns. The collection of solid waste management service charges has not been committed to a state agency and does not present such a statewide concern, even though the construction and management of a solid waste landfill may be subject to both federal and state regulation. Similarly, section 7-1-114, MCA, does not prohibit enactment of the proposed ordinance. I agree that subsection (f) of that statute does not apply inasmuch as state law does not direct or require a local government to provide solid waste management services. See Clopton v. Madison County Commission, 216 Mont. 335, 701 P.2d 347 (1985); 43 Op. Att'y Gen. No. 1 at 1 (1989).

The third factor of the analysis concerns section 7-1-113, MCA, which prohibits a self-governing local government from exercising any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control. Stated conversely, this statute "allows a local government with self-government powers to enact any ordinance unless the ordinance (1) is inconsistent with state law or regulation and (2) concerns an area affirmatively subjected by law to state control." 43 Op. Att'y Gen. No. 53 at 184, 186-87 (1990), citing 43 Op. Att'y Gen. No. 41 (1989) (emphasis in original).

In this instance, the proposed ordinance is neither inconsistent with state law nor concerned with an area affirmatively subjected by law to state control. Subsection (2) of section 7-1-113, MCA, states that the exercise of a power is inconsistent with state law "if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation." Here the proposed ordinance would treat delinquent service charges in the same manner as such charges are presently treated where incurred by property owners in solid waste management districts. Section 7-13-233(5), MCA, provides that "[i]f not paid, the service charge [established pursuant to section 7-13-231, MCA, to defray the cost of maintenance and operation of a solid waste management district] becomes delinquent and becomes a lien on the property, subject to the same penalties and the same rate of interest as property taxes." See 40 Op. Att'y Gen. No. 45 at 180 (1984). The proposed ordinance would do no more than

provide the city-county with the same remedy for collecting delinquent service charges as is now available to a solid waste management district.

Under section 7-1-113(3), MCA, an area is affirmatively subjected to state control "if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency." You correctly observe in your letter that state law does not vest any state officer or agency with enforcement or regulatory authority concerning the collection of delinquent service charges. Applying the statutory definition to the facts presented in your letter, I have concluded that the collection of such charges is not an area affirmatively subjected to state control.

I agree that 40 Op. Att'y Gen. No. 7 (1983) does not apply to a self-governing local government and would not prohibit the enactment of the proposed ordinance. The city-county of Butte-Silver Bow may properly rely upon the previously cited opinions from this office and the Montana Supreme Court's decisions in such cases as D & F Sanitation Service v. City of Billings, 219 Mont. 437, 713 P.2d 977 (1986), in concluding that it may enact an ordinance providing that delinquent solid waste management service charges become a lien on the property served.

THEREFORE, IT IS MY OPINION:

> A local government with self-governing powers may enact an ordinance which provides that delinquent solid waste management service charges become a lien on the property served.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 35

COUNTY GOVERNMENT - Requirement to levy tax for noxious weed fund;
LOCAL GOVERNMENT - Requirement to levy tax for noxious weed fund;
PESTICIDES - Requirement of board of county commissioners to levy tax for noxious weed fund;
TAXATION AND REVENUE - Requirement of board of county commissioners to levy tax for noxious weed fund;
WEED CONTROL DISTRICTS - Requirement of board of county commissioners to levy tax for noxious weed fund;
MONTANA CODE ANNOTATED - Title 7, chapter 22, part 21; sections 7-6-2348, 7-22-2101(10), 7-22-2102, 7-22-2103, 7-22-2105, 7-22-2109, 7-22-2115, 7-22-2121, 7-22-2141 to 7-22-2146;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 63 (1990), 41 Op. Att'y Gen. No. 91 (1986), 39 Op. Att'y Gen. No. 5 (1981).

HELD: Section 7-22-2142, MCA, grants discretionary authority to the board of county commissioners to assess and levy a tax of up to two mills each fiscal year to fund the noxious weed program.

June 1, 1992

Mike McGrath
Lewis and Clark County Attorney
County Courthouse
228 Broadway
Helena MT 59623

Dear Mr. McGrath:

You have requested my opinion regarding the obligation of the board of county commissioners (hereinafter "commissioners") to fund the noxious weed program. Specifically, you have asked whether section 7-22-2142, MCA, requires the commissioners to assess and levy a tax of at least two mills each fiscal year to fund the weed management district created pursuant to section 7-22-2102, MCA.

The Montana Legislature has declared noxious weeds and the seed of any noxious weed to be a common nuisance. § 7-22-2115, MCA. In order to implement a program for the containment, suppression, and eradication of noxious weeds, the Legislature has directed that a weed management district be formed in every county of the state. §§ 7-22-2101(10), 7-22-2102, MCA. Each district is to be governed by a district weed board (hereinafter "weed board"), whose members are appointed by the commissioners. § 7-22-2103, MCA.

The weed board is responsible for the administration of the district's noxious weed program, which is based upon a management plan approved by the weed board. §§ 7-22-2109, 7-22-2121, MCA. The cost of the weed control program is to be paid from a noxious weed fund created by the commissioners. §§ 7-22-2109(1)(b), 7-22-2141, 7-22-2144, MCA.

There are several statutory sources of money for the noxious weed fund. Section 7-22-2117, MCA, provides that all fines, bonds, and penalties collected under the provisions of Title 7, chapter 22, part 21 are to be credited to the noxious weed fund by the county treasurer. In addition, section 7-22-2142, MCA, provides:

> **Sources of money for noxious weed fund.** (1) The commissioners may create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109, by:
>
> (a) appropriating money from the general fund of the county;
>
> (b) at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.
>
> (c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.
>
> (2) The proceeds of the noxious weed control tax must be used solely for the purpose of managing noxious weeds in the county and must be designated to the noxious weed fund.
>
> (3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.
>
> (4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

Use of the term "may" in section 7-22-2142, MCA, is not determinative of the funding question, since "may" can be interpreted as either mandatory or permissive. See State ex rel. Griffin v. Greene, 104 Mont. 460, 469, 67 P.2d 995, 999

(1937). The ambiguity created by use of the term "may" is resolved by looking to the other provisions of Title 7, chapter 22, part 21, MCA, and comparing the respective powers granted to the commissioners and to the weed board. See 43 Op. Att'y Gen. No. 63 (1990) (the duty of a local governing body to levy the amount of tax certified annually by a local port authority is mandatory rather than discretionary under sections 7-14-1131 and 7-14-1132, MCA, where the local port authority had specifically been granted the power to certify the amount of tax to be levied); see also 41 Op. Att'y Gen. No. 91 (1986) (a board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees where the trustees' administrative powers were broad and exclusive and included the authority to adopt a budget); accord 39 Op. Att'y Gen. No. 5 (1981) (county commissioners' duty to levy a proper assessment for a conservation district is mandatory where district has express grant of authority to cause taxes to be levied).

A comparison of the commissioners' express powers with those of the weed board reveals that the commissioners' authority in budgetary matters is significantly broader than that of the weed board. The weed board is responsible for estimating the cost of the proposed weed management program in its noxious weed management plan and making budget recommendations to the commissioners based on those estimated costs. §§ 7-22-2121(2)(d), 7-22-2143, MCA. However, it is the commissioners who determine and fix the costs of noxious weed control, § 7-22-2143, MCA. In addition, the commissioners are responsible for setting the salary, per diem and mileage of weed board members, § 7-22-2105, MCA; creating a noxious weed management fund, § 7-22-2141, MCA; accepting private, state, or federal gifts, grants, contracts, or other funds for noxious weed control, § 7-22-2142, MCA; determining and fixing the cost of noxious weed control in the district, § 7-22-2143; approving warrant claims upon the weed fund, § 7-22-2145, MCA; and establishing cost-share programs in the district, § 7-22-2146, MCA.

The weed board's authority is readily distinguishable from that of library trustees, who have exclusive control over budgetary matters, as discussed in 41 Op. Att'y Gen. No. 91, supra, at 395:

> The trustees' power under section 22-1-309(6), MCA, to adopt an annual budget forecloses the board of county commissioners from effecting changes in such budget. The obvious purpose of the trustees' authority in library budget matters is to allow application of their informed judgment to fiscal issues. Such authority is, moreover, an integral aspect of the trustees' independence without which many of their other express powers would be rendered

> meaningless. The board of county commissioners' only role in library budget matters is to assign a property tax levy amount, which presently cannot exceed five mills, sufficient to satisfy the budgetary needs. The commissioners' function is thus purely ministerial with respect to the imposition of the levy.

In contrast, the weed board's recommendations in budget matters are subject to final approval by the commissioners. Furthermore, there is no means by which the weed board may compel the commissioners to assess and levy a tax or appropriate general funds to fund the noxious weed program as is the case with conservation districts. See 39 Op. Att'y Gen. No. 5, supra.

Although the weed board may cause the noxious weed fund to be expended in the manner and at the time it sees fit, § 7-22-2145, MCA, this power extends only to those funds from independent sources or to additional money which the commissioners, in their discretion, choose to make available. It does not empower the weed board to compel funding from the commissioners in one of the methods outlined in section 7-22-2142, MCA. I recognize that many of the weed board's statutorily mandated functions are jeopardized if the commissioners, in the exercise of their discretion, refuse to supplement the noxious weed fund by one of the methods outlined in section 7-22-2142, MCA. However, the relevant statutes lead to the conclusion that funding of the noxious weed program by tax levy is solely within the commissioners' discretion.

This conclusion is supported by the defeat of recently proposed amendments to section 7-22-2142, MCA. In the 1991 legislative session, House Bill 549 was introduced to provide funding for a full-time weed control supervisor for each district and increase the maximum tax levy to five mills. See Minutes of House of Representatives Committee on Agriculture, Livestock and Irrigation, February 8, 1991; Minutes of Senate Committee on Agriculture, Livestock and Irrigation, March 11, 1991. The original bill proposed that section 7-22-2142, MCA (1989), be amended to read: "The commissioners shall create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties[.]" The term "shall" was later stricken and replaced with the term "may" following opponents' suggestions that some districts did not need or could not afford a full-time supervisor, and that the maximum tax levy remain at two mills. See Minutes of House Committee, February 8, 1991, at 3-4, Exhibit 3; Minutes of Senate Committee, March 11, 1991, at 4, 9. Any attempt of the original bill drafters to mandate that weed districts "be funded at levels to allow for adequate development and implementation of the weed management program" by use of the term "shall" (House Committee Minutes, supra, at 2), was thus defeated by changes in statutory language. These proposed changes which were rejected in committee give rise to a presumption that the Legislature did not intend to change what

was previously a permissive duty to a mandatory duty in section 7-22-2142, MCA (1989). See Foster v. Kovich, 207 Mont. 139, 144, 673 P.2d 1239, 1243 (1983).

THEREFORE, IT IS MY OPINION:

Section 7-22-2142, MCA, grants discretionary authority to the board of county commissioners to assess and levy a tax of up to two mills each fiscal year to fund the noxious weed program.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1992. This table includes those rules adopted during the period April 1, 1992 through June 30, 1992 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 March 31, 1992, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1991 and 1992 Montana Administrative Registers.

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