RESERVE

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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

In the matter of the amendment of ARM 2.43.612, 2.43.613 and 2.43.614 in order to comply with new statutory deadlines for certifying annual benefit payments for distributing lump sum benefit increases to Montana resident retirees	NOTICE OF PROPOSED AMENDMENT OF RULES GOVERNING LUMP SUM BENEFIT PAYMENTS TO IN-STATE RESIDENT RETIREES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 25, 1992, the Public Employees' Retirement Board proposes to amend ARM 2.43.612, 2.43.613 and 2.43.614 in order to comply with new statutory deadlines for the certification of annual benefit payments to the state treasurer and for the distribution of lump sum benefit adjustments to eligible retirees.

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

2.43.612 ELIGIBILITY FOR ANNUAL BENEFIT ADJUSTMENT (1) All benefit recipients who maintain Montana as their official residence and who received at least one monthly benefit payment on or before December 31 of the preceding calendar year will be eligible for the annual benefit adjustment.

(2) For purposes of determining residence, eligible recipients will include those retirees (or their surviving beneficiaries receiving a continuing monthly benefit) who:

(a) have continuously maintained a Montana mailing address both for payment of monthly benefits and for mailing annual tax information statements since their effective retirement date, or

(b) have provided acceptable certification of Montana residency to the board.

(3) On or before ~~February~~ January 1, certification forms will be mailed to those recipients who must provide certification of residency. The certification forms will be mailed to the current information address on file with the Public Employees' Retirement Division. Recipients not returning satisfactory certifications of Montana residency by ~~March~~ February 1, will be considered non-residents for the purpose of determining eligibility for the annual adjustment to be made during ~~May~~ March of that year.

2.43.613 CALCULATION OF ANNUAL BENEFIT ADJUSTMENT (1) The annual adjustment payment made to each eligible recipient of a monthly benefit paid by a retirement system administered by the Public Employees' Retirement Board shall be a percentage of the gross annual benefit received by the eligible retiree (or their eligible beneficiary) in the prior calendar year.

(2) Each calendar year, a uniform adjustment rate factor will

be determined for each retirement system. The percentage rate for each system will be the ratio between:

(a) ~~the total annual benefits paid to all eligible recipients in the prior calendar year and~~

~~(b)~~ the amount appropriated for the retirement adjustment in the current calendar year~~.~~ and

(b) the total annual benefits paid to all eligible recipients in the prior calendar year.

(3) The annual adjustment shall be made to each eligible recipient in a single payment which will be combined with the regular ~~May~~ March benefit. (~~May~~ March benefits are mailed on or before the last business day of ~~May~~ March.)

2.43.614 ANNUAL CERTIFICATION OF PENSION PAYMENTS BY LOCAL POLICE AND FIRE PENSION PLANS (1) On or before January 1 of each year, the public employees' retirement division will mail annual certification forms to the boards of local police and fire pension systems operating under the authority of either Title 19, Chapter 10 or Chapter 11, MCA.

(2) The gross amount of public pension benefits paid during the preceding calendar year must be certified to the retirement division on or before February 15 of each year.

(3) Any local pension board not meeting an annual deadline will not have their pension payments included in the board's certification to the state treasurer of total annual pension payments made during the preceding calendar year, nor will the plan receive an allocation of the general fund appropriation made for the purpose of providing annual pension adjustments to eligible instate resident retirees during that year.

3. The rules are proposed to be amended in order to comply with new statutory deadlines enacted during the first special session of the 52nd Montana Legislature. SB 1 which was enacted during January 1992 requires certification of annual benefits to the state treasurer no later than February 15 of each year and payment of lump sum adjustment payments to in-state resident retirees not later than April 1. Amendments proposed to all three rules provide earlier deadlines which are necessary due to the new, earlier statutory deadlines.

In addition, the amendment to sections 2(a) and (b) of ARM 2.43.613 clarifies that the calculation is to be made using total amount appropriated as the numerator of an equation and the total annual benefits paid to all eligible recipients as the denominator of the equation. The proposed amendment simply switches the order of the current (a) and (b) since the numerator of an equation is usually stated first. This amendment is for clarification purposes only and does not change the actual manner in which the uniform adjustment rate will be determined.

4. Interested parties may submit their data, view or arguments concerning the proposed adoptions or amendments in writing to Mark

Cress, Acting Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than November 6, 1992.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mark Cress, Acting Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than October 15, 1992.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,650 persons based upon the number of active members in the PERS covered by these rules per the 1990 actuarial valuation of the PERS.

7. The authority for the rules are found in sections 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203, 19-13-202, and 19-15-101, MCA, and the rules implement 1992 amendments to the provisions of 19-15-101 and 102, MCA.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State August 28, 1992.

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

In the matter of the proposed amendment of a rule pertaining to examinations and the proposed adoption of new rules pertaining to definitions and applications	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 8.34.414 EXAMINATIONS AND THE PROPOSED ADOPTION OF NEW RULES PERTAINING TO DEFINITIONS AND APPLICATIONS

TO: All Interested Persons:

1. On October 16, 1992, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to nursing home administrators.

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

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

~~(2) A signed physician's statement dated within 60 days of application attesting to applicant's physical and mental health will be accepted as evidence that the applicant is of sound physical and mental health.~~

~~(3) The instruction and training provided by section 37-9-301(1)(b), MCA, shall include successful completion, of at least:~~

~~(a) 60 semester hours or 90 quarter hours in an accredited college or university or graduation from a nationally accredited school of nursing;~~

~~(b) or the equivalent education, training and experience provided by section 37-9-301(1)(b), MCA, must include at least 1 year out of the last 3 years as an assistant administrator or director of nursing, or a one-year internship with a licensed nursing home administrator. There must be verification of the time completed, and a recommendation that the applicant be licensed. This must be from a person who has been a practicing administrator for at least the past 3 years.~~

~~(c) Applicants holding a BA or BS degree in hospital administration, nursing home administration, or long-term care administration, will not be required to have working experience.~~

~~(4)~~ (2) A passing score in examinations prepared by the professional examination service, or the national association

of boards and passing score in an open book examination relating to the provisions of the Montana long-term care ~~facility~~ licensing law and regulations will be required of each applicant.

(5) and (6) will remain the same but will be renumbered (3) and (4)."

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

REASON: This amendment is being proposed so that the rule is in compliance with section 37-9-301, MCA and the Omnibus Budget and Reconciliation Act of 1987 and 1990.

3. The proposed new rules will read as follows:

"I DEFINITIONS (1) "Experience in health care administration" shall mean having management responsibility, which shall include supervision of at least three (3) staff persons, of a health care facility, or of an agency providing healthcare services. For the purposes of this provision only, agencies providing healthcare services shall include out-patient clinics, home health agencies, agencies providing rehabilitative services and other non-institutional businesses or agencies which provide direct healthcare services to individuals.

(2) "Education in healthcare administration" shall mean the completion of a course of instruction designed to teach the elements of healthcare facility administration and management, including training regarding the protection of the rights of residents or patients therein.

(3) "Healthcare facility" shall mean a licensed long-term or acute care facility.

(4) "Clock hour" shall mean sixty (60) minutes of formal instruction by an approved presenter."

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

REASON: This proposed new rule would clearly define terms as used in chapter 9, MCA, and in these rules.

"II APPLICATION FOR EXAMINATION (1) An application for examination shall be filed at least 30 days prior to the examination date and must be accompanied by the required fee, which shall not be refunded.

(2) A signed physician's statement dated within 60 days of application attesting to applicant's physical and mental health will be accepted as evidence that the applicant is of sound physical and mental health.

(3) The application information furnished by each applicant shall be evaluated by the board and given point value to determine whether the applicant has sufficient experience, education or training. The experience, education or training requirements are set out in subsections (a) through (c) below:

(a) A maximum of five years of experience will be considered for categories set out in subsections (iii) through (vii) below. Documented part-time employment will be pro-rated on a full-time employee status.

(i) administration of healthcare facility(ies) to include administrator and/or director of nursing, full-time equivalency, 1200 points/year;

(ii) middle management in healthcare facility(ies) who has the ability to hire/fire, full-time equivalency, 400 points/year;

(iii) direct services experience in healthcare facility(ies) with direct patient contact, full-time equivalency, 200 points/year;

(iv) support services experience in healthcare facility(ies) with indirect patient contact, full-time equivalency, 100 points/year;

(v) casual (indirect) experience in healthcare facility(ies), full-time equivalency, 50 points/year;

(vi) non-healthcare related administrative/management experience, 300 points/year; and

(vii) non-healthcare related supervisory/business experience, 100 points/year.

(b) Educational requirements shall be obtained through the following:

(i) Graduate/professional degrees:

(A) masters or beyond in healthcare administration equals 3600 points;

(B) masters or beyond in business administration equals 2700 points;

(C) masters or beyond in nursing equals 2700 points;

(D) masters or beyond in other healthcare related area equals 2100 points;

(E) masters or beyond in non-healthcare related area equals 1800 points.

(ii) Baccalaureate degree:

(A) BS/BA in healthcare administration equals 3600 points;

(B) BS/BA in nursing (RN) (diploma nurse) equals 1800 points;

(C) BS/BA in business administration equals 1800 points;

(D) BS/BA in other healthcare related area equals 1800 points; and

(E) BS/BA in non-healthcare related area equals 800 points.

(iii) Associate degree:

(A) Associate degree in healthcare administration (including a minimum of 21 semester hours or 28 quarter hours of coursework directly in healthcare administration), equals 3600 points;

(B) Associate degree nurse equals 1800 points;

(C) Associate degree in other healthcare related area equals 1500 points; and

(D) Associate degree in non-healthcare related area equals 500 points.

(iv) Certificate/technical programs:
(A) Licensed nurse practitioner equals 2000 points;
(B) Licensed physician assistant equals 1800 points;
(C) Licensed practical nurse equals 500 points;
(D) Other certified programs in the healthcare field equals 50 points.
(v) College/University coursework (no degree earned), (completed with a grade of not less than "C"):
(A) Courses in healthcare administration equals 150 points per semester hour;
(B) Courses in business administration equals 50 points per semester hour;
(C) Courses in other healthcare related area equals 50 points per semester hour; and
(D) Courses not specifically healthcare related equals 15 points per semester hour.
(c) Training requirements:
(i) Seminars/workshop/short courses (limited to those attended in the past five (5) years):
(A) Healthcare administration equals 10 points per approved clock hour;
(B) Business administration equals 10 points per approved clock hour;
(C) Other healthcare content equals 10 points per approved clock hour; and
(D) Non-healthcare related equals 0 points.
(ii) Administrator-in-training (AIT) programs:
(A) Contents of program can be submitted of the hours of training with 1 point per clock hour in the last 2 years. Verification of clock hours documented and signed by licensed active nursing home administrator.
(4) A copy of all documents including transcript and diploma or degree, if applicable, to provide accumulation of points required."
Auth: 37-1-131, 37-9-203, MCA; IMP, Sec. 37-9-301, 37-9-304, MCA

REASON: The purpose of this new rule is to describe the cumulative point-system the board shall use to determine whether the evidence submitted by an applicant satisfies the conditions as set forth in ARM 8.34.414 of sufficient education, training or experience.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing Home Administrators, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than 5:00 p.m., October 8, 1992.

5. Carol Grell, attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF NURSING HOME
ADMINISTRATORS
MOLLY MUNRO, CHAIRPERSON

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.5.1002 pertaining to day care rates	NOTICE OF PROPOSED AMENDMENT OF RULE 11.5.1002 PERTAINING TO DAY CARE PAYMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 29, 1992, the Department of Family Services proposes to amend ARM 11.5.1002 pertaining to day care rates for benefits paid under day care programs administered by the department.

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

11.5.1002 DAY CARE RATES (1) Full day care services (six or more hours per day/night) are paid at a rate of ~~$10.50~~11.25 per day/night per child in care in family day care homes. The maximum rate for group day care homes is ~~$11.00~~11.25 per child per day/night of care. The maximum rate for day care centers is $11.00 per child per day/night of care. These rates are effective rates for the current fiscal year.

(2) Part-time care (less than six hours per day/night) is paid at a rate of $1.~~35~~50 per hour per child in family day care homes, $1.~~35~~50 per hour per child in group day care homes, and ~~$1.65~~2.00 per hour per child in all day care centers up to a maximum of a full day or night care rate.

Subsection (3) remains the same.

(4) Special needs child or exceptional child day care is paid at a rate of $12.00 per child per day/night of care in family day care homes, upon approval of the department. Special needs or exceptional child day care is paid at a rate of $12.00 per child per day/night of care in group day care homes, upon approval of the department. Special needs or exceptional child day care is paid at a rate of $12.15 per day/night of care in day care centers, upon approval of the department. Part-time care (less than six hours per day/night) for special needs child or exceptional child day care is paid at a rate of $1.~~65~~75 per hour per child in family day care homes, upon approval of the department, up to a maximum of a full day or night care rate. Part-time care (less than six hours per day/night) for special needs child or exceptional child day care is paid at a rate of $1.~~65~~75 per hour per child in group day care homes, upon approval of the department, up to a maximum of a full day or night care rate. Part-time care (less than six hours per day/night) for special needs child or exceptional child day care is paid at a rate of ~~$1.75~~2.00 per hour per child in day care centers, upon approval of the department, up to a maximum of the full day or

night care rate.

(5) The infant care rate may be charged for children under the age of twenty-four months as follows: full day care services (six or more hours per day) are paid at a rate of $12.00 per day/night per infant in care in family day care homes. The maximum rate for group day care homes is $12.00 per infant per day/night of care. The maximum rate for day care centers is $13.00 per infant per day/night of care. Part-time care (less than six hours per day) is paid at a rate of $1.~~35~~50 per hour per infant in family day care homes, $1.~~35~~50 per hour per infant in group day care homes, and $~~1.75~~2.00 per hour per infant in all day care centers up to a maximum of a full day or night care rate, as such rate is calculated for the facility.

(6) Day care operators will be allowed to claim a day's care only when actually provided to the child, unless the child is enrolled in the ~~center~~ facility.

Subsection (7) remains the same.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-713, MCA.

3. The 1991 Montana Legislature directed that day care rates be increased in a two-step process. The first increase ocurred in October of 1991, and the increase as set out herein completes the process. The amounts are based on a market study completed in 1990. Amounts paid under the rule which are keyed to day care rates on the open market ensure adequate payment for obtaining quality care. Periodic increases based on market trends also fulfill, in part, development and maintenance of day care facility programs.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing 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 October 9, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, 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 October 9, 1992.

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

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, August 31, 1992.

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

In the matter of the amendment of rules 16.44.102, 16.44.105, 16.44.118, 16.44.120, 16.44.202, 16.44.302-306, 16.44.610, 16.44.804, and new rules I through XIII dealing with boiler and industrial furnace (BIF) regulations	)))))))	INTERIM NOTICE OF NEW RULES

(Solid & Hazardous Waste)

To: All Interested Persons

1. On December 26, 1991, the department published a notice at page 2567 of the 1991 Montana Administrative Register, Issue No. 24, of the proposed amendment of the above-captioned rules and proposed adoption of new rules. A subsequent notice was published March 12, 1992, at page 445 of the 1992 Montana Administrative Register, Issue No. 5, adopting amendments to ARM 16.44.306 and deferring further action on the balance of the proposal until a proper response to the extraordinarily large number of comments could be made.

2. In the original notice of proposed rulemaking, the department proposed incorporating by reference the entirety of Subpart H of 40 CFR, part 266, governing the burning of hazardous waste in boilers and industrial furnaces, but subsequently received an outpouring of comments on those rules. The proposed rules issued by the department in December, 1991, contemplated that the federal regulations controlling boilers and industrial furnaces would be accepted as rules governing the State of Montana. The mechanism for accepting these rules was simple incorporation by reference of the federal rules into the ARM. However, as noted in the rulemaking action disallowing interim status for boilers and industrial furnaces taken in March, 1992, the department noted that sufficient comments had been received to call into question the adequacy of certain portions of the federal boiler and industrial furnace rules. The department has decided instead of incorporating by reference the federal rules, to propose adopting the full text of certain of those federal rules, edited to contain state, rather than federal, references, but is not reiterated in this notice, and to adopt a modified version of other federal rules in line with and after consideration of the comments. The department will accept written comments on the proposed new rules until October 9, 1992, after which it will publish notice of its final action on the entire rulemaking package, as well as its responses to comments.

3. The text of those rules, I through XI and XIII, follows [the new Rule I that was contained in the original proposal, is renumbered as Rule XII]:

RULE I APPLICABILITY (1) The rules of this subchapter

apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in ARM 16.44.202) irrespective of the purpose of burning or processing, except as provided by sections (2), (3), (4), and (5) of this rule. In this subchapter, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of [RULE IV] through [RULE VII] apply to facilities operating under a HWM permit as specified in [RULE III].

(2) The following hazardous wastes and facilities are not subject to regulation under this subchapter:

(a) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in ARM 16.44.320 through 16.44.324. Such used oil is subject to regulation under subpart E of part 266 (incorporated by reference in ARM 16.44.306(4)) rather than this subchapter;

(b) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery.

(c) Hazardous wastes that are exempt from regulation under ARM 16.44.304 and 16.44.306(1)(c)(v-viii), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under ARM 16.44.402(2).

(d) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

(3) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under this subchapter, except for [RULE II] and [RULE X].

(a) To be exempt from [RULE III] through [RULE IX], an owner or operator of a metal recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of section (3)(c) of this rule:

(i) Provide a one-time written notice to the department indicating the following:

(A) The owner or operator claims exemption under this section;

(B) The hazardous waste is burned solely for metal recovery consistent with the provisions of section (3)(b) of this rule;

(C) The hazardous waste contains recoverable levels of metals; and

(D) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this section;

(ii) Sample and analyze the hazardous waste and other

feedstocks as necessary to comply with the requirements of this section under procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (incorporated by reference in ARM 16.44.351) or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(iii) Maintain at the facility for at least three years records to document compliance with the provisions of this section including limits on levels of toxic organic constituents and Btu value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.

(b) A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:

(i) The hazardous waste has a total concentration of organic compounds listed in ARM 16.44.352(1)(b) exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by section (3)(a)(iii) of this rule; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by section (3)(a)(iii) of this rule.

(c) To be exempt from [RULE III] through [RULE IX], an owner or operator of a lead or nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the department identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this section or section (3)(a) of this rule. The owner or operator must comply with the requirements of section (3)(a) of this rule for those wastes claimed to be exempt under that section and must comply with the requirements below for those wastes claimed to be exempt under this section.

(i) The hazardous wastes listed in Appendices XI and XII (as incorporated by reference in [RULE XI]) of this subchapter and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of section (3)(a) of this rule, provided that:

(A) A waste listed in Appendix XI (as incorporated by reference in [RULE XI]) must contain recoverable levels of

lead, a waste listed in Appendix XII (as incorporated by reference in [RULE XI]) must contain recoverable levels of nickel or chromium, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

(B) The waste does not exhibit the toxicity characteristic of ARM 16.44.324 for an organic constituent; and

(C) The waste is not a hazardous waste listed in ARM 16.44.330 through 16.44.333 because it is listed for an organic constituent as identified in ARM 16.44.352(1)(a); and

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of section (3)(c) of this rule and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to section (3)(a)(ii) of this rule and records to document compliance with section (3)(c) of this rule shall be kept for at least three years.

(ii) The department may decide on a case-by-case basis that the toxic organic constituents in a material listed in Appendix XI or XII (as incorporated by reference in [RULE XI]) of this subchapter that contains a total concentration of more than 500 ppm toxic organic compounds listed in ARM 16.44.352(1)(b), may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subchapter. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subchapter when burning that material. In making the hazard determination, the department will consider the following factors:

(A) The concentration and toxicity of organic constituents in the material; and

(B) The level of destruction of toxic organic constituents provided by the furnace; and

(C) Whether the acceptable ambient levels established in Appendices IV or V (as incorporated by reference in [RULE XI]) of this subchapter may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

(4) The standards for direct transfer operations under [RULE IX] apply only to facilities subject to the permit standards of [RULE III].

(5) The management standards for residues under [RULE X] apply to any boiler or industrial furnace burning hazardous waste.

(6) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, iridium, osmium, rhodium, or ruthenium,

or any combination of these are conditionally exempt from regulation under this subchapter, except for [RULE X]. To be exempt from [RULE II] through [RULE IX], an owner or operator must:

(a) Provide a one-time written notice to the department indicating the following:

(i) the owner or operator claims exemption under this section;

(ii) the hazardous waste is burned for legitimate recovery of precious metal; and

(iii) the owner or operator will comply with the sampling and analysis and recordkeeping requirements of this section; and

(b) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal using procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (incorporated by reference in ARM 16.44.351) or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(c) Maintain at the facility for at least three years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

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

RULE II MANAGEMENT PRIOR TO BURNING (1) Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to subchapter 4 of this chapter.

(2) Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to subchapter 5 of this chapter.

(3)(a) Owners and operators of facilities that store hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of subparts A through L of 40 CFR Part 264 (incorporated by reference in ARM 16.44.702) and subchapter 1 of this chapter, except as provided by section (3)(b) of this rule. These standards apply to storage by the burner as well as to storage facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(b) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulation under the small quantity burner provisions of [RULE VIII], hazardous waste that they generate are exempt from regulation under subparts A through L of 40 CFR Part 264 and subchapter 1 of this chapter with respect to the storage of mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in section (3)(a) of this rule.

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

RULE III PERMIT STANDARDS FOR BURNERS (1)(a) Owners and operators of boilers and industrial furnaces burning hazardous waste must comply with the requirements of this rule and 40 CFR 270.22 (incorporated by reference in ARM 16.44.120) and [RULE XII], unless exempt under the small quantity burner exemption of [RULE VIII].

(b) Owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions of 40 CFR Part 264 (incorporated by reference in ARM 16.44.702) and of subchapter 8 of this chapter, except as provided otherwise in this subchapter:

(i) In 40 CFR Part 264, subpart B (general facility standards), §§ 264.11-264.18;

(ii) In 40 CFR Part 264, subpart C (preparedness and prevention), §§ 264.31-264.37;

(iii) In 40 CFR Part 264, subpart D (contingency plan and emergency procedures), §§ 264.51-264.56;

(iv) In 40 CFR Part 264, subpart E (manifest system, recordkeeping, and reporting), the applicable provisions of §§ 264.71-264.77;

(v) In 40 CFR Part 264, subpart F (corrective action), §§ 264.90 and 264.101;

(vi) In 40 CFR Part 264, subpart G (closure and post-closure), §§ 264.111-264.115;

(vii) In subchapter 8 (financial assurance requirements), ARM 16.44.803, 16.44.804, 16.44.806 through 16.44.814 (closure only), and 16.44.817 through 16.44.823, except that state agencies and agencies of the federal government are exempt from the requirements of subchapter 8; and

(viii) 40 CFR Part 264, subpart BB (air emission standards for equipment leaks), except §§ 264.1050(a).

(2)(a) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in ARM 16.44.352(1)(b) that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by analytical procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference; see ARM 16.44.351). Alternative methods that meet or exceed the method performance capabilities of SW-846 methods may be used. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. The ARM 16.44.352(1)(b) constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this subchapter and ARM 16.44.120 and [RULE XII] and to enable the department to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis must be included as a portion of the part B permit application, as well as any other analysis required by the department in preparing the permit. Owners and operators of boilers and industrial

furnaces must provide the information required by ARM 16.44.120 or [RULE XII](3) in the part B application to the greatest extent possible.

(b) Throughout normal operation, the owner or operator must conduct sampling and analysis as necessary to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace are within the physical and chemical composition limits specified in the permit.

(3) Owners and operators must comply with the emissions standards of [RULE IV] through [RULE VII].

(4)(a) The owner or operator may burn only hazardous wastes specified in the facility permit and only under the operating conditions specified under section (5) of this rule, except in approved trial burns under the conditions specified in [RULE XII].

(b) Hazardous wastes not specified in the permit may not be burned until operating conditions have been specified under a new permit or permit modification, as applicable. Operating requirements for wastes are based on trial burn results.

(c) A permit for a boiler or industrial furnace must establish appropriate conditions for each of the applicable requirements of this rule, including but not limited to allowable hazardous waste firing rates and operating conditions necessary to meet the requirements of section (5) of this rule, in order to comply with the following standards:

(i) For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the device to a point of operational readiness to conduct a trial burn, not to exceed a duration of 720 hours operating time when burning hazardous waste, the operating requirements must be those most likely to ensure compliance with the emission standards of [RULE IV] through [RULE VII], based on the department's engineering judgment. If the applicant is seeking a waiver from a trial burn to demonstrate conformance with a particular emission standard, the operating requirements during this initial period of operation shall include those specified by the applicable provisions of [RULE IV] through [RULE VII]. The department may extend the duration of this period for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(ii) For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the emissions standards of [RULE IV] through [RULE VII] and must be in accordance with the approved trial burn plan;

(iii) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, review of the trial burn results and modification of the facility permit by the department to reflect the trial burn results, the operating requirements must be those most likely to ensure compliance with the emission standards of [RULE IV] through [RULE VII] based on the

department's engineering judgment.

(iv) For the remaining duration of the permit, the operating requirements must be those demonstrated in a trial burn specified in ARM 16.44.120, as sufficient to ensure compliance with the emissions standards of [RULE IV] through [RULE VII].

(5)(a) A boiler or industrial furnace burning hazardous waste must be operated in accordance with the operating requirements specified in the permit at all times when there is hazardous waste in the unit.

(b) Requirements to ensure compliance with the organic emissions standards.

(i) Operating conditions will be specified either on a case-by-case basis for each hazardous waste burned as those demonstrated (in a trial burn as specified in ARM 16.44.120) to be sufficient to comply with the destruction and removal efficiency (DRE) performance standard of [RULE IV](1). Each set of operating requirements will specify the composition of the hazardous waste (including acceptable variations in the physical and chemical properties of the hazardous waste which will not affect compliance with the DRE performance standard) to which the operating requirements apply. For each such hazardous waste, the permit will specify acceptable operating limits including, but not limited to, the following conditions as appropriate:

(A) Feed rate of hazardous waste and other fuels measured and specified as prescribed in section (5)(f) of this rule;

(B) Minimum and maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in section (5)(f) of this rule;

(C) Appropriate controls of the hazardous waste firing system;

(D) Allowable variation in boiler and industrial furnace system design or operating procedures;

(E) Minimum combustion gas temperature measured at a location indicative of combustion chamber temperature, measured and specified as prescribed in section (5)(f) of this rule;

(F) An appropriate indicator of combustion gas velocity, measured and specified as prescribed in section (5)(f) of this rule, unless documentation is provided under [RULE XII] demonstrating adequate combustion gas residence time; and

(G) Such other operating requirements as are necessary to ensure that the DRE performance standard of [RULE IV](1) is met.

(ii) Carbon monoxide and hydrocarbon standards. The permit must incorporate a carbon monoxide (CO) limit and, as appropriate, a hydrocarbon (HC) limit as provided by sections (2), (3), (4), (5) and (6) of [RULE IV]. The permit limits will be specified as follows:

(A) When complying with the CO standard of [RULE IV](2)(a), the permit limit is 100 ppmv;

(B) When complying with the alternative CO standard under [RULE IV](3), the permit limit for CO is based on the trial

burn and is established as the average over all valid runs of the highest hourly rolling average CO level of each run, and the permit limit for HC is 20 ppmv (as defined in [RULE IV](3)(a)), except as provided in [RULE IV](6).

(C) When complying with the alternative HC limit for industrial furnaces under [RULE IV](6), the permit limit for HC and CO is the baseline level when hazardous waste is not burned as specified by that section.

(iii) During start-up and shut-down of the boiler or industrial furnace, hazardous waste (except waste fed solely as an ingredient under the tier I (or adjusted tier I) feed rate screening limits for metals and chloride/chlorine must not be fed into the device unless the device is operating within the conditions of operation specified in the permit.

(iv) The following hazardous wastes listed for dioxin, pentachlorophenol or derived from any of the following dioxin-listed wastes may not be burned in a boiler or industrial furnace: EPA hazardous waste numbers D017, D037, D041, D042, F020, F021, F022, F023, F026, F027, F028, F032, and K001 (containing pentachlorophenol).

(c) Requirements to ensure conformance with the particulate standard.

(i) Except as provided in sections (5)(c)(ii) of this rule, the permit shall specify the following operating requirements to ensure conformance with the particulate standard specified in [RULE V]:

(A) Total ash feed rate to the device from hazardous waste, other fuels, and industrial furnace feedstocks, measured and specified as prescribed in section (5)(f) of this rule;

(B) Maximum device production rate when producing normal product expressed in appropriate units, and measured and specified as prescribed in section (5)(f) of this rule;

(C) Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

(D) Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

(E) Such other operating requirements as are necessary to ensure that the particulate standard in [RULE V](1) is met.

(ii) For cement kilns and light-weight aggregate kilns, permit conditions to ensure compliance with the particulate standard shall not limit the ash content of hazardous waste or other feed materials.

(iii) In conjunction with the permit application, the department may require the owner/operator of a boiler or an industrial furnace (BIF) to submit a plan which will require a cessation of the burning of hazardous waste during prolonged inversion conditions. The department will consider the proximity of the boiler or industrial furnace to populated areas when determining the need for such a plan. The plan, if determined to be necessary by the department, must include an ambient air monitoring program in order to establish the conditions under which the burning will be halted and under

which it may then be resumed, unless the owner/operator provides an alternate method for determining such conditions. Any monitoring program must conform to methods contained in the Montana Quality Assurance Manual (July 1991 ed.). Any alternate method must be determined by the department as equivalent to applicable methods contained in the Montana Quality Assurance Manual.

(d) Requirements to ensure conformance with the metals emissions standard.

(i) For conformance with the tier I (or adjusted tier I) metals feed rate screening limits of sections (2) or (5) of [RULE VI], the permit shall specify the following operating requirements:

(A) Total feed rate of each metal in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified under provisions of section (5)(f) of this rule;

(B) Total feed rate of hazardous waste measured and specified as prescribed in section (5)(f) of this rule;

(C) A sampling and metals analysis program for the hazardous waste, other fuels, and industrial furnace feedstocks;

(ii) For conformance with the tier II metals emission rate screening limits under [RULE VI](3) and the tier III metals controls under [RULE VI](4), the permit shall specify the following operating requirements:

(A) maximum emission rate for each metal specified as the average emission rate during the trial burn;

(B) feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in section (5)(f)(i) of this rule;

(C) feed rate of each metal in the following feedstreams, measured and specified as prescribed in sections (5)(f) of this rule:

(I) total feed streams;

(II) total hazardous waste feed; and

(III) total pumpable hazardous waste feed;

(D) total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in section (5)(f) of this rule;

(E) maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in section (5)(f) of this rule;

(F) maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in section (5)(f) of this rule;

(G) maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in section (5)(f) of this rule;

(H) appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

(I) allowable variation in boiler and industrial furnace system design including any air pollution control system or

operating procedures; and

(J) such other operating requirements as are necessary to ensure that the metals standards under [RULE VI](3) or (4) are met.

(iii) For conformance with an alternative implementation approach approved by the department under [RULE VI](6), the permit will specify the following operating requirements:

(A) maximum emission rate for each metal specified as the average emission rate during the trial burn;

(B) feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in section (5)(f)(i) of this rule;

(C) feed rate of each metal in the following feedstreams, measured and specified as prescribed in section (5)(f) of this rule:

(I) total hazardous waste feed; and

(II) total pumpable hazardous waste feed;

(D) total feed rate of chlorine and chloride in total feed streams measured and specified prescribed in section (5)(f) of this rule;

(E) maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in section (5)(f) of this rule;

(F) maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in section (5)(f) of this rule;

(G) maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in section (5)(f) of this rule;

(H) appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

(I) allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

(J) such other operating requirements as are necessary to ensure that the metals standards under [RULE VI](3) or (4) are met.

(e) Requirements to ensure conformance with the hydrogen chloride and chlorine gas standards.

(i) For conformance with the Tier I total chloride and chlorine feed rate screening limits of [RULE VII](2)(a), the permit will specify the following operating requirements:

(A) feed rate of total chloride and chlorine in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified as prescribed in section (5)(f) of this rule;

(B) feed rate of total hazardous waste measured and specified as prescribed in section (5)(f) of this rule;

(C) a sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks;

(ii) For conformance with the tier II HCl and Cl_2 emission rate screening limits under [RULE VII](2)(b) and the tier III

HCl and Cl_2 controls under [RULE VII](3), the permit will specify the following operating requirements:

(A) maximum emission rate for HCl and for Cl_2 specified as the average emission rate during the trial burn;

(B) feed rate of total hazardous waste measured and specified as prescribed in section (5)(f) of this rule;

(C) total feed rate of chlorine and chloride in total feed streams, measured and specified as prescribed in section (5)(f) of this rule;

(D) maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in section (5)(f) of this rule;

(E) appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

(F) allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

(G) such other operating requirements as are necessary to ensure that the HCl and Cl_2 standards under [RULE VII](2)(b) or (3) are met.

(f) Measuring parameters and establishing limits based on trial burn data.

(i) As specified in sections (5)(b) through (5)(e) of this rule, each operating parameter shall be measured, and permit limits on the parameter shall be established, according to either of the following procedures:

(A) A parameter may be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the permit limit specified as the time-weighted average during all valid runs of the trial burn; or

(B) The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

(I) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(II) An hourly rolling average is the arithmetic mean of the 60 most recent 1-minute average values recorded by the continuous monitoring system.

(C) The permit limit for the parameter shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average value for each run.

(ii) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (i.e., arsenic, beryllium, cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by section (5)(f)(i) of this rule or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an average period from 2 to 24 hours:

(A) The feed rate of each metal shall be limited at any

time to ten times the feed rate that would be allowed on an hourly rolling average basis;

(B) The continuous monitor shall meet the following specifications:

(I) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(II) The rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60-minute period beginning at one minute after the beginning of preceding clock hour; and

(C) The permit limit for the feed rate of each metal shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average feed rate for each run.

(iii) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of sections (5)(f)(i) and (ii) of this rule.

(iv) Conduct of trial burn testing.

(A) If compliance with all applicable emissions standards of [RULE IV] through [RULE VII] is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.

(B) Prior to obtaining test data for purposes of demonstrating compliance with the emissions standards of [RULE IV] through [RULE VII] or establishing limits on operating parameters under this rule, the facility must operate under trial burn conditions for a sufficient period to reach steady-state operations. The department may determine, however, that industrial furnaces that recycle collected particulate matter back into the furnace and that comply with an alternative implementation approach for metals under [RULE VI](6) need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals emissions.

(C) Trial burn data on the level of an operating parameter for which a limit must be established in the permit must be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl_2, organic compounds) for which the parameter must be established as specified by section (5) of this rule.

(g) General requirements.

(i) Fugitive emissions must be controlled by:

(A) Keeping the combustion zone totally sealed against fugitive emissions; or

(B) Maintaining the combustion zone pressure lower than atmospheric pressure; or

(C) An alternate means of control demonstrated (with part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(ii) Automatic waste feed cutoff. A boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when operating conditions deviate from those established under this rule. The department may limit the number of cutoffs per an operating period on a case-by-case basis. In addition:

(A) The permit limit for (the indicator of) minimum combustion chamber temperature must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber,

(B) Exhaust gases must be ducted to the air pollution control system operated in accordance with the permit requirements while hazardous waste or hazardous waste residues remain in the combustion chamber; and

(C) Operating parameters for which permit limits are established must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the permit limits. For parameters that may be monitored on an instantaneous basis, the department will establish a minimum period of time after a waste feed cutoff during which the parameter must not exceed the permit limit before the hazardous waste feed may be restarted.

(iii) A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits as specified in the permit.

(iv) The owner or operator may be required to install and operate items such as additional stack monitoring devices and additional or duplicative instrumentation or alarm systems upon the request of the department, during the permit application or permit review process.

(h) Monitoring and inspections are as follows:

(i) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:

(A) If specified by the permit, feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks, and feed rates of ash, metals, and total chloride and chlorine;

(B) If specified by the permit, carbon monoxide (CO), hydrocarbons (HC), and oxygen on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the

atmosphere in accordance with operating requirements specified in section (5)(b)(ii) of this rule. CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter.

(C) Upon the request of the department, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feedstocks as appropriate), residues, and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the applicable standards of [RULE IV] through [RULE VII]. Stack emissions will be sampled and tested, at the owner or operator's expense, on at least an annual basis. The constituents to be tested and the conditions of the testing will be established during the permit application or permit review process. The results will be compared to conditions established during the trial burn. Test results are to be submitted to the department in accordance with the schedule to be outlined in the permit.

(ii) All monitors shall record data in units corresponding to the permit limit unless otherwise specified in the permit.

(iii) The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

(iv) The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every 7 days when hazardous waste is burned to verify operability, unless the applicant demonstrates to the department that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing must be conducted at least once every 30 days.

(v) These monitoring and inspection data must be recorded and the records must be placed in the operating record required by 40 CFR 264.73 (adopted by reference in ARM 16.44.702).

(i) If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator must comply with [RULE IX].

(j) The owner or operator must keep in the operating record of the facility all information and data required by this rule until closure of the facility.

(k) At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace.

(6) Background and periodic testing of soils, surface waters and aquifers.

(a) The owners and operators of boilers and industrial furnaces burning hazardous waste must perform background and periodic testing of soils, surface waters and aquifers.

(b) Soil samples shall be sampled and analyzed for total metals and pH, or other constituents as determined by the department, from surface locations that are predominantly downwind of the stack or facility. The number of samples and locations shall be determined during the permit application or permit review process. Background samples shall be tested prior to burning hazardous waste. Soil samples shall be taken on an annual basis. The results of the annual sampling shall be compared to the background results.

(c) Surface water samples shall be sampled and analyzed for total metals and pH, or other constituents as determined by the department, from surface locations that are predominantly downstream from the stack or facility. This requirement does not apply if there are no streams, rivers, lakes or wetlands within one mile of the boiler or industrial furnace. The number of samples and locations shall be determined during the permit application or permit review process. Background samples shall be tested prior to burning hazardous waste. Surface water samples shall be taken on an annual basis. The results of the annual sampling shall be compared to the background results.

(d) Samples of groundwater from the uppermost aquifer underlying the property shall be sampled and analyzed for total metals and pH, or other constituents as determined by the department, if it is determined during the permit application or permit review process that aquifer testing is warranted. This determination shall be made by the department based, in part, on review of the Part B application regarding known geologic and hydrogeologic conditions underlying the site, including use of the aquifer. If required, the number of samples and locations shall be determined during the permit review process. Background samples will be tested prior to burning hazardous waste. Groundwater samples will be taken on an annual basis. The results of the annual sampling shall be compared to the background results.

(e) Sampling and analysis shall be in conformance with procedures described in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference in ARM 16.44.351). The statistical methodology will be the same employed for Bevill residue determinations as described in Appendix IX of this subchapter. That is, the annual samples (taken after hazardous wastes are burned) will be compared to background samples for the constituents of concern. The 95 percent confidence interval about the mean of the background levels must be used in the comparison of the annual and background samples. The concentration of a constituent in the annual sample is not considered to be significantly higher than in the background sample if the concentration does not exceed the upper limit of the 95 percent confidence interval about the mean that was established for the background level.

(f) The results of the sampling and analysis program for soils, surface waters and aquifers will be evaluated at the time of permit application or permit review. The evaluation of the results will consider the possibility of interferences

from sources other than the boiler or industrial furnace. If the department determines that statistically increased contamination from the facility is apparent, then the department will have the option to require additional testing, restrict the feed rates of certain hazardous wastes, deny reissuance of the permit or revoke the permit.
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RULE IV STANDARDS TO CONTROL ORGANIC EMISSIONS (1) The destruction and removal efficiency standard is as follows:

(a) A boiler or industrial furnace burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99% for all organic hazardous constituents in the waste feed. To demonstrate conformance with this requirement, 99.99% DRE must be demonstrated during a trial burn for each principal organic hazardous constituent (POHC) designated (under section (1)(b) of this rule) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \left[1 - \frac{W_{out}}{W_{in}} \right] X\ 100$$

where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the hazardous waste fired to the boiler or industrial furnace; and

W_{out} = Mass emission rate of the same POHC present in stack gas prior to release to the atmosphere.

(b) Principal organic hazardous constituents (POHCs) are those compounds for which compliance with the DRE requirements of this rule shall be demonstrated in a trial burn in conformance with procedures prescribed in [RULE XII]. One or more POHCs shall be designated by the department for each waste feed to be burned. POHCs shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with part B of the permit application. POHCs are most likely to be selected from among those compounds listed in Part 261, Appendix of 40 CFR 261, incorporated by reference in ARM 16.44.352(1)(b), that are also present in the normal waste feed. However, if the applicant demonstrates to the department's satisfaction that a compound not listed in ARM 16.44.352(1)(b), or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this rule, that compound may be designated as a POHC. Such POHCs need not be toxic or organic compounds.

(2)(a) Except as provided in section (3) of this rule, the stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste cannot

exceed 100 ppmv on an hourly rolling average basis (i.e., over any 60 minute period), continuously corrected to 7 percent oxygen, dry gas basis.

(b) CO and oxygen shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter.

(c) Compliance with the 100 ppmv CO limit must be demonstrated during the trial burn. To demonstrate compliance, the highest hourly rolling average CO level during any valid run of the trial burn must not exceed 100 ppmv.

(3) Alternative carbon monoxide standard.

(a) The stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste may exceed the 100 ppmv limit provided that stack gas concentrations of hydrocarbons (HC) do not exceed 20 ppmv, except as provided by section (6) of this rule for certain industrial furnaces.

(b) HC limits must be established under this rule on an hourly rolling average basis (i.e., over any 60 minute period), reported as propane, and continuously corrected to 7 percent oxygen, dry gas basis.

(c) HC shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter. CO and oxygen shall be continuously monitored in conformance with section (2)(b) of this rule.

(d) The alternative CO standard is established based on CO data during the trial burn. The alternative CO standard is the average over all valid runs of the highest hourly average CO level for each run. The CO limit is implemented on an hourly rolling average basis, and continuously corrected to 7 percent oxygen, dry gas basis.

(4) Owners and operators of industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient at any location other than the end where products are normally discharged and where fuels are normally fired must comply with the hydrocarbon limits provided by sections (3) or (6) of this rule irrespective of whether stack gas CO concentrations meet the 100 ppmv limit of section (2) of this rule.

(5) Owners and operators of boilers and industrial furnaces must conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1 in 100,000 (this provision may be waived if the owner or operator of the facility can demonstrate, to the satisfaction of the department, that raw materials and fuels used are such that dioxins and furans would

not be present in waste residues or emissions):

(a) During the trial burn, determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (CDDs/CDFs) using Method 23, "Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans (PCDFs) from Stationary Sources", in Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter;

(b) Estimate the 2,3,7,8-TCDD toxicity equivalence of the tetra-octa CDDs/CDFs congeners using "Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners" in Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter. Multiply the emission rates of CDD/CDF congeners with a toxicity equivalence greater than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8-TCDD;

(c) Conduct dispersion modeling using methods recommended in Guideline on Air Quality Models (Revised) or the "Hazardous Waste Combustion Air Quality Screening Procedure", which are provided in Appendices X and IX, respectively, 40 CFR 260.11 or "EPA SCREEN Screening Procedure" as described in Screening Procedures for Estimating Air Quality Impact of Stationary Sources, (as incorporated by reference in [RULE XI]), to predict the maximum annual average off-site ground level concentration of 2,3,7,8-TCDD equivalents determined under section (5)(b) of this rule. The maximum annual average on-site concentration must be used when a person resides on-site; and

(d) The ratio of the predicted maximum annual average ground level concentration of 2,3,7,8-TCDD equivalents to the risk-specific dose for 2,3,7,8-TCDD provided in Appendix V (as incorporated by reference in [RULE XI]) of this subchapter (2.2×10^{-7}) shall not exceed 1.0.

(6) Alternative HC limit for furnaces with organic matter in raw material. For industrial furnaces that cannot meet the 20 ppmv HC limit because of organic matter in normal raw material, the department may establish an alternative HC limit on a case-by-case basis (under a part B permit proceeding) at a level that ensures that flue gas HC (and CO) concentrations when burning hazardous waste are not greater than when not burning hazardous waste (the baseline HC level) provided that the owner or operator complies with the following requirements. However, cement kilns equipped with a by-pass duct meeting the requirements of section (7) of this rule, are not eligible for an alternative HC limit.

(a) The owner or operator must demonstrate that the facility is designed and operated to minimize hydrocarbon emissions from fuels and raw materials when the baseline HC (and CO) level is determined. The baseline HC (and CO) level is defined as the average over all valid test runs of the highest hourly rolling average value for each run when the facility does not burn hazardous waste, and produces normal products under normal operating conditions feeding normal

feedstocks and fuels. More than one baseline level may be determined if the facility operates under different modes that may generate significantly different HC (and CO) levels;

(b) The owner or operator must develop an approach to monitor over time changes in the operation of the facility that could reduce the baseline HC level;

(c) The owner or operator must conduct emissions testing during the trial burn to:

(i) Determine the baseline HC (and CO) level;

(ii) Demonstrate that, when hazardous waste is burned, HC (and CO) levels do not exceed the baseline level; and

(iii) Identify the types and concentrations of organic compounds listed in ARM 16.44.352(1)(b) that are emitted and conduct dispersion modeling to predict the maximum annual average ground level concentration of each organic compound. On-site ground level concentrations must be considered for this evaluation if a person resides on site.

(A) Sampling and analysis of organic emissions shall be conducted using procedures prescribed by the department.

(B) Dispersion modeling shall be conducted according to procedures provided by section (5)(b) of this rule; and

(iv) Demonstrate that maximum annual average ground level concentrations of the organic compounds identified in section (6)(c)(iii) of this rule do not exceed the following levels:

(A) For the noncarcinogenic compounds listed in Appendix IV (as incorporated by reference in [RULE XI]) of this subchapter, the levels established in Appendix IV (as incorporated by reference in [RULE XI]);

(B) For the carcinogenic compounds listed in Appendix V (as incorporated by reference in [RULE XI]) of this subchapter, the sum for all compounds of the ratios of the actual ground level concentration to the level established in Appendix V cannot exceed 1.0. To estimate the health risk from chlorinated dibenzo-p-dioxins and dibenzofuran congeners, use the procedures prescribed by section (5)(c) of this rule to estimate the 2,3,7,8-TCDD toxicity equivalence of the congeners.

(C) For compounds not listed in Appendix IV or V, (as incorporated by reference in [RULE XI]), 0.1 micrograms per cubic meter.

(d) All hydrocarbon levels specified under this section are to be monitored and reported as specified in sections (3)(a) and (3)(b) of this rule.

(7) Monitoring CO and HC in the by-pass duct of a cement kiln. Cement kilns may comply with the carbon monoxide and hydrocarbon limits provided by sections (2), (3), and (4) of this rule by monitoring in the by-pass duct provided that:

(a) Hazardous waste is fired only into the kiln and not at any location downstream from the kiln exit relative to the direction of gas flow; and

(b) The by-pass duct diverts a minimum of 10% of kiln off-gas into the duct.

(8) Use of emissions test data to demonstrate compliance and establish operating limits. Compliance with the require-

ments of this rule must be demonstrated simultaneously by emissions testing or during separate runs under identical operating conditions. Further, data to demonstrate compliance with the CO and HC limits of this rule or to establish alternative CO or HC limits under this rule must be obtained during the time that DRE testing, and where applicable, CDD/CDF testing under section (5) of this rule and comprehensive organic emissions testing under section (6) is conducted.

(9) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit [RULE III] will be regarded as compliance with this rule. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this rule may be "information" justifying modification or revocation and re-issuance of a permit under ARM 16.44.116.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE V STANDARDS TO CONTROL PARTICULATE MATTER (1) A boiler or industrial furnace burning hazardous waste may not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) after correction to a stack gas concentration of 7% oxygen, using procedures prescribed in 40 CFR Part 60, Appendix A, methods 1 through 5, and Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter.

(2) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under [RULE III]) will be regarded as compliance with this rule. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this rule may be "information" justifying modification or revocation and re-issuance of a permit under ARM 16.44.116.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE VI STANDARDS TO CONTROL METALS EMISSIONS (1) The owner or operator must comply with the metals standards provided by sections (2), (3), (4), (5), or (6) of this rule for each metal listed in section (b) of this rule that is present in the hazardous waste at detectable levels using analytical procedures specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846), incorporated by reference in ARM 16.44.351(1)(e).

(2) Tier I feed rate screening limits for metals are specified in Appendix I (as incorporated by reference in [RULE XI]) of this subchapter as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in section (2)(g) of this rule.

(a) Noncarcinogenic metals. The feed rates of antimony, barium, lead, mercury, thallium, and silver in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the screening limits specified in Appendix I (as incorporated by reference in [RULE

XI]) of this subchapter.

(i) The feed rate screening limits for antimony, barium, mercury, thallium, and silver are based on either:

(A) An hourly rolling average as defined in [RULE III](5)(f)(i)(B); or

(B) An instantaneous limit not to be exceeded at any time.

(ii) The feed rate screening limit for lead is based on one of the following:

(A) An hourly rolling average as defined in [RULE III](5)(f)(i)(B);

(B) An averaging period of 2 to 24 hours as defined in [RULE III](5)(f)(ii) with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis; or

(C) An instantaneous limit not to be exceeded at any time.

(b) Carcinogenic metals.

(i) The feed rates of arsenic, cadmium, beryllium, and chromium in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed values derived from the screening limits specified in Appendix I (as incorporated by reference in [RULE XI]) of this subchapter. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in Appendix I shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals
AFR=actual feed rate to the device for metal "i"
FRSL=feed rate screening limit provided by Appendix I (as incorporated by reference in [RULE XI]) of this subchapter for metal "i"

(ii) The feed rate screening limits for the carcinogenic metals are based on either:

(A) An hourly rolling average; or

(B) An averaging period of 2 to 24 hours as defined in [RULE III](5)(f)(ii) with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis.

(c)(i) The terrain-adjusted effective stack height (TESH) is determined according to the following equation:

TESH=Ha+H1-Tr

where:

Ha=Actual physical stack height
H1=Plume rise as determined from Appendix VI (as incorporated by reference in [RULE XI]) of this subchapter as a function of stack flow rate and stack gas exhaust temperature.
Tr=Terrain rise within five kilometers of the stack.

(ii) The stack height (Ha) may not exceed good engineering practice as specified in ARM 16.8.1204(2).

(iii) If the TESH for a particular facility is not listed in the table in the appendices, the nearest lower TESH listed in the table shall be used. If the TESH is four meters or less, a value of four meters shall be used.

(iv) The department hereby incorporates by reference 40 CFR 51.100(ii). 40 CFR 51.100(ii) is a federal agency rule setting forth stack height limitations.

(d) The screening limits are a function of whether the facility is located in noncomplex or complex terrain. A device located where any part of the surrounding terrain within 5 kilometers of the stack equals or exceeds the elevation of the physical stack height (Ha) is considered to be in complex terrain and the screening limits for complex terrain apply. Terrain measurements are to be made from U.S. Geological Survey 7.5-minute topographic maps of the area surrounding the facility.

(e) The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in Appendices IX or X (as incorporated by reference in [RULE XI]) of this subchapter shall be used.

(f) Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls of metals emissions under a RCRA operating permit or interim status controls must comply with the screening limits for all such units assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics. The worst-case stack is determined from the following equation as applied to each stack:

K=HVT

Where:

K=a parameter accounting for relative influence of stack height and plume rise;
H=physical stack height (meters);
V=stack gas flow rate (m^3/second); and
T=exhaust temperature (°K).
The stack with the lowest value of K is the worst-case stack.

(g) Criteria for facilities not eligible for screening limits. If any criteria below are met, the tier I (and tier

II) screening limits do not apply. Owners and operators of such facilities must comply with the tier III standards provided by section (4) of this rule.

(i) The device is located in a narrow valley less than one kilometer wide;

(ii) The device has a stack taller than 20 meters and is located such that the terrain rises to the physical height within one kilometer of the facility;

(iii) The device has a stack taller than 20 meters and is located within five kilometers of a shoreline of a large body of water such as an ocean or large lake;

(iv) The physical stack height of any stack is less than 2.5 times the height of any building within five building heights or five projected building widths of the stack and the distance from the stack to the closest boundary is within five building heights or five projected building widths of the associated building; or

(v) The department determines that standards based on site-specific dispersion modeling are required.

(h) The feed rate of metals in each feedstream must be monitored to ensure that the feed rate screening limits are not exceeded.

(3) Tier II emission rate screening limits. Emission rate screening limits are specified in Appendix I (as incorporated by reference in [RULE XI]) as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in section (2)(g) of this rule.

(a) Noncarcinogenic metals. The emission rates of antimony, barium, lead, mercury, thallium, and silver shall not exceed the screening limits specified in Appendix I (as incorporated by reference in [RULE XI]) of this subchapter.

(b) Carcinogenic metals. The emission rates of arsenic, cadmium, beryllium, and chromium shall not exceed values derived from the screening limits specified in Appendix I (as incorporated by reference in [RULE XI]) of this subchapter. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission rate screening limit specified in Appendix I (as incorporated by reference in [RULE XI]) shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AER_{(i)}}{ERSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals

AER=actual emission rate for metal "i"

ERSL=emission rate screening limit provided by Appendix I (as incorporated by reference in [RULE XI]) of this subchapter for metal "i".

(c) The emission rate limits must be implemented by limiting feed rates of the individual metals to levels during the trial burn. The feed rate averaging periods are the same as provided by sections (2)(a)(i) and (ii) and (2)(b)(ii) of this rule. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under [RULE III] are not exceeded.

(d) Definitions and limitations. The definitions and limitations provided by section (2) of this rule for the following terms also apply to the tier II emission rate screening limits provided by section (3) of this rule: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

(e)(i) Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a RCRA operating permit must comply with the emissions screening limits for any such stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.

(ii) The worst-case stack is determined by procedures provided in section (2)(f) of this rule.

(iii) For each metal, the total emissions of the metal from those stacks shall not exceed the screening limit for the worst-case stack.

(4) Tier III site-specific risk assessment.

(a) Conformance with the tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.

(b) Appendices IV and V (as incorporated by reference in [RULE XI]), list the acceptable ambient levels for purposes of this rule. Reference air concentrations (RACs) are listed for the noncarcinogenic metals and 10^{-5} risk-specific doses (RSDs) are listed for the carcinogenic metals. The RSD for a metal is the acceptable ambient level for that metal provided that only one of the four carcinogenic metals is emitted. If more than one carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the RSD as described in section (4)(c) of this rule.

(c) For the carcinogenic metals, arsenic, cadmium, beryllium, and chromium, the sum of the ratios of the predicted maximum annual average off-site ground level concentrations (except that on-site concentrations must be considered if a person resides on site) to the risk-specific dose (RSD) for all carcinogenic metals emitted shall not exceed 1.0 as determined by the following equation:

$$\sum_{i}^{n} \frac{\text{Predicted Ambient Concentration}_{(i)}}{}$$

$$\sum_{i=1} \frac{}{\text{Risk-Specific Dose}_{(i)}} \leq 1.0$$

where: n=number of carcinogenic metals

(d) For the noncarcinogenic metals, the predicted maximum annual average off-site ground level concentration for each metal shall not exceed the reference air concentration (RAC).

(e) Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a RCRA operating permit must conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.

(f) Under tier III, the metals controls must be implemented by limiting feed rates of the individual metals to levels during the trial burn. The feed rate averaging periods are the same as provided by sections (2)(a)(i) and (ii) and (2)(b)(ii) of this rule. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under [RULE III] are not exceeded.

(5) The owner or operator may adjust the feed rate screening limits provided by Appendix I (as incorporated by reference in [RULE XI]), of this subchapter to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back-calculating from the acceptable ambient level provided by Appendices IV and V (as incorporated by reference in [RULE XI]), of this subchapter using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals are implemented as prescribed in section (2)(b) of this rule.

(6) Alternative implementation approaches.

(a) The department may approve on a case-by-case basis approaches to implement the tier II or tier III metals emission limits provided by sections (3) or (4) of this rule alternative to monitoring the feed rate of metals in each feedstream.

(b) The emission limits provided by section (4) of this rule must be determined as follows:

(i) For each noncarcinogenic metal, by back-calculating from the RAC provided in Appendix IV (as incorporated by reference in [RULE XI]), of this subchapter to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with section (8) of this rule; and

(ii) For each carcinogenic metal by:

(A) Back-calculating from the RSD provided in Appendix V (as incorporated by reference in [RULE XI]), of this subchap-

ter to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with section (8) of this rule; and

(B) If more than one carcinogenic metal is emitted, selecting an emission limit for each carcinogenic metal not to exceed the emission rate determined by section (6)(b)(ii)(A) of this rule such that the sum for all carcinogenic metals of the ratios of the selected emission limit to the emission rate determined by that section does not exceed 1.0.

(7) Emission testing.

(a) Emission testing for metals shall be conducted using the Multiple Metals Train as described in Appendix IX (as incorporated by reference in [RULE XI]), of this subchapter.

(b) Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Appendix IX (as incorporated by reference in [RULE XI]) of this subchapter.

(8) Dispersion modeling required under this rule shall be conducted according to methods recommended in Appendix X (as incorporated by reference in [RULE XI]), of this subchapter, the "Hazardous Waste Combustion Air Quality Screening Procedure" described in Appendix IX (as incorporated by reference in [RULE XI]), or "EPA SCREEN Screening Procedure" as described in Screening Procedures for Estimating Air Quality Impact of Stationary Sources incorporated by reference in [RULE XI] to predict the maximum annual average off-site ground level concentration. However, on-site concentrations must be considered when a person resides on-site.

(9) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under [RULE III]) will be regarded as compliance with this rule. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this rule may be "information" justifying modification or revocation and re-issuance of a permit under ARM 16.44.116. AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE VII STANDARDS TO CONTROL HYDROGEN CHLORIDE (HCL) AND CHLORINE GAS (CL_2) EMISSIONS (1) The owner or operator must comply with the hydrogen chloride (HCl) and chlorine (Cl_2) controls provided by section (2) or (3) of this rule.

(2)(a) Tier I feed rate screening limits. Feed rate screening limits are specified for total chlorine in Appendix II (as incorporated by reference in [RULE XI]), of this subchapter as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the levels specified.

(b) Tier II emission rate screening limits. Emission

rate screening limits for HCl and Cl_2 are specified in Appendix III (as incorporated by reference in [RULE XI]), of this subchapter as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and Cl_2 shall not exceed the levels specified.

(c) The definitions and limitations provided by [RULE VI](2) for the following terms also apply to the screening limits provided by this section: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

(d) Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl_2 emissions under a RCRA operating permit must comply with the Tier I and Tier II screening limits for those stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.

(i) The worst-case stack is determined by procedures provided in [RULE VI](2)(f).

(ii) Under tier I, the total feed rate of chlorine and chloride to all subject devices shall not exceed the screening limit for the worst-case stack.

(iii) Under tier II, the total emissions of HCl and Cl_2 from all subject stacks shall not exceed the screening limit for the worst-case stack.

(3) Tier III site-specific risk assessments

(a) Conformance with the tier III controls must be demonstrated by emissions testing to determine the emission rate for HCl and Cl_2, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.

(b) Acceptable ambient levels. Appendix IV (as incorporated by reference in [RULE XI]), lists the reference air concentrations (RACs) for HCl (7 micrograms per cubic meter) and Cl_2 (0.4 micrograms per cubic meter).

(c) Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl_2 emissions under a RCRA operating permit must conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels for HCl and Cl_2.

(4) The HCl and Cl_2 controls are implemented by limiting the feed rate of total chlorine and chloride in all feedstreams, including hazardous waste, fuels, and industrial furnace feed stocks. Under tier I, the feed rate of total chloride and chlorine is limited to the tier I screening limits. Under tier II and tier III, the feed rate of total chloride and chlorine is limited to the feed rates during the trial burn. The feed rate limits are based on either:

(a) An hourly rolling average as defined in [RULE III](5)(f); or

(b) An instantaneous basis not to be exceeded at any time.

(5) The owner or operator may adjust the feed rate screening limit provided by Appendix II (as incorporated by reference in [RULE XI]), of this subchapter to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit is determined by back-calculating from the acceptable ambient level for Cl_2 provided by Appendix IV (as incorporated by reference in [RULE XI]), of this subchapter using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit.

(6) Emissions testing for HCl and Cl_2 shall be conducted using the procedures described in Appendix IX (as incorporated by reference in [RULE XI]), of this subchapter.

(7) Dispersion modeling shall be conducted according to the provisions of [RULE VI](8).

(8) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under [RULE III]) will be regarded as compliance with this rule. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this rule may be "information" justifying modification or revocation and re-issuance of a permit under ARM 16.44.116.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE VIII SMALL QUANTITY ON-SITE BURNER EXEMPTION

(1) Owners and operators of facilities that burn hazardous waste in an on-site boiler or industrial furnace are exempt from the requirements of this subchapter provided that:

(a) The quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in the following table based on the terrain-adjusted effective stack height as defined in [RULE VI](2)(c):

Exempt Quantities for Small Quantity Burner Exemption

Terrain-adjusted effective stack height of device (meters)	Allowable hazardous waste burning rate (gallons/ month)	Terrain-adjusted effective stack height of device (meters)	Allowable hazardous waste burning rate (gallons/ month)
0 to 3.9	0	40.0 to 44.9	210
4.0 to 5.9	13	45.0 to 49.9	260
6.0 to 7.9	18	50.0 to 54.9	330
8.0 to 9.9	27	55.0 to 59.9	400
10.0 to 11.9	40	60.0 to 64.9	490
12.0 to 13.9	48	65.0 to 69.9	610
14.0 to 15.9	59	70.0 to 74.9	680
16.0 to 17.9	69	75.0 to 79.9	760
18.0 to 19.9	76	80.0 to 84.9	850
20.0 to 21.9	84	85.0 to 89.9	960
22.0 to 23.9	93	90.0 to 94.9	1,100
24.0 to 25.9	100	95.0 to 99.9	1,200
26.0 to 27.9	110	100.0 to 104.9	1,300
28.0 to 29.9	130	105.0 to 109.9	1,500
30.0 to 34.9	140	110.0 to 114.9	1,700
35.0 to 39.9	170	115.0 or greater	1,900

(b) The maximum hazardous waste firing rate does not exceed at any time 1 percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste;

(c) The hazardous waste has a minimum heating value of 5,000 Btu/lb, as generated; and

(d) The hazardous waste fuel does not contain (and is not derived from) EPA Hazardous Waste Nos. D017, D037, D041, D042, F020, F021, F022, F023, F026, or F027, F028, F032 or K001 (containing pentachlorophenol).

(2) If hazardous waste fuel is mixed with a nonhazardous fuel, the quantity of hazardous waste before such mixing is used to comply with section (1).

(3) If an owner or operator burns hazardous waste in more than one on-site boiler or industrial furnace exempt under this rule, the quantity limits provided by section (1)(a) of this rule are implemented according to the following equation:

$$\sum_{i=1}^{n} \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} \leq 1.0$$

where:

n means the number of stacks;

Actual Quantity Burned means the waste quantity burned per month in device "i";

Allowable Quantity Burned means the maximum allowable exempt quantity for stack "i" from the table in (1)(a) above.

Note: Hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under ARM 16.44.402 may be burned in an off-site device under the exemption provided by [RULE VIII], but must be included in the quantity determination for the exemption.

(4) The owner or operator of facilities qualifying for the small quantity burner exemption under this rule must provide a one-time signed, written notice to the department indicating the following:

(a) The combustion unit is operating as a small quantity burner of hazardous waste;

(b) The owner and operator are in compliance with the requirements of this rule; and

(c) The maximum quantity of hazardous waste that the facility may burn per month as provided by [RULE VIII](1)(a).

(5) The owner or operator must maintain at the facility for at least three years sufficient records documenting compliance with the hazardous waste quantity, firing rate, and heating value limits of this rule. At a minimum, these records must indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month, and the heating value of the hazardous waste.

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

RULE IX STANDARDS FOR DIRECT TRANSFER (1) The regulations in this rule apply to owners and operators of boilers and industrial furnaces subject to [RULE III] if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(2) Definitions.

(a) When used in this rule, the following terms have the meanings given below:

(i) "Direct transfer equipment" means any device (including but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (i.e., transport vehicle) and a boiler or industrial furnace.

(ii) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (e.g., tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(b) This rule references several requirements provided in subparts I and J of 40 CFR Parts 264 and 265 (incorporated by reference in ARM 16.44.702 and 16.44.609, respectively). For purposes of this rule, the term "tank systems" in those referenced requirements means direct transfer equipment as defined in section (2)(a) of this rule.

(3) General operating requirements.

(a) No direct transfer of a pumpable hazardous waste shall be conducted from an open-top container to a boiler or industrial furnace.

(b) Direct transfer equipment used for pumpable hazardous waste shall always be closed, except when necessary to add or remove the waste, and shall not be opened, handled, or stored in a manner that may cause any rupture or leak.

(c) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not:

(i) Generate extreme heat or pressure, fire, explosion, or violent reaction;

(ii) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(iii) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(iv) Damage the structural integrity of the container or direct transfer equipment containing the waste;

(v) Adversely affect the capability of the boiler or industrial furnace to meet the standards provided by [RULE IV] through [RULE VII]; or

(vi) Threaten human health or the environment.

(d) Hazardous waste shall not be placed in direct transfer equipment, if it could cause the equipment or its secondary containment system to rupture, leak, corrode, or otherwise fail.

(e) The owner or operator of the facility shall use appropriate controls and practices to prevent spills and overflows from the direct transfer equipment or its secondary

containment systems. These include at a minimum:

(i) spill prevention controls (e.g., check valves, dry discount couplings); and

(ii) automatic waste feed cutoff to use if a leak or spill occurs from the direct transfer equipment.

(4) Areas where direct transfer vehicles (containers) are located. Applying the definition of container under this rule, owners and operators must comply with the following requirements:

(a) The containment requirements of 40 CFR 264.175;

(b) The use and management requirements of subpart I, 40 CFR Part 265, except for 40 CFR 265.170 and 265.174, (adopted by reference in ARM 16.44.609) and except that in lieu of the special requirements of 40 CFR 265.176 (adopted by reference in ARM 16.44.609) for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code," 1977 or 1981 (incorporated by reference in [RULE XI]). The owner or operator must obtain and keep on file at the facility a written certification by the local Fire Marshall that the installation meets the subject NFPA codes; and

(c) The closure requirements of 40 CFR 264.178.

(5) Direct transfer equipment must meet the following requirements:

(a) Owners and operators shall comply with the secondary containment requirements of 40 CFR 265.193, except for paragraphs 265.193(a), (d), (e), and (i).

(b)(i) The owner or operator must inspect at least once each operating hour when hazardous waste is being transferred from the transport vehicle (container) to the boiler or industrial furnace:

(A) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(B) The above ground portions of the direct transfer equipment to detect corrosion, erosion, or releases of waste (e.g., wet spots, dead vegetation); and

(C) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges) to ensure that the direct transfer equipment is being operated according to its design.

(ii) The owner or operator must inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided by 40 CFR 265.195(b):

(iii) Records of inspections made under this section shall be maintained in the operating record at the facility, and available for inspection for at least 3 years from the date of the inspection.

(c) For design and installation of new ancillary equip-

ment, owners and operators must comply with the requirements of 40 CFR 265.192.

(d) For response to leaks or spills, owners and operators must comply with the requirements of 40 CFR 265.196.

(e) For closure, owners and operators must comply with the requirements of 40 CFR 265.197, except for 40 CFR 265.197(c)(2), through (c)(4).

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

RULE X REGULATION OF RESIDUES (1) A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under ARM 16.44.304(2)(b), (d) or (e) unless the device and the owner or operator meet the following requirements:

(a) The device meets the following criteria:

(i) Boilers must burn at least 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

(ii) Industrial furnaces subject to ARM 16.44.304(2)(d) must process at least 50% by weight normal, nonhazardous raw materials;

(iii) Cement kilns must process at least 50% by weight normal cement-production raw materials;

(b) The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:

(i) Comparison of waste-derived residue with normal residue. The waste-derived residue must not contain ARM 16.44.352(1)(b) constituents, (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in Appendix VIII of [RULE XI] that may be generated as products of incomplete combustion. Sampling and analyses shall be in conformance with procedures prescribed in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, (incorporated by reference in ARM 16.44.351).

(A) Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95% confidence with a 95% proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations

must be revised or statistically-derived concentrations of toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Bevill Residue Determinations" in Appendix IX (as incorporated by reference in [RULE XI]).

(B) Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under section (1)(b)(i)(A) of this rule. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

(ii) Comparison of waste-derived residue concentrations with health-based limits.

(A) The concentrations of nonmetal toxic constituents of concern (specified in section (1)(b)(i) of this rule) in the waste-derived residue must not exceed the health-based levels specified in Appendix VII (as incorporated by reference in [RULE XI]). If a health-based limit for a constituent of concern is not listed in Appendix VII, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used; and

(B) The concentration of metals in an extract obtained using the toxicity characteristic leaching procedure of ARM 16.44.324 must not exceed the levels specified in Appendix VII (as incorporated by reference in [RULE XI]); and

(C) Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and

(c) Records sufficient to document compliance with the provisions of this rule shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded.

(i) Levels of constituents in ARM 16.44.352(1)(b), that are present in waste-derived residues;

(ii) If the waste-derived residue is compared with normal residue under section (1)(a)(i) of this rule:

(A) The levels of constituents in ARM 16.44.352(1)(b), that are present in normal residues; and

(B) Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

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

RULE XI INCORPORATION BY REFERENCE (1) The department hereby incorporates by reference Appendices I through XII of 40 CFR 266 Subpart H.

(2)(a) The department hereby incorporates by reference the document "Screening Procedures for Estimating Air Quality Impact of Stationary Sources", US EPA, August 1988.

(b) The department hereby incorporates by reference Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code", (1977 or 1981).

(c) The department hereby incorporates by reference Guideline on Air Quality Models (Revised) or the "Hazardous Waste Combustion Air Quality Screening Procedure", which are provided in Appendices X and IX, respectively, 40 CFR 260.11 or "EPA SCREEN Screening Procedure". Copies may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620

(3) The department hereby incorporates by reference 40 CFR Part 60, Appendix A, methods 1 through 5. Methods 1 through 5 are federal agency rules setting forth test methods demonstrating particulate matter standards. Copies of 40 CFR Part 60, Appendix A, methods 1 through 5 or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

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

RULE XIII INTERIM STATUS (a) The department does not adopt 40 CFR 266.103(a)(1)(ii), the definition of "existing or in existence", or any of the federal interim status provisions of 40 CFR 266.103. A boiler or industrial furnace cannot operate under interim status unless it was in operation burning or processing hazardous waste on or before August 21, 1991; facilities for which construction to burn or process hazardous waste had commenced, but which were not in operation as of that date, do not qualify for interim status.

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

4. The department will accept additional written comment on the proposed new rules until October 9, 1992. Written comments must be submitted to Patti Powell, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620.

DENNIS IVERSON, Director

Certified to the Secretary of State August 31, 1992.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of amendment of a rule to make consistent exclusions from the definition of employment in the unemployment insurance and workers' compensation acts 24.29.706	) NOTICE OF THE CONTINUANCE OF HEARING AND EXTENSION OF COMMENT PERIOD

TO ALL INTERESTED PERSONS:

1. On September 29, 1992 at 10:00 a.m., a public hearing will be held in the Auditorium of the Montana Department of Transportation Building, 2701 Prospect, Helena, Montana to consider the above rules.

2. On July 30, 1992 the Department published notice of proposed rule making, as above described, in the Montana Administrative Register, pages 1573 through 1576, with a public hearing to be held on August 26, 1992. That hearing was continued. In order to provide interested parties an opportunity to participate this public hearing is rescheduled.

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

Legal Services Division
Hearing Unit
Department of Labor and Industry
Old Board of Health Building
1301 Lockey
Helena, MT 59620
no later than October 2, 1992

William E. O'Leary, Chief Counsel
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: 8-31-92

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of a rule and adoption of a rule regarding what is classified as wages for purposes of workers' compensation and unemployment insurance amending 24.11.814; new rule I.	))))))	NOTICE OF THE CONTINUANCE OF HEARING AND EXTENSION OF COMMENT PERIOD

TO ALL INTERESTED PERSONS:

1. On September 29, 1992 at 10:00 a.m., a public hearing will be held in the Auditorium of the Montana Department of Transportation Building, 2701 Prospect, Helena, Montana to consider the above rules.

2. On July 30, 1992 the Department published notice of proposed rule making, as above described, in the Montana Administrative Register, pages 1577 through 1579, with a public hearing to be held on August 26, 1992. That hearing was continued. In order to provide interested parties an opportunity to participate this public hearing is rescheduled.

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

Legal Services Division
Hearing Unit
Department of Labor and Industry
Old Board of Health Building
1301 Lockey
Helena, MT 59620

no later than October 2, 1992

William E. O'Leary, Chief Counsel
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: 8-31-92

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF NEW RULES AND THE AMENDMENT OF RULES PERTAINING TO DEFINITIONS, THE BONDING OF OIL AND GAS WELLS, REPORTS, WELL PLUGGING REQUIREMENTS, AND THE REFERRAL OF ADMINISTRATIVE MATTERS.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO RULES 36.22.302, 36.22.1242, AND 36.22.1308, AND NEW RULES I AND II.

TO: All Interested Persons:

1. On October 8, 1992, at 9:00 a.m a public hearing will be held at the Billings Petroleum Club, Sheraton Hotel, corner of 27th Street and 1st Avenue North, Billings, Montana, to consider new Rule I and Rule II, and amendments to rules 36.22.302, 36.22.1242, and 36.22.1308.

2. The proposed new rules and proposed amendments to rules add to or amend present rules found in the Administrative Rules of Montana beginning on page 36-395.

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

RULE I REFERRAL OF ADMINISTRATIVE DECISIONS (1) The Board administrator may refer any administrative action or decision to the board for consideration.

(2) Administrative actions or decisions referred by the board administrator to the board for consideration must be presented in the form of a petition, and are subject to the notice and hearing requirements of Section 82-11-141, MCA.

AUTH: Sec. 82-11-111, 82-11-115, MCA IMP: Sec. 82-11-115, 82-11-141, MCA

36.22.302 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) through (21) remain the same.

(22) "Degrade" means that as a result of any source discharging pollutants to groundwater or surface water, the concentration~~, outside of applicable mixing zones as defined in ARM 16.20.1001 and ARM 16.20.1010,~~ of a pollutant for which maximum contaminant levels are established in subsection (4) of ARM 16.20.1003 has become worse, or that the concentration of other pollutants~~, outside of mixing zones,~~ has become worse and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(23) through (80) remain the same.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-101 through 82-11-201, MCA

RULE II REPORT OF WELL STATUS CHANGE (1) The owner or operator of any oil, gas, service, or injection well must report the change in status of such well from active to inactive or from producing or non-producing. Owners or operators must

report the return of a well to active or producing status if such well was idle for six (6) or more consecutive months. If the owner or operator expects that the well will be returned to an active or producing status within six (6) months of the date idled, filing of the report may be deferred until the end of such six (6) month period, and the report need not be filed if the well is returned to service during that period. Such reports are due within thirty (30) days of the date of status change or within thirty (30) days after the end of the deferred reporting period, and must be submitted on board Form No. 2.
AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-111, 82-11-121, 82-11-123, and 82-11-124, MCA

36.22.1242 REPORTS BY PRODUCERS - TAX REPORT - TAX RATE (1) Each owner or operator ~~or producer~~ of an oil or gas well, or any other well (except an injection well reported on Form No. 5), shall file or cause to filed with the board on or before the last day of each month ~~succeeding the month in which the producing or taking occurs~~ following the month being reported a report on Form No. 6 containing all information required by said form and accurately reporting the status of each well thereon as of the last day of the month reported.

(2) remains the same.
AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123 and 82-11-131, MCA

36.22.1308 PLUGGING AND RESTORATION BOND (1) ~~The board~~, Except as ~~hereinafter~~ otherwise provided in these rules, ~~shall require from any owner who proposes to drill or acquire any oil, gas, or service well on privately owned or state owned lands within this state a good and sufficient bond on either Form No. 3 or Form No. 14 in the sum of $5,000.00 where one well is to be drilled to any depth or acquired payable to the State of Montana, and must be conditioned for the performance of the duty to properly plug each dry or abandoned well and to restore the surface of the location to its original contours insofar as such restoration is practicable, unless the owner of surface requests otherwise and executes a release to that effect.~~ the following penal bonds are required for wells within the board's jurisdiction:

(a) The owner or operator of a single well to be drilled, or of a single existing oil, gas, or Class II injection well to be acquired, must provide a one well penal bond:

(i) in the sum of $5,000, where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is less than 3,500 feet; or

(ii) in the sum of $10,000, where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is 3,501 feet or more.

(b) The owner or operator of multiple wells to be drilled, of existing wells to be acquired, or any combination thereof, must provide a multiple well penal bond in the sum of $25,000.

(2) ~~It is further provided that where the owner is to drill or acquire more than one well the board shall require from~~

~~such owner a good and sufficient bond on either Form No. 3 or Form No. 14, in the sum of $10,000 payable to the State of Montana and conditioned as provided for above. Upon acceptance and approval by the board, such bond shall be considered as being in compliance with the foregoing provisions. The board shall require an increase by appropriate rider of any bond from $5,000.00 to $10,000.00 or from $10,000.00 to $20,000.00 when in the opinion of the board the factual situation warrants such an increase in order for any owner to be in compliance with this rule.~~

All bonds must be executed on board form no. 3 or board form no. 14, must be payable to the State of Montana, and must be conditioned for the performance of the duty to properly plug each dry or abandoned well, and to restore the surface of the location as required by board rules.

~~(3) Said bond shall remain in full force and effect until:~~

~~(a) The plugging and restoration of the surface has been approved by the board; or~~

~~(b) A new bond is filed by a successor in interest and approved by the board; or~~

~~(c) Application for release of well from bond on Form No. 21 is filed and the bond is released by the board.~~

The board may require an increase by appropriate rider of any bond from $5,000.00 to $10,000.00 or from $10,000.00 to $20,000.00 for a single well bond, and from $25,000 to $50,000 for a multiple well bond, when in the opinion of the board the factual situation warrants such an increase in order for any owner or operator to be in compliance with this rule. In addition to, or in lieu of, an increase in the bond amount as provided above, the board may limit the number of wells that may be covered by any multiple well bond.

~~(4) Transfer of property does not in itself release the bond. A notice of intent to change operator shall be filed on Form No. 30 by the new operator of any drilling or completed well. Said notice shall include all information required thereon and contain the endorsement of both the transferor and the transferee. The transfer is not effective until approved by the board.~~

No new or additional wells shall be added or substituted to any bond existing prior to the effective date of this rule.

~~(5) Where the owner of the surface of the land upon which one or more non commercial wells have been drilled acquires the well for domestic purposes, the bond provided by the person who drilled the well will be released if said surface owner furnishes a property bond in the amount of $10,000 for a single well or $20,000 for more than one well on Form No. 18.~~

The bond referred to in this rule must be in one of the following forms:

(a) a good and sufficient surety bond secured from a bonding company licensed to do business in the State of Montana; or

(b) a federally insured certificate of deposit issued and held by any bank or savings and loan association licensed to do business and located in the State of Montana.

(6) A well must remain covered by a bond, and such bond must remain in full force and effect until:

(a) the plugging and restoration of the surface of the well is approved by the board;

(b) a new bond is filed by a successor in interest and such bond is approved by the board; or

(c) an application is made by the operator for the release of a producing well from a bond on Form No. 21, and such application is approved by the board.

(7) A notice of intent to change operator must be filed on Form No. 20 by a proposed new owner or operator of a well within thirty (30) days of the acquisition of the well. Said notice shall include all information required thereon and must contain the endorsement of both the transferor and the transferee. The board administrator may delay or deny any change of operator request if he determines that either the transferor or the transferee is not in substantial compliance with the board's statutes, rules, or orders. The board may require an increase in any bond up to the maximum amount specified in subsection (3) of this rule as a condition of approval for any change of operator request. The transferor of a well is released from the responsibility of plugging and restoring the surface of the well under board rules after the transfer is approved by the board.

(8) Where the owner of the surface of the land upon which one or more non-commercial wells have been drilled wishes to acquire a well for domestic purposes, the bond provided by the person who drilled or operated the well will be released if the surface of the location is restored as required by board rules, and if said surface owner furnishes:

(a) proof of ownership of the surface of the land on which the well is located; and,

(b) for actual beneficial water uses of less than 100 gallons per minute, a copy of the notice of completion of groundwater development (Water Rights Bureau Form 602) filed with the Department of Natural Resources and Conservation (DNRC); or

(c) for actual beneficial water uses of more than 100 gallons per minute, a copy of Form 602 as required in (b) above, and a copy of the beneficial water use permit received from the DNRC; or

(d) for a domestic gas well, a written and signed inspection report from one of the board's field inspectors stating that the well is presently being beneficially used as a source of domestic natural gas; and

(e) for a domestic gas well, a federally insured certificate of deposit in the amount of $10,000.

(9) A domestic well must be plugged, abandoned, and restored in accordance with board rules within ninety (90) days after the well ceases to be used for domestic purposes.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123, MCA

4. The reason for new Rule I is to provide a mechanism for the board administrator to refer administrative decisions to the full board.

The reason for the amendment to ARM 36.22.302 is to delete an erroneous reference to "mixing zones" in the definition of "degrade."

The reason for new Rule II and the amendment to ARM 36.22.1242 is to provide a mechanism for reporting the status of wells to the board.

The reason for the amendments to ARM 36.22.1308 is to increase the amount of the plugging and restoration bond required for oil and gas well operators in the State of Montana. This is necessary to reflect the increased cost of plugging and reclaiming a well.

5. 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 Timothy C. Fox, 2535 St. Johns Avenue, Billings, Montana 59102, by no later than 5:00 p.m. on October 8, 1992.

6. Warren H. Ross, Chairman of the Montana Board of Oil and Gas Conservation, has been designated to preside over and conduct the hearing.

Donald D. MacIntyre
Chief Legal Counsel

Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I, II, and III relating to Valuation for Commercial Property	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of NEW RULES I, II, and III relating to Valuation for Commercial Property

TO: All Interested Persons:

1. On October 8, 1992, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of Rules I, II, and III, relating to the valuation for commercial property.

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

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

NEW RULE I VALUATION METHODS FOR COMMERCIAL PROPERTIES (1) When determining the market value of commercial properties, other than industrial properties, department appraisers will consider, if the necessary information is available, an income approach valuation.

(2) If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis method, the band-of-investment method or collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.

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

NEW RULE II INCOME APPROACH (1) The income approach is based on the theory that the market value of income producing property is related to the amount, duration, and certainty of its income producing capacity. The formula used by the department to estimate the market value of income producing property through application of the income approach to value is V = I/R where:

(a) "V" is the value of the property to be determined by the department;

(b) "I" is the typical property net income for the type of properties being appraised; and

(c) "R" is the capitalization rate determined by the department as provided in Rule III.

(2) The following procedures apply when valuing commercial property using the income approach:

(a) Typical property net income "I" shall reflect economic rents not investment value income or other rents.

(b) Economic rent is the rent that is justified for the property based on an analysis of comparable rental properties and upon past, present, and projected future rent of the subject property. It is not necessarily contract rent which is the rent actually paid by a tenant.

(c) The department will periodically request gross rental income and expense information from commercial property owners. Standard forms, developed by the department, will be used to collect the information statewide. Copies of those forms may be obtained by contacting the Department of Revenue, Property Assessment Division, Mitchell Building, Helena, Montana 59620.

(d) Additional methods of obtaining income and expenses information may consist of personal contacts or telephone contacts with owners, tenants, renters or lessees, knowledgeable lending institution officials, real estate brokers, fee appraisers, or any other sources the appraiser deems appropriate including summarized data from recognized firms who collect income and expense information, and appeal or court actions.

(e) The department will review and analyze all annual rental income and expense data collected. As necessary, that data will be adjusted to reflect average conditions and management before entering the data into the computer assisted mass appraisal system. The process must result in defensible estimates of potential gross rents, effective gross incomes, normal operating expenses, and normal net operating incomes.

(f) The department will follow established procedures for validating commercial sales information for the development of income models. Only valid sales will be used for the income and expense module of the computer assisted mass appraisal system.

(3) The department will use generally accepted procedures as outlined by the International Association of Assessing Officers in their text titled "Property Assessment and Appraisal Administration" when determining normal net operating income. The following is an example of the format which will be used:

(a) potential gross rent
less vacancy and collection allowance
plus miscellaneous income
equals effective gross income
less normal operating expenses
equals normal net operating income

(b) Normal and allowable expenses include the costs of property insurance; heat, water, and other utilities; normal repairs and maintenance; reserves for replacement of items whose economic life will expire before that of the structure itself; management; and other miscellaneous items necessary to operate and maintain the property.

(c) Items which are not allowable expenses are depreciation charges, debt service, property taxes and business expenses other than those associated with the property being appraised.

(d) An effective tax rate will be included as part of the overall capitalization rate.

(4) (a) Depending on data availability, the department may develop income models for various income use groups. Income models which may be developed in each commercial neighborhood are:

(i) Apartments;
(ii) Hotels/motels;
(iii) General retail stores;
(iv) Offices;
(v) Regional malls;
(vi) Multi-use offices;
(vii) Warehouses/light manufacturing;
(viii) Mini warehouses;
(ix) Department stores;
(x) Medical buildings;
(xi) Auto service buildings;
(xii) Manufacturing buildings;
(xiii) Parking garages;
(xiv) Multi-use sales;
(xv) Banks;
(xvi) Restaurants;
(xvii) Storage buildings;
(xviii) Apartment spaces in commercial buildings;
(xix) Discount stores/super markets; and
(xx) Franchise restaurants.

(b) Location groupings for each use type will be developed by combining the income and expense data in the following sequential order until a statistically significant amount of income and expense data and capitalization rate data is obtained:

(i) Commercial intra-county neighborhoods as determined by the department to be economically and demographically homogeneous. In making the commercial neighborhood determinations, the department will consult with real estate and fee appraisal professionals; and

(ii) Commercial inter-county neighborhoods the department determines to be economically and demographically homogeneous.

(c) The department may analyze the following information in addition to other appropriate information to ensure economic and demographic homogeneity:

(i) Population;
(ii) Employment;
(iii) Income;
(iv) Service availability and infrastructure;
(v) Multiple listing service designations;
(vi) Zoning and planning board designations;
(vii) Proximity to employment/business center; and
(viii) Proximity to federal parks and reservations.

(d) The department may further group data based on the age of improvements if that is determined to be statistically significant.

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

NEW RULE III CAPITALIZATION RATES (1) When using the income approach, the department will develop overall capitalization rates which may be according to use type, location, and age of improvements. Rates will be determined by dividing the net income of each property in the group by its corresponding valid sale price. The overall rate chosen for each group is the median of the rates in that group. The final overall rate must include an effective tax rate.

(2) (a) If there are insufficient sales to implement the provisions of Rule III (1), the department will consider using a yield capitalization rate. The rate shall include a return of investment (recapture), a return on investment (discount), and an effective tax rate. The discount is developed using a band-of-investment method for types of commercial property. The band-of-investment method considers the interest rate that financial institutions lend on mortgages and the expected rate of return an average investor expects to receive on their equity. This method considers the actual mortgage rates and terms prevailing for individual types of property.

(b) A straight-line recapture rate and effective tax rate will be added to the discount rate to determine the yield capitalization rate.

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

4. The Department is proposing new rules I, II, and III because the valuation of commercial property is an important reappraisal consideration. The income approach to value is an accepted method for valuing commercial property. It is provided for in the commercial reappraisal plan. These proposed new rules identify the specific methods and procedures the department intends to follow to implement the income approach to value. The use of this approach has been requested by many commercial property owners.

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

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

no later than October 9, 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.1305, 42.22.1311, 42.22.1312, 42.22.1313, and 42.22.1401 relating to Property Taxes for Centrally Assessed Property	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.113, 42.22.113, 42.22.115, 42.22.116, 42.22.1305 42.22.1311, 42.22.1312, 42.22.1313, and 42.22.1401 relating to Property Taxes for Centrally Assessed Property

TO: All Interested Persons:

1. On October 8, 1992, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.1305, 42.22.1311, 42.22.1312, 42.22.1313, and 42.22.1401 relating to property taxes for centrally assessed property.

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

42.22.103 DETERMINATION OF OPERATING AND NONOPERATING PROPERTY (1) To determine if a property is operating property, the department shall consider the use to which the property is put ~~and if it is subject to scrutiny by a regulatory agency~~.

(2) Right-of-way or station grounds leased to others, except land leased to others for public grain elevator sites, cultivation, pasturage, public roads, parks, pole lines, pipelines, and microwave sites, will be considered nonoperating property and must be reported to the department ~~'s agents, the county appraisers~~ by March 1 of each year.

(3) remains the same.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 1 MCA.

42.22.105 REPORTING REQUIREMENTS (1) and (2)(a) through (o) remain the same.

(p) signed ~~and notarized~~ statement of correctness.

(3) remains the same.

AUTH: 15-23-108; IMP: 15-23-103, 15-23-201, 15-23-301, 15-23-402, 15-23-502, 15-23-602, and 15-23-701 MCA.

42.22.106 ADDITIONAL REPORTING REQUIREMENTS FOR CENTRALLY ASSESSED RAILROADS (1) Each year all centrally assessed railroads shall submit by April 15 (except that information required under ARM 42.22.103(2)) a report of operations for the preceding year containing in addition to that information required by ARM 42.22.105 the following information and items:

(a) copies of all Montana valuation maps;
(b) copies of all Montana track charts;
(c) a statement setting forth by individual counties the total acreage of Montana real property and right-of-way;
(d) a statement of all agreements authorizing the longitudinal use of Montana right-of-way, including for each agreement the names of the parties to the agreement, a summary of its terms, the amounts paid thereunder, the longitudinal use contemplated, and the location and length of right-of-way covered.
(2) and (3) remain the same.
AUTH: 15-23-108 MCA; IMP: 15-23-201 MCA.

42.22.111 VALUATION METHOD (1) The unit method of valuation will be used to appraise centrally assessed companies whenever appropriate. When applying this method, the department will use commonly accepted methods and techniques of appraisal to determine market value. The application of the unit method may include a cost indicator, capitalized income indicator, and a market indicator ~~(stock and debt)~~ of value when sufficient information is available. If the department determines that an individual indicator, the unit method of valuation or other method of valuation does not reflect a company's market value or that information is unavailable, it may adopt a different method or methods of valuation, including but not limited to net scrap, net salvage, corridor value in the case of railroads, comparative market sales ~~in the case of airlines~~, or any combination of methods of valuation which reflect the company's market value.
(2) through (4) remain the same.
AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 1 MCA.

42.22.112 COST INDICATOR (1) The cost indicator of value shall be derived from information contained in the company's report to the department, report to a regulatory agency, property descriptions submitted to the department, and any other reliable source of information. ~~The department will include the cost of all operating properties which are taxable under Montana law.~~ This includes properties both within and without the state.
(2) through (4) remain the same.
AUTH: 15-23-108 MCA; IMP: 15-23-403 MCA.

42.22.113 MARKET INDICATOR (1) A market, or stock and debt indicator, of value ~~shall~~ may be derived from the company's outstanding liabilities. The department may also construct a market indicator using sales comparison data for similar properties, or any analysis, study, database, or methodology which contains or generates market values or estimates of market values for similar properties.
(2) The department shall consider the market value of the company's preferred and common stocks, outstanding debt, and the

net of current assets and current liabilities. The sum of these items represent an indicator of market value for all the company's property. When the sum represents both operating and nonoperating property, the department will deduct the market value of the nonoperating property.

~~(2)~~ (3) If a company's stock is not traded in the market place, the department may use a price earnings ratio from similar companies or other appropriate methods.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 12, part 1 MCA.

42.22.115 NOTIFICATION AND HEARING (1) On or before June ~~30~~ 1 each year the department shall notify the centrally assessed companies of the proposed valuation of their Montana properties. Within 20 days of notification companies may meet with the department to review the valuation and provide additional information which is pertinent in arriving at a proper valuation. The department shall consider the company's suggestions and additional material and notify the company of its intended action.

(2) and (3) remain the same.

AUTH: 15-23-108 MCA; IMP: 15-23-102 and 15-23-403 MCA.

42.22.116 DETERMINATION OF TAX RATE FOR CLASS ~~15~~ 12 PROPERTY

(1) To implement the statutory direction to compute an annualized tax rate for class ~~15~~ 12 property, the department of revenue will employ the procedure outlined in this rule.

(2) The department of revenue has developed a form which will be employed in order to solicit information regarding the taxable value and the market value for all commercial and industrial property from the county assessors. That form will be dispatched annually to the county assessors on ~~January~~ May 1. The county assessors shall have up to and including the 15th day of May of each taxable year in which to return the form to the property assessment division. A copy of the form is available to taxpayers upon request.

(3) through (5) remain the same.

AUTH: 15-1-201 MCA; IMP: 15-6-145 MCA.

42.22.1305 INDUSTRIAL PROPERTY OTHER THAN LAND (1) and (2) remain the same.

(3) All property which has been certified by the department of health to control air or water pollution shall be placed in Class 5.

(4) remains the same.

AUTH: 15-1-201 MCA; IMP: 15-8-111 MCA.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes

pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Industries with similar trending factors are grouped. The schedules in the rule reflect an average of trend factors for each industry group. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

~~INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS~~
~~1991 = 100%~~

~~YEAR~~	~~TABLE 1~~	~~TABLE 2~~	~~TABLE 3~~	~~TABLE 4~~	~~TABLE 5~~	~~TABLE 6~~
~~1991~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~1990~~	~~1.020~~	~~1.019~~	~~1.017~~	~~1.013~~	~~1.019~~	~~1.019~~
~~1989~~	~~1.048~~	~~1.049~~	~~1.043~~	~~1.036~~	~~1.048~~	~~1.046~~
~~1988~~	~~1.106~~	~~1.103~~	~~1.097~~	~~1.094~~	~~1.104~~	~~1.106~~
~~1987~~	~~1.155~~	~~1.141~~	~~1.141~~	~~1.150~~	~~1.149~~	~~1.156~~
~~1986~~	~~1.175~~	~~1.153~~	~~1.157~~	~~1.163~~	~~1.164~~	~~1.171~~
~~1985~~	~~1.192~~	~~1.161~~	~~1.166~~	~~1.169~~	~~1.173~~	~~1.182~~
~~1984~~	~~1.214~~	~~1.177~~	~~1.181~~	~~1.185~~	~~1.190~~	~~1.199~~
~~1983~~	~~1.246~~	~~1.206~~	~~1.214~~	~~1.219~~	~~1.222~~	~~1.228~~
~~1982~~	~~1.265~~	~~1.230~~	~~1.237~~	~~1.237~~	~~1.245~~	~~1.244~~
~~1981~~	~~1.326~~	~~1.290~~	~~1.297~~	~~1.288~~	~~1.306~~	~~1.301~~
~~1980~~	~~1.466~~	~~1.440~~	~~1.430~~	~~1.413~~	~~1.447~~	~~1.437~~
~~1979~~	~~1.620~~	~~1.583~~	~~1.568~~	~~1.573~~	~~1.598~~	~~1.591~~
~~1978~~	~~1.789~~	~~1.729~~	~~1.709~~	~~1.721~~	~~1.765~~	~~1.740~~
~~1977~~	~~1.928~~	~~1.862~~	~~1.846~~	~~1.837~~	~~1.899~~	~~1.869~~
~~1976~~	~~2.031~~	~~1.973~~	~~2.946~~	~~1.930~~	~~2.001~~	~~1.967~~
~~1975~~	~~2.163~~	~~2.092~~	~~2.082~~	~~2.045~~	~~2.127~~	~~2.082~~
~~1974~~	~~2.415~~	~~2.391~~	~~2.294~~	~~2.316~~	~~2.412~~	~~2.353~~
~~1973~~	~~2.798~~	~~2.774~~	~~2.629~~	~~2.739~~	~~2.822~~	~~2.750~~
~~1972~~	~~2.900~~	~~2.869~~	~~2.716~~	~~2.845~~	~~2.936~~	~~2.854~~
~~1971~~	~~3.015~~	~~2.967~~	~~2.806~~	~~2.957~~	~~3.044~~	~~2.966~~

~~TABLE 1~~
~~Baking (12)~~
~~Fish Canning (12)~~
~~Meat Packing (12)~~
~~Honey Processing (12)~~
~~Candy & Confectionery (20)~~
~~Fruit Canning (12)~~
~~Rubber & Vulcanizing (15)~~
~~Creamery & Dairy (12)~~
~~Printing (12)~~

~~TABLE 2~~
~~Cement Manufacturing (20)~~
~~Ore Milling & Concentrating (15)~~

~~TABLE 4~~
~~Electrical Equipment Manufacturing (10)~~
~~Electric Power Equipment (16)~~
~~Hydroelectric Generation (20)~~
~~Steam Power Generation (16)~~
~~Laundry & Drycleaning (10)~~
~~Aircraft & Airframe Manufacturing (15)~~

~~TABLE 5~~
~~Chemical Manufacturing (12)~~
~~Contractor Equipment (10)~~
~~Sulphur Manufacturing (12)~~

~~Concrete Ready Mix (10)~~
~~Bentonite (20)~~
~~Vermiculite Processing (15)~~
~~Stone Products (15)~~
~~Concrete Products (20)~~
~~Gypsum (20)~~
~~Coal Crushing & Handling (20)~~
~~Graphite Products (20)~~
~~Heap Leach Pads (5)~~
~~Heap Leach Mechanical (20)~~
~~Nonferrous Smelting (15)~~
~~Underground Mining (10)~~
~~Open Pit Mining & Quarrying (15)~~
~~Phosphate Beneficiation (20)~~
~~Clay Products (15)~~
~~Oxygen Generation (20)~~
~~Wood Pellet Plant (16)~~
~~Refrigeration (12)~~
~~Fruit Packing (12)~~
~~Paint Manufacturing (12)~~
~~Egg Packing (20)~~
~~Industrial Shop Equipment (10)~~
~~Metal Machine & Milling (15)~~
~~Foundry (15)~~
~~Rifle Manufacturing (15)~~
~~Plastic Products Manufacturing (20)~~
~~Fertilizer Manufacturing (12)~~
~~Metal Fabrication (20)~~

~~TABLE 3~~
~~Textile Fabrication (10)~~
~~Leather Fabrication (20)~~
~~Pulp & Paper Manufacturing (13)~~
~~Cardboard Container Fabrication (20)~~
~~Woodworking (20)~~
~~Furniture Manufacturing (10)~~
~~Sawmill Equipment (10)~~

~~TABLE 6~~
~~Brewing & Distilling (20)~~
~~Vegetable Oil Extraction (20)~~
~~Gasohol Plant (15)~~
~~Alcohol Plant (15)~~
~~Bottling (12)~~
~~Flour Milling (16)~~
~~Feed Milling (16)~~
~~Seed Treating & Cleaning (16)~~
~~Cereal Products (16)~~
~~Grain Handling Facilities (16)~~

~~YEAR~~	~~TABLE 7~~	~~TABLE 8~~
~~1991~~	~~1.000~~	~~1.000~~
~~1990~~	~~1.016~~	~~1.023~~
~~1989~~	~~1.040~~	~~1.049~~
~~1988~~	~~1.086~~	~~1.103~~
~~1987~~	~~1.121~~	~~1.148~~
~~1986~~	~~1.136~~	~~1.152~~
~~1985~~	~~1.145~~	~~1.153~~
~~1984~~	~~1.158~~	~~1.165~~
~~1983~~	~~1.184~~	~~1.187~~
~~1982~~	~~1.198~~	~~1.198~~
~~1981~~	~~1.252~~	~~1.277~~
~~1980~~	~~1.385~~	~~1.432~~
~~1979~~	~~1.508~~	~~1.591~~
~~1978~~	~~1.644~~	~~1.730~~
~~1977~~	~~1.770~~	~~1.876~~
~~1976~~	~~1.868~~	~~1.985~~
~~1975~~	~~2.020~~	~~2.098~~
~~1974~~	~~2.200~~	~~2.356~~
~~1973~~	~~2.486~~	~~2.775~~
~~1972~~	~~2.546~~	~~2.880~~
~~1971~~	~~2.642~~	~~2.994~~

~~TABLE 7~~

~~Warehousing (10)~~
~~Fertilizer Distribution (10)~~
~~Peat Moss Bagging Plant (20)~~

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

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

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

~~EXAMPLE~~

~~The Trending/Depreciation Procedure~~

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

~~1. Determine the economic life of the subject industry.~~

~~2. Acquire a set of reasonable trends for that economic life.~~

~~3. Acquire the original installed cost (direct and indirect) for the subject equipment.~~

~~4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).~~

~~5. Depreciate the RCN on the basis of age to arrive at sound value. Example:~~

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

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

~~Case I~~		~~Case II~~	
~~Cost~~	~~$ 200~~	~~Cost~~	~~$ 100~~
~~x Trend~~	~~1.430~~	~~x Trend~~	~~1.430*~~
~~RCN~~	~~286~~	~~RCN~~	~~143~~
~~x % Good~~	~~.20~~	~~x % Good~~	~~.20~~
~~Sound Value~~	~~$ 57~~	~~Sound Value~~	~~$ 29~~

~~*The trending factor is applied only to the last year of the~~

~~economic life. Although the equipment is 18 years old, it is trended by the 10th year trend.~~

INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS
1992 = 100%

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6	TABLE 7
1992	1.000	1.000	1.000	1.000	1.000	1.000	1.000
1991	1.014	1.009	1.010	1.013	1.006	1.018	0.992
1990	1.033	1.030	1.028	1.035	1.023	1.038	1.000
1989	1.062	1.058	1.054	1.065	1.049	1.070	1.017
1988	1.119	1.113	1.104	1.127	1.107	1.126	1.079
1987	1.167	1.156	1.145	1.178	1.157	1.165	1.148
1986	1.185	1.168	1.160	1.198	1.171	1.180	1.157
1985	1.200	1.175	1.169	1.221	1.179	1.190	1.163
1984	1.220	1.193	1.186	1.246	1.196	1.206	1.174
1983	1.251	1.224	1.215	1.274	1.229	1.233	1.204
1982	1.278	1.244	1.260	1.290	1.249	1.263	1.218
1981	1.338	1.318	1.317	1.354	1.308	1.325	1.259
1980	1.445	1.469	1.460	1.500	1.442	1.458	1.377
1979	1.585	1.622	1.622	1.662	1.596	1.600	1.545
1978	1.732	1.772	1.779	1.819	1.741	1.751	1.700
1977	1.879	1.892	1.915	1.955	1.874	1.893	1.802
1976	1.988	2.002	2.017	2.062	1.980	2.005	N/A
1975	2.135	2.116	2.144	2.191	2.097	2.146	N/A
1974	2.338	N/A	2.431	2.445	2.379	2.456	N/A
1973	2.654	N/A	2.845	2.833	2.783	2.824	N/A

TABLE 1
Baking (12)
Cardboard Container Fabrication (20)
Creamery & Dairy (12)
Fish Cannery (12)
Fruit Cannery (12)
Furniture Manufacturing (10)
Honey Processing (12)
Leather Fabrication (20)
Logging Equipment (10)
Meat Packing (12)
Pole Treating Equipment (10)
Pulp & Paper Manufacturing (13)
Sawmill Equipment (10)
Textile Fabrication (10)
Wood Pellet Plant (16)
Woodworking (20)

TABLE 2
Clay Products (15)
Natural Gas Processing (16)
Oil Refining (16)
Petroleum (16)
Rubber & Vulcanizing (15)
Stationary Asphalt Plant (15)
Sugar Refinery (18)

TABLE 3
Fertilizer Distribution (10)
Foundry (15)
Industrial Shop Equipment (10)
Metal Fabrication (20)
Metal Machining & Milling (15)
Peat Moss Bagging Plant (20)
Rifle Manufacturing (15)
Warehousing (10)

TABLE 4
Candy & Confectionery (20)

TABLE 5
Aircraft & Airframe Manufacturing (15)
Alcohol Plant (15)
Bottling (12)
Brewing & Distilling (20)
Cement Manufacturing (20)
Chemical Manufacturing (12)
Cereal Products (16)
Coal Fired Power Generation (16)
Concrete Products (18)
Concrete Ready Mix (18)
Electrical Equipment Manufacturing (10)
Electronic Component Manufacturing (10)
Feed Milling (16)
Fertilizer Manufacturing (12)
Flour Milling (16)
Gasohol Plant (15)
Grain Handling Facilities (16)
Hydroelectric Generation (20)
Laundry & Drycleaning (10)
Oxygen Generation (20)
Paint Manufacturing (12)
Plastic Products Manufacturing (20)
Polystyrene (20)
Printing (12)
Refrigeration (12)
Seed Treating & Cleaning (16)
Steam Power Generation (16)
Sulphur Manufacturing (12)
Vegetable Oil Extraction (20)

TABLE 6
Bentonite (20)
Coal Crushing & Handling (20)
Contractor Equipment (10)
Egg Packing (20)
Fruit Packing (12)
Graphite Products (20)
Gypsum (20)
Heap Leach Mechanical (20)
Heap Leach Pads (5)
Lime & Calcium Benefication (20)
Nonferrous Smelting (15)
Open Pit Mining & Quarrying (15)
Ore Milling & Concentrating (15)
Phosphate Benefication (20)
Stone Products (15)
Talc Benefication (20)
Underground Mining (10)
Vermiculite Processing (20)

TABLE 7
Electric Power Equipment (16)

Note:

1. The number in parentheses indicates assigned economic life expectancies.

2. Lab equipment is to be included in its related industry's table at 10-year life expectancy.

AUTH: 15-1-201 MCA; IMP: 15-6-138 and 15-8-111 MCA.

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) remains the same.

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

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

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

Example:

Industry - Sawmill
Economic life - 10 years
1980~~6~~93 Table - Table ~~6~~1 ~~(Subsection 1)~~

Case	I	II
Equipment - Motor		
Original Installed Cost	$ 200	$ 100
Year Installed	1980~~6~~1	1972~~3~~3

Case I

~~Cost~~	~~$ 200~~
~~x Trend~~	~~1.227~~
~~RCN~~	~~245~~
~~x % Good~~	~~.49~~
~~Sound Value~~	~~$ 120~~

Cost	$ 200
x Trend	1.251
RCN	250
x % Good	.20
Sound Value	$ 50

Case II

~~Cost~~	~~$ 100~~
~~x Trend~~	~~1.596*~~
~~RCN~~	~~245~~
~~x % Good~~	~~.20~~
~~Sound Value~~	~~$ 32~~

Cost	$ 100
x Trend	1.251*
RCN	125
x % Good	.20
Sound Value	$ 25

*The trending factor is applied only to the last year of the economic life. Although the equipment is ~~15~~ 20 years old, it is trended by the 10th year trend.

AUTH: 15-1-201 MCA; IMP: 15-6-138 and 15-8-111 MCA.

42.22.1313 ASSESSMENT OF GRAIN, SEED, AND FERTILIZER STORAGE FACILITIES (1) remains the same.

~~(2) Storage tanks, working houses, drive houses, and large platform truck and railroad scales are considered long lived assets. Elevator legs, metering scales, augers, conveyors, cleaning and treating equipment and all other permanently~~

~~affixed equipment is product handling property and are examples of short lived assets.~~

~~(3)~~(2) All product moving or handling property ~~(short-lived assets)~~ used in grain storage facilities, seed cleaning facilities, and bulk fertilizer facilities is considered part and parcel to the facility ~~are~~ and is assessed under 15-6-134, MCA. ~~This property shall be considered part and parcel if permanently affixed to the improvements and cannot be removed without destroying the value of the facility.~~ Property under this rule shall not be considered manufacturing equipment.

~~(4)~~(3) Bulk fertilizer facilities are defined as an improvement to land for storing, blending, and distributing dry fertilizers. Blending, cleaning, treating, packaging, conditioning, dust removal, and pollution control in these facilities are not considered a manufacturing process.

~~(5)~~(4) Seed cleaning facilities are defined as an improvement to land if used either solely or in conjunction with a grain elevator for the cleaning and treating of seed grain. Blending, cleaning, treating, packaging, conditioning, dust removal, and pollution control in these facilities are not considered a manufacturing process.

~~(6)~~(5) All property described in paragraphs (1) and (2) shall be valued according to the reappraisal cycle established for other class 4 property in 15-7-103, MCA. The department will determine market value considering the cost approach, sales comparison approach, and income approach. When using the cost approach, a separate age/life schedule will be applied to the product handling portion of the facility to reflect physical depreciation and functional obsolescence. Economic obsolescence will be addressed on a case by case basis. Cost data used in developing the cost approach for property included in this rule is found in the ~~Marshall Valuation Service~~ Montana Appraisal Manual.

~~(7)~~(6) Mobile equipment used in conjunction with the facilities described in this rule shall be valued in accordance with ARM 42.21.131.

~~(8)~~(7) Other equipment not meeting the requirements of paragraph 2 shall be valued and assessed in accordance with ARM 42.22.1306.

AUTH: 15-1-201 MCA; IMP: 15-6-134, 15-7-103 and 15-8-111 MCA.

42.22.1401 TAX BENEFITS FOR CLASS ~~TWENTY~~ FOUR NONPRODUCTIVE PROPERTY (1) For the purposes of determining property eligible for class ~~20~~ 4 nonproductive property classification, "single working unit" means an integrated facility having been organized, synchronized and combined to perform an industrial function.

(2) The property owner of record or his agent must make application to the department of revenue, property assessment division for the classification of nonproductive property as class ~~20~~ 4. An application must be filed on a form available

from the department of revenue, property assessment division before March 1 of each tax year for which the property owner seeks the classification of property as class ~~20~~ 4 nonproductive property. The application must be accompanied by the approving resolution of the governing body for the taxing jurisdiction.

(3) Real property, improvements to real property, improvements upon real property, fixtures, machinery and mobile equipment left on the site will qualify as class ~~20~~ 4 nonproductive property when authorized in the approving resolution of the governing body for the taxing jurisdiction.

(4) The governing body of a county or incorporated city or town shall determine by resolution the specific buildings, structures, machinery, equipment and fixtures that will be placed in taxable class ~~20~~ 4 nonproductive property from an appraisal made by the department.

(5) Property qualifying as class ~~20~~ 4 nonproductive property on January 1 will remain in class ~~20~~ 4 for the entire assessment year even though production may commence after January 1.

(6) The department shall maintain two taxable values for a plant approved for class ~~20~~ 4 nonproductive property classification. One taxable value will include the 25% reduction in market value granted each year by the approving governing body for class ~~20~~ 4 nonproductive property. The other taxable value will be maintained for purposes of the mill levies to which class ~~20~~ 4 nonproductive property does not apply.

(7) When a plant or an operating unit is classified as class ~~20~~ 4 nonproductive property, the property assessment division shall not further reduce value based upon economic or functional obsolescence.

AUTH: 15-1-201 MCA; IMP: 15-6-101, 15-6-150, 15-6-155 and 15-8-111 MCA.

3. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments and adoptions of the above rules are the result of this review of chapter 22 for the Property Assessment Division. Section 15-8-111, MCA, requires the department to value all property at 100% of its market value except as provided in (5) of 15-7-111 and 15-8-111, MCA. Through the rules the department has adopted the concept of trending and depreciating to arrive at market value.

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

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

no later than October 9, 1992.

5. 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.157, and 42.21.305 relating to Property Taxes for Market Value for Personal Property	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 42.21.106, 42.21.107, 42.21.113 42.21.123, 42.21.124, 42.21.131 42.21.137, 42.21.138, 42.21.139 42.21.140, 42.21.151, 42.21.155 42.21.157, and 42.21.305 relating to Property Taxes for Market Value of Personal Property

TO: All Interested Persons:

1. On October 8, 1992, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.157, and 42.21.305, relating to property taxes for market value of personal property.

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

42.21.106 TRUCKS (1) through (3) remain the same.

(4) The trended depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for the 199~~2~~3 tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in subsection (1).

TRUCK TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD
~~1992~~	~~80%~~
~~1991~~	~~45%~~
~~1990~~	~~39%~~
~~1989~~	~~33%~~
~~1988~~	~~29%~~
~~1987~~	~~25%~~
~~1986~~	~~21%~~
~~1985~~	~~19%~~
~~1984~~	~~17%~~
~~1983~~	~~16%~~
~~1982~~	~~15%~~
~~1981~~	~~14%~~
~~1980~~	~~14%~~
~~1979~~	~~13%~~
~~1978~~	~~12%~~

~~1977~~	~~12%~~
~~1976 and before~~	~~11%~~
1993	80%
1992	40%
1991	35%
1990	29%
1989	24%
1988	20%
1987	18%
1986	15%
1985	14%
1984	13%
1983	12%
1982	11%
1981	11%
1980 and before	10%

(5) remains the same.

(6) This rule is effective for tax years beginning after December 31, 199~~2~~2.

AUTH: 15-1-201 MCA; IMP: 15-6-139 and 15-6-140 MCA.

42.21.107 TRAILERS (1)(a) through (d) remain the same.

(e) The trended depreciation schedules referred to in subsections (1)(b), (c), and (d) is listed below and shall be used for the 199~~2~~3 tax year.

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

YEAR NEW/ACQUIRED	% GOOD
~~1992~~	~~80%~~
~~1991~~	~~61%~~
~~1990~~	~~50%~~
~~1989~~	~~53%~~
~~1988~~	~~49%~~
~~1987~~	~~45%~~
~~1986~~	~~42%~~
~~1985~~	~~39%~~
~~1984~~	~~38%~~
~~1983~~	~~37%~~
~~1982~~	~~35%~~
~~1981~~	~~33%~~
~~1980~~	~~31%~~
~~1979~~	~~29%~~
~~1978~~	~~27%~~
~~1977~~	~~25%~~
~~1976~~	~~23%~~
~~1975~~	~~21%~~
~~1974~~	~~19%~~
~~1973~~	~~17%~~

~~1972 & Before~~	~~15%~~
1993	80%
1992	59%
1991	57%
1990	56%
1989	52%
1988	48%
1987	44%
1986	42%
1985	41%
1984	40%
1983	38%
1982	36%
1981	34%
1980	32%
1979	30%
1978	28%
1977	26%
1976	24%
1975	22%
1974	20%
1973 & Before	15%

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

(d) The trended depreciation schedule mentioned in subsection (2)(b) and (c) is listed below and shall be used for the 199~~2~~3 tax year. It is the same schedule as used in ARM 42.2~~1~~.106(4).

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

YEAR ACQUIRED	% GOOD
~~1992~~	~~80%~~
~~1991~~	~~45%~~
~~1990~~	~~39%~~
~~1989~~	~~33%~~
~~1988~~	~~29%~~
~~1987~~	~~25%~~
~~1986~~	~~21%~~
~~1985~~	~~19%~~
~~1984~~	~~17%~~
~~1983~~	~~16%~~
~~1982~~	~~15%~~
~~1981~~	~~14%~~
~~1980~~	~~14%~~
~~1979~~	~~13%~~
~~1978~~	~~12%~~
~~1977~~	~~12%~~
~~1976 & Before~~	~~11%~~

1993	80%
1992	40%
1991	35%
1990	29%
1989	24%
1988	20%
1987	18%
1986	15%
1985	14%
1984	13%
1983	12%
1982	11%
1981	11%
1980 and before	10%

(3) This rule is effective for tax years beginning after December 31, 199~~1~~2.

AUTH: 15-1-~~2~~01 MCA; IMP: 15-6-138 and 15-6-139 MCA.

42.21.113 LEASED AND RENTED EQUIPMENT (1) Leased or rental equipment which meets the criteria of 15-6-136(1)(b), MCA, will be valued in the following manner:

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

(b) For equipment that has an acquired cost greater than $501, the department shall use ~~a~~ two five-year trended depreciation schedules.

(2) remains the same.

(3) The trended depreciation schedules referred to in subsections (1) and (2) are listed below and shall be used for tax year 199~~2~~3.

Year New/Acquired	$0 - 500	$501 - 1500	$1,501 or Greater
~~1991~~	~~70%~~	~~85%~~	~~85%~~
~~1990~~	~~44%~~	~~68%~~	~~73%~~
~~1989~~	~~19%~~	~~52%~~	~~58%~~
~~1988~~	~~19%~~	~~35%~~	~~40%~~
~~1987~~	~~19%~~	~~21%~~	~~24%~~
~~1986~~	~~19%~~	~~21%~~	~~24%~~
~~1985 and older~~	~~19%~~	~~21%~~	~~24%~~
1992	70%	85%	85%
1991	40%	70%	72%
1990	17%	52%	57%
1989	17%	35%	40%
1988	17%	21%	24%
1987	17%	21%	24%
1986 and older	17%	21%	24%

(4) remains the same.

(5) For rental video tapes the following schedule shall be used:

Year Acquired	Trended % Good
199~~1~~2	25%
1990~~1~~	15%
19~~89~~90	10%

(6) This rule is effective for tax years beginning after December 31, 199~~1~~2.

AUTH: 15-1-2~~0~~1 MCA; IMP: 15-6-136 MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in subsections (2) through (4) is listed below and shall be used for tax year 199~~2~~3. The schedule is derived by using the guidebook listed in subsection (1) and the "Farm Tractor Trade-In Guide" and "Farm Equipment Trade-In Guide" of the current year of assessment and are incorporated by reference, Technical Publications Division, Intertec Publishing Corporation, Box 12901, Overland Park, Kansas 66212, as the data base. The trended depreciation schedule will approximate average loan value.

YEAR	TRENDED % GOOD AVERAGE LOAN
~~1992~~	~~65%~~
~~1991~~	~~51%~~
~~1990~~	~~46%~~
~~1989~~	~~44%~~
~~1988~~	~~40%~~
~~1987~~	~~37%~~
~~1986~~	~~36%~~
~~1985~~	~~35%~~
~~1984~~	~~34%~~
~~1983~~	~~33%~~
~~1982~~	~~33%~~
~~1981~~	~~32%~~
~~1980~~	~~33%~~
~~1979~~	~~32%~~
~~1978~~	~~31%~~
~~1977~~	~~29%~~
~~1976~~	~~27%~~
~~1975~~	~~26%~~
~~1974~~	~~26%~~
~~1973~~	~~25%~~
~~1972~~	~~25%~~
~~1971~~	~~24%~~
~~1970~~	~~23%~~
~~1969~~	~~22%~~
~~1968~~	~~21%~~
~~1967 & Older~~	~~20%~~

1993	65%
1992	52%
1991	46%
1990	42%
1989	41%
1988	37%
1987	35%
1986	34%
1985	33%
1984	32%
1983	31%
1982	32%
1981	31%
1980	30%
1979	29%
1978	28%
1977	26%
1976	25%
1975	26%
1974	25%
1973	24%
1972	23%
1971	22%
1970	21%
1969 and before	20%

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, 1991.

AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

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

All horses, mules, asses, shetland ponies, donkeys and burros - 9 months and older
All bulls and cattle - 9 months and older
All goats - 9 months and older
All swine - 3 months and older
All buffalo, elk, llamas, deer & other domestic ungulates - 9 months and older
Poultry
Bees
All sheep - 9 months and older

AUTH: 15-1-201 MCA; IMP: 15-6-136, 15-6-207, 15-24-921, 15-24-922 and 15-24-925 MCA.

42.21.131 HEAVY EQUIPMENT (1) through (4) remains the same.

(5) The trended depreciation schedules referred to in subsections (1), (3) and (4) is listed below and shall be used for tax year 1992~~2~~3. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in subsection (2).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR	% GOOD WHOLESALE
~~1992~~	~~88%~~
~~1991~~	~~67%~~
~~1990~~	~~53%~~
~~1989~~	~~50%~~
~~1988~~	~~47%~~
~~1987~~	~~44%~~
~~1986~~	~~39%~~
~~1985~~	~~36%~~
~~1984~~	~~32%~~
~~1983~~	~~30%~~
~~1982~~	~~28%~~
~~1981~~	~~29%~~
~~1980~~	~~28%~~
~~1979~~	~~28%~~
~~1978~~	~~28%~~
~~1977~~	~~29%~~
~~1976~~	~~27%~~
~~1975~~	~~27%~~
~~1974~~	~~28%~~
~~1973~~	~~28%~~
~~1972~~	~~28%~~
~~1971 & Before~~	~~26%~~
1993	80%
1992	65%
1991	50%
1990	46%
1989	44%
1988	42%
1987	39%
1986	34%
1985	32%
1984	29%
1983	27%
1982	26%
1981	28%
1980	27%
1979	26%
1978	28%
1977	28%

1976	25%
1975	26%
1974	27%
1973	27%
1972 & Before	26%

(6) This rule is effective for tax years beginning after December 31, 199~~1~~2, and applies to all heavy equipment not listed in ARM 42.21.139.

AUTH: 15-1-201 MCA; IMP: 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remains the same.

(4) The trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year 199~~2~~3.

SEISMOGRAPH UNITS

TRENDED YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	WHOLESALE % GOOD
~~1992~~	~~100%~~	~~1.000~~	~~100%~~	~~80%~~	~~80%~~
~~1991~~	~~85%~~	~~1.000~~	~~85%~~	~~80%~~	~~68%~~
~~1990~~	~~69%~~	~~1.020~~	~~70%~~	~~80%~~	~~56%~~
~~1989~~	~~52%~~	~~1.046~~	~~54%~~	~~80%~~	~~43%~~
~~1988~~	~~34%~~	~~1.105~~	~~38%~~	~~80%~~	~~30%~~
~~1987~~	~~20%~~	~~1.153~~	~~23%~~	~~80%~~	~~18%~~
~~1986 & older~~	~~5%~~	~~1.166~~	~~6%~~	~~80%~~	~~5%~~
1993	100%	1.000	100%	80%	80%
1992	85%	1.000	85%	80%	68%
1991	69%	1.005	69%	80%	55%
1990	52%	1.026	53%	80%	42%
1989	34%	1.153	36%	80%	29%
1988	20%	1.113	22%	80%	18%
1987 & older	5%	1.161	6%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1992~~	~~100%~~	~~1.000~~	~~100%~~
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~1.020~~	~~70%~~
~~1989~~	~~52%~~	~~1.046~~	~~54%~~
~~1988~~	~~34%~~	~~1.105~~	~~38%~~
~~1987~~	~~20%~~	~~1.153~~	~~23%~~

~~1986 & older~~	~~5%~~	~~1.166~~	~~6%~~
1993	100%	1.000	100%
1992	85%	1.000	85%
1991	69%	1.005	69%
1990	52%	1.026	53%
1989	34%	1.153	36%
1988	20%	1.113	22%
1987 & older	5%	1.161	6%

(5) This rule is effective for tax years beginning after December 31, 199~~1~~2.

AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) and (2) remain the same.

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year 199~~2~~3.

OIL AND GAS FIELD PRODUCTION
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1992~~	~~100%~~	~~1.000~~	~~100%~~
~~1991~~	~~95%~~	~~1.000~~	~~95%~~
~~1990~~	~~89%~~	~~1.020~~	~~91%~~
~~1989~~	~~83%~~	~~1.046~~	~~87%~~
~~1988~~	~~77%~~	~~1.105~~	~~85%~~
~~1987~~	~~71%~~	~~1.153~~	~~82%~~
~~1986~~	~~65%~~	~~1.166~~	~~76%~~
~~1985~~	~~58%~~	~~1.171~~	~~68%~~
~~1984~~	~~51%~~	~~1.188~~	~~61%~~
~~1983~~	~~45%~~	~~1.219~~	~~55%~~
~~1982~~	~~39%~~	~~1.237~~	~~48%~~
~~1981~~	~~33%~~	~~1.302~~	~~43%~~
~~1980~~	~~28%~~	~~1.448~~	~~41%~~
~~1979~~	~~23%~~	~~1.606~~	~~37%~~
~~1978 & Older~~	~~20%~~	~~1.746~~	~~35%~~
1993	100%	1.000	100%
1992	95%	1.000	95%
1991	89%	1.005	89%
1990	83%	1.026	85%
1989	77%	1.053	81%
1988	71%	1.113	79%
1987	65%	1.161	75%
1986	58%	1.173	68%
1985	51%	1.179	60%
1984	45%	1.195	54%
1983	39%	1.227	48%
1982	33%	1.245	41%

1981	28%	1.310	37%
1980	23%	1.457	34%
1979 & Older	20%	1.616	32%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, 1991.

AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year 1992.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

YEAR	% GOOD	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
1992	100%	80%	80%
1991	92%	80%	74%
1990	84%	80%	67%
1989	76%	80%	61%
1988	67%	80%	54%
1987	58%	80%	46%
1986	49%	80%	39%
1985	35%	80%	28%
1984	30%	80%	24%
1983	24%	80%	19%
1982 & Older	20%	80%	16%

(6) This rule is effective for tax years beginning after December 31, 1991.

AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The trended depreciation schedule for tax year 1992 is listed below.

DRILL RIG % GOOD SCHEDULE

YEAR	TRENDED % GOOD
1992	100%
1991	92%
1990	84%
1989	76%

~~1986~~ 9	67%
~~1987~~ 8	58%
~~1986~~ 7	49%
~~1985~~ 6	35%
~~1984~~ 5	30%
~~1983~~ 4	24%
~~1982~~ 3 and Older	20%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1991~~ 2.

AUTH: 15-1-201 MCA; IMP: 15-6-138 MCA.

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

(4) The trended depreciation schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year ~~1992~~ 1993.

TABLE 1: 5 YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~1.018~~	~~70%~~
~~1989~~	~~52%~~	~~1.045~~	~~54%~~
~~1988~~	~~34%~~	~~1.101~~	~~37%~~
~~1987 & older~~	~~20%~~	~~1.148~~	~~23%~~
1992	85%	1.000	85%
1991	69%	1.009	70%
1990	52%	1.029	54%
1989	34%	1.056	36%
1988 & older	20%	1.113	22%

TABLE 2: 10 YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~92%~~	~~1.000~~	~~92%~~
~~1990~~	~~84%~~	~~1.018~~	~~86%~~
~~1989~~	~~76%~~	~~1.045~~	~~79%~~
~~1988~~	~~67%~~	~~1.101~~	~~74%~~
~~1987~~	~~58%~~	~~1.148~~	~~67%~~
~~1986~~	~~49%~~	~~1.165~~	~~57%~~
~~1985~~	~~39%~~	~~1.176~~	~~46%~~
~~1984~~	~~30%~~	~~1.193~~	~~36%~~
~~1983~~	~~24%~~	~~1.226~~	~~29%~~
~~1982 & older~~	~~20%~~	~~1.248~~	~~25%~~

1992	92%	1.000	92%
1991	84%	1.009	85%
1990	76%	1.029	78%
1989	67%	1.056	71%
1988	58%	1.113	65%
1987	49%	1.161	57%
1986	39%	1.177	46%
1985	30%	1.189	36%
1984	24%	1.206	29%
1983 & older	20%	1.239	25%

(5) This rule is effective for tax years beginning after December 31, 1991~~2~~.

AUTH: 15-1-201 MCA; IMP: 15-6-140 MCA.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 1992~~3~~ are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~70%~~	~~1.000~~	~~70%~~
~~1990~~	~~45%~~	~~0.979~~	~~44%~~
~~1989~~	~~20%~~	~~0.964~~	~~19%~~
~~1988 and older~~	~~10%~~	~~0.964~~	~~10%~~
1992	70%	1.000	70%
1991	45%	0.966	43%
1990	20%	0.946	19%
1989 and older	10%	0.932	9%

CATEGORY 2

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~.990~~	~~68%~~
~~1989~~	~~52%~~	~~1.007~~	~~52%~~
~~1988~~	~~34%~~	~~1.033~~	~~35%~~
~~1987 and older~~	~~20%~~	~~1.060~~	~~21%~~
1992	85%	1.000	85%
1991	69%	1.014	70%
1990	52%	1.005	52%
1989	34%	1.021	35%
1988 and older	20%	1.047	21%

CATEGORY 3

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~.990~~	~~69%~~
~~1989~~	~~52%~~	~~1.000~~	~~52%~~
~~1988~~	~~34%~~	~~1.024~~	~~35%~~
~~1987 and older~~	~~20%~~	~~1.032~~	~~21%~~
1992	85%	1.000	85%
1991	69%	.994	69%
1990	52%	.992	52%
1989	34%	.993	34%
1988 and older	20%	1.018	20%

CATEGORY 4

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~1.008~~	~~70%~~
~~1989~~	~~52%~~	~~1.006~~	~~52%~~
~~1988~~	~~34%~~	~~1.019~~	~~35%~~
~~1987 and older~~	~~20%~~	~~1.036~~	~~21%~~
1992	85%	1.000	85%
1991	69%	1.015	70%
1990	52%	1.024	53%
1989	34%	1.021	35%
1988 and older	20%	1.034	21%

CATEGORY 5

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~1.016~~	~~70%~~
~~1989~~	~~52%~~	~~1.046~~	~~54%~~
~~1988~~	~~34%~~	~~1.079~~	~~37%~~
~~1987 and older~~	~~20%~~	~~1.103~~	~~22%~~
1992	85%	1.000	85%
1991	69%	1.015	70%
1990	52%	1.024	53%
1989	34%	1.021	35%
1988 and older	20%	1.034	21%

CATEGORY 6

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~85%~~	~~1.000~~	~~85%~~
~~1990~~	~~69%~~	~~1.057~~	~~73%~~
~~1989~~	~~52%~~	~~1.120~~	~~58%~~
~~1988~~	~~34%~~	~~1.171~~	~~40%~~
~~1987 and older~~	~~20%~~	~~1.221~~	~~24%~~
1992	85%	1.000	85%
1991	69%	1.040	72%
1990	52%	1.100	57%
1989	34%	1.165	40%
1988 and older	20%	1.218	24%

CATEGORY 7

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~92%~~	~~1.000~~	~~92%~~
~~1990~~	~~84%~~	~~1.039~~	~~87%~~
~~1989~~	~~76%~~	~~1.083~~	~~82%~~
~~1988~~	~~67%~~	~~1.125~~	~~75%~~
~~1987~~	~~58%~~	~~1.148~~	~~67%~~
~~1986~~	~~49%~~	~~1.166~~	~~57%~~
~~1985~~	~~39%~~	~~1.190~~	~~46%~~
~~1984~~	~~30%~~	~~1.222~~	~~37%~~
~~1983~~	~~24%~~	~~1.241~~	~~30%~~
~~1982 and older~~	~~20%~~	~~1.280~~	~~26%~~
1992	92%	1.000	92%
1991	84%	1.029	86%
1990	76%	1.070	81%
1989	67%	1.115	75%
1988	58%	1.158	67%
1987	49%	1.182	58%
1986	39%	1.201	47%
1985	30%	1.225	37%
1984	24%	1.258	30%
1983 and older	20%	1.277	26%

CATEGORY 8

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~1991~~	~~92%~~	~~1.000~~	~~92%~~
~~1990~~	~~84%~~	~~1.027~~	~~86%~~
~~1989~~	~~76%~~	~~1.067~~	~~81%~~
~~1988~~	~~67%~~	~~1.116~~	~~75%~~

~~1987~~	~~50%~~	~~1.156~~	~~67%~~
~~1986~~	~~49%~~	~~1.186~~	~~58%~~
~~1985~~	~~39%~~	~~1.234~~	~~48%~~
~~1984~~	~~30%~~	~~1.276~~	~~38%~~
~~1983~~	~~24%~~	~~1.323~~	~~32%~~
~~1982 and older~~	~~20%~~	~~1.399~~	~~28%~~
1992	92%	1.000	92%
1991	84%	1.014	85%
1990	76%	1.042	79%
1989	67%	1.082	72%
1988	58%	1.132	66%
1987	49%	1.173	57%
1986	39%	1.203	47%
1985	30%	1.252	38%
1984	24%	1.294	31%
1983 and older	20%	1.342	27%

AUTH: 15-1-201 MCA; IMP: 15-6-139 MCA.

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

(2) The data used to compute the trend factors are the monthly values of the "Producer Price Indexes" (PPI) specified in subsections (2) through (8) of ARM 42.21.156. The values shall be taken from the most recent publications received by the Montana State Library as of ~~September 30~~ July 15.

(3) and (4) remain the same.

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

42.21.305 TRENDED DEPRECIATION SCHEDULES (1) 199~~2~~3 trended percent depreciation schedule for licensed motorcycles and licensed quadricycles*

Year	Trended % Good
~~1992~~	~~80%~~
~~1991~~	~~57%~~
~~1990~~	~~51%~~
~~1989~~	~~49%~~
~~1988~~	~~44%~~
~~1987~~	~~40%~~
~~1986~~	~~31%~~
~~1985~~	~~27%~~
~~1984~~	~~24%~~
~~1983~~	~~21%~~
~~1982~~	~~17%~~
~~1981~~	~~10%~~
~~1980~~	~~16%~~
~~1979~~	~~19%~~
~~1978~~	~~16%~~
~~1977 & Older~~	~~16%~~
1993	80%
1992	59%

1991	51%
1990	47%
1989	43%
1988	40%
1987	37%
1986	29%
1985	27%
1984	23%
1983	20%
1982	16%
1981	16%
1980	15%
1979	15%
1978 & Older	15%

(2) 1992~~3~~ trended depreciation schedule for automobiles and trucks with a rated capacity of 1 ton and less*

Year	Trended % Good
~~1992~~	~~80% of FOB~~
~~1991~~	~~77%~~
~~1990~~	~~60%~~
~~1989~~	~~54%~~
~~1988~~	~~47%~~
~~1987~~	~~41%~~
~~1986~~	~~34%~~
~~1985~~	~~27%~~
~~1984~~	~~19%~~
~~1983~~	~~16%~~
~~1982~~	~~14%~~
~~1981~~	~~12%~~
~~1980~~	~~10%~~
~~1979~~	~~9%~~
~~1978~~	~~9%~~
~~1977~~	~~8%~~
~~1976~~	~~8%~~
~~1975 & Older~~	~~8%~~

1993	80% of FOB
1992	75%
1991	64%
1990	53%
1989	44%
1988	39%
1987	32%
1986	26%
1985	19%
1984	16%
1983	13%
1982	11%
1981	10%
1980	9%

1979	8%
1978	7%
1977	7%
1976 & Older	7%

AUTH: 15-1-201 and 61-3-506 MCA; IMP: 15-8-202 MCA.

3. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments of the above rules are the result of this review of chapter 21 for the Property Assessment Division and also because 15-8-111, MCA, requires the department to assess all property at 100% of its market value except as provided in 15-7-111 and 15-8-111(5), MCA. Through various administrative rules, the department has adopted the concept of trending and depreciation to arrive at market value for property.

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

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

no later than October 9, 1992.

5. 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.17.301, 42.17.302, 42.17.303 and ADOPTION of NEW RULES I through XIII relating to estimated tax payments	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL of ARM 42.17.301, 42.17.302, 42.17.303 and ADOPTION of NEW RULES I through XIII relating to estimated tax payments

TO: All Interested Persons:

1. On October 7, 1992, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of new rules I through XIII and the repeal of ARM 42.17.301, 42.17.302, and 42.17.303 relating to estimated tax payments.

2. The Department proposes to repeal the following rules:

42.17.301 COMPUTATION OF ESTIMATED TAX, found at page 1741 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA IMP: Sec. 15-30-241, MCA

42.17.302 AMENDED DECLARATION, found at page 1741 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA IMP: Sec. 15-30-241 and 15-30-242, MCA

42.17.303 EXTENSION OF FILING TIME, found at page 1741 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA IMP: Sec. 15-30-241, MCA

3. The Department proposes to adopt new rules I through XIII, which do not replace or modify any sections currently found in the Administrative Rules of Montana, as follows:

RULE I DEFINITIONS (1) As used in this sub-chapter, the following definitions apply:

(a) The term "tax liability" means the tax imposed by Title 15, chapter 30 less any tax credits allowed under Montana law excluding the elderly homeowner/renter credit.

(i) For purposes of estimating a taxpayer's tax liability, the tax liability is not decreased by income tax withholding, estimated tax payments or the elderly homeowner/renter credit.

(ii) A taxpayer's withholding, estimated tax and the elderly homeowner/renter credit will be considered as payments prior to the calculation of the deficiency payment.

Example: A taxpayer has a tax, before credits, of $5,000. He has $1,000 in tax credits. He has withholding of $800 and a elderly homeowner/renter credit of $400. His tax liability for estimated tax purposes is computed as follows:

Tax before credits	$5,000
Credits	(1,000)
Tax liability	$4,000

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE II SHORT TAXABLE YEARS (1) Estimated tax payments are not required in the case of a short taxable year which is less than four months.

(2) Individuals who have a short taxable year of four months or more are required to pay estimated tax on the following dates:

(a) The first installment is due on April 15 or on the 15th day of the fourth month of the taxable year;

(b) The second and third installments are due on the 15th day of the sixth month of the taxable year and the 15th day of the ninth month of the taxable year if the short taxable year does not close prior to these dates; and

(c) The final installment is due on the 15th day of the first month of the succeeding taxable year.

(3) If less than four installments are required, the applicable percentage of the required annual amount for each installment is increased. The applicable percentage per installment is as follows:

(a) 100% for one installment;

(b) 50% for two installments; and,

(c) 33 1/3% for three installments.

Example 1: If the short taxable year is the 10-month period from January 1 through October 31, the estimated tax must be paid in four installments, on April 15, June 15, September 15, and November 15. Each installment is 25% of the total payment required.

Example 2: If the short taxable year ended on September 30, the estimated tax must be paid in three installments, on April 15, June 15, and October 15. With three installments, each installment is 33 1/3% of the total payment required.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE III APPLICATION FOR EXTENSION - PAYMENT OF ESTIMATED TAX (1) An application for an extension of time for payment of any installment or for the payment of any deficiency amount shall be made on forms prescribed by the department and shall be accompanied by evidence showing that undue hardship would result to the taxpayer if the extension were refused. The extension will not be granted under a general statement of "hardship."

(2) The application, with supporting documents, must be filed 30 days prior to the installment date for which the extension is requested. The application will be examined, and within 30 days, if possible, be denied, granted, or tentatively granted subject to certain conditions.

(3) If an extension is granted, the estimated payment shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand.

(4) The maximum total time period for an extension is six months per year. An estimated tax payment cannot be extended past the due date of the return not including any extension of time to file. The underpayment penalty of 15-30-241(5), MCA applies to any payments that are paid past the due date whether or not an extension is granted.

(5) The granting of an extension of time for payment of one installment does not extend the time for payment of any subsequent installments.

(6) Inability to pay does not constitute "hardship."

(7) Examples of what does and what does not constitute "hardship" are contained in ARM 42.3.106.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE IV AMENDMENTS OF PREVIOUS INSTALLMENTS (1) If an amendment of a previously filed installment is filed, the remaining installments must be ratably increased or decreased to reflect the change in the total estimated tax by reason of the amendment.

(2) If any amendment is made after September 15 of the taxable year, any increase in the estimated tax shall be paid at the time of making the amendment.

(3) Amendments to the original declaration of estimated tax must be made on forms prescribed by the department.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE V DETERMINATION OF ANNUAL TAXABLE INCOME (1) There must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date of which the determination is made.

(2) Income or expenses that are paid occasionally during a year cannot be spread out during the year in determining the required installments. For example, a taxpayer distributes year-end bonuses to his employees but does not determine the amount of the bonuses until the last month of the taxable year. He may not deduct any portion of such year-end bonuses in determining his taxable income for any installment period other than the final installment period for the taxable year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE VI INCOME ON AN ANNUALIZED BASIS (1) A taxpayer whose income fluctuates or is seasonal may be able to lower or eliminate the amount of one or more required estimated tax installments by periodically annualizing his income.

(2) A taxpayer's income is annualized when his income, deductions and credits that cover a certain period of time are multiplied by annualization factors that arrive at his income projected over twelve months.

(3) The annualized taxable income for each period is found by multiplying the adjusted gross income and itemized deductions

for that period by the annualization factors for that period, less personal exemptions. The standard deduction may be substituted in place of the annualized itemized deductions.

(4) For a calendar taxpayer, the annualization periods are January through March, January through May, January through August, and January through December of the tax year.

(5) For fiscal year taxpayers, the annualization periods all begin on the first day of the taxable year and end on the last day of the third, fifth, eighth and twelfth months following the beginning of the taxable year.

(6) The annualization factors are 4 for the 1st period, 2.4 for the 2nd period, 1.5 for the 3rd period and 1 for the 4th period.

(7) The annualized tax less allowable credits is multiplied by 22.5% to find the 1st required installment amount, 45% for the second installment amount, 67.5% for the third period and 90% for the fourth period. Each annualized installment payment is decreased by the total of any preceding payments to arrive at that periods required payment.

(8) A taxpayer must file annualization forms provided by the department or have prior approval to use similar forms.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE VII DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM JOINT TO SEPARATE (1) Taxpayers who file separate returns on separate forms for the current period and who filed a joint return for the preceding taxable year shall compute their prior years estimated tax liability as follows:

(a) 100% of the tax liability of the joint return for the preceding taxable year; or

(b) A prorated portion of the preceding year's joint tax liability. This prorated amount is determined by calculating the tax liability of the taxpayers as if they filed separately and totaling their individual taxes. Each spouse's prior year estimated tax liability is found by dividing their separate liability by the total of the two separate liabilities and multiplying this figure times the preceding years joint tax liability.

Example: Husband and wife file a joint return for the calendar year 1992 showing taxable income of $50,000 and a tax of $3,930. Of the taxable income, $30,000 was attributable to the husband and $20,000 to the wife. Husband and wife filed separate returns on separate forms in 1993. The tax shown on the return for the preceding taxable year, for purposes of determining if an underpayment penalty applies is determined as follows:

Taxable income of husband for 1992:	$30,000
Tax on $30,000 (on basis of separate return):	$ 1,960
Taxable income of wife for 1992:	$20,000
Tax on $20,000 (on basis of separate return):	$ 1,090
Aggregate tax of husband & wife (on basis of separate	

returns): $ 3,050
Portion of 1992 tax shown on joint return attributable to husband (1,960/3,050 times 3,930): $ 2,526
Portion of 1992 tax shown on joint return attributable to wife (1,090/3,050) times 3,930): $ 1,404
AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE VIII DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM SEPARATE TO EITHER A JOINT RETURN OR MARRIED FILING SEPARATE (1) In the case of taxpayers who file a joint return for the taxable year and who filed separate returns for the preceding taxable year, the tax liability shown on the return for the preceding taxable year shall be the sum of both spouses tax liabilities for the preceding tax year.
AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE IX ESTIMATED TAX PAYMENTS - DIVORCE (1) If at the end of a tax year, a couple, who is divorced or legally separated, has filed joint estimated income tax payments, the joint payments will be split as follows:
(a) The joint estimated tax payments will be split equally; or
(b) As agreed by the two parties.
(2) If an agreement is reached by the two parties, a copy of the agreement showing the division of the payments signed by both parties must accompany both tax returns.
(3) The division of jointly filed estimated payments does not relieve the taxpayers from the underpayment penalty.
AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE X PAYMENT OF ESTIMATED TAX - DECEDENT (1) Joint estimated tax payments may not be made after the death of either spouse. The surviving spouse must recompute his estimated tax for the remainder of the year and file a separate payment for each remaining due date.
(2) In the case of a deceased taxpayer, payments of estimated tax are not required after the date of death.
(3) If a joint return is filed for the last taxable year with the deceased spouse, the joint estimated tax payments of the deceased spouse may be applied on the return.
(4) If separate returns are filed for the last taxable year of the deceased spouse, any jointly filed estimated tax payments must be split equally.
AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE XI NONRESIDENTS & PART-YEAR RESIDENTS (1) Nonresidents and part-year residents who did not have a Montana individual income tax filing requirement in the previous tax year are not required to file estimated taxes.
(2) Nonresidents, other than those in (1), who derive income from Montana are required to file estimated taxes.
(3) Part-year residents moving out of Montana, other than

those in (a), are required to file estimated taxes to cover the amount of income that is taxable to Montana.

(4) Part-year residents moving in or out of Montana are not considered to have a short taxable year unless they have a short taxable year on their federal return.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE XII ESTIMATED TAX UNDERPAYMENT PENALTY - WAIVER (1) The underpayment penalty may be waived if the taxpayer shows there is "reasonable cause" as provided in ARM 42.3.105.

(2) "Hardship" as provided in ARM 42.3.106 constitutes reasonable cause.

(3) The calculation of the estimated underpayment penalty must be made on forms prescribed by the department.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

RULE XIII TRUSTS, ESTATES, FIDUCIARIES & CONSOLIDATED PARTNERSHIP RETURNS (1) Trusts, estates and fiduciaries are required to file estimated tax payments and are subject to the underpayment penalties.

(2) Partners of a partnership that file a consolidated partnership return with Montana are subject to filing estimated tax payments.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

4. The Department is proposing to adopt the new rules because House Bill 14 was passed by the Special Session of the 52nd Legislature. The bill provides for mandatory estimated tax payments which provide that either 90% of the current years tax or 100% of the past years individual income tax must be paid to the Department during the tax year. Issues that need to be clarified through rules are the definition of tax liability, short tax years, reasonable extension periods, annualized taxpayers, changes in filing status and divorce.

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

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

no later than October 9, 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 August 31, 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 PUBLIC HEARING ON THE PROPOSED 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

TO: All Interested Persons:

1. This proposal was noticed with no hearing contemplated at page 1217 in MAR issue No. 11 on June 11, 1992. However, since the department has received a request for a hearing from the public, on October 6, 1992, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the repeal of ARM 42.31.110, adoption of new rule I, and amendment of ARM 42.31.107 and 42.31.131 relating to untaxed cigarettes under tribal agreements.

2. The proposed rule I, does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The department is proposing to repeal:

42.31.110 WHOLESALE/RETAIL PRICES found at page 42-3107 of the Administrative Rules of Montana.

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

4. 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 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

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

5. 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.

6. 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.

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

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

no later than October 9, 1992.

8. 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.211, 42.11.212, 42.12.102, 42.12.103, 42.12.104, 42.12.131, 42.12.141, 42.12.207, 42.12.313, 42.13.401; and NEW RULES I and II relating to the Liquor Division	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.11.211, 42.11.212, 42.12.102, 42.12.103, 42.12.104, 42.12.131, 42.12.141, 42.12.207, 42.12.313, 42.13.401; and NEW RULES I and II relating to the Liquor Division

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1992, the Department of Revenue proposes to amend ARM 42.11.211, 42.11.212, 42.12.102, 42.12.103, 42.12.104, 42.12.131, 42.12.141, 42.12.207, 42.12.313, and 42.13.401; and new rules I and II relating to the Liquor Division.

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

42.11.211 REGISTRATION OF REPRESENTATIVES (1) Any person acting as a representative of a vendor must be registered with the department by a vendor in accordance with the provisions of ARM 42.11.212 through 42.11.215 ~~and have been issued identification cards as provided for in ARM 42.11.232~~.

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

(d) not a resident of Montana ~~within 30 days of application for registration~~.

(3) remains the same.

~~(4) An application to register a representative must be accompanied by two recent unmounted photographs 1½ inches square, of the representative to be registered.~~

(5), (6), and (7) are renumbered (4), (5), and (6).

AUTH: 16-1-303, MCA; IMP: 16-3-103, MCA.

42.11.212 RESTRICTION ON NUMBER OF REPRESENTATIVES (1) remains the same.

~~(2) An identification card shall neither be issued to an applicant representative nor shall the application for a representative be approved if two identification cards have previously been issued for the vendor and are still outstanding. One of the previously issued identification cards must be returned to the liquor division before a new identification card may be issued unless the vendor has provided the liquor division with an acceptable explanation in writing showing why it is impossible or impractical to return the card.~~

AUTH: 16-1-303, MCA; IMP: 16-3-103, MCA.

42.12.102 SUPPORTING DOCUMENTATION -- PUBLIC CONVENIENCE AND NECESSITY (1) remains the same.

(a) any new retail ~~all-beverages~~ license including a 16-4-204, MCA, all-beverages license; or

(b) ~~a new resort retail all-beverages license; or~~

~~(c) a new retail on-premises beer license for use at a premises situated more than five miles from the nearest corporate city boundaries~~ a transfer of location of an existing licensed premises.

(2) remains the same

(3) The department will find that the evidence supports the public convenience and necessity of the application where it indicates that the issuance of the license will materially promote the public's ability to engage in the licensed activity. This determination involves an evaluation of a variety of criteria, including all together the business abilities and character of the applicant, the demand for services in the area to be served, the impact on existing retail alcoholic beverages licensees, and any adverse impact on the area to be served. No single factor is a necessary or sufficient indicator of public convenience and necessity. AUTH: Sec. 16-1-303 MCA; IMP, Sec. 16-4-105 and 16-4-203 MCA.

42.12.103 SUPPORTING DOCUMENTATION -- CORPORATE APPLICANTS (1) A corporate applicant applying for a retail on-premises consumption alcoholic beverages license must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in section 16-4-401(2), MCA.

(2) A corporate applicant applying for a retail off-premises consumption alcoholic beverages license must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in section 16-4-401(3), MCA.

(3) A corporate applicant applying for a license that permits the manufacture, importing or wholesaling of an alcoholic beverage must provide with its application a sworn statement by an office or director attesting that the corporation meets the licensing criteria in section 16-4-401(4), MCA.

~~(1)~~ (4) A corporate application other than one whose stock is listed on a national exchange or a corporation with more than 10 stockholders shall list:

(a) the names, dates of birth and social security numbers of all owners of the issued stock, directors and officers;

(b) the ~~amount~~ number of shares of stock owned by each stockholder; and

(c) the residence addresses of all stockholders, directors and officers.

AUTH: Sec. 16-1-303, MCA; IMP. Sec. 16-4-203, MCA.

42.12.104 ~~USE OF CENSUS DATA~~ ACTION TAKEN WITH CENSUS UPDATE (1) Upon receipt of the most recent census taken under the direction of congress or the most recent population estimates published by the bureau of the census, United States department of commerce, the department of revenue will determine the availability of any alcoholic beverage licenses subject to a quota system. The department will publish notice of increases in the availability of alcoholic beverages licenses subject to a quota limitation if the quota of licenses had previously been filled.

(2) In determining the availability of such licenses, the department will utilize only those boundaries that are recognized by the bureau of the census.

(3) The department will determine whether a license is available for a license applicant based on the verified census data in the department's possession on the date the department received the application except when the department has published a notice of availability of a license three months before or after receipt of the application, in which case, the verified census data in the department's possession on the date the notice is published shall be used. Census data is verified when the department has confirmation the federal census bureau has declared the census data to be official, the department has calculated the license quotas from the official census data, and the department has placed the revised quotas on file. AUTH: Sec. 16-1-303 MCA; IMP, 16-4-105, 16-4-106, 16-4-201, 16-4-203, and 16-4-502 MCA.

42.12.131 APPLICATION FOR LAST AVAILABLE LICENSE IN QUOTA AREA (1) When the liquor division receives an application for the last available license in a quota area, the following procedures apply:

(a) The applicant will be advised, in writing, that he has applied for the last available license and may choose to direct the license bureau to:

(i) publish notice of the last available license and set a final date for receipt of all applications for that license; or

(ii) continue processing the application with the knowledge that if another application is received before his application is approved the department will publish notice of the last available license and set a deadline for receipt of all applications for that license.

~~(1)~~ (b) ~~a~~All applications ~~timely~~ received at the liquor division office or postmarked on or before the final date for receipt of all applications will be considered; and

~~(2)~~ (c) ~~w~~When more than one application is filed, a public hearing shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

AUTH: 16-1-303, MCA; IMP: 16-4-105 and 16-4-201, MCA.

42.12.141 CORPORATE LICENSES (1) No alcoholic beverages license shall be issued to a Montana corporation unless the following requirements are met:

~~(1)~~ (a) The corporation was organized and has existed as a Montana corporation or has been authorized to do business in Montana ~~for at least 30 days~~ prior to making application for an alcoholic beverages license~~.~~; and

~~(2)~~ (b) The corporate application must be accompanied by a copy of the corporation's certificate of incorporation issued by the secretary of state.

AUTH: 16-1-303, MCA; IMP: 16-4-401, MCA.

42.12.207 APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES (1) remains the same.

(2) If, upon investigation, the department determines the applicant is qualified to own a license and it appears that the proposed premises, based on sufficient evidence provided by the applicant, meets all criteria for suitability, the department may enter a final agency decision conditionally approving the application. The conditional approval is subject to a final inspection of the completed premises conducted by department investigative personnel, state or local health officials, ~~or~~ state or local building codes personnel and state or local fire code officials.

(3) through (7) remain the same.

AUTH: 16-1-303, MCA; IMP: 16-4-104, 16-4-106, 16-4-201, 16-4-402, and 16-4-404, MCA.

42.12.313 WINE OR BEER TASTINGS (1) ~~Any person, association, or corporation conducting a wine tasting shall, in the discretion of the liquor division, be entitled to conduct a wine tasting for the general public under the following conditions:~~

~~(a) The wine tasting shall be conducted on premises licensed for the sale of wine.~~

~~(b) The wine furnished shall be purchased from the Montana state liquor store. Wine may be furnished by a winery or winery representative as provided by and subject to the limitations set forth in ARM Title 42, chapter 11, sub chapter 2.~~

~~(c) The applicant shall advise the liquor division in writing at least 10 days beforehand of the date, place, name and address of the sponsor, and manner in which the wine tasting shall be conducted, including the brand names of the wines to be furnished.~~ Wine tastings must be conducted by a retail licensee, special permittee or catering permittee.

(2) In no case can a wine distributor, a beer wholesaler, a winery\wine importer or a brewer\beer importer conduct a wine tasting other than a domestic winery as allowed under 16-3-411, MCA.

~~(2)~~ (3) This rule shall not apply to wine tastings which are held in a private home wherein no consideration, remuneration, contribution, donation, gift, or any other money

or thing of value is solicited or charged for entry or attendance and which do not violate the provisions of 16-6-306, MCA.

AUTH: 16-1-303, MCA; IMP: 16-4-105 MCA.

42.13.401 IMPORTATION OF WINE (1) and (2) remain the same.

(3) Each winery or importer registration must be:

(a) submitted on forms supplied by the liquor division;

(b) accompanied by a $25 fee; and

(c) renewed annually on or before ~~July~~ October 1.

(4) Any winery or importer failing to renew ~~or not actively engaged in business in Montana for a period of one year~~ will be subject to cancellation or suspension as provided in 16-4-107, MCA.

AUTH: 16-1-303, MCA; IMP: 16-4-107, MCA.

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

RULE I SEVEN DAY CREDIT LIMITATION (1) A Montana brewer\beer importer license, a beer wholesaler license, a Montana winery\wine importer registration or a table wine distributor license will be suspended or revoked if credible evidence demonstrates that a brewer\beer importer, a winery\wine importer, a wholesaler or distributor extended credit to a retail licensee for more than seven days.

(2) A retailer's license will be suspended or revoked if credible evidence demonstrates that the retailer accepted credit extended by a brewer\beer importer or a beer wholesaler for more than seven days for the purchase of beer.

(3) The first day of the seven day credit period begins at 8:00 a.m. on the day after the delivery.

(4) Criteria which demonstrates credit has been extended are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler do not have documentation of payment;

(c) wholesaler has been without payment for more than seven days; and

(d) wholesaler does not have documentation of efforts to collect payment; or

(e) (a), (b), (c) and the wholesaler has no documentation to show further product delivery was terminated.

(5) Criteria which demonstrates credit has been accepted are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler do not have documentation of payment;

(c) wholesaler has been without payment for more than seven days;

(d) product has not been returned by retailer.

AUTH: 16-1-303, MCA; IMP: 16-3-243 and 16-3-406, MCA.

RULE II CLOSING HOURS DUE TO CHANGE TO OR FROM DAYLIGHT SAVINGS TIME (1) Hours of operation change twice yearly due to daylight savings time. The change in time will occur at 2:00 a.m., therefore:

(a) In the fall the establishment must close at 2:00 a.m. and then set the clock back to 1:00 a.m.; and

(b) In the spring the establishment must close at 2:00 a.m. and then set the clock forward to 3:00 a.m.

AUTH: 16-1-303, MCA; IMP: 16-3-304, MCA.

4. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments and adoptions of the above rules are the result of this review for the Liquor Division.

New rule I is proposed to make it clear there is a distinction in the circumstances under which a retailer is subject the the 7 day credit limitation when receiving product from either a beer wholesaler or a wine distributor. The rule explains the criteria that demonstates when the wholesaler has extended credit to the retailer and when the retailer has accepted credit from the wholesaler, establishing a violation of the 7-day credit law. It also defines the day and time of the beginning of the 7 days and provides the penalty for violating the 7-day credit law.

New rule II is proposed to explain when a licensee must close his establishment during the year when the time changes for daylight savings time. In the past prior to the time change, the license bureau has received many calls inquiring about when an establishment selling alcoholic beverages must close. The rule is proposed to clarify this question.

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

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

no later than October 9, 1992.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than October 9, 1992.

7. 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.112, 42.15.113, 42.15.305, 42.15.309, 42.15.311, 42.15.314, 42.15.315, 42.15.321, 42.15.322, 42.15.431 and REPEAL of ARM 42.15.504 and 42.15.505 relating to Income Tax Returns and Tax Credit	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.15.112, 42.15.113, 42.15.305, 42.15.309 42.15.311, 42.15.314, 42.15.315 42.15.321, 42.15.322, 42.15.431 and REPEAL of ARM 42.15.504 and 42.15.505 relating to Income Tax Returns and Tax Credit

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1992, the Department of Revenue proposes to amend ARM 42.15.112, 42.15.113, 42.15.305, 42.15.309, 42.15.311, 42.15.314, 42.15.315, 42.15.321, 42.15.322, 42.15.431 and repeal of ARM 42.15.504 and 42.15.505 relating to income tax returns and tax credit.

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

42.15.112 NONRESIDENT MILITARY PERSONNEL (1) Members of the Armed Forces of the United States who are not Montana residents and who are living in this state solely by reason of compliance with military orders are not subject to tax on their compensation for military service. However, such persons are subject to tax on any other income derived from or attributable to sources within Montana and are subject to the same gross income filing requirements as any other nonresident described in 15-30-142(1), MCA.

AUTH: 15-30-305 MCA; IMP: 15-30-101 MCA.

42.15.113 INTEREST INCOME EXCLUSION (1) Pursuant to 15-30-111, MCA, interest income earned by a taxpayer who is age 65 or over is exempt from Montana income tax for the following amounts and filing requirements:

(a) remains the same.

(b) if married and a joint return is filed, the exclusion cannot exceed $1600; this exclusion applies even if only one spouse is age 65 or over;

(c) and (d) remain the same.

(2) The exclusion cannot exceed the amount reported as income. ~~The exclusion under subsection (1)(b) applies even if only one spouse is age 65 or over.~~

AUTH: 15-30-305, MCA; IMP: 15-30-111 MCA.

42.15.305 TRUST AND ESTATE RETURNS (1) remains the same.

(2) The return for an estate or a trust is to be made on

the Montana fiduciary income tax return form and may not be made on the federal form 1041. The form must include a statement showing each beneficiary's distributive share of income, regardless of whether or not distributed as of the close of the taxable year. ~~The return must be made on the Montana Fiduciary Income Tax Return form and may not be made on the Federal 1041 form.~~

(3) A fiduciary return for an estate or trust is not entitled to a standard deduction.

AUTH: 15-30-305 MCA; IMP: 15-30-135 MCA.

42.15.309 MONTANA MODIFIED ADJUSTED GROSS INCOME (1) remains the same.

(2) Montana modified adjusted gross income shall be the taxpayer's federal modified adjusted gross income as calculated by using section 86 of the internal revenue code ~~and in addition shall include federal refunds received~~.

(3) In addition Montana modified adjusted gross income shall include:

(a) taxable federal refunds received;

(b) interest on all state and county municipal bonds;

(c) interest on U.S. obligations;

(d) any other income taxable under 15-30-111(1), MCA.

~~(3)~~(4) Montana modified adjusted gross income does not include the following:

(a) Montana state refunds;

(b) exempt Montana retirement income;

(c) part-year resident income not earned in Montana; ~~and~~

(d) any tier one railroad retirement benefits~~.~~;

(e) the Montana capital gain exclusion; and

(f) any other income not taxable under 15-30-111(2), MCA, except for interest received from U.S. obligations.

~~(4)~~(5) Part-year resident's social security benefits will be taxable only for the time they are Montana residents.

~~(5)~~(6) The part-year resident's base amount must be prorated according to the percentage of Montana income to the federal income before addition of any taxable social security benefits.

~~(6)~~ (7) A married person filing separately on the same form must claim $16,000, one-half of the base amount as allowed by section 86 of the internal revenue code.

~~(7)~~ (8) Nonresident's social security benefits are not taxable.

AUTH: 15-30-305 MCA; IMP: 15-30-111 MCA.

42.15.311 INFORMATION RETURN (1) Information returns are to be made on ~~either~~ a copy of the appropriate federal information return (form 1099 series, etc.) ~~W-2P or Form 1-A, which may be secured by directing a request to the Department of Revenue, Helena, Montana, 59620.~~ Upon approval from the department, computer generated tapes and diskettes may be substituted for the forms.

(2) Information returns are due on or before the 15th day of April following the close of the calendar year with respect to which payments made are being reported. The returns are to be filed with the Department of Revenue, Mitchell Building, Helena, Montana 59620. ~~The information~~ rReturns filed on paper forms are to be accompanied by ~~State Form 1,~~ a copy of federal form 1096 ~~which summarizes~~ summarizing the information being reported ~~by the information agent~~ to the department. Information returns filed via magnetic media are to be accompanied by a copy of federal form 4804/4802 summarizing the information submitted to the department.

(3) Distributions to recipients with a Montana address from pension, profit sharing, stock bonus, or annuity plans, deferred compensation plans, an IRA or commercial annuity program must be reported to the department on a federal form 1099, ~~W-2P or Form 1-A~~.

AUTH: 15-30-305 MCA; IMP: 15-30-301 MCA.

42.15.314 CHANGES IN FEDERAL RETURNS OR TAXES (1) remains the same.

(2) In addition, the taxpayer will be liable for the penalties provided for under 15-30-321 (2) & (3), MCA.

AUTH: 15-30-305 MCA; IMP: 15-30-304 MCA.

42.15.315 ORIGINAL RETURN DEFINED (1) through (4) remain the same.

(5) Late file and late pay penalties are assessed as required under 15-30-321, MCA on the correct amount due on the original return.

(6) The filing of an amended return by a taxpayer will not change the calculation of the late file and late pay penalties on the original return.

(7) If required by 15-30-321, MCA, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under 15-30-149, ~~MCA~~ or 15-30-142, MCA as of the due date in (1) above.

(8) remains the same.

(9) If an extension of time to file has been made and the return was not filed before the extension deadline, the return is subject to late file and late pay penalties.

AUTH: 15-30-305 MCA; IMP: 15-30-321 and 15-30-149 MCA.

42.15.321 JOINT RETURNS (1) A joint return may be filed even though one of the spouses has no income or deductions. However, a joint return is not permitted if the husband and wife have different taxable years or if both spouses have different states of domicile. A joint return must include all income and deductions of both spouses. Both the husband and the wife must sign the return, and both are jointly and severally liable for the tax.

(2) remains the same.

AUTH: 15-30-305 MCA; IMP: Sec. 15-30-142 MCA.

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS (1) through (3) remain the same.

(4) A married couple who have different taxable years or have different states of domicile are required to file on separate income tax forms.

AUTH: 15-30-305 MCA; IMP: 15-30-142 MCA.

42.15.431 CREDIT FOR INVESTMENT FOR ENERGY CONSERVATION (1) through (5) remain the same.

(6) A credit is not allowed for the purchase and installation of new equipment or appliances such as hot water heaters, furnaces, air conditioners, etc.

~~(6)~~(7) This credit must be claimed on Form 2C, which may be obtained from the Montana Department of Revenue, Mitchell Building, Helena, Montana 59620. The completed form must be attached to the taxpayer's return for the year in which the credit is claimed.

AUTH: 15-32-105 MCA; IMP: 15-32-105 MCA.

3. The rules proposed to be repealed are as follows:

42.15.504 INVESTMENT CREDIT as found on page 42-1582 of the Administrative Rules of Montana, is being repealed in its entirety.

AUTH: 15-30-305 MCA; IMP: 15-30-162 MCA.

42.15.505 BUSINESS INVENTORY TAX CREDIT as found on page 42-1582.2 of the Administrative Rules of Montana, is being repealed in its entirety.

AUTH: 15-30-305, MCA; IMP: Section 7, chap. 613, Laws, 1981.

4. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments and adoptions of the above rules are the result of this review for chapter 15 of the Income and Miscellaneous Tax Division.

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

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

no later than October 9, 1992.

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

later than October 9, 1992.

7. 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.31.404 relating to emergency telephone service fee	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.31.404 relating to emergency telephone service fee

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1992, the Department of Revenue proposes to amend ARM 42.31.404 relating to emergency telephone service fee.

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

42.31.404 RETENTION OF RECORDS (1) Records and other supporting data used to prepare the quarterly returns must be maintained for a period of ~~two~~ five years from the due date of the return or ~~two~~ five years from the date of payment, whichever is later.

AUTH: 10-4-203, 10-4-212, and 15-1-201(1) MCA; IMP: 10-4-203, 10-4-207, and 10-4-212, MCA.

3. Amendments to ARM 42.31.404 are necessary because of the enactment of 10-4-207, MCA, which provides for a five year statute of limitations for filing returns. Therefore the records must be retained for five years rather than two years.

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

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

no later than October 9, 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 October 9, 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.16.104 relating to Interest on Unpaid Tax	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.16.104 relating to Interest on Unpaid Tax
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1992, the Department of Revenue proposes to amend ARM 42.16.104 relating to interest on unpaid tax.

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

42.16.104 INTEREST ON UNPAID TAX (1) ~~(a) In the case of taxable years which ended prior to December 31, 1962, interest accrues on the tax unpaid at the rate of 1% per month.~~

~~(b) In the case of taxable years which ended on or after December 31, 1962, but before December 31, 1968, interest accrues on the tax unpaid at the rate of 6% per annum.~~

~~(c)~~ Effective with taxable years ending on and after December 31, 1968, if the tax or any part thereof is not paid by the 15th day of the 4th month following the close of the taxable year, whether by reason of extension granted or otherwise, interest accrues on the amount of tax unpaid at the rate of 9% per annum.

(2) through (4) remain the same.

AUTH: 15-30-305 MCA; IMP: 15-30-142 MCA.

3. Section 2-4-314, MCA, requires each agency to conduct a biennual review of its rules. The amendment of the above rule is the result of this review of chapter 16 for the Income and Miscellaneous Tax Division.

The first two subsections of the rule state the amount of interest that accrues on tax returns prior to 1968. Since the exam functions do not go back that far, those subsections are being deleted.

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

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

no later than October 9, 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 October 9, 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.112 and 42.17.131 relating to Withholding	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.17.112 and 42.17.131 relating to Withholding

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1992, the Department of Revenue proposes to amend ARM 42.17.112 and 42.17.131 relating to withholding.

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

42.17.112 EMPLOYER REGISTRATION (1) remains the same.

(2) No registration is considered complete unless:

(a) ~~t~~The federal employer identification number appears on the application; and

(b) In the case of a sole proprietor or partnership, the social security number(s) of the principal(s) appear(s) on the application. Not being registered does not relieve an employer from withholding and/or payroll tax reporting requirements.

AUTH: 15-30-305 MCA; IMP: 15-30-209 and 39-71-2503 MCA.

42.17.131 WITHHOLDING ALLOWANCES (1) The employee's withholding allowances for purposes of determining the amount of tax to be withheld are deemed to be, unless the department has determined otherwise, the same as or less than those claimed on ~~line 4 of~~ the I.R.S. Form W4 withholding allowance certificate, (on the line stating "Total number of allowances you are claiming"), furnished by the employee to his employer for federal withholding tax purposes. Accordingly, the department of revenue does not provide forms for this purpose.

(2) remains the same.

(3) If an employee fails or refuses to provide ~~his allowable~~ the number of allowances on ~~line 4 of~~ Form W-4, (line stating "Total number of allowances you are claiming"), the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to the ~~line 4 of~~ "Total number of allowances you are claiming", on Form W-4 for federal purposes, including federal redeterminations of allowances automatically changes the number of allowances for Montana purposes unless the allowances have been set at a fixed number by the department under subsection (5) below.

(5) through (7) remain the same.

AUTH: 15-30-305 MCA; IMP: 15-30-202 MCA.

3. Section 2-4-314, MCA, requires each agency to conduct

a biennual review of its rules. The amendments of the above rules are the result of this review of chapter 17 for the Income and Miscellaneous Tax Division.

The amendment to ARM 42.17.112 is necessary to provide social security numbers of sole proprietors and partners conducting business in Montana.

The amendment to ARM 42.17.131 is necessary because the federal form W-4 has been changed and the line number is incorrect.

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

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

no later than October 9, 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 October 9, 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 August 31, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.402, 42.19.1102, 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1211, 42.19.1212, 42.19.1221, 42.19.1222, 42.19.1235 relating to Property Taxes for Low Income Property, Energy Related Tax Incentives, and New Industrial Property	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.19.402, 42.19.1102, 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1211, 42.19.1212, 42.19.1221, 42.19.1222 42.19.1235 relating to Property Taxes for Low Income Property, Energy Related Tax Incentives, and New Industrial Property

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1992, the Department of Revenue proposes to amend ARM 42.19.402, 42.19.1102, 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1211, 42.19.1212, 42.19.1221, 42.19.1222, 42.19.1235 relating to property taxes for low income property, energy related tax incentives, and new industrial property.

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

42.19.402 INFLATION ADJUSTMENT FOR LOW INCOME PROPERTY TAX RELIEF (1) Section 15-6-134(2)(b), MCA, provides property tax relief to low income homeowners. The section requires the department to annually adjust the income schedules used to determine the eligibility and the amount of relief to account for the effects of inflation.

(2) The calculation of the inflation adjustment ~~and the new income schedules are~~ shall be made on a yearly basis as follows:

~~(2)~~ (a) Calculation of inflation factor: Section 15-6-134(2)(ii), MCA, specifies that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce, is to be used in the calculation of the inflation factor.

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

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t\ o}}$$

where:

IF_t equals the inflation factor for property tax year t,

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

PCE_{t_8} is the implicit price deflator for personal consumption expenditures for the second quarter of 1986.

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

~~$$IF_{88} = \frac{PCE_{87}}{PCE_{86}} = \frac{123.4}{113.6} = 1.08979$$~~

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

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

The base year income schedule is below.

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

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

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

~~1989 Income Schedules~~

Single Person			Married Couple			Percentage Multiplier
$ 0	-	$1,090	$ 0	-	$1,308	0%
1,091	-	2,180	1,309	-	2,615	10%
2,181	-	3,269	2,616	-	3,923	20%

3,270	4,359	3,924	5,231	30%
4,360	5,449	5,232	6,539	40%
5,450	6,539	6,540	7,846	50%
6,540	7,629	7,847	9,154	60%
7,630	8,718	9,155	10,462	70%
8,719	9,808	10,463	11,770	80%
9,809	10,899	11,771	13,077	90%

AUTH: 15-1-201 MCA; IMP: 15-6-134 and 15-6-151 MCA.

42.19.1102 TREATMENT OF GASOHOL PRODUCTION FACILITIES (1) ~~Facilities for the production of gasohol do not receive a property tax exemption under 15-6-201, MCA, but may receive a classification under 15-6-135, MCA, as class 5 property.~~

~~(2) Anhydrous ethanol production facilities that produce the ethanol from solid or organic wastes may receive an exemption under 15-6-201, MCA, as well as classification as class 5 property under 15-6-135, MCA. Anhydrous ethanol production facilities utilizing grain to produce the ethanol are not entitled to exemption under 15-6-201, but may receive a classification as class 5 property under 15-6-135, MCA.~~ Anhydrous ethanol production facilities utilizing solid or organic wastes to produce ethanol may qualify for a ten year exemption from property taxation under 15-6-201, MCA. They also may qualify as taxable class 5 property under 15-6-135, MCA, during production and for the first three years of operation.

(2) Anhydrous ethanol production facilities utilizing grain to produce ethanol are excluded from the ten year exemption from property taxation under 15-6-201, MCA. It is not a form of nonfossil energy generation specified under 15-32-102, MCA. They may, however, qualify as taxable class 5 property under 15-6-135, MCA, during production and for the first three years of operation.

(3) Gasohol production plants which perform a mixing function of the ingredient gasoline and the ingredient ethanol do not qualify for a ten year exemption from property taxation under 15-6-201, MCA. It is not a form of nonfossil energy generation specified under 15-32-102, MCA. They may, however, qualify as taxable class 5 property under 15-6-135, MCA, during construction and for the first three years of production.

AUTH: 15-1-201 MCA; IMP: 15-6-135 and 15-6-201 MCA.

42.19.1201 TREATMENT OF AGRICULTURAL PROCESSING (1) ~~The exclusion of property used in agriculture under 15-6-135(5), MCA, does not exclude property used in the processing of agricultural products but only excludes property used in the production of the agricultural commodities themselves. Consequently, agricultural processing property is eligible for treatment as new industrial property.~~ Section 15-6-135(5), MCA, precludes property used in the production of agricultural commodities from being eligible as new industry property.

(2) Agricultural processing property is eligible for treatment as new industrial property.

AUTH: 15-1-201 MCA; IMP: 15-6-135 MCA.

42.19.1202 TREATMENT OF PROPERTY NOT USED AS PART OF THE NEW INDUSTRY (1) remains the same.

(2) ~~The raw material to be used or processed by a new industrial plant, as well as the end product, at any stage of treatment, is not considered to be new industrial property.~~ Raw materials, in-process, and finished product "business inventories" are not considered new industrial property and are exempt from property taxation under 15-6-202(5), MCA. Similarly, all materials, ~~inventory,~~ supplies~~,~~ and merchandise held for sale or used by a new industrial plant is not considered to be new industrial property.

AUTH: 15-1-201 MCA; IMP: 15-6-135, 15-6-152, 15-24-1401 and 15-24-1402 MCA.

42.19.1203 TREATMENT OF AIR AND WATER POLLUTION CONTROL EQUIPMENT (1) Air and water pollution control plant property and equipment, as defined in 15-6-135, MCA, is not considered to be new industrial property but is already treated as taxable class 5 property under the provisions of 15-6-135(1)(b) and (2), MCA.

(2) ~~A new industry installing air and water pollution control equipment must make separate application for such equipment in order to receive classification under 15-6-135(1)(b), MCA.~~ In order to receive taxable class 5 classification under 15-6-135(1)(b), MCA, a new industry installing pollution control plant property and equipment must apply to and receive pollution control certification from the department of health and environmental sciences.

AUTH: 15-1-201 MCA; IMP: 15-6-135 MCA.

42.19.1211 PERIOD OF CLASSIFICATION AS NEW INDUSTRIAL PROPERTY (1) The taxable classification of all qualifying new industry property ~~made by a new industry becomes operative as to all qualifying property~~ becomes effective beginning on the first assessment date falling on or after the initial commencement date ~~of commencement~~ of operations ~~and continues for each taxable year thereafter for which the assessment date falls within the 3-year period beginning on the date of commencement of such operations.~~

(2) ~~Once the 3-year period begins to run, starting on the date operations commence, the period runs to its expiration unaffected by additions of property to the industry use, expansion of operations, changes in operations (other than changes that would disqualify the unit from classifications as new industry property), or cessation or curtailment of operations.~~ The new industry property taxable classification runs for a three consecutive year period after commencement of operations. This period runs to its expiration date uninterrupted by additions of property to the new industry endeavor, expansion of operations, changes of operations (other

than changes that would disqualify the new industry endeavor from classification as new industry property) or cessation or curtailment of operations.

(3) remains the same.

(4) For all property other than migratory personal property, ~~T~~the taxable year is considered to be the calendar year~~, and the a~~Assessment date within any given calendar year is January 1. ~~for all qualifying property other than migratory personal property. Migratory personal property coming into Montana after the regular assessment date has an assessment date on the date the property comes to rest and becomes a part of the general property within any county of the state, but not less than 30 days after entry into Montana.~~

(5) Migratory personal property that enters Montana after the regular assessment date and comes to rest and becomes a part of the general property within any county of the state, has an assessment date falling on the date the property originally came into the state. This property shall be taxed from the time it enters the state until the end of the year. For purposes of assessment year proration on this migratory personal property, any part of a month is considered a month of residency.

AUTH: 15-1-201 MCA; IMP: 15-6-135 and 15-6-152 MCA.

42.19.1212 COMMENCEMENT OF OPERATIONS (1) The date of commencement of operations is the date when the new industry ~~first~~ endeavor begins to function ~~as an organized unit and for its primary purpose, even if the operation is only for limited production or upon a limited scale~~ for its designed purpose as an organized production unit. Production at a limited level or scale constitutes production.

(2) Initial test batch runs for machinery adjustment purposes are considered part of the initial cost of installing the machinery in the production process and does not constitute production.

AUTH: 15-1-201 MCA; IMP: 15-6-135 and 15-6-152 MCA.

42.19.1221 OPINION LETTERS (1) Upon written request and prior to formal application under ARM 42.19.1222, the department will considers the status of a proposed operation with respect to treatment as new industry property. The department after review of the potential applicants written submission issues an opinion letter as to classification of the property in question.

(2) remains the same.

AUTH: 15-1-201 MCA; IMP: 15-6-135 and 15-6-152 MCA.

42.19.1222 APPLICATION FOR SPECIAL CLASSIFICATION (1) A person or business desiring to have property classified as new industry property shall make written application for such classification to the department of revenue on or before May 1 of the year for which the classification is sought. The application is to contain a clear and concise statement of the facts that entitle the applicant's property to receive

classification as new industrial property.

(2) The application shall contain as a minimum the following information:

(a) through (c) remain the same.

(d) the principal place of business and principal business address of the applicant and the principal place of business and business address of the contemplated ~~"new industry"~~ endeavor;

(e) remains the same.

(f) a complete list of all properties (perspective properties) of the applicant within the state of Montana for which application is made, giving the legal description of all real property and describing with certainty the personal property and the location thereof, including the original cost and date of acquisition of personal property;

(g) and (h) remain the same.

(i) the name and address of each person, firm, or corporation from which the applicant has or intends to acquire property for use in its qualifying operation and for which application is made or for which the application if granted will afford classification as new industry property;

(j) an exact description of the nature of the business (perspective business), economic, or industry operations or activities ~~not~~ conducted by the applicant, related persons or business units, or any controlling officers, directors, incorporators, partners, shareholders, investors, or any predecessor thereof;

(k) through (l)(iv) remain the same.

(3) through (5) remain the same.

AUTH: 15-1-201 MCA; IMP: 15-6-135, 15-6-152, 15-24-1401 and 15-24-1402 MCA.

42.19.1235 TAX INCENTIVE FOR NEW AND EXPANDING INDUSTRY (1) through (6) remain the same.

(7) An industrial plant which qualifies for classification as new industrial property under 15-6-135, MCA, cannot qualify for a tax incentive pursuant to 15-24-1402, MCA, as new or expanding industry property defined in 15-24-1401(3), MCA.

(8) and (9) remain the same.

AUTH: 15-1-201 MCA; IMP: 15-6-135, 15-24-1401 and 15-24-1402 MCA.

3. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments of the above rules are the result of this review for the Property Assessment Division.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building

Helena, Montana 59620
no later than October 9, 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 October 9, 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 August 31, 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 PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.15.116 relating to Net Operating Loss Computations

TO: All Interested Persons:

1. On October 7, 1992, at 9:00 a.m., a public hearing will be held in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.15.116, relating to net operating loss computations.

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

42.15.116 SPECIAL MONTANA NET OPERATING LOSS COMPUTATIONS

(1) remains the same.

(2) ~~For Montana individual income tax purposes, the long term capital gain deduction which must be added back to arrive at the net operating loss under section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, is that portion of the long term capital gain deduction attributable to the Montana income or loss.~~ The capital gain deduction taken under 15-30-110 MCA must ~~also~~ be added back to arrive at the Montana net operating loss.

(3) through (5) remain the same.

(6) To determine the portion of the federal income tax and motor vehicle fee attributable to income from a trade or business, the net income from the trade or business must be divided by ~~the~~ Montana adjusted gross income to arrive at a percentage. The percentage is multiplied by the federal tax or motor vehicle fee. When calculating the federal tax attributable to trade or business income, the total income figures used for the computation must be for the year the federal tax was incurred.

(7) remains the same.

(8) If a taxpayer elects to waive the carryback of the net operating loss, the election must be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be irrevocable for such taxable year.

AUTH: 15-30-305 MCA; IMP: 15-30-117 and 15-30-110 MCA.

3. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendment of the above rule is the result of this review of chapter 15 for the Income and Miscellaneous Tax Division.

This rule is also amended to clarify that the business income associated with the federal tax deducted on the NOL has to be included in the Montana adjusted gross income. The rules

state that the waiver of the carryback period has to be included on the loss year which is identical to the federal statute. Also, this change deletes the addition of the federal capital gain exclusion since the 1986 Tax Reform Act did away with that deduction.

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

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

no later than October 9, 1992.

5. 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 August 31, 1992.

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

In the matter of the amendment of rules 46.10.305, 46.10.402, 46.10.403 and 46.10.505 pertaining to AFDC standards of assistance	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.305, 46.10.402, 46.10.403 and 46.10.505 PERTAINING TO AFDC STANDARDS OF ASSISTANCE

TO: All Interested Persons

1. On October 1, 1992, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.10.305, 46.10.402, 46.10.403 and 46.10.505 pertaining to AFDC standards of assistance.

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

46.10.305 SPECIAL HOUSEHOLDS Subsections (1) and (1)(a) remain the same.

(2) A stepparent household is one in which ~~the spouse by legal or common-law marriage is neither the natural nor adoptive parent of the children~~ a parent receiving an AFDC assistance grant for a child or children is married by either a ceremonial or common-law marriage to a person who is not the natural or adoptive parent of at least one of the children for whom assistance is being received. A dual stepparent household is one in which two persons married to each other by either a ceremonial or common-law marriage each have a child or children for whom he or she receives AFDC assistance who is not the natural or adoptive child or children of his or her spouse.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

46.10.402 STANDARD OF ASSISTANCE AND ASSISTANCE UNIT

(1) Standards of assistance are used to determine when need exists with respect to income for any person who applies for or receives assistance. ~~Three~~ Two sets of assistance standards are used. The gross monthly income standard sets the level of gross monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to be or continue to be income eligible for AFDC. The net monthly income standard sets the level of net monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to be or continue to be income eligible for AFDC. The net monthly income standard represents the ~~requirements that~~

minimum dollar amount the ~~individual or group of individuals needs~~ assistance unit requires for basic ~~subsistence~~ needs (food, clothing, shelter, ~~and other essentials~~ personal care items, and household supplies). ~~The benefit standard sets the level of net monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to receive or continue to receive an AFDC grant. However, if the grant amount is for less than ten dollars ($10), no payment check will be issued. The benefit standard represents the amount of money an individual or group of individuals receives for basic subsistence other than food (clothing, shelter, and other essentials).~~ Assistance standards are implemented uniformly throughout the state, and are applied to applicants and recipients on the basis of size of assistance units.

(2) An assistance unit is composed of ~~an individual, or the~~ persons whose needs are met by the grant amount~~,~~ who form a family group, and all of whom meet the requirements for AFDC. Parents and all minor siblings living with the dependent child must be included in the assistance unit unless the individual ~~is an SSI beneficiary or the child's stepbrother or stepsister.~~ fails to meet nonfinancial criteria. A separate grant amount shall be computed for each assistance unit regardless of the number of units in a household with the exception of a dual stepparent household as defined in ARM 46.10.305. Dual stepparent assistance units must be combined as one and issued one grant. ~~Each assistance unit is entitled to a grant amount based on the full benefit standard for an assistance unit of its size even if other assistance units live in the same household.~~

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsection (1) remains the same.

(2) Monthly gross income as defined in ARM 46.10.505~~,~~ ~~after the application of the exclusions and disregards specified in ARM 46.10.506, 508, 510 and 512,~~ is compared to ~~tested against~~ the gross monthly income (GMI) standard~~,~~ and, after specified disregards, to the net monthly income (NMI) standard~~,~~ ~~, and the benefit standard.~~ If the assistance unit's gross income exceeds the GMI standard or their net income exceeds the NMI standard, the assistance unit is ineligible for assistance. At application, ~~these tests are applied~~ income is compared to the standards prospectively using income reasonably expected to be received in the first two benefit months. After the initial two benefit months, subsequent payments are computed retrospectively based on income actually received in the budget month. If income is reported or discovered after benefits have been issued, this income is ~~tested~~ compared to the standards retrospectively in the budget month.

Monthly income is compared to the full standard even though the payment may only cover part of the month. If monthly income exceeds ~~any of~~ either the GMI or NMI standards ~~(GMI, NMI or benefit standards)~~, the assistance unit is not eligible for any part of the benefit month. The assistance unit may also be ineligible as provided in subsection (3) of this rule.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 540	$ 196
2	731	~~317~~ 316
3	919	~~432~~ 433
4	1,108	549
5	1,297	657
6	1,486	759
7	1,676	~~861~~ 860
8	1,865	955
9	1,954	1,043
10	2,041	1,130
11	2,118	~~1,207~~ 1,206
12	2,196	~~1,283~~ 1,284
13	2,263	1,351
14	2,327	~~1,416~~ 1,415
15	2,388	~~1,477~~ 1,478
16	2,442	~~1,531~~ 1,532

Subsections (2)(b) through (3)(c) remain the same.

(4) A maximum payment amount is set for each size assistance unit. An assistance unit receives ~~the full amount of the benefit~~ an amount equal to the net monthly income standard less net monthly income ~~which~~ or the maximum payment amount, whichever is less. This amount is prorated if eligibility is for less than a full month. If the grant amount is less than ten dollars ($10), no payment check will be issued. ~~From this amount r~~Recoveries will be taken from this amount for prior overpayments.

(a) ~~Benefit standards~~ Maximum payment amounts to be used when adults are included in the assistance unit are compared ~~with~~ to the difference between the assistance unit's net monthly income and the net monthly income standard defined in ARM 46.10.505.

~~BENEFIT STANDARDS~~ MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	~~$ 238~~ 229	~~$ 7.93~~ 7.63	~~$ 86~~ 83	~~$ 2.87~~ 2.77
2	~~322~~ 310	~~10.73~~ 10.33	~~139~~ 134	~~4.67~~ 4.47
3	~~405~~ 390	~~13.50~~ 13.00	~~191~~ 184	~~6.33~~ 6.13
4	~~488~~ 470	~~16.27~~ 15.67	~~242~~ 233	~~8.07~~ 7.77
5	~~571~~ 550	~~19.03~~ 18.33	~~289~~ 279	~~9.65~~ 9.30
6	~~654~~ 630	~~21.80~~ 21.00	~~334~~ 322	~~11.13~~ 10.73
7	~~738~~ 711	~~24.60~~ 23.70	~~379~~ 365	~~12.63~~ 12.17
8	~~822~~ 791	~~27.40~~ 26.37	~~421~~ 405	~~14.03~~ 13.50
9	~~861~~ 829	~~28.70~~ 27.63	~~460~~ 443	~~15.33~~ 14.77
10	~~899~~ 866	~~29.97~~ 28.87	~~498~~ 480	~~16.60~~ 16.00
11	~~933~~ 899	~~31.10~~ 29.97	~~531~~ 512	~~17.73~~ 17.07
12	~~967~~ 932	~~32.23~~ 31.07	~~566~~ 545	~~18.83~~ 18.17
13	~~997~~ 960	~~33.23~~ 32.00	~~595~~ 573	~~19.83~~ 19.10
14	~~1,025~~ 988	~~34.17~~ 32.93	~~623~~ 601	~~20.80~~ 20.03
15	~~1,052~~ 1,013	~~35.07~~ 33.77	~~651~~ 627	~~21.70~~ 20.90
16	~~1,076~~ 1,036	~~35.87~~ 34.53	~~675~~ 650	~~22.50~~ 21.67

(b) ~~Benefit standards~~ Maximum payment amounts to be used when no adults are included in the assistance unit are compared ~~with~~ to the difference between the assistance unit's net monthly income and the net monthly income standard as defined in ARM 46.10.505.

~~BENEFIT STANDARDS~~ MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	~~$ 86~~ 83	~~$ 2.87~~ 2.77	~~$ 32~~ 31	~~$ 1.10~~ 1.03
2	~~170~~ 163	~~5.67~~ 5.43	~~86~~ 83	~~2.87~~ 2.77
3	~~254~~ 245	~~8.47~~ 8.17	~~139~~ 134	~~4.63~~ 4.47
4	~~338~~ 326	~~11.27~~ 10.87	~~191~~ 184	~~6.37~~ 6.13
5	~~422~~ 407	~~14.07~~ 13.57	~~241~~ 232	~~8.03~~ 7.73
6	~~508~~ 489	~~16.93~~ 16.30	~~291~~ 280	~~9.70~~ 9.33
7	~~593~~ 571	~~19.77~~ 19.03	~~339~~ 327	~~11.30~~ 10.90
8	~~676~~ 651	~~22.53~~ 21.70	~~386~~ 372	~~12.87~~ 12.40
9	~~716~~ 689	~~23.87~~ 22.97	~~435~~ 410	~~14.17~~ 13.67
10	~~764~~ 726	~~25.13~~ 24.20	~~464~~ 447	~~15.47~~ 14.90
11	~~791~~ 762	~~26.37~~ 25.40	~~503~~ 484	~~16.73~~ 16.13
12	~~827~~ 797	~~27.63~~ 26.57	~~536~~ 517	~~17.87~~ 17.23
13	~~863~~ 831	~~28.33~~ 27.70	~~573~~ 552	~~19.10~~ 18.40
14	~~897~~ 864	~~29.90~~ 28.80	~~606~~ 584	~~20.20~~ 19.47
15	~~930~~ 896	~~31.00~~ 29.87	~~640~~ 616	~~21.33~~ 20.53
16	~~961~~ 926	~~32.03~~ 30.87	~~671~~ 646	~~22.37~~ 21.53

AUTH: Sec. 53-4-212 AND 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.505 ~~INCOME, DEFINITIONS~~ (1) "Income" means all unearned ~~income~~ and earned income received or expected to be received in a month by members of an assistance unit.

(2) "Unearned income" means all income that is not earned income as defined in ARM 46.10.505(3). Unearned income includes, but is not limited to social security income benefits, veteran's benefits or payments, workers' compensation payments, unemployment compensation payments, and ~~returns from~~ dividends paid on capital investments ~~with respect to which the individual is not actively engaged~~.

Subsection (2)(a) remains the same.

(3) "Earned income" means all income earned by an individual through ~~receipt of~~ wages, salary, commissions, tips, or any other profit from activity in which he is ~~actively~~ engaged.

(a) Earned income from self-employment means the total profit from the business enterprise ~~and farming, resulting from a comparison of the~~ determined by the calculation of gross ~~income received with the~~ revenue less allowable business expenses. ~~or total cost of the production of the income.~~ Returns from capital investments are earned income when produced as a result of the individual's own efforts~~,~~ ~~including managerial responsibilities.~~

(b) Earned income shall be treated as provided in ARM ~~46.10.508(1)(b) and~~ 46.10.510 through 46.10.512.

(4) "Gross monthly income" means all unearned and earned income ~~that is available for current use~~ in the budget month, except for excluded ~~unearned~~ income as provided in ARM 46.10.506~~,~~ and 46.10.510. ~~plus all earned income that is available for current use in the budget month, including any earned income otherwise excluded in ARM 46.10.510.~~

(a) In stepparent household cases, gross monthly income includes any income~~, both earned and unearned,~~ of the stepparent deemed available to the ~~stepchildren~~ spouse as unearned income as provided in ARM 46.10.512(2).

~~(b) When applying gross monthly income to the gross monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month, except that when income is reported or discovered after receipt, the budget month is two months prior to the benefit month.~~

(b) When comparing gross monthly income to the gross monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first two months of eligibility and for the third and subsequent months of eligibility the budget month is two months prior to the benefit month.

(5) "Net monthly income" means gross monthly income less any unearned and earned income excluded in ARM 46.10.506 and ~~ARM~~ 46.10.510, ~~plus earned income credit defined according to ARM 46.10.508(1)(b),~~ and less any earned income disregarded in ARM 46.10.512.

~~(a) When applying net monthly income to the net monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month.~~

(~~b~~a) When applying net monthly income to the ~~benefit~~ net monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first two months of eligibility, and for the third and subsequent months of eligibility the budget month is two months prior to the benefit month.

(6) "Budget month" means the calendar month from which the income ~~or~~ and circumstances of the assistance unit are used to calculate income.

Subsection (7) remains the same.

AUTH: Sec. 53-4-212 53-4-241 MCA
IMP: Sec. 53-4-211, 53-4-231, 53-4-241 and 53-4-242 MCA

3. House Bill 2 of the Second Special Session of the 52nd Montana Legislature mandated that payments to recipients of Aid to Families with Dependent Children (AFDC) be reduced from 42% of the federal poverty level to 40.5% of the poverty level. It is therefore necessary to amend ARM 46.10.403 to provide for the decrease in payment levels and also to adjust the gross monthly income (GMI) and net monthly income (NMI) standards accordingly, since the GMI and NMI standards used to determine eligibility for AFDC are based on the AFDC payment levels.

ARM 46.10.403 is also being amended to provide for a new method of determining an AFDC recipient's payment amount. Currently ARM 46.10.402(4) provides that a recipient's monthly payment will be determined by subtracting the assistance's unit net monthly income (that is, their countable income) from the benefit standard for a household of that size. It is being changed to state that an assistance unit's payment will be either the maximum payment amount for a household of that size or an amount equal to the NMI standard for a household of that size minus the assistance unit's net monthly income (countable income), whichever is less.

The Department is changing its method for computing payments in order to give recipients an incentive to seek sources of income in addition to their AFDC grants. Under the current budgeting method, the payment to a recipient who has no income and is therefore receiving the maximum benefit (payment amount) will be reduced if the recipient starts to receive any income, earned or unearned, because countable income is subtracted from the benefit standard (maximum payment amount) and reduces the payment one dollar for each dollar of net income. Using the new methodology, the recipient's payment will be reduced less than under the old method when the recipient

acquires countable income. In some cases, if the amount of net income is small, the payment may not be reduced at all under the new method.

This new methodology for calculating the monthly payment is consistent with federal regulations governing the AFDC program at 45 C.F.R. 233.20(a)(3)(ii)(B) which allow the states to determine the monthly payment amount by comparing income to either the payment (benefit) standard or the need standard. The NMI standard is Montana's need standard, as it represents the minimum dollar amount the assistance unit requires for basic needs such as food, clothing, shelter, personal care items and household supplies.

The term "benefit standard" in 46.10.403 has been changed to "maximum payment amount" to reflect the change in methodology. Under the old rule, these amounts represented a standard to which income was compared to determine benefit amount. Under the new method of computing payment amount, these figures represent instead a limit on payment amount.

Subsection (1) of ARM 46.10.402 is being amended to provide that two rather than three sets of assistance standards are used to determine eligibility, since the benefit standards are being replaced by maximum payment amounts. This change is necessitated by the change in budgeting method explained above. Also subsection (1) has been re-written to list specifically the needs of the assistance unit which are considered when determining the "net monthly income standard." There is no change in policy regarding the net monthly income standard. In addition, language which has been included in subsection (4) of ARM 46.10.403 is being deleted from this subsection.

Subsection (2) of ARM 46.10.402 is being changed to provide that dual stepparent households are the exception to the rule that a separate grant will be issued to each assistance unit within a household. The department is adopting this policy because it is reasonable to assume that if the heads of two assistance units are married and living in the same household, they form a single economic unit and should receive one monthly payment rather than two. The result of computing one grant amount for the household rather than two is that the cash assistance to the household will be reduced. The department feels this is justified by the economies of scale achieved by living as a single economic unit.

In ARM 46.10.305(2) a definition of "dual stepparent household" has been added and the definition of "stepparent household" has been rewritten to make its meaning clearer.

The amendment of ARM 46.10.505 pertaining to definitions of income is also necessary to make it more readable by rewording and reorganizing it. The department is not changing any policy regarding what income is counted or how income is budgeted to determine eligibility or benefit amount. However, in subsection (4), the definition of gross monthly income has been changed because the current rule does not accurately state the department's policy. While availability of income is considered in determining whether it should be counted for purposes of AFDC eligibility, in some cases income which is not available for current use is counted. An example is the portion of a paycheck which is withheld pursuant to a garnishment, which the department includes as gross income as required by federal regulations governing the AFDC program at 45 CFR 233.20(a)(6)(iii). Therefore, we are deleting from subsection (4) the requirement that income be available for current use in order to be included as gross income.

Similarly, in subsection (3) of ARM 46.10.505 it is necessary to amend the definition of earned income to make it conform to the department's present policy. The words "receipt of" are being deleted to make it clear that earned income includes the entire amount of wages, salary, commissions, tips, or other profit from activity which is earned, regardless of whether it is received. This policy is mandated by federal regulations at 45 CFR 233.20 (a)(6)(iii) which specify that earned income means gross earned income prior to any deductions for taxes or any other purpose.

4. These amendments will take effect on October 1, 1992, which is the earliest date the department is able to implement the changes mandated by House Bill 2 of the July Special Session of the 52nd Montana Legislature.

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 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 October 8, 1992.

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

Dawn Sliva
Rule Reviewer

Henry A. Hudson
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 31, 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 PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On October 1, 1992, at 2:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.12.3803 pertaining to medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS Subsections (1) through (3)(a) remain the same.

(b) Institutionalized recipients must also meet the income criteria of ARM 46.12.4008.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	One Month Net Income Level	
1	$ ~~422~~	416
2	~~433~~	416
3	~~461~~	443
4	~~488~~	470
5	~~572~~	550
6	~~655~~	630
7	~~738~~	711
8	~~822~~	791
9	~~905~~	829
10	~~988~~	866
11	~~1,071~~	899
12	~~1,155~~	932
13	~~1,238~~	960
14	~~1,321~~	988
15	~~1,404~~	1,013
16	~~1,488~~	1,036

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. The income standards used to determine eligibility for the Medically Needy program are based on the income standards used in the most closely related cash assistance program, which is the Aid to Families with Dependent Children (AFDC) program. The AFDC standards are being reduced effective October 1, 1992, as required by House Bill 2 of the July Special Session of the 52nd Montana Legislature. Therefore, it is necessary to amend ARM 46.12.3803 to decrease the Medically Needy income standards also.

4. This rule change will be retroactive to October 1, 1992 to comply with House Bill 2, 52nd Legislature, Special Session July 1992.

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 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 October 8, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 31, 1992.

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

In the matter of the amendment of rules 46.25.101, 46.25.711, 46.25.725 through 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746, 46.25.751 and 46.25.752 and the repeal of rules 46.25.743 and 46.25.744 pertaining to general relief	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.25.101, 46.25.711, 46.25.725 THROUGH 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746, 46.25.751 AND 46.25.752 AND THE REPEAL OF RULES 46.25.743 AND 46.25.744 PERTAINING TO GENERAL RELIEF

TO: All Interested Persons

1. On October 2, 1992, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.25.101, 46.25.711, 46.25.725 through 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746, 46.25.751 and 46.25.752 and the repeal of rules 46.25.743 and 46.25.744 pertaining to general relief.

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

46.25.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

Subsections (1) through (14) remain the same.

(15) "Employability classification" means a determination that a claimant is employable, temporarily unemployable or unemployable.

Subsections (16) and (17) remain the same.

~~(18) "Enable" means to allow activities which keep another person sick and/or dependent.~~

(~~19~~18) "General relief (GR)" ~~or "general relief assistance"~~ means a ~~the~~ program of ~~public~~ assistance ~~which includes both "general relief~~ for basic necessities~~"~~ and ~~"general relief~~ medical" needs for those persons determined to be eligible for such assistance.

(20) "General relief assistance benefit month" means any month for which a general relief for basic necessities benefits have ~~check has~~ been or will be issued. Pro-rated benefits for a month count as one benefit month, regardless of the number of days included.

(~~21~~19) "General relief assistance (GRA) ~~for basic necessities~~" means a program of public financial assistance to

provide basic necessities to those persons determined to be eligible.

(~~22~~21) "General relief medical (GRM)" means medical services provided to those persons determined eligible.

Subsections (23) through (24) remain the same in text but will be renumbered (22) through (23).

(~~25~~24) "Household" means:

(a) ~~"General relief for basic necessities household" means~~ a collective body of persons consisting of spouses or parents and their children who reside in the same residence; or

(b) other persons who~~,~~ by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

~~(b) "General relief medical household" means all persons who reside in the same residence and are either married to each other or are parents or children of other persons living in the same residence are considered to be one household for purposes of determining general relief medical assistance.~~

Subsections (26) through (33) remain the same in text but will be renumbered (25) through (32).

(33) "New to Montana" means a person who has been a Montana resident for one month or less at the time of application. Thirty days is to be considered the equivalent of one month.

Subsections (34) and (35) remain the same.

(36) "Peer counseling" means a training program designed to help persons overcome social, personal and other barriers in order to get a job. Peer counseling may include, but is not limited to, mentor relationships with regularly scheduled meeting times, support group meetings with topics such as: success stories from previous general relief ~~for basic necessities~~ recipients, obsessive/compulsive behavior, and social skills development.

Subsection (37) remains the same.

(38) "Project work program training components" means initial month or successive month activities that employable and temporarily unemployable claimants of general relief for basic necessities must participate in as a condition of eligibility. These training components include, but are not limited to, assessment for serious barriers and chemical dependency, job search, work experience, job skills training, job readiness training, remedial education, peer counseling, self-sufficiency activities and programs to overcome chemical dependency.

Subsections (39) through (42) remain the same.

(43) "Self-sufficiency program" means a program designed to enable temporarily unemployable persons to achieve self-sufficiency and includes any combination of a self-sufficiency plan, concentrated rehabilitation activities or support services.

Subsections (43) through (47) remain the same in text but will be renumbered (44) through (48).

(49) "Temporarily unemployable" means the condition of a person who suffers from a temporary illness, injury, or incapacity that is medically certifiable and that prevents the person from becoming immediately employable in any substantial, gainful employment, as determined by a vocational specialist, and who:

(a) is at least 55 years of age and who has a limited ability because of advanced age to obtain or retain suitable employment, as determined by a vocational specialist; or

(b) would not be considered disabled under 42 U.S.C. 1382(c) if evaluated under criteria used to determine eligibility for the federal supplemental security income program.

Subsection (48) remains the same in text but will be renumbered (50).

(~~49~~51) "Unemployable" means the condition of a person who:

~~(a) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age as determined by a vocational specialist;~~

(~~b~~a) has a serious physical, emotional, or mental handicap that is medically certified and that prevents him from being employed in any substantial, gainful employment as determined by a vocational specialist; or

(~~c~~b) suffers from a permanent ~~or temporary~~ illness, injury or incapacity that is medically certified and that prevents the person from working in any substantial, gainful employment, as determined by a vocational specialist.

Subsections (50) through (52) remain the same in text but will be renumbered (52) through (54).

AUTH: Sec. 53-2-201, 53-3-102, 53-2-803, 53-3-109 and 53-3-114 MCA
IMP: Sec. 53-2-201, 53-2-301, 53-2-802, 53-3-109, 53-3-122, 53-3-304, 53-3-305 and 53-3-321 MCA.

46.25.711 CONDITIONS OF ELIGIBILITY Subsections (1) through (1)(b) remain the same.

(2) General relief applicants or recipients who voluntarily leave employment without good cause or who are discharged due to misconduct shall not be eligible for benefits for three months. This period of ineligibility begins on the first day of the next month in which the person is otherwise eligible.

AUTH: Sec. 53-2-201, 53-2-803, 53-3-114 and 53-3-212 MCA
IMP: Sec. 53-3-205, 53-3-206, 53-3-211, 53-3-212, and 53-3-209 MCA

46.25.725 INCOME (1) During the benefit month all income that is received, reasonably expected to be received, and all presumptive income must be considered when determining eligibility for general relief.

Subsections (1)(a) and (1)(b) remain the same.

(2) Lump sum income~~:~~

~~(a)~~ ~~R~~received by the household during any eligibility period renders the household ineligible for general relief assistance for the number of months determined by dividing the lump sum plus other available income by the maximum monthly income standard for the same household size. Any remainder is considered income in the first month following the ineligibility period.

Subsections (2)(b) and (2)(c) remain the same in text but will be renumbered (2)(a) and (2)(b).

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-205 MCA

46.25.726 RESOURCES Subsection (1) remains the same.

(2) All resources not specifically excluded will be deducted from the general relief assistance grant award each eligibility period.

(3) The equity value of all non-excluded resources will be counted as available income for general relief medical.

Subsections (3) through (3)(d) remain the same in text but will be renumbered (4) through (4)(d).

~~(i) In instances where the property transferred is the individual's home, the individual, his spouse or a dependent relative must have actually been living in the home at the time of the transfer in order for the home to be considered his principal residence and, therefore, an excluded resource.~~

Subsections (3)(e) through (11)(d) remain the same in text but will be renumbered (4)(e) through (12)(d).

AUTH: Sec. 53-2-803, 53-2-201, 53-2-801 and 53-3-114 MCA
IMP: Sec. 53-3-205, 53-3-102, 53-3-204 and 53-2-803 MCA

46.25.727 MAXIMUM MONTHLY INCOME AND RESOURCES ~~STANDARD FOR GENERAL RELIEF ASSISTANCE~~ (1) The maximum monthly general relief income ~~standards~~ and resource levels are:

Maximum Monthly Levels ~~Income Standard~~

Number of Persons in Household	GR Maximum Monthly ~~Income~~ Levels ~~Standard~~	
1	$ ~~238~~	229
2	~~322~~	310
3	~~405~~	390
4	~~488~~	470
5	~~571~~	550
6	~~654~~	630
7	~~738~~	711
8	~~822~~	791
9	~~905~~	829
10	~~988~~	866
11	~~1,071~~	899

12	~~1,155~~	932
13	~~1,238~~	960
14	~~1,321~~	988
15	~~1,404~~	1,013
16 or more	~~1,488~~	1,036

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-205 and 53-3-206 MCA

46.25.728 INCOME AND RESOURCE COMPUTATION Subsection (1) remains the same.

(2) A household is eligible for general relief ~~for basic necessities~~ if the household income expected in the benefit month, less the earned income disregard described in (3) if applicable, does not exceed the monthly income standard found in ARM 46.25.725.

Subsection (3) remains the same.

(4) Benefits for general relief ~~for basic necessities~~ shall be determined:

Subsections (4)(a) through (6) remain the same.

(7) ~~Issuance of benefit checks for claimants who were not eligible for a check in the previous month will be as follows:~~ Employable or temporarily unemployable household members must participate in the job search, training, workfare or self-sufficiency programs for four full weeks prior to the issuance of a benefit check. If participation in the program begins during the middle of the week, 20 days of participation will be considered the equivalent of four full weeks.

~~(a) for employable claimants, after eligibility has been determined and at least ten (10) days of successful participation in the project work program have been completed; or~~

~~(b) for unemployable claimants, after eligibility has been determined and a determination of unemployability has been completed.~~

(8) Unemployable household members will be issued a benefit check following a determination of eligibility and unemployability.

(9) The benefit amounts to be paid a recipient household is equal to the GR level less all countable income and resources.

(10) The maximum benefit amount to be granted to a person new to Montana will be reduced by $50 per month for each of the first two months of the person's residency.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-109, 53-3-205, 53-3-206, 53-3-209 and 53-3-311 MCA

46.25.730 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF ~~ASSISTANCE~~ (1) Eligibility for general relief ~~assistance~~ will be provided for a one ~~(1)~~ month period.

Subsections (2) and (2)(a) remain the same.

(3) Eligibility for general relief ~~assistance~~ terminates at any time the department determines that the household:

Subsections (3)(a) through (3)(c) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-206 and 53-3-209 MCA

46.25.731 STRUCTURED JOB SEARCH, ~~AND~~ TRAINING AND SELF-SUFFICIENCY PROGRAM Subsection (1) remains the same.

(2) All claimants for general relief assistance for basic necessities will be referred by the county office of human services to the project work program, where the vocational specialist will do an intake interview and initial assessment to determine whether the claimant is employable, temporarily unemployable or unemployable.

Subsection (3) remains the same.

(4) Based on information gained during the intake and assessment, the vocational specialist will recommend to the county office of human services that the claimant be classified as either employable, temporarily unemployable or unemployable.

Subsection (5) remains the same.

(6) All employable and temporarily unemployable claimants will immediately be referred to the project work program, and will participate for ~~forty (40)~~ hours per week.

(a) The following employable and temporarily unemployable claimants will be excused from participation:

Subsections (6)(a)(i) through (6)(a)(iv) remain the same.

(7) During the initial month and upon reassessment by the vocational specialist, employable claimants shall inform the vocational specialist of serious barriers to employment or chemical dependency. In addition, all other employable claimants will be observed for indications of serious barriers or chemical dependency. A reassessment of all claimants will be held in their final month of eligibility to determine whether the claimant should be reclassified as employable, temporarily unemployable or unemployable or should remain classified as having serious barriers to employment.

Subsections (8) through (9) remain the same.

(10) If at any time during the initial month or upon reassessment, serious barriers, ~~and/or~~ chemical dependency, or temporary unemployability are found or identified, the claimant will be referred for further assessment and development of an individualized plan.

(11) Claimants with chemical dependency ~~will~~ may be referred to a certified chemical dependency counselor for assessment and recommendation of treatment.

Subsection (11)(a) remains the same.

(12) Claimants with serious barriers and those classified as temporarily unemployable will meet with the vocational specialist for further assessment.

(a) For those with serious barriers, ~~A~~an EDP and training plan will be jointly developed by the claimant and the vocational specialist.

(b) For those who are temporarily unemployable, a self-sufficiency plan will be jointly developed by claimant and vocational specialist.

(13) All general relief assistance ~~for basic necessities~~ claimants who are employable, temporarily unemployable or employable with serious barriers or chemical dependency, will be required to participate for ~~forty (40)~~ hours per week in successive months of the project work program.

Subsections (13)(a) through (13)(c) remain the same.

(d) Claimants who are temporarily unemployable shall participate in accordance with their individualized self-sufficiency plan.

(~~d~~e) For employable claimants with serious barriers or chemical dependency and for those temporarily unemployable, successive months' participation shall consist of some or all of the following components:

Subsections (13)(d)(i) through (13)(d)(vii) remain the same in text but will be renumbered (13)(e)(i) through (13)(e)(vii).

(viii) peer counseling; ~~and~~

(ix) concentrated rehabilitation activities; and

(~~i~~x) other training components as described in the county plan.

Subsection (13)(e) remains the same in text but will be renumbered (13)(f).

(14) If at any time during successive months' participation in the project work program or upon reassessment, a serious barrier or chemical dependency or temporary unemployability is found or identified, that claimant will meet with the vocational specialist to have further assessment done to ~~determine if a serious barrier or chemical dependency exists~~ verify the condition. An individualized EDP/training/treatment self-sufficiency plan will be jointly developed. A reassessment must include an evaluation of the applicant's education, training, experience, and ability to work in substantial gainful employment.

(15) For a serious barrier self-sufficiency participant or chemical dependency claimants, individualized plans shall allow the client to choose the job search component.

(16) Claimants with serious barriers identified in the EDP or the reassessment and persons in a self-sufficiency program, must be willing to participate in a component to assist them to overcome those barriers to be eligible for an additional two months of general relief assistance for basic necessities benefits.

Subsection (17) remains the same.

~~(18) If they are otherwise eligible, claimants with chemical dependency, as identified in the EDP or the reassessment, who are participating in a drug or alcohol rehabilitation program will receive a maximum of three additional months of general relief assistance. This assistance is in addition to the six months of benefits in a 12 month period presently granted to persons with serious barriers to employment. Each~~

~~chemically dependent claimant may receive this extension of benefits only once in a lifetime.~~

Subsection (19) remains the same in text but will be renumbered (18).

(~~20~~19) Upon application for general relief assistance ~~for basic necessities~~, persons who have previously been referred to (or enrolled in) the project work program, shall be required to start the entire project work program process again.

Subsections (21) through (21)(c) remain the same in text but will be renumbered (20) through (20)(c).

(d) child care; ~~and~~

(e) medical support services necessary to obtain or retain employment; and

Subsections (21)(e) through (22)(d) remain the same in text but will be renumbered (20)(f) through (21)(d).

(i) if transportation is determined to be a necessary support service;

(ii) the claimant uses their own vehicle for transportation; and

(iii) the total claimed does not exceed the limits on reimbursement set forth above.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-822, 53-3-304, 53-3-305 and 53-3-321 MCA

46.25.733 PENALTY (1) Recipients of general relief who are subject to the provisions found in ARM 46.25.731 ~~and ARM 46.25.732~~ and who without good cause refuse to participate in any component of the structured job search and training program, including workfare, or register for employment and maintain an active job registration file, or accept available employment shall be disqualified for benefits for three ~~(3)~~ months for the first infraction and six ~~(6)~~ months for subsequent infractions. The period of ineligibility begins on the first day of the month in which the person is otherwise eligible for general relief.

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

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

46.25.742 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF MEDICAL Subsections (1) through (4)(c) remain the same.

(5) Up to three months of retroactive coverage may be provided to households determined eligible for general relief medical if:

(a) the medical services were received during any of the three months prior to application and remain the obligation of the household to pay; and

(b) the household is determined eligible for general relief medical for the month(s) medical services were received;

(6) Eligibility for any retroactive month will be determined in accordance with the rules on eligibility, except that actual income received in the retroactive month(s) will be used.

AUTH: Sec. 53-3-114, 53-2-201 and 53-2-803 MCA
IMP: Sec. 53-3-209, 53-3-206 and 53-3-318 MCA

46.25.746 GROUNDS FOR SANCTIONING (1) Sanctions may be imposed by the department against providers of medical assistance provided under this chapter in accordance with the provisions of ARM 46.12.~~400~~401 et. seq.

AUTH: Sec. 53-2-803 and 53-6-111 MCA
IMP: Sec. 53-2-803 MCA

46.25.751 SELECTION OF MEDICAL PROVIDER (1) The department may through a managed care system or other means designate a medical provider to provide diagnosis and treatment of the serious medical condition for eligible persons. Payment for services to all medical providers is contingent on the providers participation and cooperation with the managed care contractor.

Subsection (2) remains the same.

(a) Restrictions may be imposed on ~~physician services, drugs or any other~~ medical services covered by the general relief medical assistance program when:

Subsections (2)(a)(i) through (2)(j)(iii) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-313 MCA

46.25.752 SCOPE OF GENERAL RELIEF MEDICAL ASSISTANCE (1) Medically necessary services subject to limits below will be provided to treat a specific serious medical condition related to chronic illness or which requires immediate medical attention to alleviate a serious health risk ~~in the amount and scope provided under the medicaid program described at Title 46, chapter 12 of the Administrative Rules of Montana~~. Covered services are limited to hospital services, physicians and prescribed drugs.

Subsection (2) remains the same.

~~(3) The following services are not covered:~~

~~(a) experimental services; and~~

~~(b) inpatient or residential psychiatric services for individuals under 21 years of age.~~

~~(4) Cosmetic services are covered as follows:~~

~~(a) when a medical review indicates the condition poses a serious medical risk; and~~

~~(b) the department has granted prior authorization.~~

Subsections (5) through (8) remain the same in text but are renumbered (3) through (6).

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-310 MCA

3. The rules 46.25.743 and 744 as proposed to be repealed are on pages 46-7935 and 7936 of the Administrative Rules of Montana.

The cites for 46.25.743 are: AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; IMP: Sec. 53-3-205 and 53-3-206 MCA

The cites for 46.25.744 are: AUTH: Sec. 53-2-201, 53-2-803, 53-3-114, 53-3-206 MCA; IMP: Sec. 53-3-205 and 53-3-206 MCA

4. The department's rules pertaining to general relief are being amended as a result of significant changes adopted by the July 1992 session of the Montana Legislature. Senate Bill 10 (SB 10) created two new classifications of people. Those groups of individuals are referred to as the temporarily unemployable and individuals "new to Montana". In addition, this bill lowered the maximum monthly levels of income and resources which a recipient may have in order to become eligible for general relief medical services. Further changes to the general relief laws were made by House Bill 2. Pertinent provisions of that bill have the effect of reducing eligibility and benefit payments from 42% to 40.5% of the federal poverty level. These changes and other less significant changes are described in more detail below.

ARM 46.25.101 is being amended to ensure that the definitions contained in the department rule coincides with definitions contained in 53-3-109, MCA. Although these definitions need not be repeated in the rule, because they are stated in statutory law, they are so included for ease of reading and understanding the administrative rules pertaining to general relief. Three new definitions are being added, i.e. "new to Montana", "self-sufficiency program", and "temporarily unemployable". The term "enable" is being eliminated from the definitional section because it had no special significance for purposes of the general relief program. A general dictionary definition will suffice. The term "general relief medical household" is being deleted because the new definition of general relief includes general relief assistance for basic necessities and medical needs. The term "general relief" is also being amended to account for the broader definition of the term. Other definitional terms are being slightly modified to coincide with Senate Bill 10.

ARM 46.25.711 is being amended to comply with section 7 of SB 10. This rule specifically identifies the beginning of ineligibility periods which begin on the first day of the next month in which the person would otherwise be eligible for general relief. In the past, there was some confusion as to

whether the period of ineligibility began during the month in which the violation occurred or in the following month.

ARM 46.25.725 (income), 46.25.726 (resources), 46.25.727 (maximum monthly income and resources) and 46.25.728 (income and resource computation) are being amended as a result of legislative changes to section 53-3-205, MCA and the repeal of section 53-3-206, MCA. (See sections 5 and 24 of SB 10.) These changes will have the effect of applying the same income and resource limits for the general assistance (cash payment or vendor payment) program and the general relief medical services program. The legislature, for purposes of easing the state's budgetary crisis, reduced the maximum level of income and resources permitted of a person applying for medical assistance.

Previous to the repeal of section 53-3-206, MCA a household was eligible for general relief medical if their income and resources were equal to or less than 150% of the benefit amounts established in 53-3-205(2), MCA. The new ARM creates one program of benefits with the same eligibility criteria for the receipt of all services. Article XII, Section 3, Subsection (4) of the Montana Constitution specifically allows the legislature to set eligibility criteria for programs and services.

ARM 46.25.728(7)(a) extends the waiting period from 10 days to four full weeks before someone may receive benefits. This change is being made to comply with section 17 of SB 10. Section 53-3-322, MCA was amended to require that all applicants for assistance complete four full weeks in a structured job search training workfare or self-sufficiency program prior to the receipt of assistance. This will assist the department in reducing payments for individuals who may have previously received government assistance in other states or other counties. Thus, duplications of benefits will be avoided.

Changes to ARM 46.25.730 are being made for grammatical purposes and for the reason that the general relief program now includes both cash assistance and medical assistance.

ARM 46.25.731 is being made to include the "temporarily unemployable" in the structured job search, training and self-sufficiency program. These changes are mandated by sections 11 and 16 of SB 10. These sections amended 53-3-304 and 53-3-321, MCA. The legislature believed that the temporarily unemployable could benefit from the training programs offered by the department. The programs will assist these individuals to become employable and in the long run reduce the cost of the general relief program.

ARM 46.25.733 is being changed to comply with section 12 of SB 10. This section amended 53-3-305, MCA to specify the

beginning period for which a penalty is taken for a refusal to participate in the job search training or self-sufficiency programs.

ARM 46.25.742 is being changed to establish limits on retroactive application of general relief medical services. This is not a significant change from the department's current policy which was not adopted through the formal rule process.

ARM 46.25.746 is being changed to specifically identify the appropriate ARM references pertaining to provider sanctions. An incorrect citation is being amended.

ARM 46.25.752 is being amended to comply with section 14 of SB 10. That section amended 53-3-310, MCA. The effect of the change is to restrict general relief medical services to only those items specifically named in the law, i.e. inpatient and outpatient hospital services, physician services, and prescription drugs. In order to stem the rising cost in the general relief medical program it was necessary to identify and provide only the most critical of services that may be necessary.

ARM 46.25.743 and 744 are being repealed because the general relief medical program is no longer a separate program independent of a cash assistance program. The reason for these changes stem from the repeal of 53-3-206, MCA as adopted by SB 10.

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 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 October 8, 1992.

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

Dawn Sliva
Rule Reviewer

Nancy M. Hudson
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 31, 1992.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.5007 relating to reduction in work force	))))	NOTICE OF THE AMENDMENT OF ARM 2.21.5007 RELATING TO REDUCTION IN WORK FORCE

TO: All Interested Persons.

1. On Thursday, April 16, 1992, the department of administration published notice of the amendment of ARM 2.21.5007 relating to reduction in work force on pages 719-720 of the Montana Administrative Register, issue number 7.

2. The rule has been amended with the following changes:

2.21.5007 POLICY (1) - (12) Same as proposed amendments.
(13) Pay for an employee who is demoted as the result of a RIF, but who is not laid-off, will be administered using pay plan rule ~~1813~~ 1812, demotions ~~with a change in duties~~.
(14) Remain the same.
(15) Same as proposed amendments.
(16) - (18) Remain the same.
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. A public hearing was conducted on May 8, 1992, to receive testimony on the proposed rules and amendments. No comments or testimony were received.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Bob Marks, Director
Department of Administration

Certified to the Secretary of State August 31, 1992.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule pertaining to licensing by exam for midwives	)))	NOTICE OF ADOPTION OF NEW RULE I (8.4.501) PERTAINING TO LICENSING BY EXAM FOR MIDWIVES

TO: All Interested Persons:

1. On June 25, 1992, the Board of Alternative Health Care published a notice of proposed adoption of a new rule pertaining to licensing by examination for direct entry midwives, at page 1282, 1992 Montana Administrative Register, issue number 12.

2. The Board has adopted the rule as proposed but with the following changes:

"8.4.501 LICENSING BY EXAMINATION (1)(a) through (b) will remain the same.

(c) any other documents, affidavits and certificates required by section 37-27-201, ~~and~~ OR 37-27-203, MCA, WHICHEVER IS APPLICABLE, and board rules.

(2) All applicants shall take the ~~Midwives' Alliance of North America (MANA)~~ NORTH AMERICAN REGISTRY OF MIDWIVES (NARM) examination as endorsed by the board, or any other examination to be prescribed or endorsed by the board, and have their scores reported to the board office by the proper ~~MANA~~ NARM interstate reporting service, or its equivalent. All applicants for ~~MANA~~ NARM examination shall:

(a) sit for the ~~MANA~~ NARM examination only when administered by the board, at its designated Montana site, or when administered by proper ~~MANA~~ NARM officials in conjunction with the annual ~~MANA~~ NARM national meeting;

(b) through (3) will remain the same."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-201, 37-27-202, 37-27-203, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

COMMENT NO. 1: The rule does not make clear what changes are being proposed, as the options for licensure are already stated in the law.

RESPONSE: The proposed new rule does not change, but merely implements the statute. The rule is clarifying the statutory requirements by stating which examination the Board has endorsed, and how it is to be administered by the Board in Montana.

COMMENT NO. 2: Subsection (1)(c) states documents, etc., "required by section 37-27-201 AND 37-27-203 MCA," and should state "37-27-201 OR 37-27-203, MCA." Otherwise the applicants would have to apply under the licensing by examination and educational experience requirements section as well as the

educational experience exemption section, which would be redundant.

RESPONSE: The Board concurs with the comment and has changed the rule as shown above.

COMMENT NO. 3: The Midwives' Alliance of North American has incorporated under the name North American Registry of Midwives, and all references to MANA should now become NARM.

RESPONSE: The Board concurs with the comment and has changed the rule as shown above.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, N.D., CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1992.

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

In the matter of the proposed amendment of a rule pertaining to definitions	)))	NOTICE OF AMENDMENT OF A RULE PERTAINING TO DEFINITIONS

TO: All Interested Persons:

1. On March 12, 1992, the Board of Medical Examiners published a notice of public hearing on the proposed amendment of rules pertaining to definitions, applications, fees and renewals and the adoption of new rules pertaining to reactivation of inactive or inactive retired licenses, verifications and fees, at page 356, 1992 Montana Administrative Register, issue number 5. The hearing was held on April 1, 1992, at 9:00 a.m. in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana.

2. The Board previously adopted without change all proposed rule amendments and new rules, with the exception of the proposed amendment to ARM 8.28.402. The Board now adopts ARM 8.28.402 without change on the basis set forth below:

3. The Board has thoroughly considered all comments received respecting the proposed definition of "surgery." Those comments and the Board's responses thereto are as follows:

COMMENT: Proponents of the definition of surgery commented that the Board has authority to regulate and control the practice of medicine in this state, pointing out that Section 37-3-102(1)(a), MCA, defines the practice of medicine to include: "(a) . . . the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries or infirmities, whether physical or mental, by any means, methods, devices or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter."

The proponents stated that performing surgery falls within the foregoing definition of the practice of medicine, and that under Section 37-3-203, MCA, the Board has authority to adopt rules regulating the practice of medicine in Montana.

The proponents further stated that the Board has an affirmative duty to define the term "surgery." The Board must address what constitutes the unauthorized practice of medicine. Certain other professions (operating under statutory exemption from the medical licensure requirement of Section 37-3-103) are specifically prohibited from practicing surgery. Absent a definition of surgery, those professionals are unable to determine the specific parameters of allowed and disallowed procedures.

The proponents maintained that it is preferable for surgery to be defined by rule, rather than on a case by case basis.

The proponents stated that under the proposed definition, the optometric practice of fitting hard contact lenses which reshape the cornea would not be affected, because such practice is specifically authorized by Section 37-10-101(1)(c) of the Optometric Practice Act. The proponents stated that the practice of reshaping the cornea by Excimer laser, which scrapes tissue from the cornea, would be prohibited by this definition, stating that such use of the Excimer laser constitutes surgery, which is specifically prohibited to optometrists under Section 37-10-101(b) and (c).

The proponents pointed out that if the legislature intends for licensed optometrists to practice any form of surgery, it can authorize such practice, just as the legislature has authorized optometrists to prescribe limited drugs.

The proponents maintained that the proposed definition does not change the status quo, but merely gives guidance to professions which are prohibited from practicing surgery.

RESPONSE: The Board agrees with the comments of the proponents. The definition of the "practice of medicine" (Section 37-3-102(1)(a)) is all-encompassing, and the practice thereof requires licensure as a physician unless the practitioner falls under one of the exemptions listed in Section 37-3-103. Those exemptions carve out specific limited areas of medical practice which licensed practitioners in other health care professions may practice, e.g., dentistry, nursing, chiropractic, optometry, etc. Each of those professions must confine themselves to the procedures specified in their own practice acts. To go outside of those practice acts is to return to the general definition and practice of medicine, and, absent a physician's license, constitutes the unauthorized practice of medicine. Section 37-3-102(1)(a).

The unauthorized practice of medicine is subject to both civil and criminal penalties: injunctive relief, fine and imprisonment. The public and other health care professionals are entitled to fair notice, in as specific detail as possible, of what constitutes the unauthorized practice of medicine.

Surgery clearly falls within the foregoing definition of the practice of medicine. The American Heritage Dictionary, Second College Edition, defines surgery as "the medical diagnosis and treatment of injury, deformity, and disease by manual and instrumental operations." The Medical Practice Act states that the practice of medicine includes treatment of human conditions, etc., "by any means, methods, devices or instrumentalities." (Emphasis added.) The same dictionary defines "instrumental" as "of, pertaining to or accomplished with an instrument or tool." An "instrument" is a "mechanical implement." (It is not disputed that an Excimer laser is an instrument or mechanical implement.)

In State v. Thierfelder, 114 Mont. 104, 132 P.2d 1035 (1943) (overruled on other grounds, 156 P.2d 167), the Montana Supreme Court held that medicine and surgery "are considered as one under our statutes and under long acceptation by people generally, and there is no authority that we have found to justify any different notion about what practicing medicine means. Surgery is described by various authorities as follows: 'That branch of medical science, art, and practice, which is concerned with the correction of deformities and defects, the repair of injuries and diagnosis and cure of disease, the relief of suffering, and the prolongation of life, by manual and instrumental operations.' (Citing Webster's New International Dictionary, emphasis added.)

The court went on to cite: "There cannot be a complete separation between the practice of medicine and surgery, as they are developed by modern science, and understood by the most learned in the two professions; the principles of both are the same throughout, and no one is qualified to practice either who does not properly understand the fundamental principles of both." (2 Bouv. Law Dict., Rawle's Third Revision, p. 3209). "Therapy of a distinctively operative kind, such as cutting operations." (Century Dictionary and Cyclopedia.) "The art, practice, or work of treating diseases, injuries or deformities by manual operation or mechanical appliances; the branch of medicine that is concerned with such treatment." (New Century Dictionary) "The branch of healing art that resorts to manual operations or mechanical appliances for the treatment of injuries, deformities or internal morbid conditions." (Standard Dictionary) Id. at 118 and 119.

The Board is charged with regulating the practice of medicine (including surgery) "to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of medicine . . . ." Section 37-3-101, emphasis added. If a licensed physician is incompetent in the field of surgery, the Board may restrict his license to non-surgical practice through the disciplinary procedures provided in the Medical Practice Act and MAPA. If an unlicensed person attempts to perform surgical procedures, the Board may seek an injunction against him under Section 37-3-325, or the county attorney may seek criminal sanctions. If a licensee of another health care profession performs surgical procedures disallowed by his or her own practice act, that profession's board may take disciplinary action, and the Board and county attorney can proceed under Section 37-3-325 as well. The object is to protect the public against unauthorized and unqualified practice of medicine. The risk to life and limb from unauthorized surgery is too great to ignore, as the legislature has made clear in the foregoing provisions.

But in order for those statutes to be enforceable, everyone must have fair notice of just what surgery is.

Numerous health care practice acts specifically prohibit their licensee from practicing surgery, or severely limiting the extent of surgery permitted. For example, licensed dentists are permitted by their practice act to perform oral

surgery (Section 37-4-101(2)(a)), but no other form of surgery. Direct entry midwives are prohibited from performing "any operative or surgical procedures except for an episiotomy and simple surgical repair of an episiotomy or simple second-degree lacerations." Section 37-27-303. Chiropractors are prohibited entirely from practicing surgery: "Chiropractic" . . . includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery . . . ." Section 37-12-101(2). Nurses are prohibited from practicing surgery: "This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof . . . ." Section 37-8-103(2).

Optometrists, too, are specifically prohibited from practicing surgery: "The practice of optometry . . . is hereby defined to be any of the following acts: . . . (b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition . . . ; and (c) the application or prescription of ophthalmic lenses . . . for the correction or relief of visual anomalies, excluding surgery." Section 37-10-101(1)(b) and (c). (Emphasis added.)

Unauthorized practice of surgery subjects such professionals to the risk of both civil and criminal action under Section 37-3-325, MCA. Yet, to date, there has been no definition of surgery to give clear, fair notice to the public or these professionals of what conduct is acceptable and what is not. If they are to avoid prosecution for unauthorized practice of medicine (surgery), they are entitled to a clear definition of what constitutes surgery. In the absence of a legislative definition, it is the Board's duty as well as prerogative to set forth such a definition.

In Bick v. State Department of Justice, 224 Mont 455 (1986), the Montana Supreme Court upheld the Department of Justice's administrative rules respecting driver's licenses: "The decision to use objective rules . . . provides drivers with more precise notice of what conduct will be sanctioned and promotes equality of treatment among similarly situated drivers," citing Dixon v. Love (1977), 431 U.S. 105, 115, 97 S.Ct. 1723, 1729, 52 L.Ed.2d 172, 182. The principle applies here.

The proponents maintain that it is preferable to set forth the definition by rule, rather than on a case by case basis. The Board agrees. The public rule-making process provides the entire Montana public with the opportunity to comment and participate. The alternative suggested by opponents (below) is for the Board to wait until some hapless professional undertakes the personal risk of, for example, purchasing an expensive piece of equipment (such as an Excimer laser) and performing a procedure on a member of the public.

In that scenario, the professional must chance license discipline under his own practice act, injunctive action by the Board of Medical Examiners, criminal prosecution by the local county attorney, fine and imprisonment, in order to test whether the procedure constitutes "surgery" or not. The cost of obtaining a definition would be borne solely by the

professional, and the definition might well be limited to the facts of the particular case. The Board believes that such a "case by case" determination of what constitutes surgery would be unfair to the professions involved, and dangerous to the public in the process. The Board therefore elects to define "surgery" by rule under MAPA-sanctioned procedures.

COMMENT: Opponents of the proposed definition of surgery stated that the proposed definition is overbroad, broader than the statute, and would make illegal actions which are already permitted, for example, removal of non-penetrating foreign bodies from the eye, use of hard contact lenses, removing unwanted hair through destruction of the hair follicle by electrolysis, haircuts by barbers or cosmetologists, acupuncture, self-injection of insulin by diabetics, removing a simple splinter and so forth.

RESPONSE: Activities sanctioned by professional practice act (statutes) would remain unaffected by the rule. Removal of non-intraocular foreign bodies from the eye is specifically allowed by the Optometric Practice Act, Section 37-10-101(2). (Put another way, it is an activity exempt from medical licensure under Section 37-3-103.) Use of hard contact lenses is specifically allowed under Section 37-10-101(1)(c). Electrolysis is permitted under Title 37, Chapter 32. Haircutting and fingernail cutting as a profession is clearly permitted under Title 37, Chapters 30 and 31. Acupuncture is permitted by Title 37, Chapter 13. Self-administration of properly prescribed medication is not "unauthorized" practice of medicine.

When Mom removes a simple splinter from Johnny's hand, one could argue that technically she is practicing medicine under Section 37-3-101, let alone surgery under the definition the Board adopts herein. Theoretically, Mom could be sanctioned under existing statutes. The new definition of surgery places Mom in no more jeopardy than she already faces--which, in reality, is no jeopardy at all. No Board or county attorney in Montana would even think of prosecuting such a case. Any statute or rule can be reduced to the absurd, if sufficiently outrageous facts are posited.

The benefits to the public and health care professions of a clear definition of surgery outweigh the minute "splinter" misapplication risk. The "overbroad" argument does not persuade the Board. As discussed herein, the definition is consistent with the plain meaning of the term as well as the definition in Section 37-3-102; it is more specific, in the interests of giving fair notice, but it is not broader than the statute.

COMMENT: Opponents of the definition state that the rule does not meet the requirement of Section 37-3-203, that rules adopted by the Board be "necessary or proper."

RESPONSE: For the reasons stated above, the Board maintains that the rule is both necessary for the protection of the public, and proper under existing statutes. In addition, the

Board would state that 23 years ago, when the legislature passed Section 37-3-102 defining the practice of medicine, all of medicine, including surgery, was in a much more primitive state. "Surgery" in those days primarily meant cutting with a scalpel. New technologies and techniques have developed at an exponential rate since then, and cutting and alteration of human tissue is now accomplished by methods and instruments undreamed of then. If the public is to be adequately protected, the laws and rules which govern medicine must be updated as well. The definition of surgery adopted here is one element of that task.

COMMENT: Opponents of the definition state that the rule does not meet the requirement of Section 37-3-203, that rules adopted by the Board be "fair, impartial and nondiscriminatory."

RESPONSE: The Board maintains that the rule does meet that requirement. The rule does not discriminate on the basis of race, religion, color or national origin. It does not discriminate on the basis of age, sex or sexual preference. It does not discriminate between restricted physicians, chiropractors, optometrists, nurses, dentists, direct entry midwives, or members of the general public; it is equally applicable to all persons or professions prohibited in whole or in part from practicing surgery. It does not discriminate between classes of optometrists on the basis of experience, college, location of practice, or any other basis. On its face, the rule is fair, impartial and nondiscriminatory. As the rule has not yet been applied in any context, it clearly is not unfair, partial or discriminatory in its application. The rule satisfies the requirements of Section 37-3-203.

COMMENT: Opponents of the rule stated that the rule is aimed at preventing optometrists from using the Excimer laser, an instrument in the investigative stage, to shave away corneal tissue, thereby reshaping the cornea and improving vision.

RESPONSE: The rule must be enforced without discrimination as to profession or type of instrument used in a given surgical procedure. The legislature has prohibited optometrists from practicing surgery. An exception to that prohibition can be granted by the legislature, just as the legislature has granted optometrists an exception to prescribe certain kinds of drugs. The rule will undoubtedly have various applications.

COMMENT: Opponents of the rule stated that the scope of practice of optometry has changed radically in the last 15 years and will continue to do so. The requirements for an optometry education are increasing, and optometrists are receiving training on new techniques and procedures to assure the public is receiving the most current care available. The proposed rule would prevent optometrists certified in certain procedures from utilizing them in the treatment of the citizens of Montana.

RESPONSE: The legislature, not the Board, determined that the practice of optometry should not include surgery, and enacted two statutes specifically prohibiting surgery to that profession. The opponents have offered no information that any Montana optometrist is currently using Excimer laser. The proposed rule does not change the status quo. It is commendable that optometry education is increasing. Optometrists provide a very real service to the Montana public; the greater the education, the greater the benefit to Montana.

COMMENT: Opponents of the rule stated that rule is not reasonably necessary to effectuate the purpose of the statute, as required by Section 2-4-305(6)(b). They further point out that such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking. They state that the Board has not properly demonstrated "reasonable necessity."

RESPONSE: Section 2-4-305(6)(b) requires that reasonable necessity must be demonstrated in the Board's notice of proposed rulemaking and "in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency." The reasons stated in the notice are true and adequate: "This amendment is being proposed to define "surgery" as one of the privileges of licensed physicians under section 37-3-101. The word 'surgery' is not defined elsewhere. The amendment will provide guidance in determining what constitutes the unauthorized practice of medicine." In addition, the written and oral comments of the proponents and the Board, as set forth in large part herein, clearly demonstrate the reasonable necessity for a definition of surgery, so the Board may carry out its mandate to protect the public against the "unauthorized and unqualified" practice of medicine, including surgery.

COMMENT: Opponents of the rule stated that the word "surgery" does not appear in the Medical Practice Act, but does appear in the Optometry Practice Act, such that the definition has more to do with optometry than medicine.

RESPONSE: Please see responses above (e.g., Thierfelder) for the proposition that medicine includes surgery. Please also see responses above concerning the general application of the definition to restricted physicians, the general public and any profession prohibited from or restricted in practicing surgery.

COMMENT: Opponents of the rule stated that in the absence of a legislative definition, the "plain meaning" of the word should be followed, or in the alternative, the legislature should enact a statutory definition of "surgery."

RESPONSE: Please see responses above for the proposition that the definition is consistent with dictionary definitions of the word "surgery." The definition is also consistent with

the statutory definition of the practice of medicine contained in Section 37-3-102(a). The definition expresses the plain meaning of surgery as it has been understood for decades, and clarifies that the "instrumentalities" of surgery include all forms of instrument modern medicine now uses to cut or alter tissue, not just the simple scalpel of yesteryear.

As set forth above, the definition gives clearer, more specific, and fair notice to the public of what constitutes surgery. Failing to adopt a rule, and instead relying on Board or court decisions on a case-by-case basis, would create unacceptable risk to both patients and health care providers.

COMMENT: Opponents of the rule stated that a rule must be consistent and not in conflict with statute, citing Section 2-4-305(6)(a).

RESPONSE: For the reasons stated above, the Board maintains that the rule is consistent with Sections 37-3-101 and 102, and meets all statutory requirements for adoption.

COMMENT: Opponents of the rule state that a rule may not engraft additional non-contradictory requirements on a statute, which requirements were not contemplated by the legislature and which are not reasonably necessary to effectuate the purpose of the statute. Opponents cited Bick v. State Department of Justice, 730 P.2d 418, 224 Mont. 455 (1986); Bell v. Department of Licensing, 594 P.2d 331, 333, 182 Mont. ___ (1979); State ex rel Swart v. Casne, 654 P.2d 983, 172 Mont. 302 (1977); Board of Barbers of the Department of Professional and Occupational Licensing v. Big Sky College, 626 P.2d 1269, 38 St. Rep. 621 (1981); and Michels v. Department of Social and Rehabilitation Services, 609 P.2d 271, 37 St. Rep. ___ (1985).

RESPONSE: The Board agrees that a rule may not engraft additional requirements, whether contradictory or non-contradictory, to a statute. Opponents, however, fail to specify any additional requirements that are effected by the new definition.

In Bick, the Montana Supreme Court upheld a point system devised by the Department of Justice to assist in regulating drivers with certain numbers and kinds of traffic violations. (The point system had not been enacted by the legislature.) The Court found that the decision to use objective, specific rules was of benefit to the public and promoted equality among similarly situated drivers. The definition of surgery adopted here serves precisely the same function.

In Board of Barbers, the statute required only one year's apprenticeship in a school or under a licensed barber before the applicant could take the licensing examination. The rule struck down, however, required one year's apprenticeship in a commercial barbershop under the supervision of a licensed barber. Thus, the rule effectively gave the student applicant no credit for the time spent in barber school or college, and engrafted an additional time requirement in order to take the examination. The rule was properly struck down.

In Bell, the barber statute required only 10 years' experience and a satisfactory character investigation in order for a licensed barber to qualify as an instructor. The rule struck down required an instructor's examination as well. The rule improperly engrafted an additional requirement.

In Swart, the rule was in direct conflict with the statute, and was properly struck down.

In Michels, the rule was in conflict with the purpose of the statute, which was to provide aid to the indigent. The 5-day reporting requirement established by rule unreasonably deprived indigents of the opportunity to apply for legislatively-ordered benefits. The statute set forth no time requirement. The rule was properly struck down.

The definition of surgery adopted herein, however, imposes no requirement of any kind on anybody. It imposes no time requirements, no examinations, no fees, etc. Opponents do not identify any additional requirements they claim are engrafted by the rule. Opponents might argue that the rule engrafts a requirement that they abstain from a particular procedure, the argument. The argument falls, however. Those prohibited from practicing surgery by their practice acts, or lack of medical licensure must abstain from surgery by law, not by this rule.

Section 37-3-102(1)(a) clearly provides that "correcting a human condition," etc., by any "means, methods, devices or instrumentalities" is the practice of medicine. This definition merely identifies certain "instrumentalities" (i.e., "any mechanical or energy forms, including electrical or laser energy or ionizing radiation") so that non-physicians will not unwittingly violate the law. Nothing is improperly engrafted.

COMMENT: Opponents stated that the Board has no specific authority to define "surgery."

RESPONSE: On the contrary, "surgery" is clearly the practice of medicine. The Board is charged with regulating the practice of medicine for the protection of the public. Sections 37-3-101, 37-3-202, et seq. The Board is specifically authorized under Section 37-3-203 to adopt rules necessary or proper to carry out its mandate under Title 37, Chapter 3. Adopting a long-needed definition falls within the Board's duty and prerogative to regulate the overall practice of medicine in this State.

COMMENT: Opponents stated that the practice of optometry is exempt from medical licensure, and that the Board therefore may not regulate optometry.

RESPONSE: The Board is not. It is regulating medicine. As set forth above, the Board is charged with regulating all of medicine, except those pieces carved out for other health care professionals by exemption listed in Section 37-3-103. Optometry is generally exempt. But the legislature expressly prohibited optometrists from practicing surgery, thereby stating that surgery is not a permitted part of the practice

of optometry. Surgery therefore remains within the purview of the Board to regulate.

COMMENT: Opponents state that it is the legislature's prerogative to define "surgery."

RESPONSE: The legislature of course can and may adopt such definition of "surgery" as it sees fit. It has not yet done so. Instead, it has delegated to the Board of Medical Examiners the authority to adopt such rules (Section 37-3-203), and the Board believes it is necessary and proper to exercise that authority at this time.

COMMENT: Opponents state that individual health care boards may adopt individual definitions of "surgery" that conflict with the Board's rule.

RESPONSE: That may happen. If it should, there are numerous legal vehicles for resolving such conflicts. For the present, however, the Board hereby adopts the definition of "surgery" set forth in its Notice.

COMMENT: Persons wishing to be heard, but not standing as either proponents or opponents, stated that in their opinion the Board had authority to adopt the proposed definition, but that it could be applied only to physicians licensed under Title 37, Chapter 3.

RESPONSE: For the reasons stated above, the Board agrees that it has authority to adopt the definition, but disagrees that the rule's application is confined to licensees under Chapter 3, given the statutory schema enacted by the Montana legislature, i.e., the broad definition of the practice of medicine, the Board's obligation to regulate that practice, and the exemption format for the practice of various limited forms of medicine by specified professionals.

BOARD OF MEDICAL EXAMINERS
PETER L. BURLEIGH, M.D.,
PRESIDENT

By: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1992.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to course requirements and adoption of new rules pertaining to complaint process, reciprocity and license and certificate upgrade and downgrade	CORRECTED NOTICE OF 8.57.406 AND ADOPTION OF NEW RULES I, II AND III PERTAINING TO REAL ESTATE APPRAISERS

TO: All Interested Persons:

1. On May 28, 1992 at page 1082, issue number 10, 1992 Montana Administrative Register, the Board of Real Estate Appraisers published a notice of proposed amendment and adoption of new rules. The amendments and new rules were adopted exactly as proposed with no comments being received at page 1612, issue number 14, 1992 Montana Administrative Register.

2. Subsections (13) through (15) of ARM 8.57.406 were inadvertently omitted from the original proposal. The language "(13) through (15) will remain the same" should have appeared in the original notice.

3. New rules I Complaint Process, II Reciprocity and III License and Certificate Upgrade and Downgrade, were numbered wrong in the adoption notice published in issue 14. The new rules should have been numbered I (8.57.414), II (8.57.415) and III (8.57.416).

BOARD OF REAL ESTATE APPRAISERS
PATRICK ASAY, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1992.

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

In the matter of the amendment of rules 16.8.1304 and 16.8.1906, and the proposed adoption of new rule I)	NOTICE OF AMENDMENT OF RULES AND THE ADOPTION OF NEW RULE I

(Air Quality Bureau)

To: All Interested Persons

1. On June 25, 1992 the Board published a notice at page 1300 of the 1992 Montana Administrative Register, Issue No. 12, of the proposed amendment of the above-captioned rules and proposed adoption of new rule I.

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

16.8.1304 MAJOR OPEN BURNING SOURCE RESTRICTIONS Same as proposed.

16.8.1906 AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES Same as proposed.

RULE I (16.8.1907) AIR QUALITY OPEN BURNING FEES

(1)-(3) Same as proposed.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 16.8.1304 (Major Open Burning Source Restrictions). The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (b), below:

(i) a fee calculated using the following formula:
tons of total particulate emitted in the previous appropriate calendar year,
multiplied by ~~$7.30~~ $5.78; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,
multiplied by ~~$1.03~~ $1.64; plus
tons of volatile organic compounds emitted in the appropriate previous appropriate calendar year,
multiplied by ~~$1.03~~ $1.64; or

(ii) Same as proposed.

(b) Same as proposed.

3. The Board has thoroughly considered the comments received on the proposed rules. The following is a summary of the comments received, along with Board responses to these comments:

Comment: The Montana Wood Products Association and members of the Smoke Management Group made a presentation to the Board at the hearing on these rules regarding the fee levels proposed by the Board. These commentors asserted that an adequate Smoke Management Program could be operated on revenues generated by fees which are lower than those proposed. These commentors offered three recommendations: adopt as part of the rules the budget total of $34,721 recommended by the Airshed Group Budget Subcommittee; reduce the per ton fee total from $7.30 and $1.83 per ton to $5.78 per ton for particulates and $1.64 per ton for NO_2 and VOC which will provide the dollars to fund the recommended lower budget level; adopt the rules with the above amounts in order to allow the department to issue burning permits based on the new fee schedule as soon as possible.

Response: The Board agrees that an adequate smoke management program could be operated at the suggested budget level of $34,721, and has adjusted the final fee numbers as proposed. The Board has not, however, adopted the average budget level as part of these rules, as recommended, because it was not appropriate.

Comment: The U.S. Forest Service (USFS) appeared and generally supported the efforts of the Smoke Management Group. However, the USFS expressed several concerns with the current fee proposal, including: the current fee structure leaves open the possibility of limitless fee increases with no opportunity for negotiation. The fees currently proposed are nearly three times higher than the first notification of proposed fees in August, 1991; the proposed rule does not address the minor open burner, and; the fee system should assess different fees depending on the season of the year or area to be burned.

Response: The Board disagrees that the current fee-setting method allows for limitless fee increases. The department must first receive authorization from the legislature, which determines the amount to be recovered through fees. The department must then come to the Board for approval of the fees. The current proposal differs significantly from the department's August, 1991, proposal because the Smoke Management Program, at the request of the program members, was separated from the general permit fee program implemented by the department. The department may only assess permit fees to those sources which are required to obtain permits. Minor open burners are not required to obtain permits. Consideration of whether or not minor open burners should be required to obtain permits is beyond the scope of this proceeding. In response, the department agreed that a fee system which recognized the time of year during which burning

occurred would be acceptable. However, no concrete proposal was offered during this proceeding.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

DENNIS IVERSON, Secretary

Certified to the Secretary of State August 31, 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 16.20.602-603, 16.20.634, 16.20.701-705 concerning surface water quality standards and the nondegradation policy	NOTICE OF AMENDMENT OF RULES

(Water Quality Bureau)

To: All Interested Persons

1. On March 26, 1992 the board published notice at page 501 of the Montana Administrative Register, Issue No. 6, to consider the amendment of the above-captioned rules.

2. The board conducted a rulemaking hearing on the proposed amendments on May 22, 1992. Prior to that hearing written comments on the proposed changes were received. Oral comments and additional written comments were received at the hearing. At that meeting, the board requested the department prepare an analysis of the comments for its consideration. The department's analysis was presented to the board members two weeks prior to its meeting of July 31, 1992. At that meeting the department presented an updated version of that analysis to the board. After deliberation, the board voted to adopt the final version of the rule amendments set forth below and the department's analysis of the comments (new material is underlined; material to be deleted is interlined):

16.20.602 APPLICATION AND COMPOSITION OF SURFACE WATER QUALITY STANDARDS (1)-(3) Same as proposed.

(4) The standards ~~under~~ of this subchapter ~~apply to~~ are applicable where these standards are or would be violated by discharges to groundwater ~~that may affect adjacent surface waters~~.

16.20.603 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) "~~Acute lethality~~ Acutely toxic conditions" means conditions ~~that could result in increased mortality of~~ lethal to aquatic ~~life after short term exposure, as defined for the "Criteria Maximum Concentration" in the EPA document 440/5-86-001 (the "Gold Book")~~ organisms passing through the mixing zone. Lethality is a function of the magnitude of pollutant concentrations and the duration of organism exposure to those concentrations.

(2)-(11) Same as proposed.

(12) "Mixing zone" means the area of a water body contiguous to an effluent with characteristics qualitatively or quantitatively different from those of the receiving water. The mixing zone is a place where effluent and receiving water mix and not a place where effluents are treated. Certain water quality standards may not apply in the mixing zone for those

parameters regulated by a MPDES or NPDES permit. An effluent, in its mixing zone, may not block passage of aquatic organisms nor may it cause ~~acute lethality~~ acutely toxic conditions, except that ammonia, chlorine, and dissolved oxygen may be present at ~~acute lethality~~ concentrations so as to cause potentially toxic conditions in no more than 10% of the mixing zone provided that there is no lethality to aquatic organisms passing through the mixing zone. The area in which these exceedences may be allowed shall be as small as practicable. Provisions for specific mixing zones will be determined on a case by case basis by application of the department's surface water mixing zone implementation guide.

(13)-(28) Same as proposed.

(29) The board hereby adopts and incorporates by reference the department's surface water mixing zone implementation guide, which contains criteria to be used to determine the mixing zones appropriate to different sets of conditions. A copy of the implementation guide may be obtained from the department's Water Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620-0902 [phone: (406)444-2406].

16.20.634 MIXING ZONE (1) Same as proposed.

(2)(a)-(b) Same as proposed.

(c) the granting of a mixing zone does not affect existing or reasonably anticipated uses outside of the mixing zone.

16.20.701 DEFINITIONS In this subchapter, the following terms have the meanings indicated below and are supplemental to the definitions set forth in section 75-5-103, MCA:

(1)(a) Except as provided in paragraph (b) of this subsection, "degradation" means that as a result of the activities of man:

(i) Same as proposed.

(ii) the hydrogen ion concentration (pH), turbidity, temperature, color, suspended solids or oils where quality which is higher than established water quality standards has ~~become~~ changed resulting in conditions becoming worse than naturally occurring conditions;

(iii)-(vi) Same as proposed.

(b) Same as proposed.

(2)-(3) Same as proposed.

16.20.702 APPLICABILITY AND LIMITATION OF STATE WATER NONDEGRADATION -- GENERAL (1) Remains the same.

(2) If the board determines, based on necessary or important economic or social development, that degradation may be allowed, in no event may degradation of state waters interfere with or become harmful, detrimental or injurious to public health, recreation, safety, welfare, livestock, wild birds, fish and other wildlife or any other uses which existed or could have existed on or after November 28, 1975. In allowing such degradation or lower water quality, the board shall assure that within the basin upstream of the proposed degradation there shall be achieved the highest statutory and regulatory

requirements for all point and nonpoint sources.

(3) Same as proposed.

16.20.703 PERMIT CONDITIONS TO ENSURE NON-DEGRADATION Same as proposed.

16.20.704 PROCEDURE FOR PETITIONING FOR NON-DEGRADATION REVIEW (1) A person may petition the board to allow a lowering of the quality of high quality waters pursuant to 75-5-~~301~~ 303, MCA, either prior to or after obtaining a permit under this chapter. A permit issued by the department is not a prerequisite to petition the board under this subchapter.

(2)-(6) Same as proposed.

16.20.705 DEPARTMENT AND BOARD PROCEDURES FOLLOWING RECEIPT OF COMPLETED PETITION Same as proposed.

3. The department has thoroughly considered the comments received on the proposed rules. The following is a summary of the comments received from the public and the department's responses:

COMMENT 1: The proposed amendment of ARM 16.20.602(4) requires the application of surface water quality standards to discharges to groundwater, rather than to surface water affected by ground water discharges. Since most discharges to ground water will not meet surface water quality standards, the rule should be changed to clearly state that surface water quality standards will apply to groundwater discharges only if adjacent surface waters are affected by the discharge. The proposed amendment should also clarify what criteria will be used to determine when a discharge to groundwater "may affect adjacent surface waters".

RESPONSE: The proposed rule amendment has been modified in response to comments requesting clarification. The purpose of the rule is to protect surface water from ground water discharges by applying surface water quality standards whenever the discharge to groundwater impacts surface water. The amended rule as proposed for adoption has been modified to clearly state this intent. The phrase "may affect adjacent surface waters" was deleted from the proposed amendment, as the term "adjacent" is too vague and is unnecessary since any surface water impacted by groundwater would by nature be adjacent. Other geological and hydrological factors will be considered by the department on a case-by-case basis, rather than according to specific criteria, to determine when adjacent surface waters will be affected, since there are so many different circumstances to consider, varying widely in scope and detail, that it is virtually impossible to develop a single set of criteria to effectively deal with all cases.

COMMENT 2: The proposed amendment of ARM 16.20.602(4) is unnecessary because surface waters are protected by the state's

ground water permitting system.

RESPONSE: There are many activities that could affect surface or ground water that are not required to obtain permits from the department. The proposed amendment as adopted is necessary to insure the protection of surface water quality standards in instances where the requirements for a discharge permit do not apply and to insure consistent application of surface water quality standards under both the ground water and surface water rules.

COMMENT 3: The proposed amendment of 16.20.602(4) is not sufficient protection of surface water from ground water discharges, as such protection can only be accomplished through a surface water (MPDES) permit.

RESPONSE: The proposed amendment eliminates the need to obtain both a ground water permit and a surface water permit in order to protect surface water from ground water discharges. The proposed amendment as adopted will insure the protection of surface water quality standards under the ground water rules and permitting process.

COMMENT 4: The phrase "in general" should be deleted from the proposed amendment to ARM 16.20.603(1).

RESPONSE: "In general" does not appear in the amendment as proposed for adoption.

COMMENT 5: Some commentors want the existing language in rule ARM 16.20.603(1) to remain without change.

RESPONSE: U.S.EPA has disapproved the definition of "acute toxicity" under ARM 16.20.603(1). The proposed amendment to the rule is necessary to comply with EPA requirements.

COMMENT 6: The proposed amendments to ARM 16.20.603(1) and 16.20.603 (12) would eliminate mixing zones by applying water quality standards at the point of discharge rather than after complete mixing within the zone as currently allowed.

RESPONSE: The amended rule as proposed for adoption will not eliminate the use of mixing zones but will modify the current application of mixing zones. Both the current rule and the proposed amendment allow a discharge of substances above chronic levels, but prohibit concentrations of these substances (except for ammonia, chlorine and dissolved oxygen) from exceeding acute levels. The practical effect of the amendment is to restrict the area in which the concentrations of ammonia, chlorine and dissolved oxygen may exceed acute levels.

COMMENT 7: The definition of "acute lethality" is not clearly defined in the "Gold Book". Some commentors suggest using "acute criteria" as defined in the "Gold Book", rather than

"acute lethality".

RESPONSE: According to EPA guidance for mixing zones, a "mixing zone" is defined as an allocated area of impact where numeric water quality criteria can be exceeded so long as acutely toxic conditions are prevented. "Acutely toxic conditions" are defined as "those conditions lethal to aquatic organisms passing through the mixing zone. Lethality is a function of the magnitude of pollutant concentrations and the duration of organism exposure to those concentrations." Because EPA guidance suggests the use of "acutely toxic conditions" to determine allowable limits of pollutants within a mixing zone, the amendment as proposed for adoption will define and apply "acutely toxic conditions" to mixing zones, rather than the proposed definition of "acute lethality".

COMMENT 8: The 10% limit for acute lethality of certain parameters within the mixing zone, as proposed in the amendment to ARM 16.20.603(12), does not provide enough guidance to determine the extent of the mixing zone to which the limit is applied. Enforcement and monitoring of the mixing zone requirements will, therefore, be unmanageable.

RESPONSE: A surface water mixing zone implementation policy has been developed with the cooperation of EPA and has been incorporated by reference. [Note: New paragraph (29) was added after Administrative Code Committee staff affirmed that such a paragraph is legally necessary to complete proper incorporation of the guidance by reference.]

COMMENT 9: Some commentors have raised the issue of whether the department has the legal authority to grant a mixing zone.

RESPONSE: Statutory authority for the proposed rule amendment to ARM 16.20.603 is found at Sections 75-5-201 and 75-5-301, MCA. The amended rule implements the Board's authority to establish water quality standards for the administration of the water quality program pursuant to Section 75-5-301, MCA.

COMMENT 10: The use of the term "must" rather than "may" should be used within the fourth sentence of the proposed amendment to ARM 16.20.603(12).

RESPONSE: No change was made because the Legislative Council's manual for drafting bills, which the department customarily follows when drafting rules, indicates that "may not" is the proper way to state a prohibition.

COMMENT 11: The exemption for chlorine, ammonia and dissolved oxygen should be deleted in the proposed amendment to ARM 16.20.603(12).

RESPONSE: The exemption for chlorine, ammonia and dissolved

oxygen must be retained in order to provide for the lawful discharge of domestic wastes.

COMMENT 12: Several commentors suggested that the term "acute toxicity" should be retained rather than change the term to "acute lethality" as proposed in the amended ARM 16.20.603(12).

RESPONSE: The current use of the term "acute toxicity" in ARM 16.20.603(12) has been disapproved by EPA and must be changed to meet federal requirements. Pursuant to EPA guidelines for mixing zones, (See Response to Comment 7), the proposed change in language from "acute toxicity" to "acute lethality" has been rejected in favor of the term "acutely toxic conditions".

COMMENT 13: The use of the term "existing uses" in the proposed amendment to ARM 16.20.634(1)(c) is too broad and may include uses other than beneficial uses.

RESPONSE: EPA requires states to protect existing uses in their nondegradation requirements, whether or not those existing uses are designated under the water quality standards for a particular water segment. The protection of existing uses is a minimum requirement for the preservation of water quality under the state nondegradation policy.

COMMENT 14: "Potential uses" should also be protected under ARM 16.20.634(1)(c).

RESPONSE: The rule as proposed for amendment protects potential uses with the phrase "anticipated uses", as this language adopts the statutory language of the state's nondegradation policy, Section 75-5-303, MCA.

COMMENT 15: Some commentors challenged the authority of the Board to authorize mixing zones and to delegate the function of granting mixing zones to the department, as provided by amended rule ARM 16.20.634.

RESPONSE: The authority for the existing rule and proposed amendment to ARM 16.20.634 is found in Sections 75-5-201 and 75-5-301, MCA.

COMMENT 16: The proposed amendment of ARM 16.20.634 should include a requirement that new or increased sources demonstrate the necessity of a mixing zone.

RESPONSE: The proposal was rejected because the suggestion that new or increased sources must demonstrate the necessity of a mixing zone would involve additional burdens on the regulated public and the agencies with minimal benefits toward the goal of protecting and preserving water quality.

COMMENT 17: The proposed amendment of ARM 16.20.634(2)(c) should include the protection of "potential uses" outside the

mixing zone, as well as the protection of "existing resident aquatic communities" within the mixing zone.

RESPONSE: The proposed amendment, as adopted, incorporates the suggestion to protect "reasonably anticipated uses" outside the mixing zone, but does not include the protection of resident aquatic communities within the mixing zone, because to do so may effectively eliminate the use of mixing zones.

COMMENT 18: One commentor questioned how the proposed amendment of ARM 16.20.634 would apply to ground water discharges.

RESPONSE: The proposed amendment will not apply to direct discharges to ground water but will apply to discharges to surface water resulting from ground water discharges.

COMMENT 19: The proposed amendment of ARM 16.20.701(1)(a)(ii) does not address how the nondegradation requirements under this rule will impact the thermal variance component of the surface water quality standards found at ARM 16.20.923.

RESPONSE: The proposed changes must be used in a manner consistent with all other applicable rules. All industrial discharges, including thermal discharges, are subject to various treatment requirements through state adoption of federal requirements. Restating the treatment requirements within the nondegradation rule is unnecessary as the nondegradation rules must be implemented consistently with all other requirements.

COMMENT 20: The term "naturally occurring conditions" should be deleted from the proposed amendment of ARM 16.20.701(1)(a)(ii), because the definition of that term in the surface water quality standards includes certain activities of man pursuant to ARM 16.20.603(15). The combined effect would be to exclude from nondegradation review activities where "all reasonable land, soil and water conservation practices have been applied".

RESPONSE: The definition of "naturally occurring conditions" in the water quality standards (ARM 16.20.603(15)) is derived from Section 75-5-306(2), MCA. Inclusion of the term in the nondegradation rules is consistent with the statutory language defining "natural" as a condition which results from "all reasonable land, soil, and conservation practices."

COMMENT 21: The term "worse" as used in the proposed amendment to ARM 16.20.701(1)(a)(ii) is too general and open to subjective interpretation.

RESPONSE: ARM 16.20.701(1)(a)(ii), as proposed for adoption, has been modified to address the concerns of those commentors objecting to the use of the term "worse".

COMMENT 22: One commentor suggested that any "detrimental change in the resident biological communities" should be specifically listed after the term "oils" under proposed amendment of ARM 16.20.701(1)(a)(ii). In addition, the term "ecological" should be inserted after the term "occurring" to avoid conflicts with nonpoint source requirements.

RESPONSE: Specific inclusion of "ecological conditions" and "resident biological communities" may be considered in later revisions to the nondegradation rules with appropriate consideration of the impact their inclusion may have on the nondegradation requirements. At this point, inclusion of those terms in ARM 16.20.701(1)(a)(ii) is not necessary to meet state and federal nondegradation requirements.

COMMENT 23: Several commentors objected to using the term "important" versus "necessary" in the proposed amendment to ARM 16.20.702(2). In general, the commentors believed that "necessary" sets a more stringent standard and is the required standard under the state's nondegradation policy, Section 75-5-303, MCA.

RESPONSE: Section 75-5-303, MCA, refers to "necessary" economic or social development; however, EPA guidance requires an economic or social analysis based on "important" development, as this term is less susceptible to varying degrees of interpretation. The term "necessary", although used in the state's nondegradation statute, remains undefined and is subject to agency interpretation. Accordingly, EPA's nondegradation guidelines suggest that the purpose of requiring a social/economic analysis is to determine the importance of the proposal in the impacted area. Importance is determined by weighing the benefits of the proposed activity against the costs of allowing degradation. The amended rule as proposed for adoption includes both terms as an acceptable method of reconciling statutory language with EPA guidance.

COMMENT 24: The last sentence of the proposed amendment to ARM 16.20.702(2) should require that "prior to allowing such degradation and every 5th year thereafter, the Board shall assure implementation of the highest degree of waste treatment then currently available".

RESPONSE: This proposal is rejected for the following reasons: (1) a requirement that all sources are subject to the "highest degree" of treatment available ignores the technical and economic feasibility of the requirement; and (2) neither state nor federal law requires the highest degree of treatment under the nondegradation policies.

COMMENT 25: The last sentence in the proposed amendment of ARM 16.20.702(2) may be interpreted as prohibiting future nondegradation petitions.

RESPONSE: The intent of the rule is to insure that compliance with water quality regulations is being achieved within the basin upstream from the activity causing degradation. The rule does not prohibit the Board from considering petitions for future or concurrent degradation causing activities within the basin.

COMMENT 26: Amended rule ARM 16.20.702(2) unfairly requires compliance with all water quality regulations by all sources within the basin upstream from the degradation causing activity, even though these sources are not under the control of the petitioner. Any upstream source opposing a proposal for degradation may effectively prevent the proposal by their noncompliance with the water quality standards and regulations.

RESPONSE: The proposed language requiring the compliance of all sources within the basin upstream is required by EPA as part of the federal requirements for approving state nondegradation programs. A definition of compliance is being considered that would include sources under either an administrative or judicial order.

COMMENT 27: The terms "existed or could have existed", "basin upstream", and "highest statutory or regulatory requirements" are vague and need clarification.

RESPONSE: Uses that "existed or could have existed" need no further clarification. Those uses can be determined on a case-by-case basis. The intent of requiring compliance with the "highest statutory or regulatory requirements" is to insure that compliance with all water quality regulations and best management practices are currently being achieved within the water body impacted by the proposal for degradation. These requirements are also applicable to the new proposal. The "basin upstream" may be defined at a later rule-making, if determined necessary by the department.

COMMENT 28: The proposed amendment to ARM 16.20.704 incorrectly cites the nondegradation policy at Section 75-5-301, MCA. The correct citation is Section 75-5-303, MCA.

RESPONSE: The amendment as proposed for adoption includes the correct citation as Section 75-5-303, MCA.

COMMENT 29: The proposed amendment of ARM 16.20.704(1) is an attempt to conform the rule to existing practice. The proposed amendment should be rejected because it unlawfully allows the Board to review and take final action on a nondegradation petition prior to the issuance of a permit.

RESPONSE: The amendment as proposed for adoption clarifies the agencies' interpretation of the existing language in ARM 16.20.704(1). There is no requirement of state or federal law

that prohibits a determination of whether degradation will be allowed prior to the issuance of a discharge permit. This amendment clarifies that, whether or not a discharge permit is required by the Department of Health and Environmental Sciences, the procedures for submitting a nondegradation petition to the Board are available.

COMMENT 30: ARM 16.20.704(1) was not approved by EPA and will not be approved because EPA rules will not allow states to determine nondegradation issues prior to issuing a permit.

RESPONSE: Sub-chapters 6 and 7 of the ARM were submitted to EPA for approval of the state's nondegradation rules in 1988. EPA disapproved portions of those sub-chapters and approved without comment the remainder of those rules. ARM 16.20.704(1) was among those nondegradation rules approved without comment by EPA. In addition, EPA has issued no rule, and arguably has no authority, to require states to implement their nondegradation policies according to certain procedures, such as issuing a permit prior to making a decision on nondegradation.

COMMENT 31: ARM 16.20.704 should require the person petitioning for an allowance of degradation to make specific factual findings regarding the cost of compliance with the nondegradation standard and the costs of alternatives.

RESPONSE: Although the rule in its present form does not require the submittal of an analysis of costs for various alternatives to treatment, subsection (3) of the rule allows the department to request this information from the petitioner. The department, in its discretion, will request the amount of economic analysis as is necessary for the Board to determine whether degradation is justified.

COMMENT 32: Comments on the proposed amendment of ARM 16.20.704(6) were all in favor of the proposed change.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

DENNIS IVERSON, Secretary

Certified to the Secretary of State August 31, 1992.

Reviewed by:

Eleanor Parker, DHES Attorney

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	))))))	AMENDED NOTICE OF AMENDMENT OF RULE 23.7.105 AND 23.7.110.

TO: All Interested Persons:

1. On June 11, 1992, the Fire Prevention and Investigation Bureau published a notice to adopt the 1991 edition of the Uniform Fire Code and correct 23.7.110 MCA cites on page 1202 of the 1992 Montana Administrative Register, issue #11. On August 13, 1992 the Fire Prevention and Investigation Bureau published a notice of amendment on page 1759 of the Montana Administrative Register, issue #15.

2. John MacMaster, Administrative Code Committee, felt the statement of reasonable necessity was not adequate. The statement of reasonable necessity is as follows: As new materials, technology, methods of construction, safety devices and prevention techniques appear, the International Fire Code Institute studies, adopts and publishes those changes in the Uniform Fire Code. The objective of the Uniform Fire Code is to provide cities, counties, states and governmental agencies with a set of codes and standards which are correlated to provide the safest methods of establishing and implementing fire safety. The Department is adopting the 1991 UFC so Montana citizens will have the benefit of the most current and up-to-date codes available.

By: _____ _____
MARC RACICOT, Attorney General Rule Reviewer

Certified to the Secretary of State August 31, 1992.

BEFORE THE MONTANA LAW ENFORCEMENT ACADEMY
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the matter of the amendment of Rule 23.17.314 pertaining to physical performance requirements for the basic course	))))	NOTICE OF ADOPTION FOR AMENDMENT OF RULE 23.17.314 PHYSICAL PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE

TO: All Interested Persons.

1. On July 16, 1992, the Montana Law Enforcement Academy published a notice of proposed amendment to Rule 23.17.314, concerning physical performance requirements for the basic course at page 1457 of the Montana Administrative Register, Issue Number 13.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

Marc Racicot, Attorney General
Department of Justice

Rule Reviewer

Certified to the Secretary of State, August 31, 1992

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of a rule governing unemployment insurance.	) NOTICE OF AMENDMENT OF ARM 24.11.475 PERTAINING) TO UNEMPLOYMENT INSURANCE

TO ALL INTERESTED PERSONS:

1. On July 30, 1992 in the Montana Administrative Register, issue number 14, pages 1570 through 1572, the Department of Labor and Industry published a notice of proposed amendment of ARM 24.11.475 regarding the administration of unemployment insurance for the State of Montana.

2. The Department has amended rule 24.11.475 as proposed.

3. The rule was amended to eliminate a too restrictive interpretation of the rule that was eliminating training opportunities for those otherwise qualified.

William E. O'Leary, Chief Counsel
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: 8-31-92

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.2.201 relating to taxpayer or licensee lists	)))	NOTICE OF THE REPEAL of ARM 42.2.201 relating to taxpayer or licensee lists

TO: All Interested Persons:

1. On July 16, 1992, the Department published notice of the proposed repeal of ARM 42.2.201 relating to taxpayer or licensee lists at page 1460 of the 1992 Montana Administrative Register, issue no. 13.

2. No public comments were received regarding these rules.

3. The Department repeals the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 31, 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 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

TO: All Interested Persons:

1. On June 11, 1992, the Department published notice of 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 at page 1221 of the 1992 Montana Administrative Register, issue no. 11.

2. A Public Hearing was held on July 8, 1992, to consider the proposed amendments and repeals. No one appeared to testify and no written comments were received.

3. However, after review of the proposed amendments, the department believes that ARM 42.22.1304 should be further amended as follows:

42.22.1304 VALUATION OF INDUSTRIAL IMPROVEMENTS

(1) remains the same.

(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 "Boechk" 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.~~ THE DEPARTMENT APPRAISER SHALL USE HIS BEST JUDGMENT TO ESTABLISH THE EFFECTIVE AGE BY EXAMINING THE CONDITION, DESIRABILITY AND UTILITY OF THE PROPERTY.

(3) ~~The department appraiser shall use his best judgement to establish the effective age condition, desirability and utility of the property.~~ UPON THE DETERMINATION OF THE PROPERTY'S EFFECTIVE AGE, IT SHALL BE DEPRECIATED ON AN AGE/LIFE BASIS ACCORDING TO THE INTERNAL PROGRAM SCHEDULES OF THE 1992 MONTANA APPRAISAL MANUAL.

(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.~~ IF THE REPRODUCTION COST OF THE PROPERTY IS NOT LISTED, OR IS NOT ACCURATELY LISTED IN THE 1992 MONTANA APPRAISAL MANUAL FOR THE SPECIFIC PROPERTY BEING APPRAISED, THEN THE DEPARTMENT MAY USE OTHER APPROPRIATE COST MANUALS SUCH AS "MEANS" OR "MARSHALL VALUATION SERVICE" TO OBTAIN THE BEST ESTIMATE OF REPRODUCTION COST. THIS REPRODUCTION COST WOULD BE DEPRECIATED ON AN AGE/LIFE BASIS TO ARRIVE AT MARKET VALUE FOR ASSESSMENT PURPOSES.

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

4. The Department is revising this rule to reflect greater clarity and to explain the procedure by which the Montana Appraisal Manual is used to value industrial property. The revisions explain the cross check procedure by which industrial improvements may be valued allowing for a greater degree of accuracy in arriving at the reproduction cost of the improvement. They also explain the system by which the improvement is depreciated to arrive at market value.

5. Therefore, the Department adopts the rules with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 31, 1992.

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

In the matter of the amendment of rules 46.10.105 and 46.10.106 pertaining to AFDC disqualification for fraud	))))	NOTICE OF THE AMENDMENT OF RULES 46.10.105 AND 46.10.106 PERTAINING TO AFDC DISQUALIFICATION FOR FRAUD

TO: All Interested Persons

1. On July 16, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.10.105 and 46.10.106 pertaining to AFDC disqualification for fraud at page 1464 of the 1992 Montana Administrative Register, issue number 13.

2. The Department has amended rules 46.10.105 and 46.10.106 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 31, 1992.

VOLUME NO. 44 OPINION NO. 37

HEALTH - Disclosure of health care information concerning subject of HIV-related test;
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF - Disclosure of health care information concerning subject of HIV-related test;
MONTANA CODE ANNOTATED - Title 50, chapter 16, part 5; sections 50-16-501 to 50-16-553, 50-16-504(6), 50-16-529(9), 50-16-1001 to 50-16-1013, 50-16-1002, 50-16-1003, 50-16-1009(1), (3).

HELD: A health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact as defined by section 50-16-1003, MCA, without the subject's authorization, only when the health care provider "reasonably believes" that that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or another individual.

August 18, 1992

James C. Nelson
Glacier County Attorney
P.O. Box 428
Cut Bank MT 59427-0428

Dear Mr. Nelson:

You have requested my opinion concerning the following question:

> What type of information may a health care provider release to a contact about a subject of an HIV-related test, without the subject's authorization?

Your question concerns the apparent conflict in the statutes about the type of information a health care provider may disclose to a contact of the subject of an HIV-related test without the subject's authorization. Specifically, the conflict appears to occur between section 50-16-529(9), MCA, of the Uniform Health Care Information Act and section 50-16-1009(3), MCA, of the AIDS Prevention Act. Section 50-16-529(9), MCA, suggests that a health care provider may, under certain conditions, disclose the identity of the subject of an HIV-related test, whereas under section 50-16-1009(3), MCA, a health care provider may notify contacts about the possibility of exposure to HIV under certain circumstances, but is not authorized to disclose the identity of the subject. The apparent conflict, however, is eliminated by the specific incorporation of section 50-16-529(9), MCA, by subsection (1) of section 50-16-1009, MCA, which provides that a subject's identity may be disclosed to the extent allowed under the Uniform Health Care Information Act, Tit. 50, ch. 16, pt. 5, MCA.

These two acts, the Uniform Health Care Information Act ("the Information Act"), and the AIDS Prevention Act ("the Prevention Act") focus on different subjects. The Legislature enacted the Information Act, §§ 50-16-501 to 553, MCA, in 1987. The Information Act addresses the confidentiality of a person's health care information, but also recognizes that under certain conditions the information may be disclosed. Under the Information Act, "health care information" is defined as "any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information." § 50-16-504(6), MCA. Section 50-16-529 of the Information Act addresses under what circumstances a health care provider may disclose health care information without a patient's authorization. During the 1991 legislative session, the Legislature amended this section by inserting subsection (9) as follows:

> A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:
>
> ....
>
> (9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual. [Emphasis added.]

§ 50-16-529(9), MCA.

The disclosure under section 50-16-529, MCA, is based upon a recipient's need to know. When enacting subsection (9) the Legislature specifically stated: "This language is based on the need to know. If the health care provider reasonably believes that disclosure will avoid or minimize an eminent [sic] danger to health or safety of the contact or another individual [sic]. This allows for the disclosure of results without the patients [sic] authorization." Minutes of Senate Public Health, Welfare & Safety Committee hearing on H.B. 917, March 20, 1991, at 6 (statement by Rep. Howard Toole). Thus, under the Information Act, before a health care provider may disclose health care information about a person, which includes the person's identity, the health care provider must "reasonably believe" that disclosure will avoid or minimize an imminent danger to the health or safety of another person. It should be noted though, that this language allows disclosure of this information to a contact only, as defined by section 50-16-1003(2), MCA, and not a potential contact. Further, this information does not compel a health care provider to release the subject's identity. Rather, a health care provider must determine what information a contact needs to know, and in the majority of situations it would seem that a contact does not need

to know the identity of the subject, but only that he or she has been exposed to the HIV virus. Thus, many circumstances may exist when a health care provider does not need to include disclosure of a subject's identity in order to avoid or minimize an imminent danger to the health or safety of another person.

The Prevention Act, §§ 50-16-1001 to 1013, MCA, was enacted in 1989 to help in preventing the transmission of the HIV virus by educating those who are infected or are at risk through testing and counseling. § 50-16-1002(1), MCA. Section 50-16-1009, MCA, of the Prevention Act addresses the confidentiality of records, notification of contacts and penalties for unlawful disclosures. In 1991, the Legislature amended this act by inserting subsections (2) and (4). Subsection (2) addresses when a governmental official may disclose a patient's identity under the Government Health Care Information Act, and subsection (4) addresses the penalties for a person who unlawfully discloses confidential health care information. The Legislature also slightly modified subsections (1) and (3), the subsections that pertain to your question. These subsections provide:

> (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.
>
> ....
>
> (3) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test. [Emphasis indicates the 1991 amendments.]

§ 50-16-1009(1), (3), MCA. "Contact" means

> (a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or
>
> (b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of

transmission recognized by the centers for disease control of the United States public health service.

§ 50-16-1003(2), MCA.

After reviewing both of these acts, I conclude that under section 50-16-1009(3), MCA, a health care provider shall encourage the subject to notify persons who are potential contacts or, if the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identity of each contact and to authorize that he or she be notified. The notification may only state that the contact may have been exposed to HIV, and the health care provider may not expose the identity of the subject of the HIV-related test. However, if the specific requirements of section 50-16-529(9), MCA, are met, i.e., if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or another individual, then the health care provider may release health care information, including the identity of the subject to a contact. § 50-16-1009(1), MCA.

THEREFORE, IT IS MY OPINION:

A health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact as defined by section 50-16-1003, MCA, without the subject's authorization, only when the health care provider "reasonably believes" that that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or another individual.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 38

CLERKS - Collection and distribution of fees and authentication requirements for filing foreign judgment under Uniform Enforcement of Foreign Judgments Act;
FEES - Collection and distribution of fees for filing foreign judgment under Uniform Enforcement of Foreign Judgments Act;
JUDGMENTS - Authentication requirements for filing foreign judgment under Uniform Enforcement of Foreign Judgments Act;
MONTANA CODE ANNOTATED - Sections 3-5-501(4), 3-5-507, 3-5-508, 25-1-201(1), (2), 25-9-301 to 25-9-303, 25-9-501 to 25-9-508, 25-9-502, 25-9-503, 25-9-506;
MONTANA RULES OF CIVIL PROCEDURE - Rules 44, 58;
OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 15 (1991);
UNITED STATES CODE - 28 U.S.C. § 1738;
UNITED STATES CONSTITUTION - Article IV, section 1.

HELD: 1. The clerk of court should collect a fee of $60 at the time a foreign judgment is filed pursuant to the Uniform Enforcement of Foreign Judgments Act.

2. The clerk of court should distribute the fees collected at the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act in accordance with the requirements of section 25-1-201(2), MCA.

3. A foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act must be authenticated in accordance with the provisions of Rule 44(a)(1), Mont. R. Civ. P.

August 19, 1992

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

Dear Mr. McGrath:

You have requested my opinion on three questions concerning foreign judgments:

1. What fees are required by statute to be collected by the clerk of court in connection with the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act?

2. How should the clerk of court distribute the fees collected in connection with the filing of a foreign judgment?

3. What authentication should the clerk of court require before accepting a foreign judgment for filing?

The Montana Legislature enacted the Montana Uniform Enforcement of Foreign Judgments Act in 1989, joining 40 other states in adopting the Revised Uniform Enforcement of Foreign Judgments Act which was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1964. The 1964 revision of the model act provides the enacting states with a speedy and economical method of meeting the federal constitutional requirement of giving full faith and credit to the judgments of courts of other states. U.S. Const. Art. IV, § 1. It is also intended to relieve creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of a foreign judgment. See Unif. Enforcement of Foreign Judgments Act 1964 Revised Act Prefatory Note, 13 U.L.A. 150 (1986).

Montana's version of the revised model act, which is codified at sections 25-9-501 to 508, MCA, provides a procedure for the filing of a foreign judgment with the clerk of the district court and requires the clerk to treat the foreign judgment in the same manner as a judgment of the district court. If a judgment creditor utilizes this procedure, the creditor need not bring a separate action or special proceeding under section 26-3-203, MCA, to enforce the judgment in Montana. See 44 Op. Att'y Gen. No. 15 (1991).

Section 25-9-506, MCA, establishes the fees for judgments filed under the Uniform Enforcement of Foreign Judgments Act:

> Any person filing a foreign judgment shall pay to the clerk of court a fee of $60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

The clerk of court is thus required to collect a fee of $60 upon the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act. As indicated in your letter of inquiry, however, there remains a question as to what additional fees, if any, should be collected at the time the judgment is filed. Section 25-1-201(1)(c), MCA, requires the clerk of court to collect a $35 fee from the prevailing party "on the entry of judgment." Section 25-1-201(1)(h), MCA, requires the clerk to collect a $25 fee for "filing and docketing a transcript of judgment or abstract of judgment from all other courts." The clerk of court has asked whether either of these statutory

provisions applies when a foreign judgment is filed under the Uniform Enforcement of Foreign Judgments Act.

The second sentence of section 25-9-506, MCA, adopts in relevant part the suggested language from the revised model act, requiring collection of fees "for docketing, transcription, or other enforcement proceedings ... as provided for judgments of the district court." Since section 25-1-201, MCA, does not specifically provide for the collection of fees for "docketing" and "transcription" of district court judgments, the question of additional fees turns on whether any of the acts for which the clerk of court is required by the statute to collect a fee comes within the meaning of "other enforcement proceedings."

The Montana Supreme Court has long accepted the rule of statutory construction known as ejusdem generis, which "requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by specific terms." County of Chouteau v. City of Fort Benton, 181 Mont. 123, 592 P.2d 504 (1979), quoting Dean v. McFarland, 500 P.2d 1244, 1248 (Wash. 1972); see also Burke v. Sullivan, 127 Mont. 374, 265 P.2d 203 (1954). Under this rule of construction, the term "other enforcement proceedings" in section 25-9-506, MCA, should be viewed as including those clerical acts, similar to the docketing and the transcription of a judgment, which are performed in furtherance of the enforcement of the judgment.

The clerk of the district court has a general duty to "enter all orders, judgments, and decrees proper to be entered." See § 3-5-501(4), MCA; Rule 58, Mont. R. Civ. P. The clerk is required to keep a judgment book in which judgments must be entered. § 3-5-507, MCA. The clerk is also required to maintain a docket in which information about judgments is entered and made available to the public for inspection. § 3-5-508, MCA. Immediately after the entry of a judgment in the judgment book, the clerk is required to make the proper entries of the judgment under appropriate heads in the docket; from the time the judgment is thus docketed, it becomes a lien upon the nonexempt real property of the judgment debtor located in the county. § 25-9-301, MCA.

The mere rendition of a judgment by a district court creates no lien upon the judgment debtor's real property; rather, the judgment does not become a lien until it is entered on the judgment docket. See Wyman v. Jensen, 26 Mont. 227, 67 P. 114 (1902); Sklower v. Abbott, 19 Mont. 228, 47 P. 901 (1897). Once the judgment has been entered and docketed by the clerk of court, the judgment creditor may utilize the enforcement methods and procedures available under Title 25, chapters 13, 14, and 15, MCA.

Section 25-9-503, MCA, establishes the status of foreign judgments filed under the Uniform Enforcement of Foreign Judgments Act:

> A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

The plain language of this statute, adopted from the revised model act, has been held to mean that a foreign judgment is to be treated as if it were rendered in the state of filing for purposes of enforcement. See First Denver Mortgage Investors v. Riggs, 692 P.2d 1358, 1359 (Okla. 1984). However, the filing of an authenticated copy of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act is not viewed as the institution of a separate action; rather, the filing of such a document is a step designed to convert the foreign judgment into a domestic judgment capable of being enforced through the judicial processes of the state and is "the equivalent of the entry of an original judgment by the domestic court." Griggs v. Gibson, 754 P.2d 783, 785 (Colo. Ct. App. 1988).

Thus the $60 fee paid at the time of filing is not a "filing fee" in the same sense as is the fee paid at the commencement of an action or the appearance of a defendant. Cf. § 25-1-201(1)(a), (b), MCA. If the filing of a foreign judgment is the equivalent of the entry of a domestic judgment, then the $60 fee may properly be viewed as replacing the $35 fee collected on the entry of judgment from the prevailing party. § 25-1-201(1)(c), MCA. The clerk should not collect an additional $35 at the time of filing. In addition, the clerk should not collect the $25 fee required by section 25-1-201(1)(h), MCA, since the authenticated copy of the foreign judgment which must be filed to utilize the simplified procedures of the uniform act is not "a transcript of judgment or abstract of judgment." See §§ 25-9-302, 25-9-303, MCA; Griggs v. Gibson, supra; Hull v. Buffalo Federal Savings & Loan, 661 P.2d 1049 (Wyo. 1983).

Once the foreign judgment has been properly filed pursuant to section 25-9-503, MCA, the clerk is required to treat the foreign judgment as a domestic judgment and should collect the $5 fee for issuing an execution or order of sale on a foreclosure of a lien (§ 25-1-201(1)(i), MCA) as well as any other fees for services requested by the judgment creditor in the enforcement of the judgment.

Your second question concerns the distribution of the $60 fee collected by the clerk at the time of filing. The question is answered by reference to section 25-1-201(2), MCA, which provides:

> Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

I have reviewed the exceptions set forth in subsections (3) through (8) of section 25-1-201, MCA, including subsection (5)(a)(iii), and do not find any that would apply to the $60 fee. Therefore, the fee should be distributed by the clerk in accordance with the provisions of subsection (2) of section 25-1-201, MCA.

The answer to your third question concerning the authentication necessary for filing a foreign judgment requires an interpretation of Rule 44(a) of the Montana Rules of Civil Procedure. I agree that this procedural rule, which governs the authentication necessary to prove an official record in court proceedings, is the proper guide for determining the sufficiency of the authentication of a foreign judgment filed pursuant to section 25-9-503, MCA.

Rule 44(a) is divided into two subsections, each with different requirements for authentication of official records. Although subsection (1) of Rule 44(a) is entitled "Domestic" and subsection (2) is entitled "Foreign," I find that subsection (1) applies and sets forth the appropriate requirements for authentication of a foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act.

A "foreign" judgment is defined by the uniform act as "a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." § 25-9-502, MCA. As I noted in 44 Op. Att'y Gen. No. 15 (1991), it is generally agreed that judgments of foreign countries are not entitled to full faith and credit and cannot be registered under the Uniform Enforcement of Foreign Judgments Act. Subsection (2) of Rule 44(a) applies by its terms to official records of foreign countries, whereas subsection (1) includes within the heading "Domestic" all official records kept in other states and possessions of the United States. Such judgments from other states and possessions are given full faith and credit under the Constitution of the United States, Art. IV, § 1, and 28 U.S.C. § 1738. The term "foreign" thus has a different meaning as it is used in Rule 44(a), and subsection (1) rather than subsection (2) of the rule

is the proper source of the authentication requirements in question here.

Rule 44(a)(1), Mont. R. Civ. P., provides in pertinent part:

> An official record kept within the United States, or any state ... may be evidenced ... by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

This rule permits authentication of an attested copy of the judgment either by a judge of a court of record or by a qualified public officer.

THEREFORE, IT IS MY OPINION:

1. The clerk of court should collect a fee of $60 at the time a foreign judgment is filed pursuant to the Uniform Enforcement of Foreign Judgments Act.

2. The clerk of court should distribute the fees collected at the filing of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act in accordance with the requirements of section 25-1-201(2), MCA.

3. A foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act must be authenticated in accordance with the provisions of Rule 44(a)(1), Mont. R. Civ. P.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 39

LICENSES, PROFESSIONAL AND OCCUPATIONAL - License required for persons working in "field of plumbing";
MONTANA CODE ANNOTATED - Sections 37-69-101(3), (4), (7), 37-69-301;
OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 12 (1991).

HELD: The City of Billings may not allow public utility contractors to install water service lines which extend from the public water main to a point either within the boundaries of the private property or within 20 feet from any foundation wall of the premises, whichever distance is shorter as measured from the foundation wall, or wastewater service lines which extend from the public sewer main to a point within 2 feet from any foundation wall of the premises, unless the public utility contractor also has a plumber's license issued by the state.

August 27, 1992

Jim Nugent
Missoula City Attorney
435 Ryman
Missoula MT 59802-4297

Dear Mr. Nugent:

On behalf of the City of Missoula you have asked for an opinion clarifying the first holding in 44 Op. Att'y Gen. No. 12 (1991) which reads as follows:

> The City of Billings may not allow public utility contractors to install water and wastewater service lines which extend from the public water or sewer main to a point within the boundaries of the private property or within 20 feet from any foundation wall of the private residence, unless the public utility contractor also has a plumber's license issued by the state.

Your request for clarification centers on the fact that the above holding does not acknowledge the difference between the statutory distance restriction for work on plumbing systems and the statutory distance restriction for work on drainage systems. The holding referenced above addressed only the statutory distance restriction for plumbing systems. Your concern is well-taken. Therefore, this opinion is issued for the purpose of clarifying the first holding of 44 Op. Att'y Gen. No. 12.

The holding, as written, addresses those particular instances when public utility contractors, licensed by the City of Billings, must have a state-issued plumber's license. Montana law provides that

> [a]ny person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided.

§ 37-69-301, MCA. Of importance to this opinion is the licensure requirement for those persons "who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system." (Emphasis added.) Work in the "field of plumbing" includes any work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems. § 37-69-101(4), MCA. These two specific systems are defined as follows:

> (3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way [sic].
>
> ....
>
> (7)(a) Except as provided in subsection (7)(b), "plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.
>
> (b) As defined in subsection (7)(a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

§ 37-69-101(3), (7), MCA. The distance requirements for these two systems are critical to a determination of whether a plumber's license is required for the particular work being performed. Work done on a public water supply or public sewer

system which does not include work falling within the statutory distances for plumbing or drainage systems does not require a state-issued plumber's license.

THEREFORE, IT IS MY OPINION that holding No. 1 of 44 Op. Att'y Gen. No. 12 should be clarified as follows:

> The City of Billings may not allow public utility contractors to install water service lines which extend from the public water main to a point either within the boundaries of the private property or within 20 feet from any foundation wall of the premises, whichever distance is shorter as measured from the foundation wall, or wastewater service lines which extend from the public sewer main to a point within 2 feet from any foundation wall of the premises, unless the public utility contractor also has a plumber's license issued by the state.

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 June 30, 1992. This table includes those rules adopted during the period July 1, 1992 through September 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 June 30, 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 1992 Montana Administrative Register.

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