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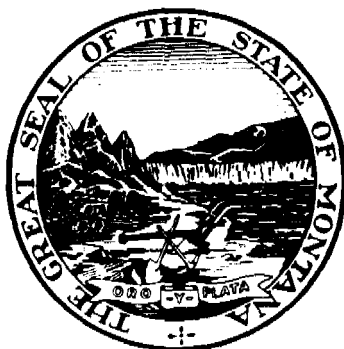
# **MONTANA ADMINISTRATIVE REGISTER**

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**NOV 15 1993**

**OF MONTANA**

1993 ISSUE NO. 21  
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BEFORE THE DEPARTMENT OF AGRICULTURE  
STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
new RULE I, Civil Penalties - )	NEW RULES, AMENDMENT AND
Enforcement and RULE II, Civil )	REPEAL OF RULES RELATING
Penalties - Matrix; amendment )	TO THE SALE, DISTRIBUTION,
of ARM 4.12.1405, 4.12.1407, )	AND INSPECTION OF NURSERY
4.12.1409 and 4.12.1419, )	STOCK IN MONTANA
REPEAL OF 4.12.1401, 4.12.1402)	
4.12.1403, 4.12.1404 and )	
4.12.1406 )	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1993, the Department of Agriculture proposes to adopt new rules on civil penalties relating to the sale and distribution of nursery stock in Montana; amend ARM 4.12.1405 increasing nursery inspection fees; amend ARM 4.12.1407 to provide for the right to appeal a nursery stock condemnation order; amend ARM 4.12.1409 to provide for the right to appeal the imposition of a nursery stock quarantine; amend 4.12.1419 to correct the catch phrase; repeal ARM 4.12.1401 requiring Montana inspection of all imported nursery stock; repeal ARM 4.12.1402 related to payment of fumigation charges; repeal ARM 4.12.1403 relating to fumigation standards; repeal ARM 4.12.1404 relating to nursery stock labeling requirements; and repeal ARM 4.12.1406 defining insect pests and diseases and nursery stock.

2. The proposed new rules will read as follows:

RULE I CIVIL PENALTIES - ENFORCEMENT (1) Whenever the department has reason to believe that a violation of Title 80, Chapter 7, MCA, or any adopted rule thereunder has occurred and the department finds it in the public interest to assess a civil penalty, it may initiate a civil penalty action pursuant to the Administrative Procedure Act.

(2) Each violation shall be considered a separate offense and is subject to a separate penalty not to exceed \$1,000. A repeat violation shall be considered a first violation if it occurred two or more years after the previous violation.

(3) The penalty matrixes set forth in this rule establish the basic penalty value for each offense. Factors dealing with the violation may cause the matrix penalty to increase or decrease. Examples of such factors would be the firm's history of compliance or non-compliance, or the extent of the harm to agriculture or environment.

AUTH: 80-1-102, MCA

IMP: 80-7-135, MCA

RULE II CIVIL PENALTIES - MATRIX

<u>Type of Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>Subsequent Offenses</u>
Operating without a nursery license or refusal to pay the licensing fee required after being fully advised of its requirement.	\$300	\$600	\$1,000
Failure to properly label nursery stock offered at retail, or falsely representing or misrepresenting the name, age, variety, class, or origin of nursery stock.	\$300	\$600	\$1,000
Misrepresenting information supplied regarding exemption from licensing.	\$300	\$600	\$1,000
Willfully or intentionally distributing plant materials that are infected or infested with a plant pest dangerous to interests in Montana.	\$500	\$750	\$1,000
Distributing plants declared noxious weeds under section 7-22-2101 (7) (a) (i), MCA	\$500	\$750	\$1,000

AUTH: 80-1-102, MCA

IMP: 80-7-135, MCA

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

4.12.1405 INSPECTION OF MONTANA NURSERY STOCK CERTIFICATE PLANT INSPECTION CERTIFICATE/SURVEY/TREATMENT COSTS - FEES (1) ~~The inspectors are required to inspect all nursery stock grown in their districts to be used for filling nursery orders. No inspection certificates shall be issued until inspection has been made and inspection fees are paid. The fees for inspecting the nursery stock in Montana nurseries shall be ten dollars (\$10.00) as follows:~~

Annual plant inspection certificates: \$50.00

Phytosanitary Certificates:

\$10.00 if monetary value of shipment is \$500 or less;

\$20.00 if monetary value of shipment is greater than \$500 and less than \$1,250;

\$30.00 if monetary value of shipment exceeds \$1,250.

(2) Additional inspection fees shall be as follows:

Surveys or other services required under 80-7-108, MCA or 80-7-110, MCA:

21-11/10/93

MAR Notice No. 4-14-63

- Hourly charge - \$20.00 per hour;
- Per diem and mileage per ARM Title 2, Chapter 4;
- Actual cost of trapping, survey, and treatment materials.

Nursery Tags - 2¢/tag 15¢/tag

~~Phytosanitary Certificate - minimum of \$1.50 and not to exceed \$10.00.~~

AUTH: 80-1-102, MCA IMP: 80-7-108, MCA and 80-7-110, MCA

4.12.1407 RIGHT TO HOLD NURSERY STOCK FOR INSPECTION--  
CONDEMNATION OF PRODUCTS (1) All condemnation orders issued by the department are subject to appeal pursuant to the provisions of the Montana Administrative Procedure Act (Title 2, Chapter 4, MCA) and the procedural rules of the department (Title 4, Chapter 2, ARM).

(2) All notices of condemnation of nursery stock or fruit plant material given by ~~an inspector~~ the department shall be written and served either upon the owner, shipper, or person in charge. If no person is in charge of such stock, the ~~inspector~~ department shall immediately notify the consignor at his address advising him of the action and in such case the consignor shall have three days to perfect an appeal as defined.

~~(2) (3) The owner, shipper or person in charge of the condemned nursery may appeal the decision to the administrator~~ director of the department in writing. Such appeal must be perfected within twenty-four hours after the notice has been served if notice is delivered in person and three days if notification is made by wire mail. Condemned stock must, at the expense of the person perfecting the appeal, be immediately placed in quarantine until final action and determination of the appeal. ~~The stock shall be transferred at the expense of the person in appeal by the inspector to the office of the administrator or the administrator shall travel to the point where the condemned nursery stock is held in quarantine to examine and determine judgement upon appeal. A final appeal may be made to the director from the decision of the administrator, whereby such an appeal must be made in writing and within twenty-four hours after the decision of the administrator. The decision of the director shall be final and conclusive.~~

AUTH: 80-1-102, MCA IMP: 80-7-110, MCA

4.12.1409 QUARANTINE OF ORCHARDS PLANT MATERIALS AND NURSERIES (1) The director, or his representative, has the authority to establish and enforce a quarantine over any ~~orchard or~~ place where ~~fruits, fruit products, plant materials~~ or nursery stock are grown, or kept that is infested with any injurious ~~disease~~ plant pest. The director, or his representative declaring such quarantine shall notify the owner or person in control of such ~~orchard~~

or place in writing of the establishment of the quarantine. The owner or person in control of quarantined ~~orchards or~~ place shall not ship or move or allow to be shipped or remove any ~~fruit~~ nursery stock or other material, except by written permission of the director, or his representative. The owner or person in control of any ~~orchard or~~ place may be permitted to use such ~~fruit or~~ nursery stock or plant material on the premises under the instructions of the director or his representative.

(2) All quarantine orders issued by the department are subject to appeal pursuant to the provisions of the Montana Administrative Procedure Act (Title 2, Chapter 4, MCA) and the procedural rules of the department (Title 4, Chapter 2, ARM).

AUTH: 80-1-102, MCA

IMP: 80-7-121, MCA

4.12.1419 FUMIGATION CERTIFICATION OF GROWING SITES

(1) Application.

(a) Application forms will be provided by the Montana department of agriculture. The applicant nurseryman shall furnish to the department all information pertinent to the operation of this program and shall give his consent to the department to take propagating wood from any tree for testing purposes.

(b) Application for inspection and testing of registered scion, seed, and stool-bed trees and for inspection of nursery stock for certification shall be filed by June 1 of each year with the Montana department of agriculture.

(2) Fees.

(a) The application fee shall be \$100.

(b) Laboratory fee. Laboratory fees will be charged according to the actual costs incurred on a per sample basis.

AUTH: 80-1-102, MCA

IMP: 80-7-122, MCA

4. The rules proposed to be repealed in their entirety are as follows:

4.12.1401 IMPORTATION OF NURSERY STOCK INTO THE STATE OF MONTANA IS REPEALED. This rule is found on page 4-425 of the ARM.

AUTH: 80-7-111, MCA, IMP: 80-7-111, MCA.

4.12.1402 WHO SHALL PAY CHARGES FOR INSPECTION AND FUMIGATION OF NURSERY STOCK IS REPEALED. This rule is found on page 4-425 of the ARM.

AUTH: 80-7-111, MCA, IMP: 80-7-112, MCA.

4.12.1403 TREATMENT OF NURSERY STOCK BY FUMIGATION OR OTHER METHODS IS REPEALED. This rule is found on page 4-425 of the ARM.

AUTH: 80-7-131, MCA, IMP: 80-7-131, MCA.

4.12.1404 LABELING OF NURSERY STOCK ACCORDING TO NAME, AGE, AND VARIETY IS REPEALED. This rule is found on page 4-425 of the ARM.

AUTH: 80-7-131, MCA, IMP: 80-7-116, MCA.

4.12.1406 DEFINITION IS REPEALED. This rule is found on page 4-426 of the ARM.

AUTH: 80-7-201, MCA, IMP: 80-7-203, MCA.

Reasons: The reason for new rules I and II is to adopt a civil penalty matrix required under section 80-7-135, MCA of the newly adopted Nursery law passed during the 1993 session of the Montana Legislature. The civil penalty matrix establishes specific fines for specific violations of Montana's nursery law and rules.

ARM 4.12.1405 is amended to implement sections 80-7-108, MCA and 60-7-110, MCA of the new Nursery law. These sections mandate that the department adopt by rule inspection and other fees such as fumigation costs which "cover the actual cost of inspection, surveys, and other services". The old inspection fees were not increased since 1975.

ARM 4.12.1407 is amended to clarify that the owner of any nursery stock or plant materials which are condemned under Section 80-7-110, MCA has a right to appeal the condemnation under Montana's Administrative Procedure Act. This Act stipulates the rights of appeal and procedures to follow when appealing a department condemnation order.

ARM 4.12.1409 is amended to incorporate the right of appeal when nursery stock or plant materials are quarantined by the department under section 80-7-121, MCA. The appeal may be made according to Montana's Administrative Procedure Act.

ARM 4.12.1419 is amended to correct the catch phrase. The rule relates to application for "certification" of growing sites, not fumigation of growing sites.

ARM 4.12.1401 is repealed in its entirety. This rule requires inspection of all imported nursery stock upon arrival in Montana. The department concurs with Montana's nursery industry that this requirement is not necessary to protect Montana's nursery industry, and if enforced, would place an unnecessary large financial burden on the nursery industry. Nursery stock entering Montana is already inspected in the state of origin, and through routine random inspections upon arrival in Montana.

ARM 4.12.1402 relating to the payment of fumigation costs is repealed in its entirety since the cost of fumigation is covered in proposed amendments to ARM 4.12.1405 noted above.



ARM 4.12.1403 which requires fumigation according to Environmental Protection Agency (EPA) and Montana Pesticide Control standards is repealed in its entirety. This rule is unnecessary and redundant since the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., sec. 121-136) and the Montana Pesticides Act (Title 80, Chapter 8, MCA) already require that all fumigations be conducted according to Federal and state standards.


ARM 4.12.1404 specifying nursery stock labeling requirements is repealed in its entirety since nursery stock labeling requirements are already established in section 80-7-133, MCA of the new Nursery law. The rule is redundant and unnecessary.

ARM 4.12.1406 defining "Insect pests and diseases" and "Nursery stock" is repealed in its entirety. Plant pests, which includes insect pests and diseases, and nursery stock are already defined in section 80-7-105, MCA of the new nursery law. The rule is redundant and unnecessary.

5. Interested persons may present their data, views, or arguments either orally or in writing to Gary Gingery, Administrator, Agricultural Sciences Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT. 59620-0201, no later than December 8, 1993.

6. 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 Gary Gingery, Administrator, Agricultural Sciences Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT. 59620-0201, no later than December 8, 1993.

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

  
LEO A. GIACOMETTO  
DIRECTOR

 11/1/93  
TIMOTHY J. MELOY, ATTORNEY  
RULE REVIEWER

Certified to the Secretary of State Office 11/1/93.

BEFORE THE BOARD OF PHARMACY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of a rule pertaining ) ON THE PROPOSED AMENDMENT  
to fees and the proposed ) OF 8.40.404 FEE SCHEDULE  
adoption of new rules pertain- ) AND THE PROPOSED ADOPTION  
ing to out-of-state mail ) OF NEW RULES PERTAINING TO  
service pharmacies ) OUT-OF-STATE MAIL SERVICE  
 ) PHARMACIES

TO: All Interested Persons:

1. The notice of proposed board action published in the Montana Administrative Register on September 16, 1993, issue number 17, at page 2073, is amended as follows due to a number of individuals requesting an opportunity to present data, views or arguments to the Board. In response to the requests, the Board has scheduled a hearing on the proposed rules and will open the rule-making record to the date set forth below in order to receive additional comments.

2. On December 15, 1993, at 9:00 a.m., a public hearing will be held in the conference room, Arcade Building, Lower Level, 111 North Jackson, Helena, Montana, to consider the proposed amendment and new language of the above-stated rules.

3. The language of the amended and proposed new rules designated above is the same as the original notice for those rules as found on page 2073 of the 1993 Montana Administrative Register, issue number 17.

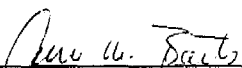
4. The new rules are proposed for the same reasons as set forth in the original notice found on page 2073 of the 1993 Montana Administrative Register, issue number 17.

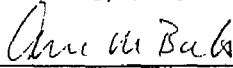
5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Pharmacy, Arcade Building, 111 No. Jackson, Helena, Montana 59620-0513, to be received no later than December 15, 1993.

6. Carol Grell, attorney, has been designated to preside over and conduct the hearing.

7. The authority of the Board to propose the new rules is based on section 37-7-201, MCA, and the proposed new rules implement sections 37-7-701, 37-7-702, 37-7-703, 37-7-704 and 37-7-706, MCA. The specific authority of the Board to propose the new rules and the specific sections which are implemented are cited in the Montana Administrative Register, September 16, 1993, at page 2073, issue number 17.

BOARD OF PHARMACY  
ROBERT KELLEY, CHAIRMAN

  
ANNIE M. BARTOS  
RULE REVIEWER

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

Certified to the Secretary of State, November 1, 1993.

In the matter of the proposed amendment of rules pertaining to examinations, fees, temporary license and licensure by endorsement	)	NOTICE OF PROPOSED AMENDMENT OF 8.42.402 EXAMINATIONS, 8.42.403 FEES, 8.42.405 TEMPORARY LICENSES, AND 8.42.406 LICENSURE BY ENDORSEMENT
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TO: All Interested Persons:

1. On December 10, 1993, The Board of Physical Therapy  
Examiners proposes to amend the above-stated rules.  
2. The proposed amendments will read as follows: (new  
matter underlined, deleted matter interlined)

"8.42.402. EXAMINATIONS (1) The examination will be the assessment systems, inc. (ASI) national physical therapy exam (NPTE) or another equivalent examination as the board may in its discretion approve and adopt.

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

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

(5) The applicant shall score a passing grade as established by the board on the national examination of that particular examination equal to or higher than a scaled score of 600, the criterion-referenced passing point recommended nationally by the federation of state boards of physical therapy.

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

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

"8.42.403 FEES (1) will remain the same.

(a) Application for ~~AST~~ NPTE examination (for \$75.00 each examination taken)

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

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

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

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

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

"8.42.406 LICENSURE BY ENDORSEMENT (1) Each applicant applying for licensure by endorsement must have taken the ~~professional examination service or assessment systems, inc. examination NPTE~~ or the national registry exam in another state to be considered for licensure by endorsement. All ~~professional examination service or assessment systems, inc. NPTE~~ scores must be reported directly to the board office through the interstate reporting service. All national registry exam scores must be substantiated by the records of the American Congress of Physical Medicine, 80 North Michigan Avenue, Chicago, Illinois 60602. If the applicant supplies the board with results from the ~~professional examination service examination NPTE~~, such results shall be equal to or higher than 1.5 standard deviation below the ~~national mean a scaled score of 600~~ in order for the individual to be licensed by endorsement. ~~If the applicant furnishes an examination result from assessment systems, inc., such result shall be equal to or greater than the score allowed by the board for that examination date to qualify the individual for licensure by endorsement.~~ The overall score of those applicants that have taken only the national registry exam, must be in accordance with the pass or fail grades as mandated by the registry. Those applicants failing the national registry exam will not be licensed by endorsement.

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

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

**REASON:** The proposed amendments will change all examination references to read "National Physical Therapy Examination (NPTE)," as this is the standard test now in use throughout the nation, including Montana, and the AST and PES references are outdated. The amendments will also set the passing score on the NPTE at a scaled score of 600, which is the recommended passing point from the Federation of State Boards of Physical Therapy.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Physical Therapy Examiners, Lower Level, Arcade

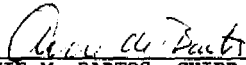
Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 8, 1993.

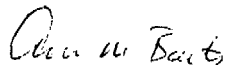
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Physical Therapy Examiners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 8, 1993.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 57 based on the 570 licensees in this state.

BOARD OF PHYSICAL THERAPY  
EXAMINERS  
THOMAS MEAGHER, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 1, 1993.

BEFORE THE BOARD OF PSYCHOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of rules pertaining ) OF 8.52.606 REQUIRED SUPER-  
to supervised experience and ) VISED EXPERIENCE AND 8.52.  
licensees from other states ) 609 LICENSEES FROM OTHER  
 ) STATES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1993, the Board of Psychologists proposes to amend the above-stated rules.

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

"8.52.606 REQUIRED SUPERVISED EXPERIENCE (1) through (4) will remain the same.

(5) Independent private practice shall not be considered as acceptable professional experience for purposes of the experience requirement, ~~rather~~. The post-doctoral setting shall have two or more psychologists on staff as supervisors, both of whom hold current psychologist licenses in this state, or the state in which the training program exists, and the supervisee must be a salaried employee receiving both administrative and clinical supervision from a supervisor who receives compensation for providing these services.

(6) through (e) will remain the same."

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-302, MCA

**REASON:** The proposed amendment will require a stricter supervisory setting for gaining professional experience to clarify independent private practice or single supervisor settings are not allowed.

8.52.609 RECIPROCITY LICENSEES FROM OTHER STATES

(1) When a person applies for licensure under this provision, the board shall obtain information from the other state(s), and determine whether the requirements for obtaining such other license(s) or certificate(s) ~~were at least as great as provided in~~ are substantially equivalent to the requirements of Montana law.

(2) Persons seeking a license ~~by reciprocity~~ on the basis of having been examined and then issued a license by another state shall submit to the board information concerning the nature of the prior examination with their completed application forms. The information shall be evaluated by the board, which may request additional information before making a decision to waive the written examination. The requirements

of the other state must be verified by the board as at least substantially equivalent to those of the state of Montana.

(3) and (4) will remain the same.

~~(5) Other supporting documents will be required only if information received from the other state(s) (referred to in (1) above) leaves the determination unclear as to whether the requirements were equivalent to those of Montana. If these requirements are not equivalent, the applicant may be required to take the written examination.~~

~~(6) A psychologist who is a diplomate in good standing of the American board of examiners in psychology of the American psychological association may apply for licensure by reciprocity.~~

~~(7) (5) All candidates for licensure by reciprocity will under this rule shall be required to pass an oral examination."~~

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-304, MCA

**REASON:** The proposed amendments will bring the rule in line with language and authority stated in the statute. The amendments will delete the incorrect references to "reciprocity," and insert the "substantially equivalent" language from the statute to more accurately reflect the Board's procedure as allowed by statute.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Psychologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 8, 1993.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Psychologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 8, 1993.

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

persons directly affected has been determined to be 20 based on the 198 licensees in Montana.

BOARD OF PSYCHOLOGISTS  
EVAN LEWIS, Ph.D., CHAIRMAN

BY:

Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 1, 1993.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
amendment of General	)	TO ARM 10.66.101 REQUIREMENTS
Educational Development	)	WHICH MUST BE MET IN ORDER TO
	)	RECEIVE HIGH SCHOOL EQUIVALENCY
	)	CERTIFICATES, 10.66.102 WAIVER
	)	OF AGE REQUIREMENT, 10.66.103
	)	METHOD OF APPLYING, 10.66.104
	)	FEES, 10.66.105 WAITING PERIOD
	)	FOR RETESTING, 10.66.106
	)	ISSUANCE OF EQUIVALENCY
	)	CERTIFICATES AND NEW RULES
	)	I, II AND III
		NO PUBLIC HEARING
		CONTEMPLATED

To: All Interested Persons

1. On December 10, 1993, the Board of Public Education proposes to amend ARM 10.66.101 Requirements which must be met in order to receive High School Equivalency Certificates, 10.66.102 Waiver of Age Requirement, 10.66.103 Method of Applying, 10.66.104 Fees, 10.66.105 Waiting Period for Retesting, 10.66.106 Issuance of Equivalency Certificates and adopt new rules I, II and III.

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

10.66.101 REQUIREMENTS WHICH MUST BE MET IN ORDER TO RECEIVE HIGH SCHOOL EQUIVALENCY CERTIFICATES DIPLOMAS (1) The high school equivalency certificate is issued to civilians, service personnel and veterans if the applicant meets the following requirements: Applicants shall not be currently enrolled in school or have received an accredited high school diploma or high school equivalency credential.

(a)(2) Applicants must have shall attain a standard score of 35 or above on each of the five tests and average a standard score of 45 on all five GED tests (225 points).

(b) Results of GED tests taken in the service are accepted if reported officially by the Education Testing Service, by official centers of the GED Testing Service of the American Council on Education, or by the manager of a Veterans Administration hospital with an authorized Educational Therapy program.

(c) Applicants must be 18 years of age before they may take the GED tests. An 18-year-old applying to take the GED tests must provide the official GED testing center with a letter of approval from the principal of the high school in which the applicant is presently enrolled, or an 18-year-old applying to take the tests must have been out of high school at least one full semester before applying. Unless one of the above stipulations is met, 18-year-olds cannot take the GED tests. The applicant must furnish the official GED testing center with

~~documentation regarding either of the two stipulations.~~

~~(3) Applicants 17 and 18 years of age are eligible provided one of the following documents is presented to the official GED testing center prior to testing:~~

~~(a) An official withdrawal slip from last school attended or other documentation approved by state GED administrator or GED chief examiner certifying applicant has been out of school 90 days.~~

~~(b) An original letter of approval to take GED test, on school letterhead, signed by the chief education officer providing applicant's last school enrollment date, if applicant has been out of school less than 90 days.~~

~~(c) An original letter of approval to take GED test, on school letterhead, signed by the chief education officer in the public school district in which the applicant currently resides documenting the applicant has not enrolled in school and has been advised of available in-school options.~~

~~(d) An original letter of approval to take GED test, on school letterhead, signed by chief education officer indicating applicant's high school class has been graduated.~~

~~(4) Applicants 17 and 18 years of age who reside in a Montana-based job corps center; are incarcerated in a correctional institution, a youth correctional center or school; are under the jurisdiction of a court, a youth probation office, a state authorized group home or alcohol/drug treatment center may be tested at the written request of the facility director or authorized agent (e.g., probation officer) provided applicant is no longer enrolled in a regular school program for credit. The official GED testing center may require documentation satisfying 10.66.101 section 3 before testing.~~

~~(4) An applicant must be a legal resident of Montana, employed regularly in the state, or have been stationed with the military in Montana for at least 30 days before taking the examination.~~

~~(5) Applicant must physically reside in Montana and have a Montana mailing address or claim Montana as the state of residence if tested at a military installation or in a federal correctional institution.~~

~~(e)(6) Previous high school enrollment is not required.~~

AUTH: Sec. 20-2-114, MCA IMP: Sec. 20-2-121, MCA

~~10.66.102 WAIVER OF AGE REQUIREMENT (1) A 17-year-old who does not meet the minimum age requirements for issuance of a high school equivalency certificate may receive a waiver of the requirement under the following provisions:~~

~~(a) The 17-year-old must provide the official GED testing center with verification that he/she has been out of the classroom at least one year, or that his/her high school class has been graduated. In addition, the applicant must provide official GED testing center with one of the following:~~

~~(i) a written request concerning the applicant by an employer who requires high school equivalency for job opportunities;~~

~~(ii) a written request by a college or university official who will consider admitting the applicant on the basis of GED test scores;~~

~~(iii) a written request concerning the applicant by a recruiting official from a branch of the armed forces where high school equivalency is required;~~

(iv) ~~a completed program of instruction provided by an agency such as the Job Corps, the Postal Service Academy or others sponsoring apprenticeship training programs with a certificate of completion to be presented by the director of the program to an examiner at an official GED testing center.~~

~~(b) Before testing, the application of 17 year olds must be reviewed and approved by the GED testing supervisor in the state superintendent's office.~~

A 16-year-old may receive a waiver of the age requirement provided documentation satisfying each of the following provisions is submitted to an official GED testing center and approval to test is granted by state GED administrator (101.66.102, section 3):

(a) Submit to official GED testing center a completed, signed, and notarized 16-year-old age waiver application form providing school status as required under 10.66.101 section 3 and providing notarized permission of applicant's parent, legal guardian, or responsible adult.

(b) Submit documentation to official GED testing center from the director of an adult education program or a literacy program verifying:

(i) the applicant has successfully completed GED preparation classes and is considered academically ready to attempt official GED test battery, or

(ii) the applicant has attained pre-test scores satisfactory to attempt GED test battery.

(c) Submit documentation to official GED testing center on official letterhead stationery from an employer, a postsecondary education institution admissions director, or a military recruiting official indicating that agent's acceptance of the applicant based upon successful completion of the GED test.

(2) Applicants 16 years of age who reside in a Montana-based job corps center; are incarcerated in a correctional institution, a youth correctional center or school; are under the jurisdiction of a court, a youth probation office, a state authorized group home or alcohol/drug treatment center may be tested provided the following documentation is submitted for review and approval to the state GED administrator in the office of public instruction prior to testing:

(a) a written request from the facility director or authorized agent (e.g., probation officer) to have applicant tested, verifying applicant is not enrolled in a regular school program for credit. The state GED administrator may require school documentation satisfying 10.66.101 section 3 before testing.

(b) documentation from the facility education director or from the director of an adult education program or a literacy program verifying:

(i) the applicant has successfully completed GED preparation classes and is considered academically ready to attempt official GED test battery, or

(ii) the applicant has attained pre-test scores satisfactory to attempt GED test battery.

(3) Sixteen (16)-year-old age waiver applications and accompanying documentation (10.66.102 section 1 or 2) shall be submitted by official GED testing center to the state GED administrator in office of public instruction for review and approval prior to testing.

Auth: Sec. 20-2-114

IMP: Sec. 20-2-121

10.66.103 METHOD OF APPLYING (1) Applications for a Montana high school equivalency ~~certificate diploma should~~ must be made at an ~~the nearest~~ official GED testing center. Each applicant ~~must~~ shall complete an application form at the testing center, ~~on the day of testing provide photo identification (e.g., drivers license, photo identification card, passport), and pay the testing fee.~~ Prior to testing, applications of 16-year-olds must be reviewed and approved as stated in 10.66.102, section 2 or 3. Prior to testing, applicants 17 or 18 years of age shall provide documentation as stated in 10.66.101, section 3 or 4.

(2) Applications from veterans or service personnel ~~claiming Montana residency who have taken the GED tests in the service or applications from clients claiming Montana residency who tested in a federal correctional institution will be processed in the office of public instruction upon receipt of a completed application form and an official report of scores received on the tests as provided in 10.66.107.~~

AUTH: Sec. 20-2-114, MCA IMP: Sec. 20-2-121, MCA

10.66.104 FEES (1) An ~~\$0~~ \$18 charge is made by all Montana testing centers for administration of the GED ~~Test~~ Battery. Retest charges will be \$4 \$6 for test section 1 (includes essay component) and ~~\$1~~ \$3 per section for test sections 2, 3, 4 or 5.

AUTH: Sec. 20-2-114, MCA IMP: Sec. 20-2-121, MCA

10.66.105 WAITING PERIOD FOR RETESTING (1) A one-month waiting period is required before applicants may retake the GED tests. A waiting period of three months is required for any subsequent retest.

(2) Retests must be administered in a test form not previously taken by the examinee.

(3) Retests may not be administered in a subtest section prior to completion of the entire test battery unless requested in writing by the GED chief or alternate examiner.

(4) GED candidates who previously received a Montana high school equivalency credential may retest if higher scores are required for employment or admission to a postsecondary institution. Retesting for this purpose requires prior approval from the state GED administrator in the office of public instruction. Candidates shall show proof that retesting is necessary by presenting a written request on official letterhead stationery signed by the agent requiring higher scores, stating the reasons for higher scores.

AUTH: Sec. 20-2-114, MCA IMP: Sec. 20-2-121, MCA

10.66.106 ISSUANCE OF EQUIVALENCY CERTIFICATES DIPLOMAS (1) All applications for the Montana high school equivalency ~~certificate diploma~~ are processed in the office of public instruction, and all equivalency ~~certificates~~ diplomas are issued by the superintendent of public instruction. Applicants will be advised of their complete test results by mail, and certificates will be forwarded to those who successfully complete the GED tests. ~~Incomplete test results are forwarded to the official GED testing center. Permanent GED record maintenance for Montana applicants is provided by the office of public instruction.~~

AUTH: Sec. 20-2-114, MCA IMP: Sec. 20-2-121, MCA

I. OFFICIAL TRANSCRIPTS (1) GED test scores are accepted as official only when reported to the state GED administrator in the office of public instruction by official GED testing centers; the GED Testing Service of the American Council on Education; transcript service of the Defense Activity for Non-Traditional Education Support (DANTES); Educational Testing Service (ETS) transcript service; or Veterans Administration hospitals and centers.

AUTH: Sec. 20-2-114 MCA IMP: Sec. 20-2-121 MCA

II. OFFICIAL GED TEST CENTERS (1) Official GED test centers may be established as needed in agencies meeting American Council on Education, GED Testing Service guidelines with the approval and inspection of the state GED administrator. (2) Official GED test centers must abide by the policies and procedures of the American Council on Education, GED Testing Service as provided in the most recent edition of the GED Examiner's Manual and by the testing policies provided in administrative rules of Montana (10.66.101-10.66.109).

AUTH: Sec. 20-2-144 MCA IMP: Sec. 20-2-121 MCA

III. DEFINITIONS (1) School: Education program provided by a public, private, or home school.

(2) Official withdrawal slip: School document clearly identifying applicant by name, date of birth and providing last school enrollment date. Official withdrawal slip must contain school seal or be originally signed by designated school official (e.g., principal, guidance counselor).

(3) Chief education officer: Public school--principal or designated school official (e.g., guidance counselor); Private school--principal or supervising teacher; Home school--parent or legal guardian providing home school instruction.

(4) Applicant's high school class: high school graduating class defined as 12 years from first grade.

(5) Responsible adult: adult with knowledge of a 16-year-old applicant's substantial and warranted reasons for leaving regular school program. Responsible adult's (e.g., probation officer, judge) signature required in lieu of parent/legal guardian signature when 16-year-old applicant does not live with parent or legal guardian.

(6) Regular school program: Education program provided by a public, private, or home school for which credits towards graduation are earned.

AUTH: Sec. 20-4-114 MCA IMP: Sec. 20-2-121 MCA

3. The board proposes these rules to update Montana's GED testing regulations, making them more reasonably accomodating to persons needing access the GED program, also to implement recommendations of the American Council on Education, GED Testing service and update the fees for the program that the student will incur.

4. Interested parties may submit their data, views or arguments in writing to John Kinna, Chairman, Board of Public Education, 2500 Broadway Helena, MT 59620, no later than December 10, 1993.

21-11/10/93

MAR Notice No. 10-3-166

5. If a person who is directly affected by the proposed rules wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a public hearing and submit this request along with any written comments they have to John Kinna, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than December 10, 1993.

6. If the board receives requests for a public hearing on the proposed amendments and new rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative register. Ten percent of those directly affected has been determined to be 51 as there are 514 school districts in Montana.

  
WAYNE BUCHANAN, EXECUTIVE SECRETARY  
Board of Public Education

Certified to the Secretary of State 11/1/93.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
rules 16.6.901 and 902 concerning	)	FOR PROPOSED AMENDMENT,
filing death certificates, repeal	)	ADOPTION, AND REPEAL
of 16.6.906 concerning burial	)	OF RULES
transit permits, and adoption of	)	
new rule I, concerning dead body	)	
removal authorization, and new	)	(Records & Statistics)
rule II, concerning notification	)	
of failure to file certificate or	)	
body removal authorization	)	

To: All Interested Persons

1. On December 3, 1993, at 1:30 p.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment, adoption, and repeal of the above-captioned rules.

2. The rules, as proposed to be amended and adopted, appear as follows (in existing rules, new material is underlined and material to be deleted is interlined):

16.6.901. DEATH CERTIFICATE (1) Remains the same.

(2) Death certificate forms may be obtained from the department. Each consists of an original and two copies.

(3) The person in charge of final disposition of a dead body must file a properly completed death certificate with the local registrar of the county where the death occurred either:

(a) within ten calendar days after the date the death occurs or is first discovered; or

(b) within two working days after the cause of death is certified on the death certificate, whichever date is later.

~~(3)(4) The death certificate shall comprise four copies. The registrar must file the original of a completed death certificate must be filed with the department, retain a copy, and copies must be filed file the remaining copy with the county clerk and recorder and local registrar. The final copy constitutes the burial-transit permit which is to be filed in accordance with ARM 16.6.906.~~

AUTH: 50-15-102, MCA; IMP: 50-15-109, 50-15-403, 50-15-405, MCA

16.6.902. FETAL DEATH CERTIFICATE (1) Remains the same.

(2) Fetal death certificate forms may be obtained from the department. Each consists of an original and two copies.

(3) The person in charge of final disposition of a dead fetus must file a properly completed fetal death certificate with the local registrar of the county where the death occurred either:

(a) within ten calendar days after the date the death

occurs or is first discovered; or

(b) within two working days after the cause of death is certified on the fetal death certificate, whichever date is later.

(3)(4) The fetal death certificate shall comprise 4 copies. The registrar must file the original of a completed fetal death certificate must be filed with the department, retain a copy, and copies must be filed file the remaining copy with the county clerk and recorder and local registrar. The final copy constitutes the burial transit permit which is to be filed in accordance with ARM 16.6.906.

AUTH: 50-15-102, MCA; IMP: 50-15-109, 50-15-403, 50-15-405, MCA

RULE I DEAD BODY REMOVAL AUTHORIZATION (1) A completed dead body removal authorization form must include, as a minimum:

(a) decedent's full name or, in the case of a fetal death, the full name of the mother;

(b) place of death, including city; county; name and address of facility, if applicable; address of a place which is not a named facility; or the specific geographic location if an address does not exist;

(c) date of death or date of delivery if a fetal death;

(d) signed and dated authorization statement, along with, if applicable, a signed and dated certification of oral authorization;

(e) signed and dated statement of assumption of responsibility for filing the death or fetal death certificate;

(f) social security number of the decedent.

(2) The person (physician, physician's designee, coroner having jurisdiction, or mortician) who authorizes the removal of a dead body or the remains of a fetal death from the place of death must complete a dead body removal authorization on the department's form and, before or at the time of removal, if the person authorizing removal is:

(a) a physician or physician's designee, give all three copies of the form to the person in charge of disposition;

(b) a coroner or mortician, retain a copy of the completed form and give the other two copies to the person in charge of disposition, unless (c) applies; or

(c) also the person in charge of disposition, retain all three copies and comply with (3) below.

(3) The person who removes a dead body or the remains of a fetal death from the place of death must retain a copy of the completed department dead body removal authorization form for that removal and mail or otherwise deliver the remaining copy or copies to the local registrar within 48 hours of the body's removal.

(4) If the registrar receives more than one copy of a completed dead body removal authorization form s/he must retain one copy and provide the other copy to the coroner having jurisdiction.

AUTH: 50-15-102, MCA; IMP: 50-15-405, MCA

RULE II NOTIFICATION OF FAILURE TO FILE (1) A local



registrar must immediately notify the department, orally or in writing, whenever:

(a) the registrar has received a completed dead body removal authorization form for a decedent but does not receive a death or fetal death certificate, whichever is appropriate, for the same decedent within ten days after the death occurred or was discovered.

(b) the registrar has received a death or fetal death certificate for a decedent but has not received a dead body removal authorization form for that same decedent.

AUTH: 50-15-102, MCA; IMP: 50-15-106, MCA

3. The rule to be repealed (16.6.906) may be found at page 16-117 of the Administrative Rules of Montana.

AUTH: 50-15-102, MCA; IMP: 50-15-103 and 50-15-405, MCA

4. The department is proposing the foregoing rule amendments, repeal, and adoption in order to comply with the mandates of House Bill 491, passed by the 1993 Legislature. The primary provisions of HB 491 require the department to replace the current burial transit permit with a "dead body removal authorization" and to substitute, by rule, a deadline for filing death certificates in place of the current three-day statutory deadline. The proposed rule changes are necessary to implement those provisions and to ensure, via new Rule II, that the department gets the information it needs to enforce the laws relating to death certificates.

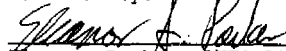
5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sam Sperry, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 8, 1993.

6. Ellie Parker has been designated to preside over and conduct the hearing.

  
ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 1, 1993.

Reviewed by:

  
Eleanor Parker, DHES Attorney

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

In the Matter of Proposed	)	NOTICE OF PROPOSED REPEAL
Repeal of Rules 38.4.801 -	)	OF RULES 38.4.801 THROUGH
38.4.806 Regarding Rear-End	)	38.4.806
Telemetry Systems for Trains.	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 13, 1993 the Department of Public Service Regulation proposes to repeal the rules noted in the above caption. The proposed rules to be repealed are located at pages 38-405 - 38-406, Administrative Rules of Montana. The authority section was 69-14-116, MCA and the implementation section was 69-14-116 for rules 801 - 806.

2. The rules proposed to be repealed are as follows.

38.4.801 GENERAL PROVISIONS FOR TELEMTRY DEVICES  
38.4.802 REAR-END TELEMTRY SYSTEM  
38.4.803 MOUNTAIN GRADE TERRITORY  
38.4.804 REPORTING AND FILING REQUIREMENTS  
38.4.805 NO DISCIPLINARY ACTION FOR REPORTING VIOLATIONS  
38.4.806 ENFORCEMENT AND PENALTIES

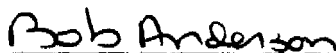
3. Rationale: In 1991 the Montana Legislature amended § 69-14-116, MCA, requiring the Montana Public Service Commission to enact rules requiring the installation and operation of rear-end train telemetry systems, to perform certain designated functions on trains operating within mountain grade territory in the state. Sec. 1, Ch. 487, Session Laws of Montana 1991 (House Bill 217). Pursuant to this legislative enactment, the Commission noticed ARM 38.4.801 through 38.4.806 for adoption. MAR Notice No. 38-2-97, pp. 1201-1203 (July 25, 1991). Following a rulemaking hearing held on August 22, 1991, the Commission published a Notice of Adoption of said rules, by which they would become effective on October 1, 1991. MAR Issue No. 18, September 26, 1991, pp. 1843-1847. On September 30, 1991 the United States District Court for the District of Montana (Helena Division), issued a Temporary Restraining Order prohibiting the enforcement of the rules, and on October 16, 1992 the same Court issued its final decision, issuing a permanent injunction and declaring the provisions of House Bill 271 and the implementing rules (38.4.801 through 38.4.806) to be unconstitutional, void and unenforceable. Burlington Northern Railroad Co. v. State of Montana and the Montana Department of Public Service Regulation, 805 F.Supp. 1522 (1992).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing (original and 10 copies) to Ivan C. Evilsizer, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than December 10, 1993.


5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Ivan C. Evilsizer, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than December 10, 1993.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 any one of the affected railroads (Burlington Northern, Montana Rail Link, or Union Pacific), based upon the number of railroads operating in mountain grade territory; and greater than 25 of the railroad employees or members of the public, based on the number of affected railroad employees and affected members of the public.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

  
Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 1, 1993.

  
Reviewed By

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

In the Matter of Proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules adopting	)	OF RULES 38.5.2202 AND
Federal Pipeline Safety	)	38.5.2220
Regulations.	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 13, 1993 the Department of Public Service Regulation proposes to amend rules adopting Federal pipeline safety regulations.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191 and 192, including all revisions and amendments enacted by the department of transportation on or before the effective date of this rule, ~~October 12, 1990~~ December 8, 1993. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191 and 192 may be obtained from the U.S. Department of Transportation, Research and Special Programs Administration, Western Region, Pipeline Safety, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2220 INVESTIGATION AND REPORTS OF INCIDENTS OF IN-TRASTATE GAS PIPELINE OPERATORS (1)(a) through (A) No changes. (B) Estimated property damage sustained by the operator or others, or both, of ~~\$5,000~~ \$50,000 or more. (ii) through (3) No changes. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

3. Rationale: The Federal Pipeline Safety regulations (49 C.F.R., Parts 191 and 192) adopted by the U.S. Department of Transportation, Research and Special Programs Administration (RSPA), pursuant to the Federal Natural Gas Pipeline Safety Act (49 U.S.C. § 1671 et seq.) are periodically amended and revised. The Public Service Commission is required to adopt and maintain rules consistent with the Federal regulations, pursuant to its Section 5(a) certification authority under the Federal Act. 49 U.S.C. § 1674(a). The Commission has the authority to enforce the Federal Act on an intrastate basis pursuant to § 69-3-207, MCA.

The Commission last adopted the amendments to Parts 191 and 192 on October 12, 1990. Since that time a number of

amendments have been adopted by RSPA. A state rulemaking proceeding is necessary to adopt the Federal amendments into the Administrative Rules of Montana. See §§ 2-4-307(3) and 2-4-307(5), MCA.


Pursuant to legal authority delegated from the Secretary of the Department of Transportation to RSPA, the threshold level for required reporting of pipeline safety incidents has been amended from \$5,000 to \$50,000 property damage. See 49 U.S.C. § 1674(a)(ii) (Sec. 110 of the 1992 amendments to the Natural Gas Pipeline Safety Act, Public law 102-508, 106 Stat. 3289 at 3295) and Memorandum from RSPA Acting Administrator Rose A. McMurray, June 15, 1993. ARM 38.5.2220(1)(b)(i)(B) is being amended accordingly.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing (original and 10 copies) to Ivan C. Evilsizer, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than December 8, 1993.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Ivan C. Evilsizer, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than December 8, 1993.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be two intrastate pipeline operators, based upon the number of intrastate pipeline operators; and greater than 25 affected members of the public, based upon the affected population of the state.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

  
Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 1, 1993.

  
Reviewed By

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

In the Matter of Proposed	)	NOTICE OF PROPOSED ADOPTION
adoption by reference of the	)	OF A NEW RULE REGARDING THE
1993 Edition of the National	)	NATIONAL ELECTRICAL SAFETY
Electrical Safety Code.	)	CODE
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 13, 1993 the Department of Public Service Regulation proposes to adopt a rule by reference of the 1993 Edition of the National Electrical Safety Code.

2. The rule proposed to be adopted provides as follows.

Rule I. INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL SAFETY CODE (1) The public service commission hereby adopts and incorporates by reference the 1993 edition of the National Electrical Safety Code, published by the Institute of Electrical and Electronics Engineers August 3, 1992 and approved by the American National Standards Institute July 10, 1992 (accredited standards committee C2-1993), and the correction sheet (errata) dated February 26, 1993. A copy of the 1993 edition of the National Electrical Safety Code and the errata sheet may be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-4-201, MCA; IMP: Sec. 69-4-201, MCA

3. Rationale: The 1993 Montana Legislature amended § 69-4-201, MCA, clarifying that the Public Service Commission shall adopt electrical safety standards by rule, and that such standards must be based on the most recent edition of the national electrical safety code. The proposed rule will adopt the 1993 edition by reference.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing (original and 10 copies) to Ivan C. Evilsizer, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than December 8, 1993.

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 public hearing and submit this request along with any written comments he has (original and 10 copies) to Ivan C. Evilsizer, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than December 8, 1993.

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 two regulated electric or telecommunications public utility companies, based upon the number of regulated electric and telecommunications utilities; and greater than 25 utility employees or members of the public, based upon the number of affected utility employees and the affected population of the state.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

Bob Anderson  
Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 1, 1993.

Ron A. McElroy  
Reviewed By

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT ) NOTICE OF THE PROPOSED AMEND-  
of ARM 42.22.101, 42.22.102 and ) MENT of ARM 42.22.101, 42.22.  
42.22.117 relating to Centrally ) 102, and 42.22.117 relating  
Assessed Property ) to Centrally Assessed  
 ) Property

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 24, 1993, the Department of Revenue proposes to amend ARM 42.22.101, 42.22.102, and 42.22.117 relating to centrally assessed property.

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

42.22.101. DEFINITIONS (1) through (17) remains the same.

(18) (a) "Situs property" for a centrally assessed company, other than a railroad is operating property that is not part of a transmission or distribution system, that is not rolling stock or airplanes, or that by nature is immovable.

(i) Situs property includes but is not limited to: buildings, dams, powerhouses, depots, stations, shops, furniture, fixtures, tools, substations, electronic switching equipment, machinery, meters, transformers, and operating lands not in the right-of-way.

(ii) Situs property does not include automobiles, trucks, and special mobile equipment (as defined in 61-1-104, MCA) upon which property taxes or fees in lieu of property tax have been assessed and paid.

(b) "Situs property" for a centrally assessed railroad is all operating property used by the railroad that is:

(i) by its nature located at a specific site;

(ii) not part of the roadway, track structure, rails, roadbed or right-of-way;

(iii) not rolling stock; and

(iv) not signals or signal systems, such as computerized traffic control and computerized traffic control (CTC) buildings.

(c) By way of illustration but not limitation, situs property of a railroad includes:

(i) all operating land located outside the right-of-way;

(ii) depots, stations, microwave and radio sites and towers;

(iii) telecommunications equipment not specifically excluded;

(iv) all shops and buildings not specifically identified elsewhere;

(v) permanent fixed improvements, such as parking lots and



parking structures; and all associated costs of grading and improvements at the location;

(vi) construction work in progress associated with situs property; and

(vii) furniture and fixtures, materials and supplies, and machinery and equipment which are not moved or movable in the ordinary course of railroad operations.

(d) By way of illustration but not limitation, situs property of railroad does not include:

(i) railroad signalling and switching structures, equipment and devices;

(ii) ballast, grading, and construction work in progress associated with the track or roadbed;

(iii) machinery and equipment normally used to repair track; and

(iv) automobiles, trucks, and special mobile equipment (as defined in 61-1-104, MCA) upon which property taxes or fees in lieu of property tax have been assessed and paid.

(e) Situs property for a railroad normally consists of property in the following accounts in Schedules 330 and 200 of the Annual Report R1 to the ICC:

(i) Schedule 330

Line No.	Account No.	
11	16	station and office buildings
12	17	roadway buildings
13	18	water station
14	19	fuel stations
15	20	shops and enginehouses
16	22	storage warehouses
17	23	wharves and docks
18	24	coal and ore wharves
19	25	tofc/cofc terminals
22	29	power plants
24	35	miscellaneous structures
27	44	shop machinery
28	45	power plant machinery
38	59	comp. systems and word proc. equipment

(ii) Schedule 200

Line No.	Account No.	
12	712	materials & supplies

(f) Situs property for a railroad normally consists of a portion of the property in the following accounts in Schedule 330 of the Annual Report R1 to the ICC:

(i) Schedule 330

Line No.	Account No.	
1	2	land for transportation purposes

2	3	grading
10	13	fences, snowsheds, and signs
20	26	communication systems
23	31	power-transmission systems
25	37	roadway machines
26	39	public improvements-construction
29		other
37	58	miscellaneous equipment
42	90	construction work in progress

(19) through (21) remain the same.

AUTH: Sec. 15-23-108 MCA; IMP; Title 15, chapter 23, part 1 and 15-23-211 MCA.

42.22.102 CENTRALLY ASSESSED PROPERTY (1) remains the same.

(2) The property of a centrally assessed company is separated into two categories: operating and nonoperating. The department's agents are responsible for the valuation of all the nonoperating properties. All operating property will be valued by the intercounty property centralized assessment bureau and apportioned to the taxing units as provided in ARM 42.22.121 and 42.22.122.

AUTH: Sec. 15-23-108 MCA; IMP; Title 15, chapter 23, part 1 and 15-23-211 MCA.

42.22.117 METHODOLOGY FOR PREPARATION OF SALES ASSESSMENT RATIO STUDY (1) through (6) remain the same.

(7) The sales assessment ratio study will be conducted solely for the purpose of determining the tax rate applicable to class 15 12 properties.

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

3. ARM 42.22.101 is being amended to clarify situs property and what it includes and does not include. ARM 42.22.102 is being amended to reflect a change in the bureau name from Inter-County Property to Centralized Assessment Bureau. ARM 42.22.117 is being amended to reflect the correct statutory class code.

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 December 8, 1993.

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 December 8, 1993.

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

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State November 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT )	NOTICE OF PUBLIC HEARING ON
of ARM 42.17.105, 42.17.111, )	THE PROPOSED AMENDMENT of
42.17.112, 42.17.113, 42.17. )	ARM 42.17.105, 42.17.111,
114, 42.17.115, 42.17.116, 42. )	42.17.112, 42.17.113, 42.17.
17.118, 42.17.133, 42.17.134 )	114, 42.17.115, 42.17.116,
42.17.136, 42.17.137, and 42. )	42.17.118, 42.17.133, 42.17.
17.138; and ADOPTION of RULES )	134, 42.17.136, 42.17.137,
I through VIII relating to Old )	and 42.17.138; and ADOPTION
Fund Liability Tax )	of RULES I through VIII
)	relating to Old Fund
)	Liability Tax

TO: All Interested Persons:

1. On December 1, 1993, 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 amendment of ARM 42.17.105, 42.17.111, 42.17.112, 42.17.113, 42.17.114, 42.17.115, 42.17.116, 42.17.118, 42.17.133, 42.17.134, 42.17.136, 42.17.137 and 42.17.138; and adoption of new rules I, II, III, IV, V, VI, VII, and VIII relating to the old fund liability tax.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of state income tax withheld per payroll period shall be calculated according to the following four-step annual formula:

(a)  $Y = PZ$

where  $Z$  is the individual's gross earnings for the payroll period; and

$Y$  is the individual's annualized gross earnings.

In these calculations, the quantity  $P$  (number of payroll periods during the year) has one of the following values:

Annual payroll period  $P = 1$

Monthly payroll period  $P = 12$

Semimonthly payroll period  $P = 24$

Biweekly payroll period  $P = 26$

Weekly payroll period  $P = 52$

(b)  $T = Y - 1700N$

where  $T$  is the annualized earnings; and

$N$  is the number of withholding allowances claimed.

If  $T$  in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If  $T$  is greater than 0, then the annualized tax liability is calculated using:

(c)  $X = A + B(T - C)$  where  $X$  is the individual's annualized tax liability the parameters  $A$ ,  $B$  and  $C$  are chosen from the following rate schedule:

At Least	But Less Than	A	B	C
\$ 0	\$ 8,230	\$ 0	2.7%	\$ 0
8,230	18,250	222.21	4.6%	8,230
18,250	40,000	683.13	6.4%	18,250
40,000 and over		2,075.13	6.8%	40,000

$$(d) \quad W = \frac{X}{P}$$

where W is the amount to be withheld for the payroll period;  
X is the annualized tax liability; and  
P is the number of payroll periods during the year.

Definitions:

G = Annual gross earnings.  
N = Number of withholding allowances claimed.  
T = Net taxable earnings for the period.  
W = Withholding tax for the period.

\$2,710 = The exemption value.

Note: There is a two-step calculation involved in the annual formula; to adjust the formula for specific pay periods, i.e., monthly (12), semimonthly (24), biweekly (26) or weekly (52), divide the product of Step 2 by the number of pay periods per year:

Step 1: The net taxable earnings "T" must be computed. Net taxable earnings is based on the level of gross earnings, the amount of standard deduction, and the number of withholding allowances claimed.

Step 2: The actual tax to be withheld "W" is calculated. The actual tax withheld is calculated by taking a percentage of the net taxable earnings.

SINGLE PERSONS AND MARRIED PERSONS USING SINGLE RATE

Step 1: Calculate Taxable Earnings "T":

$T = (0.60 \times G) - (2,710 \times N)$ , whenever G is less than or equal to 12,500;

$T = G - 5,000 - (2,710 \times N)$ , whenever G is greater than 12,500.

Step 2: Calculate Withholding Tax "W":

$W = 0.0737 \times T$

MARRIED

Step 1: Calculate Taxable Earnings "T":

$T = (0.60 \times G) - (2,710 \times N)$ , whenever G is less than or equal to 25,000;

$T = G - 10,000 - (2,710 \times N)$ , whenever G is greater than 25,000.

Step 2: Calculate Withholding Tax "W":

$W = 0.0703 \times T$

(2) This rule is effective for tax periods beginning ~~January~~ July 1, 1993.

AUTH: 15-30-305 MCA; IMP: 15-30-103; 15-30-199; and 15-30-202 MCA.

42.17.111 WHO MUST WITHHOLD MONTANA STATE INCOME TAX AND WHO IS SUBJECT TO WITHHOLDING (1) Every employer residing in Montana and every nonresident employer transacting business in Montana is required to withhold Montana state income tax from wages paid to an employee for services rendered within Montana and for services rendered outside Montana by an employee who is a resident of Montana.

(2) through (7) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-202 MCA.

42.17.112 EMPLOYER REGISTRATION (1) Every employer required to withhold state individual income tax or carry ~~workers' compensation insurance~~ withhold and/or pay the old fund liability tax must file an application for an account number on Form ER-1. A new employer who has acquired the business of another employer must not use his predecessor's account number. Application for an account number is to be made to the Department of Revenue, Helena, Montana.

(2) No registration is considered complete unless:

(a) 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.

(3) Not being registered does not relieve an employer from withholding, reporting and remitting state income tax and/or payroll tax reporting requirements the old fund liability tax.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-209 and 39-71-2503 MCA.

42.17.113 QUARTERLY REPORTS AND PAYMENTS (1) Every employer is required to make, for each calendar quarter, a report to the Department of Revenue, Helena, Montana,

summarizing the amounts state income tax withheld from employee's wages during the quarter. In addition, employers subject to the Workers' Compensation Act must also remit the payroll tax the employer and employee portions of the old fund liability tax must be summarized on this report. The reports will cover the weekly or quarterly periods ending March 31, June 30, September 30, and December 31 and must be postmarked no later than the last day of the month following the close of the quarter. The form to be used in making the quarterly report is MW-5 for quarterly remitters or MWA for weekly remitters described in (2)(b).

(2)(a) Employers whose total liability for state income tax withholding is less than \$300,000 in the preceding calendar year shall remit the amounts state income tax withheld and the payroll employer and employee portion of the old fund liability tax with the quarterly reports made for the period ending March 31, June 30, September 30, and December 31. The payments must be postmarked no later than the last day of the month following the end of the quarter.

(b) Employers whose total liability for state individual income tax withholding equaled or exceeded \$300,000 in the preceding calendar year must remit the amounts individual income tax withheld and the payroll old fund liability tax weekly. Any withholding or payroll tax accrued during the week must be reported, remitted, and postmarked in accordance with payment dates for federal income tax withholding purposes. Legal state holidays, Saturdays, and Sundays are not working days. When the employer's pay period is other than weekly, e.g., semimonthly or biweekly, a payment is not required for those weeks in which no employees have been paid. When employees are paid by employers with other than weekly pay periods, the employer shall remit the amount withheld and the payroll old fund liability tax for the period to the state of Montana on the same date immediately following the payment of wages, on which the employer remits withholding to the federal government.

(c) After the end of each calendar year, the department shall notify each employer whose state income tax withholding equaled or exceeded \$300,000 in the preceding calendar year. Forms for remitting weekly will be provided by the department.

(d) If no tax was withheld and/or wages paid, the quarterly report should so state. It is not necessary to furnish a list of employees with the quarterly report.

(e) If an employer is liable for the payroll old fund liability tax and not withholding, payments will be made on a quarterly basis.

(f) The payroll old fund liability tax is imposed on employers, and shall not be deducted from an employees' wages and employees at the statutory rate.

(g) No extension of time for remittance of withheld wage or payroll the required tax amounts can be granted by the department.

(3) A registered employer must submit a report for each

reporting period unless state income tax withholdings are not expected to exceed \$10 for any period during the year. Such employer shall, on or before February 28 of the year succeeding that in which such wages were paid, file an annual return as provided for in 15-30-204, MCA. If an employer is not liable for state income tax withholding, the \$10 minimum then applies to the payroll old fund liability tax.

(4) Failure to pay withheld amounts within the time provided and the use thereof by the employer in forwarding his own business, is considered to be an illegal conversion of trust money. The employer will not regard withheld wages as being equivalent to his own personal income tax indebtedness. Penalties provided in 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages. The penalties also apply to the payroll old fund liability tax.

(5) All payments will be applied to state income tax withholding tax liability first, then to payroll old fund liability tax. Insufficient payments will be applied in accordance with ARM 42.2.501.

(6) remains the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-204 and 39-71-2503 MCA.

42.17.114 ANNUAL RECONCILIATION STATEMENT (1) On or before February 28 of each year, the employer must file with the Department of Revenue, Helena, Montana, an annual reconciliation on Form MW-10. This form shows the total state income tax and old fund liability tax withheld from employees during the preceding year and must agree with the totals shown on the quarterly reports. Form MW-10 must be accompanied by the original copies of each employee's earnings statements, on federal form W-2.

(2) through (4) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-207 MCA.

42.17.115 ADJUSTMENT OF ERRORS (1) If an error is made in paying the amount of state income tax withholding or payroll old fund liability tax due, adjustment may be made on the first quarterly report filed after the error is discovered. However, if the mistake cannot be adjusted in a quarterly report of the same calendar year in which the error occurred, the correcting adjustment must be made on a supplemental or amended report for the quarter with respect to which the error occurred.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-204 and 39-71-2503 MCA.

42.17.116 EMPLOYEE'S WITHHOLDING STATEMENT (1) Employee's earning statements, federal form W-2, must be prepared for each employee, regardless of whether or not tax was withholding and/or "old fund" liability taxes were actually withheld from his the employee's wages. The state wages and state income tax



withheld must be shown in the area provided. The old fund liability tax wages and the tax withheld must be shown in either the employer's use box and designated as "OFLT" or in the local tax area and designated as "OFLT".

(2) An original copy must be filed with the employer's annual reconciliation statement, and two copies must be furnished to the employee not later than January 31 of each year.

(3) Montana does not provide substitute earning statement forms or allow earning statements which do not conform to federal form W-2 requirements.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-206 MCA.

#### 42.17.118 FORMS TO FILE AFTER TERMINATION OF WAGE PAYMENTS

(1) The following statements must be filed with the Department of Revenue, Helena, Montana 59620, within 30 days after the termination of wage payments:

(1) (a) Form MW-5, the quarterly report for the final quarter in which wage payments were made (the completed form must contain a cancellation date);

(2) (b) Form MW-10, the annual reconciliation of state income tax and old fund liability tax withheld during the year to the date of termination of wage payments; and

(3) (c) Form W-2, reporting individual employee's wages and taxes withheld during the year to the date of termination of wage payments.

(4) ~~An employer liable for payroll tax only is not required to file the statements mentioned in (2) and (3) above.~~

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-209 and 39-71-2503 MCA.

#### 42.17.133 TREATMENT OF SUPPLEMENTAL WAGES-STATE INCOME TAX WITHHOLDING

(1) If supplemental wages, such as bonuses, commissions, or overtime pay, are paid at the same time as regular wages, the state income tax to be withheld should be determined as if the total of the supplemental and the regular wages were a single wage payment for the regular payroll period.

(2) If the supplemental wages are paid at a different time, the employer may determine the state income tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year.

(3) In lieu of the above, the employer may withhold on supplemental wages at the rate of 6%.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-201 MCA.

42.17.134 RECIPROCAL AGREEMENT - NORTH DAKOTA (1) An employer is not required to deduct Montana state income tax withholding on wages earned by residents of North Dakota under the provisions of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota. Relief from

withholding is subject to the following provisions:

(a)(1) A North Dakota resident performing services in Montana for compensation must annually provide a certificate of North Dakota residency (Form NR-2) to his employer before the employer may discontinue withholding on compensation earned in Montana. The certificate is valid only from the date filed to December 31 of the year in which filed. The certificate is rendered invalid if the employee changes his residence to any state other than North Dakota;

(b)(2) Withholding from a North Dakota resident's compensation earned in Montana must be treated as if earned in North Dakota. If North Dakota requires withholding from the compensation, the North Dakota withholdings must be deducted from the compensation;

(c)(3) A copy of the employee's NR-2 must be submitted by the employer to the Department of Revenue, Helena, Montana, during or with the quarterly report for the quarter in which the NR-2 was provided the employer;

(d)(4) If the department determines that an employee's certificate is false or unsubstantiated, it may require an employer to disregard any claim to North Dakota residency and resume withholding on compensation earned in Montana; and

(e)(5) The reciprocal agreement does not affect an employer's liability for the workers' compensation payroll old fund liability tax.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-202, 15-30-209 and 39-71-2503 MCA.

42.17.136 - AFFIDAVIT - FORM AND CONTENT (1) The form and content of the affidavit exempting property from state income tax withholding or payroll old fund liability tax liens shall be approved by the department and shall contain as much as available of the following information:

(a) through (d) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-208 and 39-71-2503 MCA.

42.17.137 AFFIDAVIT - TIME PERIOD FOR EXECUTION (1) The affidavit of exemption from the grantor must be executed and witnessed or notarized prior to the filing date and time of the warrant for distraint to exempt affected property from state income tax withholding or payroll old fund liability tax liens under the provisions of 15-30-208, MCA.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-208 and 39-71-2503 MCA.

42.17.138 RECORD OF AFFIDAVIT - NOTICE (1) Any person or firm claiming an exemption from state income tax withholding or payroll old fund liability tax liens based upon an affidavit provided by this section shall be required to provide a copy of such affidavit to the department within 30 days of written request from the department. If said affidavit or a reasonable

explanation for failure to provide the affidavit is not received within the 30 day period the department may assume the lien against the property is valid and commence to enforce the lien.

AUTH: Sec. 15-30-305 and 39-71-2053 MCA; IMP: Sec. 15-30-208 and 39-71-2503 MCA.

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

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

**RULE I OLD FUND LIABILITY TAX** (1) The old fund liability tax replaces the workers' compensation payroll tax, effective July 1, 1993, applicable to wages paid on or after July 1, 1993 and to the earnings of the self-employed for tax year 1993. The old fund liability tax is imposed on employers, employees, and self-employed persons at the statutory rate. The employer must remit the employer portion of the tax and must withhold and remit the employee portion of the tax.

(2) The rules related to the self-employed portion of the old fund liability tax are found in Administrative Rules of Montana Title 42, Chapter 15.

(3) Administration and enforcement related to the workers' compensation payroll tax for the periods ending prior to July 1, 1993, will be enforced under the law and administrative rules in effect for the period.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2502 MCA.

**RULE II DEFINITIONS** For the purposes of the old fund liability tax the following definitions apply:

(1)(a) The term "employee" means any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance. The power to control, rather than the actual exercise of control, is the important factor. Designation of an individual as, or determination by an appropriate authority that an individual is, an employee for purposes of industrial accident insurance, unemployment compensation, federal social security, or federal withholding tax will establish that person as an employee unless facts can be shown to the contrary.

(b) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, other supervisory personnel, and corporate officers are employees. However, persons who are in business for themselves are not employees.

(2)(a) The term "employer" means any person or organization for whom an individual performs any service as an employee. However, if the person or organization for whom an individual performs services does not have control of the wage payments, the term employer means the person or organization having control of the payment of such wages.

(b) An employer may be an individual, corporation, partnership, estate, trust, association, joint venture, or other unincorporated group or entity. The term employer also includes all religious, educational, charitable, and social organizations or societies and all governmental agencies at the federal, state, and local level, including school districts, towns, counties, and other political subdivisions.

(3)(a) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer, including the fair value of all remuneration paid in any medium or form other than money. Thus, salaries, wages, bonuses, fees, commissions, and other payments are wages subject to the old fund liability tax if paid as compensation for services rendered by an employee for his employer. Wages do not lose their identity even though payment may be deferred.

(b) The name by which compensation is designated is immaterial.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2501 MCA.

RULE III WAGES - EXCEPTIONS (1) As a general rule, all wages/ compensation is subject to the old fund liability tax with few exceptions. Both employer and employee portion exceptions:

(a) compensation for casual labor not in the course of the employer's trade or business, if less than \$50 per quarter;

(b) compensation for services which payment is in the form of lodging or meals provided at the request of and the convenience of the employer;

(c) the compensation paid to workers in the rail industry subject to the jurisdiction of the Federal Railroad Administration, United States Department of Transportation;

(d) employer paid benefits, not included in the gross wage of an employee; and

(e) wages paid by an employer to enrolled members of an Indian tribe who live and work within the boundaries of his or her tribe's reservation.

(2) Employer portion only exceptions:

(a) wages paid by the federal government;

(b) wages paid by a sub S corporation to corporate officers who are shareholders of the sub S corporation, and wages paid to corporate officers of closely held corporations who meet the required ownership tests of a closely held corporation; and

(c) wages paid by an Indian employer to non-Indian employees (however, the employer must withhold the tax from the wages paid to non-Indian employees and remit the tax to the state).

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2501 MCA.

RULE IV EMPLOYER'S FAILURE TO WITHHOLD OLD FUND LIABILITY TAX (1) If an employer fails to withhold as required under 39-71-2503, MCA, and thereafter, the employer is liable for the tax that should have been withheld and remitted plus applicable penalties and interest.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2503 MCA.

RULE V INDIVIDUAL LIABILITY - OLD FUND LIABILITY TAX

(1) If a corporate employer fails to withhold or fails to remit old fund liability tax monies to the department as required under 39-71-2503, MCA, the individual responsible for withholding will be held individually liable for the taxes, penalties and interest.

(a) The department shall consider the officer or employee of a corporation individually liable with the corporation, for unpaid or unfilled tax, penalties and/or interest, if it can be established that the individual:

(i) possessed the authority, duty and responsibility to file and pay tax on behalf of the corporation; or

(ii) possessed the authority on behalf of the corporation, to direct filing and payment of tax; or

(iii) possessed the fiscal authority on behalf of the corporation, to direct filing or payment of other corporate obligations, and exercised said authority resulting in failure to file or pay taxes when due.

(b) The department is not limited to considering the elements set forth in (a), to establish individual liability and may consider any other available evidence or information.

(2) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty or interest against the corporation. The individual is liable for any amount of old fund liability tax plus penalty and interest unpaid by the corporation.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2503 MCA.

RULE VI OLD FUND LIABILITY TAX RATE (1) For tax years beginning after December 31, 1992, the old fund liability tax is equal to 0.1% on the income of each business of a sole proprietor, and the distributable share of ordinary income of each subchapter S corporation shareholder, partner of a partnership, or member or manager of a limited liability company. The tax is calculated separately on the income and losses of each business entity that is reported by the taxpayer. Losses cannot offset income from another business in calculation of the old fund liability tax.

(2) For years beginning after December 31, 1993, the old fund tax rate is increased from 0.1% to 0.2%.

(3) Every person subject to the tax under subsection (1) shall pay a minimum of \$25 per entity that is reported or should be reported on the taxpayer's individual income tax return.

Example: Mike Vitt is a taxpayer who has interests in various businesses. He is a sole proprietor of a business, is a partner in a partnership and is a shareholder in a Subchapter S corporation. In a taxable year, the income from the sole proprietorship was \$30,000, the partnership was a loss and the income from the subchapter S corporation was \$15,000. His old fund tax liability for tax year 1993 is calculated as follows:

1. Schedule C Income of \$30,000	=	\$30
2. Subchapter S Income of \$15,000	=	\$25 (minimum)
3. Partnership Loss	=	\$25 (minimum)
Total OFLT tax liability	=	\$80

(4) No income tax credits are allowed against the old fund liability tax. The tax is in addition to the income tax liability after credits on the individual income tax return.

(5) Income of each business of a sole proprietor, and the distributable share of ordinary income of each subchapter S corporation, partnership, or liability company that is reported on a trust, estate or fiduciary return is subject to the old fund liability tax.

(6) If property in a sole proprietorship is held jointly, the old fund liability minimum tax is applied only once.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2505 MCA.

RULE VII ESTIMATED TAX, PENALTIES AND INTEREST ON OLD FUND LIABILITY TAX (1) The old fund liability tax is subject to the estimated tax provisions and must be included with the four installments when filing estimated individual income taxes.

(2) Interest and penalties that are applicable to individual income tax also apply to the old fund liability tax.

(3) When a taxpayer who is subject to the old fund liability tax files a joint return with their spouse, the taxpayers are both jointly and severally liable.

(4) All payments made by taxpayers will be credited first to any interest, penalties and tax owing from the individual income tax.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2503 MCA.

RULE VIII OLD FUND LIABILITY TAX INCOME (1) The sole proprietorship's income subject to the old fund liability tax is the profit or loss from a business which should be shown on the federal schedule C or F in filing the taxpayer's individual income tax return.

(2) The shareholder's income subject to the old fund liability is his or her share of the subchapter S corporation's ordinary income or loss from trade or business activities.

(3) A partner's income subject to the old fund liability is his or her share of the partnership's ordinary income or loss from trade or business activities.

(4) A liability member or manager's income that is subject to the old fund liability is his or her share of the limited liability company's ordinary income or loss from trade or business activities.

(5) If there is an agreement between partners of partnerships or members of a limited liability company to share the income or loss in any fashion other than by percentage of ownership, the old fund liability tax is on the greater of the two.

(6) Only income that is earned from Montana sources is subject to the old fund liability tax. Nonresidents who receive income from Montana sources through wages, a sole proprietorship, partnership, subchapter S corporation and limited liability companies are subject to the old fund liability tax.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2503 MCA.

5. The Department is proposing to amend 42.17.105 to reflect the current withholding tables which were effective July 1, 1993. The amendment to 42.17.111 clarifies the relationship is specifically to state income tax withholding. The amendments made to 42.17.112, 42.17.113, 42.17.114, 42.17.115, 42.17.116, 42.17.118, 42.17.133 and 42.17.134 clarify the requirements for remitting and reporting Montana state income tax withholding and the old fund liability tax. The two taxes are remitted using the same form. The amendments to 42.17.133, 42.17.134, 42.17.136, 42.17.137 and 42.17.138 were made to reference the old fund liability tax rather than the workers' compensation payroll tax.

6. The new rules I through VIII address the definitional, administrative and enforcement provisions unique to the old fund liability tax.

7. The Department is proposing new rules VIII, IX and X to implement the old fund liability tax on self-employed individuals that was passed by the 1993 Legislature in House Bill 504. The rules state the rate of tax, the income that is subject to the tax and explain that the tax is subject to penalties, interest and the estimated tax provisions.

8. 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 December 10, 1993.

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



CLEO ANDERSON  
Rule Reviewer



MICK ROBINSON  
Director of Revenue

Certified to Secretary of State November 1, 1993.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT )	NOTICE OF PUBLIC HEARING ON
of ARM 42.20.303, 42.20.304, )	THE PROPOSED AMENDMENT of ARM
42.20.305, 42.20.306, 42.20.432 )	42.20.303, 42.20.304, 42.20.
42.20.454 and 42.20.455; and the) )	305, 42.20.306, 42.20.432,
REPEAL of ARM 42.20.308, 42.20. )	42.20.454 and 42.20.455; and
309, 42.20.310, 42.20.311, 42. )	the REPEAL of ARM 42.20.308,
20.420, 42.20.423, 42.20.429, )	42.20.309, 42.20.310, 42.20.
42.20.435, 42.20.438, 42.20.441 )	311, 42.20.420, 42.20.423,
42.20.444, 42.20.447, 42.20.450 )	42.20.429, 42.20.435, 42.20.
42.20.453, 42.20.468, and 42.20.)	438, 42.20.441, 42.20.444,
471 relating to Mining Claims )	42.20.447, 42.20.450, 42.20.
and Real Property Values )	453, 42.20.468, and 42.20.471
)	relating to Mining Claims and
)	Real Property Values

TO: All Interested Persons:

1. On December 1, 1993, 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 42.20.303, 42.20.304, 42.20.305, 42.20.306, 42.20.432, 42.20.454 and 42.20.455; and the repeal of ARM 42.20.308, 42.20.309, 42.20.310, 42.20.311, 42.20.420, 42.20.423, 42.20.429, 42.20.435, 42.20.438, 42.20.441, 42.20.444, 42.20.447, 42.20.450, 42.20.453, 42.20.468, and 42.20.471 relating to mining claims and real property values.

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

42.20.303 CRITERIA FOR VALUATION AS MINING CLAIM  
(1) remains the same.

(2) The applicant for ~~class 10~~ class 3 property tax treatment is required to demonstrate that he is the owner of the patented mining claim for which classification is sought. If, on the date of application, the applicant is presently carried on the tax rolls of the county as the owner of the mining claim, the department will presume that the applicant is the record owner of the mining claim.

(3) and (4) remain the same.

(5) In the event that ~~class 10~~ class 3 property tax treatment is sought for a patented mining claim which is owned by multiple parties, the criteria set forth in subsections (2) and (3) above must be fulfilled by a majority of the parties or entities currently paying the taxes on the patented mining claim or by the single party or entity paying taxes on the patented mining claim.

(6) If the department of revenue denies the application for ~~class 10~~ class 3 property tax treatment, and if the applicant/taxpayer disagrees with the department of revenue's

determination, the taxpayer shall be entitled to exercise the rights set forth in 15-7-102, MCA.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-101, 15-6-133, 15-6-148, 15-6-153, and 15-8-111 MCA.

42.20.304 ADDITIONAL RESTRICTIONS THAT CURTAIL PREFERENTIAL TREATMENT (1) Land shall not be classified or valued as a ~~class 10~~ class 3 mining claim if the land is restricted, by covenant or ordinance, from mining use.

(2) Land shall not be classified or valued as a ~~class 10~~ class 3 mining claim after mining activity begins. Once mining activity begins, ARM 42.20.159 will apply.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-101, 15-6-133, 15-6-148, 15-6-153, and 15-8-111 MCA.

42.20.305 VALUATION OF ACREAGE BENEATH IMPROVEMENTS ON ELIGIBLE MINING CLAIMS (1) For all mining claims that have improvements located upon them, the land that is beneath all the improvements and the land that is necessary for the use of those improvements shall not receive classification and valuation as ~~class 10~~ class 3 property. A market value determination shall be made for the acreage that is beneath the improvements and for the acreage necessary for the use of those improvements.

(2) and (3) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-101, 15-6-133, 15-6-148, 15-6-153, and 15-8-111 MCA.

42.20.306 VALUATION OF IMPROVEMENTS LOCATED ON ELIGIBLE MINING CLAIMS (1) All improvements located on eligible mining claims shall be classified and valued in the appropriate tax class. The improvements will normally be classified and valued as class 4 property. ~~The improvements will not be classified and valued as class 10 property.~~

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-101, 15-6-133, 15-6-148, 15-6-153, and 15-8-111 MCA.

42.20.432 PROCEDURE FOR VALIDATING SALES INFORMATION

(1) ~~In conducting the stratified sales assessment ratio study, the department shall compile sales information from realty transfer certificates. Department staff who did not participate in the determination of appraised values will validate such sales information as required by 15-7-111 (7) MCA. For purposes of this rule, "department staff who did not participate in the determination of appraised values" means department staff who did not complete the appraisal of the sold property. The department shall review sales evidenced by a realty transfer certificate to determine whether a sale was a valid, arms-length transaction. For the purposes of this rule, "valid, arm's-length transaction" means a sale of real estate not affected by unreasonable or unusual personal influence or control, as defined in literature prepared by the international association of assessing officers.~~

(2) Unless there is convincing evidence to the contrary, ~~the following sales transactions shall be excluded from the stratified sales assessment ratio study considered non-arms length transactions:~~

(2)(a) through (3) remains the same.

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

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

(a) Must make application on a property adjustment form (AB-26) to the department of revenue, property assessment division, appraisal office, located in the county where the property is situated;

(b) In order to be considered, the property adjustment form (AB-26) must be filed by ~~April 1 of the current tax year or within 15 days after receipt of a valuation notice, whichever is later. For tax year 1991 only, the application deadline will be May 6 or within 15 days after receipt of a valuation notice, whichever is later;~~

(c) ~~The sale must have taken place no later than 12 months prior to November 1 of the immediately preceding tax year and prior to April 1 of the current tax year or 15 days after receipt of a valuation notice for the current tax year, whichever is later; be adjusted by the county appraiser to account for changes in market conditions that may have occurred between the time of sale and the base year valuation date.~~

(d) The sale must be substantiated by an accurately completed and filed realty transfer certificate;

(e) Must complete and sign a sales verification form including sales price;

(f) Must provide a signed affidavit completed by at least one party or person who is not a participating party (buyer or seller) in the transaction that identifies the conditions, terms and sales price of the property;

(g) Must provide an executed buy/sell agreement as supporting documentation;

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

(i) The actual selling price of the property and the comparable sales must be trended adjusted by the county

appraiser to the a value that is consistent with the base year adopted by the department in its administrative rules, Title 42, chapter 18.

(2) For the actual selling price to be considered in lieu of the sales ratio adjusted value, the department of revenue must:

(a) Analyze and maintain the information and requirements in (1), (a) through (i), as a part of the file supporting the value placed on the property for tax purposes;

(b) Verify the subject sale as a valid arms length transaction as defined in ARM 42.20.435 and as further defined in 15-8-111 (2)(a), MCA; and

(c) Verify the comparable sales as valid arms length transaction as defined in ARM 42.20.435 and as further defined in 15-8-111 (2)(a), MCA;

~~(d) Conduct physical on site reviews of the subject property; and~~

~~(e) Conduct physical on site reviews of the comparable properties being used to support the sale value of the subject property.~~

(3) After making a determination regarding use of the actual adjusted selling price as an indication of market value for tax purposes, the department of revenue must return the form (AB-26) to the taxpayer stating clearly the reasons for accepting or rejecting the application and, if appropriate, what adjustments were made to the actual selling price and why those adjustments were made.

(a) If the application appraised value is accepted adjusted by the county appraiser, the actual selling price shall adjusted value becomes the current year valuation value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment. The department must trend the actual selling price to base year values using the inverse of each year's sales assessment ratio percentage adjustments. Subsequent years' sales assessment ratio percentage adjustments shall be applied against the current value determined by the department.

(4) When a tax appeal board decision indicates that the actual adjusted selling price is market value for the property under appeal and the department files no further appeal within the time prescribed by law, the actual adjusted selling price shall become the current year valuation value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment. The department shall trend the actual selling price to base year values using the inverse of each year's sales assessment ratio percentage adjustments. The result will be a new base year value. Subsequent years' sales assessment percentage adjustments shall be applied against the current year value determined by the tax appeal board.

AUTH: Sec. 15-1-201, MCA; IMP: 15-7-102, 15-7-111, and 15-

8-111, MCA.

42.20.455. CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property ~~adjusted by the sales assessment ratio study~~, the department may consider independent appraisals of the property as evidence of the market value of the property. For an independent appraisal to be considered ~~in lieu of the sales ratio adjusted value~~, the taxpayer or his/her agent must meet the following requirements:

(a) ~~Prior to July 1, 1993, must submit a signed original long form narrative appraisal, performed by a licensed an appraiser licensed by the State of Montana if a state licensing program is in effect, or an appraiser who has been certified by a nationally recognized appraisal society or institute if a state licensing program is not in effect,~~ to the department of revenue, property assessment division, appraisal office, located in the county where the property is situated;

~~(b) After July 1, 1993, must submit a signed, original long form narrative appraisal, performed by a licensed appraiser after a state licensing program is in effect, to the department of revenue, property assessment division, appraisal office, located in the county where the property is located;~~

~~(c)(b) The appraisal required in (a) or (b) must have been completed no later than 12 months prior to November 1 of the immediately preceding tax year and prior to April 1 of the current tax year or 15 days after receipt of a valuation notice for the current tax year, whichever is later; a valuation date within six months of the base year valuation date or must be adjusted by the county appraiser or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base year valuation date.~~

~~(d)(c) Must submit a property adjustment form (AB-26) to the department of revenue, property assessment division, appraisal office, located in the county where the property is situated; and~~

~~(e)(d) In order to be considered, must file the property adjustment form (AB-26) and the original long form narrative appraisal by April 1 of the current tax year or within 15 days after receipt of a valuation notice whichever is later. For tax year 1991 only, the application deadline will be May 4 or within 15 days of receipt of a valuation notice, whichever is later.~~

(2) For the independent appraisal to be considered ~~in lieu of the sales ratio adjusted value~~, the department of revenue must:

(a) Maintain the information and requirements in (1)(a) through ~~(e)(d)~~, as a part of the file supporting the value placed on the property for tax purposes;

(b) Conduct on site reviews of the subject property verifying the property characteristics of the subject property;

(c) Verify the comparable sales used in the independent

appraisal as valid arms length transactions as defined in ARM 42.20.435 and as further defined in 15-8-111 (2)(a), MCA; and

(d) Conduct on site reviews of the comparable properties being used to support the value of the subject property in the appraisal.

(3) After making a determination regarding use of the independent appraisal value as market value for tax purposes, the department of revenue must return the form (AB-26) to the taxpayer stating clearly the reasons for accepting or rejecting the application and, if accepted, and appropriate, what adjustments were made to the appraised value and why those adjustments were made.

~~(a) If the application is accepted, the independent appraisal value shall become the current year valuation for assessment and taxation purposes. The department must trend the independent appraisal value to base year values using the inverse of each year's sales assessment ratio percentage adjustments. Subsequent years' sales assessment ratio percentage adjustments shall be applied against the current value determined by the department.~~

(4) When a tax appeal board decision indicates that the independent appraisal value is market value for the property under appeal and the department files no further appeal within the time prescribed by law, the independent appraisal value shall become the current year valuation value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment. The department shall trend the independent appraisal value to base year values using the inverse of each year's sales assessment ratio percentage adjustments. The result will be a new base year value. Subsequent years' sales assessment ratio percentage adjustments shall be applied against the current year value determined by the tax appeal board.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111 and 15-8-111, MCA.

3. The Department proposes to repeal the following rules:

42.20.308 APPLICATION FOR CLASSIFICATION AS CLASS 19 PROPERTY found at page 42-2064 of the Administrative Rules of Montana. AUTH: Secs. 15-1-201 through 15-6-101 MCA; IMP: Sec. 15-6-149 and 15-6-154 MCA.

42.20.309 ELIGIBILITY CRITERIA FOR CLASSIFICATION AND VALUATION AS CLASS 19 found at page 42-2065 of the Administrative Rules of Montana. AUTH: Secs. 15-1-201 and 15-6-101 MCA; IMP: 15-6-149 and 15-6-154 MCA.

42.20.310 PORTIONS OF PARCELS ELIGIBLE FOR CLASSIFICATION AS CLASS 19 found at page 42-2066 of the Administrative Rules of Montana. AUTH: Secs. 15-1-201 and 15-6-101 MCA; IMP, Sec. 15-6-149 and 15-6-154 MCA.

42.20.311 PORTIONS OF PARCELS ELIGIBLE FOR CLASSIFICATION AS CLASS 4 found at page 42-2066 of the Administrative Rules of Montana. AUTH: Secs. 15-1-201 and 15-6-101 MCA; IMP, Sec. 15-6-149 and 15-6-154 MCA.

42.20.420 PROPERTY VALUE ADJUSTMENTS found at page 42-2076 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-111, 15-10-411 and 15-10-412 MCA.

42.20.423 DATA USED TO ESTIMATE SALES ASSESSMENT RATIOS found at page 42-2076 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.429 CRITERIA FOR REDUCING OR INCREASING PROPERTY VALUE found at page 42-2077 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.435 DETERMINATION OF AREAS found at page 42-2081 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.438 DESIGNATED AREAS - RESIDENTIAL found at page 42-2082 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.441 RESIDENTIAL AREA MAPS AND DESCRIPTIONS found at page 42-2100.4 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.444 DESIGNATED AREAS - COMMERCIAL found at page 42-2100.5 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.447 COMMERCIAL AREA MAPS AND DESCRIPTIONS found at page 42-2100.6 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.450 DIVISION OF PROPERTY INTO STRATUM found at page 42-2100.6 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.453 TREATMENT OF CERTAIN PROPERTIES found at page 42-2100.6 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.468 PERCENTAGE ADJUSTMENTS FOR THE 1992 TAX YEAR found at page 42-2100.10 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.

42.20.471 APPLICABILITY OF PROPERTY VALUE ADJUSTMENTS found at page 42-2100.15 of the Administrative Rules of Montana. AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-111 MCA.


4. The Department is proposing to amend and repeal ARM 42.20.303 through 42.20.311 to coincide with amendments to 15-6-133, MCA, as enacted by SB 168, Sec. 1, Ch. 267, L. 1993, and HB 643, Sec. 1, Ch. 627, L. 1993. The amended statutes change the treatment of patented mining claims from class 18 to class 3 property. The amendments and repeal of ARM 42.20.420 through 42.20.471 are necessary to coincide with the repeal of 15-6-148 and 15-6-149, MCA, which occurred through Sec. 15, Ch. 773, L. 1991.

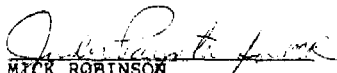
5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than December 10, 1993.

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

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State November 1, 1993.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of )	NOTICE OF PUBLIC HEARING ON
ARM 42.20.137; AMENDMENT of )	THE PROPOSED REPEAL of ARM
ARM 42.20.138, 42.20.139, 42. )	42.20.137; AMENDMENT of ARM
20.140, 42.20.141, 42.20.142, )	42.20.138, 42.20.139, 42.20.
42.20.143, 42.20.144, 42.20. )	140, 42.20.141, 42.20.142,
145, 42.20.146, and 42.20.147; )	42.20.143, 42.20.144, 42.20.
and ADOPTION of RULE I, II, )	145, 42.20.146, and 42.20.147
III, and IV relating to )	and ADOPTION of RULE I, II,
Valuation of Real Property )	III, and IV relating to
)	Valuation of Real Property

TO: All Interested Persons:

1. On December 2, 1993, 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 repeal of ARM 42.20.137; amendment of ARM 42.20.138, 42.20.139, 42.20.140, 42.20.141, 42.20.142, 42.20.143, 42.20.144, 42.20.145, 42.20.146, 42.20.147; and adoption of new rules I, II, III, and IV relating to valuation of real property.

2. The following rule is proposed to be repealed:

42.20.137. ELIGIBILITY FOR CLASS 14 TAX TREATMENT found at page 42-2026 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-144 and 15-7-202 MCA.

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

42.20.138. AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON TIMBERLAND LOCATED ON DISPARATE LAND OWNERSHIPS (1) remains the same.

~~(2) If agricultural improvements and the land beneath the agricultural improvements are not in common ownership, the improvements that are used exclusively for agricultural purposes will be eligible for class 14 tax treatment. The land and residences located on disparate land ownerships will not be eligible for class 14 tax treatment.~~

~~(3) (2) The department of revenue will not assign market value determinations for one acre areas beneath buildings on timberland if the land beneath buildings on timberland and the building on timberland are not in common ownership.~~

~~(4) If improvements on timberland and the land beneath the improvements on timberland are not in common ownership, the improvements that are used exclusively for agricultural purposes will be eligible for class 14 tax treatment. The land and the residences located on disparate land ownerships will not be eligible for class 14 tax treatments.~~

AUTH: Sec. 15-1-201, MCA; IMP, Secs. 15-7-202 MCA.

42.20.139 APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND (1) The property owner of record or his agent must make application to the property assessment division, department of revenue, in order to secure agricultural classification of his land. In order to be considered for the current tax year, an application must be filed on a form available from the county appraisal office before March 1 or 15 days after receiving a notice of classification change and appraisal from the department of revenue, whichever is later. The form must be filed with the county appraisal office.

(2) Remains the same.

(3) An annual application is not required. An application is required only:

(a) if the department reclassifies the property and the taxpayer disagrees with the department's reclassification action;

(b) if when submitting the annual farm and ranch assessment, the owner, the owner's immediate family members, the owner's agent, employee or lessee fails to indicate on the form that the land continues to be used primarily for raising agricultural products through marketing not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land;

(c) if the owner, the owner's immediate family members, the owner's agent, employee or lessee fails to submit a farm and ranch reporting form; or

(d) submits a farm and ranch reporting form but significantly reduces the amount of property reported from the prior year to the extent there is convincing belief that the property is no longer a viable agricultural unit.

(4) The taxpayer will be notified in writing if the department acts to reclassify the taxpayer's property.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-202 MCA.

42.20.140 DEFINITION OF TERMS FOR PARCELS LESS THAN 20 ACRES (1) The term contiguous parcels of land means separate land acreages in the same ownership that are adjacent and physically touching.

(2) The term "noncontiguous parcels of land" means land acreages in the same ownership that meet one of the two following standards:

(a) Acreages that do not touch but that are each an integral part of the operation of a bona fide agricultural operation, or

(b) Acreages that would meet the definition of contiguous contained in (1) above were the acreages not separated by one or more of the following features only:

(i) federal, state, or county roads and highways, or

(ii) navigable rivers and streams, or

(iii) county line local taxing authority boundaries, or

(iv) ~~school district boundaries, or railroad lines; or~~  
 (v) ~~railroads, or~~  
 (vi) federal or state land that is leased from the federal or state government by a taxpayer whose land ownership is contiguous to the federal or state land.

(3) Land acreages that do not meet the definitions of either contiguous or noncontiguous parcels of land in (1) and (2) above must individually meet the eligibility criteria set forth in 15-7-202, MCA, and ARM 42.20.147 through 42.20.149, and 42.20.157, to gain agricultural land classification.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-201 through 15-7-216 MCA.

42.20.141 AGRICULTURAL LANDS (1) The department of revenue has herein adopted and incorporated the "Montana Agricultural Land Classification Manual (1985 1993 - as revised)" by reference. Copies of this manual may be reviewed in this department or may be purchased from the department at cost plus mailing.

(2) remains the same.

(3) Taxable values for each land use and production category will be phased in over a 4 year period, beginning January 1, 1994.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-133 and 15-7-103 MCA.

42.20.142 GRAZING LAND (1) The following is the schedule for the classification and valuation of grazing land:

Acrees for 10 Month

Grazing Season per

1,000 lb. Steer or

<u>Equivalent</u>	<u>Grade</u>	<u>Assessed Value</u>
		<u>Per Acre</u>
<u>Under 3</u>	<u>1A2</u>	<u>\$71.69</u>
<u>3 5</u>	<u>1A1</u>	<u>44.18</u>
<u>5 6</u>	<u>1A1</u>	<u>31.27</u>
<u>6 10</u>	<u>1A</u>	<u>20.51</u>
<u>11 18</u>	<u>1B</u>	<u>10.53</u>
<u>19 21</u>	<u>2A</u>	<u>7.17</u>
<u>22 27</u>	<u>2B</u>	<u>5.42</u>
<u>28 37</u>	<u>3</u>	<u>3.72</u>
<u>38 55</u>	<u>4</u>	<u>2.52</u>
<u>56 99</u>	<u>5</u>	<u>1.47</u>
<u>100 or over</u>	<u>6</u>	<u>.82</u>

(a) In effect from January 1, 1994, through December 31, 1994:

Acres for 10-month  
Grazing Season per  
1,000 lb. Steer or  
Equivalent

Grade

Assessed Value  
Per Acre

Under - 3	1A2	\$556.09
3 - 5	1A1	326.63
5 - 6	1A+	232.53
6 - 10	1A	154.11
11 - 18	1B	80.44
19 - 21	2A	55.61
22 - 27	2B	42.88
28 - 37	3	30.19
38 - 55	4	20.63
56 - 99	5	12.14
100 or over	6	6.99

(b) In effect from January 1, 1995, through December 31, 1995:

Acres for 10-month  
Grazing Season per  
1,000 lb. Steer or  
Equivalent

Grade

Assessed Value  
Per Acre

Under - 3	1A2	\$555.00
3 - 5	1A1	309.89
5 - 6	1A+	222.03
6 - 10	1A	148.81
11 - 18	1B	79.05
19 - 21	2A	55.50
22 - 27	2B	43.63
28 - 37	3	31.47
38 - 55	4	21.68
56 - 99	5	12.85
100 or over	6	7.61

(c) In effect from January 1, 1996, through December 31, 1996:

Acres for 10-month  
Grazing Season per  
1,000 lb. Steer or  
Equivalent

Grade

Assessed Value  
Per Acre

Under - 3	1A2	\$553.91
3 - 5	1A1	293.15
5 - 6	1A+	211.52
6 - 10	1A	143.51
11 - 18	1B	77.65
19 - 21	2A	55.39
22 - 27	2B	44.38

<u>28 - 37</u>	<u>3</u>	<u>32.75</u>
<u>38 - 55</u>	<u>4</u>	<u>22.73</u>
<u>56 - 99</u>	<u>5</u>	<u>13.56</u>
<u>100 or over</u>	<u>6</u>	<u>8.23</u>

(d) In effect from January 1, 1997, through December 31, 1997:

Acres for 10-month  
Grazing Season per  
1,000 lb. Steer or  
Equivalent

	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>Under - 3</u>	<u>1A2</u>	<u>\$552.83</u>
<u>3 - 5</u>	<u>1A1</u>	<u>276.41</u>
<u>5 - 6</u>	<u>1A+</u>	<u>201.02</u>
<u>6 - 10</u>	<u>1A</u>	<u>138.21</u>
<u>11 - 18</u>	<u>1B</u>	<u>76.25</u>
<u>19 - 21</u>	<u>2A</u>	<u>55.28</u>
<u>22 - 27</u>	<u>2B</u>	<u>45.13</u>
<u>28 - 37</u>	<u>3</u>	<u>34.02</u>
<u>38 - 55</u>	<u>4</u>	<u>23.77</u>
<u>56 - 99</u>	<u>5</u>	<u>14.27</u>
<u>100 or over</u>	<u>6</u>	<u>8.85</u>

(2) remains the same.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-103, 15-7-201 and 15-7-221 MCA.

42.20.143 CONTINUOUSLY CROPPED HAY LAND (1) The following is the schedule for the classification and valuation of continuously cropped hay land:

<u>Tons of Hay</u> <u>Per Acre</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>3.0 and Over</u>	<u>1</u>	<u>\$67.60</u>
<u>2.5 - 2.9</u>	<u>2</u>	<u>53.03</u>
<u>2.0 - 2.4</u>	<u>3</u>	<u>41.38</u>
<u>1.5 - 1.9</u>	<u>4</u>	<u>29.43</u>
<u>1.0 - 1.4</u>	<u>5</u>	<u>19.38</u>
<u>.5 - .9</u>	<u>6</u>	<u>10.05</u>
<u>Less than .5</u>	<u>7</u>	<u>5.54</u>

(a) In effect from January 1, 1994, through December 31, 1994:

<u>Tons of Hay</u> <u>Per Acre</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>3.0 and Over</u>	<u>1</u>	<u>\$561.95</u>
<u>2.5 - 2.9</u>	<u>2</u>	<u>460.22</u>
<u>2.0 - 2.4</u>	<u>3</u>	<u>364.33</u>

<u>1.5 - 1.9</u>	<u>4</u>	<u>266.69</u>
<u>1.0 - 1.4</u>	<u>5</u>	<u>180.13</u>
<u>.5 - .9</u>	<u>6</u>	<u>97.76</u>
<u>Less than .5</u>	<u>7</u>	<u>46.29</u>

(b) In effect from January 1, 1995, through December 31, 1995:

<u>Tons of Hay</u> <u>Per Acre</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>3.0 and Over</u>	<u>1</u>	<u>\$598.50</u>
<u>2.5 - 2.9</u>	<u>2</u>	<u>508.30</u>
<u>2.0 - 2.4</u>	<u>3</u>	<u>407.06</u>
<u>1.5 - 1.9</u>	<u>4</u>	<u>304.66</u>
<u>1.0 - 1.4</u>	<u>5</u>	<u>209.63</u>
<u>.5 - .9</u>	<u>6</u>	<u>117.41</u>
<u>Less than .5</u>	<u>7</u>	<u>49.51</u>

(c) In effect from January 1, 1996, through December 31, 1996:

<u>Tons of Hay</u> <u>Per Acre</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>3.0 and Over</u>	<u>1</u>	<u>\$635.06</u>
<u>2.5 - 2.9</u>	<u>2</u>	<u>556.37</u>
<u>2.0 - 2.4</u>	<u>3</u>	<u>449.79</u>
<u>1.5 - 1.9</u>	<u>4</u>	<u>342.62</u>
<u>1.0 - 1.4</u>	<u>5</u>	<u>239.14</u>
<u>.5 - .9</u>	<u>6</u>	<u>137.06</u>
<u>Less than .5</u>	<u>7</u>	<u>52.74</u>

(d) In effect from January 1, 1997, through December 31, 1997:

<u>Tons of Hay</u> <u>Per Acre</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>3.0 and Over</u>	<u>1</u>	<u>\$671.62</u>
<u>2.5 - 2.9</u>	<u>2</u>	<u>604.45</u>
<u>2.0 - 2.4</u>	<u>3</u>	<u>492.52</u>
<u>1.5 - 1.9</u>	<u>4</u>	<u>380.58</u>
<u>1.0 - 1.4</u>	<u>5</u>	<u>268.65</u>
<u>.5 - .9</u>	<u>6</u>	<u>156.71</u>
<u>Less than .5</u>	<u>7</u>	<u>55.97</u>

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-103, 15-7-201, and 15-7-221 MCA.

42.20.144 NONIRRIGATED FARM LAND (1) The following is the schedule for the classification and valuation of non-irrigated farm land:

<u>Bu. Wheat Per Acre</u> <u>on Summer Fallow</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
40 & Over	1A8	\$81.00
38 - 39	1A7	74.51
36 - 37	1A6	67.94
34 - 35	1A5	61.37
32 - 33	1A4	54.80
30 - 31	1A3	48.60
28 - 29	1A2	42.79
26 - 27	1A1	37.31
24 - 25	1A	32.22
22 - 23	1B	27.50
20 - 21	2A	23.15
18 - 19	2B	19.17
16 - 17	2C	15.56
14 - 15	3A	12.31
12 - 13	3B	9.44
10 - 11	4A	6.94
8 - 9	4B	4.81
Under 8	5	3.06

(a) In effect from January 1, 1994, through December 31, 1994:

<u>Bu. Wheat Per Acre</u> <u>on Summer Fallow</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
40 & Over	1A8	\$552.03
38 - 39	1A7	509.81
36 - 37	1A6	467.59
34 - 35	1A5	425.37
32 - 33	1A4	383.15
30 - 31	1A3	343.09
28 - 29	1A2	305.30
26 - 27	1A1	269.44
24 - 25	1A	235.85
22 - 23	1B	204.41
20 - 21	2A	175.14
18 - 19	2B	148.02
16 - 17	2C	123.05
14 - 15	3A	100.19
12 - 13	3B	79.53
10 - 11	4A	61.04
8 - 9	4B	44.70
6 - 7	5	25.68

(b) In effect from January 1, 1995, through December 31, 1995:

<u>Bu. Wheat Per Acre</u> <u>on Summer Fallow</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>40 &amp; Over</u>	<u>1A8</u>	<u>\$473.90</u>
<u>38 - 39</u>	<u>1A7</u>	<u>440.52</u>
<u>36 - 37</u>	<u>1A6</u>	<u>407.14</u>
<u>34 - 35</u>	<u>1A5</u>	<u>373.77</u>
<u>32 - 33</u>	<u>1A4</u>	<u>340.40</u>
<u>30 - 31</u>	<u>1A3</u>	<u>308.46</u>
<u>28 - 29</u>	<u>1A2</u>	<u>278.04</u>
<u>26 - 27</u>	<u>1A1</u>	<u>248.90</u>
<u>24 - 25</u>	<u>1A</u>	<u>221.28</u>
<u>22 - 23</u>	<u>1B</u>	<u>195.10</u>
<u>20 - 21</u>	<u>2A</u>	<u>170.35</u>
<u>18 - 19</u>	<u>2B</u>	<u>147.04</u>
<u>16 - 17</u>	<u>2C</u>	<u>125.17</u>
<u>14 - 15</u>	<u>3A</u>	<u>104.70</u>
<u>12 - 13</u>	<u>3B</u>	<u>85.70</u>
<u>10 - 11</u>	<u>4A</u>	<u>68.15</u>
<u>8 - 9</u>	<u>4B</u>	<u>52.02</u>
<u>6 - 7</u>	<u>5</u>	<u>27.58</u>

(c) In effect from January 1, 1996, through December 31, 1996:

<u>Bu. Wheat Per Acre</u> <u>on Summer Fallow</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
<u>40 &amp; Over</u>	<u>1A8</u>	<u>\$395.77</u>
<u>38 - 39</u>	<u>1A7</u>	<u>371.23</u>
<u>36 - 37</u>	<u>1A6</u>	<u>346.70</u>
<u>34 - 35</u>	<u>1A5</u>	<u>322.17</u>
<u>32 - 33</u>	<u>1A4</u>	<u>297.64</u>
<u>30 - 31</u>	<u>1A3</u>	<u>273.83</u>
<u>28 - 29</u>	<u>1A2</u>	<u>250.78</u>
<u>26 - 27</u>	<u>1A1</u>	<u>228.37</u>
<u>24 - 25</u>	<u>1A</u>	<u>206.71</u>
<u>22 - 23</u>	<u>1B</u>	<u>185.78</u>
<u>20 - 21</u>	<u>2A</u>	<u>165.56</u>
<u>18 - 19</u>	<u>2B</u>	<u>146.07</u>
<u>16 - 17</u>	<u>2C</u>	<u>127.29</u>
<u>14 - 15</u>	<u>3A</u>	<u>109.21</u>
<u>12 - 13</u>	<u>3B</u>	<u>91.87</u>
<u>10 - 11</u>	<u>4A</u>	<u>75.25</u>
<u>8 - 9</u>	<u>4B</u>	<u>59.34</u>
<u>6 - 7</u>	<u>5</u>	<u>29.47</u>

(d) In effect from January 1, 1997, through December 31, 1997:



<u>Bu. Wheat Per Acre</u> <u>on Summer Fallow</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
40 & Over	1A8	\$317.64
38 - 39	1A7	301.95
36 - 37	1A6	286.26
34 - 35	1A5	270.58
32 - 33	1A4	254.89
30 - 31	1A3	239.21
28 - 29	1A2	223.51
26 - 27	1A1	207.83
24 - 25	1A	192.14
22 - 23	1B	176.46
20 - 21	2A	160.77
18 - 19	2B	145.09
16 - 17	2C	129.40
14 - 15	3A	113.72
12 - 13	3B	98.03
10 - 11	4A	82.35
8 - 9	4B	66.66
6 - 7	5	51.37

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-103, 15-7-201, and 15-7-221 MCA.

42.20.145 NONIRRIGATED, CONTINUOUSLY CROPPED FARM LAND

(1) The following is the schedule for the classification and valuation of non-irrigated, continuously cropped farm land:

<u>Bu. of Wheat Per</u> <u>Acre Each Year</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
44 & Over	1A4	\$125.71
42 - 43	1A3	116.94
40 - 41	1A2	108.17
38 - 39	1A1	99.40
36 - 37	1A	90.63
34 - 35	1	81.86
32 - 33	2	73.09
30 - 31	3	64.81
28 - 29	4	57.05
26 - 27	5	49.75
24 - 25	6	42.96
22 - 23	7	36.67
20 - 21	8	30.87
18 - 19	9	25.56
16 - 17	10	20.75
14 - 15	11	16.41
12 - 13	12	12.59
10 - 11	13	9.25
Less than 10	14	6.41

(a) In effect from January 1, 1994, through December 31, 1994:

<u>Bu. of Wheat Per</u> <u>Acre Each Year</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
44 & Over	1A4	\$907.27
42 - 43	1A3	848.30
40 - 41	1A2	789.34
38 - 39	1A1	730.38
36 - 37	1A	671.41
34 - 35	1	612.45
32 - 33	2	553.49
30 - 31	3	497.38
28 - 29	4	444.31
26 - 27	5	393.91
24 - 25	6	346.49
22 - 23	7	301.98
20 - 21	8	260.33
18 - 19	9	221.53
16 - 17	10	186.05
14 - 15	11	152.51
12 - 13	12	122.40
10 - 11	13	95.09
Less than 10	14	56.97

(b) In effect from January 1, 1995, through December 31, 1995:

<u>Bu. of Wheat Per</u> <u>Acre Each Year</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
44 & Over	1A4	\$837.51
42 - 43	1A3	787.75
40 - 41	1A2	737.98
38 - 39	1A1	688.22
36 - 37	1A	638.45
34 - 35	1	588.68
32 - 33	2	538.92
30 - 31	3	491.06
28 - 29	4	445.22
26 - 27	5	401.16
24 - 25	6	359.09
22 - 23	7	318.96
20 - 21	8	280.74
18 - 19	9	244.42
16 - 17	10	210.82
14 - 15	11	177.49
12 - 13	12	146.96
10 - 11	13	118.29
Less than 10	14	64.12

(c) In effect from January 1, 1996, through December 31, 1996:

<u>Bu. of Wheat Per</u> <u>Acre Each Year</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
44 & Over	1A4	\$767.76
42 - 43	1A3	727.19
40 - 41	1A2	686.62
38 - 39	1A1	646.05
36 - 37	1A	605.49
34 - 35	1	564.92
32 - 33	2	524.35
30 - 31	3	484.73
28 - 29	4	446.13
26 - 27	5	408.42
24 - 25	6	371.70
22 - 23	7	335.94
20 - 21	8	301.14
18 - 19	9	267.30
16 - 17	10	235.60
14 - 15	11	202.46
12 - 13	12	171.51
10 - 11	13	141.50
Less than 10	14	71.28

(d) In effect from January 1, 1997, through December 31, 1997:

<u>Bu. of Wheat Per</u> <u>Acre Each Year</u>	<u>Grade</u>	<u>Assessed Value</u> <u>Per Acre</u>
44 & Over	1A4	\$698.00
42 - 43	1A3	666.63
40 - 41	1A2	635.26
38 - 39	1A1	603.89
36 - 37	1A	572.52
34 - 35	1	541.15
32 - 33	2	509.78
30 - 31	3	478.41
28 - 29	4	447.04
26 - 27	5	415.67
24 - 25	6	384.30
22 - 23	7	352.92
20 - 21	8	321.55
18 - 19	9	290.18
16 - 17	10	260.38
14 - 15	11	227.44
12 - 13	12	196.07
10 - 11	13	164.70
Less than 10	14	78.43

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-7-103, 15-7-201, and 15-7-221 MCA.

42.20.146 TILLABLE, IRRIGATED LAND (1) The following are the schedules for the classification and valuation of tillable, irrigated land, arranged by water minimum, medium or maximum rotation:

(2) The rotations are determined as follows:

(a) Minimum rotation is irrigated land with a normal growing season of 90 or less frost-free days. Production from this land is normally limited to alfalfa hay and small grains. Growers would not have the option to profitably produce any other crops over a sustained period of years.

(b) Medium rotation is irrigated land with a normal growing season of 91 to 110 frost-free days. Lands are placed in this rotation when the grower has the option of producing a greater variety of crops than listed in the minimum rotation. Growers should be able to produce alfalfa hay, alfalfa seed, small grains, edible beans, sunflower seeds, safflowers and potatoes.

(c) Maximum rotation is irrigated land with a normal growing season of 110 or more frost-free days. These lands are capable of producing any crop which can typically be grown in Montana. Examples are all crops grown in minimum and medium rotations and, also, corn for silage, corn for grain, and sugar beets.

(3) Water costs are the combination of allowable labor costs and on-farm energy costs.

(4) Allowable labor costs which pertain to this rule are provided in 15-7-201, MCA.

(5) Allowable energy costs, expressed as cost per acre, are the actual costs incurred in 1992 for energy to provide water from a definitive source to identifiable fields by use of commonly accepted irrigation system practices.

(6) Energy costs may be documented with electrical statements or fuel statements. The taxpayer shall furnish specific information about the irrigation system and pumps.

(7) If no energy costs were incurred in 1992, the owner of irrigated land shall provide the department with energy costs from the most recent calendar year available. The department shall adjust the most recent calendar year's energy cost to reflect costs in 1992. The respective consumer price indices for energy purchases will be the basis for those adjustments.

(8) In determining the irrigated land values for the 1994 tax year, the department will contact each irrigated land taxpayer to provide information and forms that will allow for the submission of water cost and irrigation system information. All irrigated land taxpayers must provide all required labor cost and energy cost information to the department on the prescribed forms. Failure to provide the required information will result in no water cost deduction to the irrigated land value calculated by the department for property tax purposes.

(9) To make changes in the irrigated land values for tax years after 1994, irrigated land taxpayers must provide to the department updated information by March 1 of the current tax year. That information will be limited to land use change information, irrigation system changes and energy cost data. Failure to provide the updated information by the deadline will result in no change being made in the irrigated land values previously calculated by the department.

(10) The department may conduct field reviews and gather data on energy costs to ensure equality of treatment for all irrigated land taxpayers. The department may adjust the irrigated land values if information supports that action. The irrigated land taxpayer will be notified in writing of that action.

Class 1 (Maximum Rotation) Assessed Value Per Acre by Water Cost Classes

Tons													
Alfalfa	Per Acre	Grade	Under	\$1.50	\$2.50	\$3.50	\$4.50	\$5.50	\$6.50	\$7.50			
4.5+	1A	110.40	2.42	3.42	4.42	5.42	6.42	7.42	8.42	9.42	10.42	11.42	12.42
4.0-4.4	1B	94.70	88.98	83.26	77.55	71.83	66.11	60.39	54.68	48.96	43.24	37.52	31.80
3.5-3.9	2	78.70	73.96	69.20	64.45	59.70	54.94	50.19	45.44	40.68	35.93	31.17	26.42
3.0-3.4	3	63.70	59.85	56.00	52.15	48.31	44.47	40.62	36.78	32.93	29.09	25.24	21.40
2.5-2.9	4	48.53	45.60	42.67	39.74	36.81	33.88	30.95	28.02	25.09	22.16	19.23	16.30
2.0-2.4	5	31.92	30.00	28.07	26.14	24.21	22.29	20.36	18.43	16.50	14.57	12.64	10.71
1.5-1.9	6	19.86	18.67	17.47	16.27	15.07	13.87	12.67	11.47	10.27	9.07	7.87	6.67
1.0-1.4	7	11.37	10.69	10.00	9.31	8.63	7.94	7.25	6.57	5.88	5.19	4.50	3.81
less than	8	4.55	4.28	4.00	3.72	3.45	3.18	2.90	2.63	2.35	2.08	1.80	1.53

Class 2 (Medium Rotation) Assessed Value Per Acre by Water Cost Classes

Tons													
Alfalfa	Per Acre	Grade	Under	\$1.50	\$2.50	\$3.50	\$4.50	\$5.50	\$6.50	\$7.50			
4.5+	1A	97.26	90.60	83.93	77.27	70.60	63.94	57.27	50.60	43.93	37.27	30.60	23.93
4.0-4.4	1B	81.72	76.12	70.52	64.92	59.32	53.72	48.12	42.52	36.92	31.32	25.72	20.12
3.5-3.9	2	67.27	62.66	58.05	53.44	48.83	44.22	39.61	35.00	30.39	25.78	21.17	16.56
3.0-3.4	3	53.90	50.21	46.51	42.82	39.12	35.43	31.73	28.04	24.34	20.65	16.95	13.26
2.5-2.9	4	41.60	38.76	35.90	33.05	30.20	27.35	24.49	21.65	18.79	15.94	13.08	10.23
2.0-2.4	5	30.39	28.31	26.22	24.14	22.06	19.98	17.89	15.81	13.72	11.64	9.55	7.46
1.5-1.9	6	19.86	18.67	17.47	16.27	15.07	13.87	12.67	11.47	10.27	9.07	7.87	6.67
1.0-1.4	7	11.37	10.69	10.00	9.31	8.63	7.94	7.25	6.57	5.88	5.19	4.50	3.81
less than	8	4.55	4.28	4.00	3.72	3.45	3.18	2.90	2.63	2.35	2.08	1.80	1.53

Class 3 (Minimum Rotation) Assessed Value Per Acre by Water Cost Classes

Tons													
Alfalfa		Under	\$1.50	\$2.50	\$3.50	\$4.50	\$5.50	\$6.50	\$7.50				
Per Acre	Grade	\$1.50	2.49	3.49	4.49	5.49	6.49	7.49	8.49				
4.5+	1A	86.26	79.60	72.93	66.27	59.60	52.94	46.27	39.60				
4.0-4.4	1B	73.84	68.14	62.43	56.72	51.02	45.31	39.60	33.90				
3.5-3.9	2	62.01	57.32	52.63	47.94	43.24	38.55	33.86	29.17				
3.0-3.4	3	50.79	46.86	42.94	39.02	35.09	31.16	27.24	23.32				
2.5-2.9	4	40.15	37.05	33.95	30.85	27.74	24.64	21.54	18.43				
2.0-2.4	5	30.11	27.78	25.46	23.13	20.80	18.48	16.15	13.82				
1.5-1.9	6	19.86	18.67	17.47	16.27	15.07	13.87	12.67	11.47				
1.0-1.4	7	11.37	10.69	10.00	9.31	8.63	7.94	7.25	6.57				
less than	8	4.55	4.28	4.00	3.72	3.45	3.18	2.90	2.63				

Class 1, Maximum Rotation

(a) In effect from January 1, 1934 through December 31, 1994:

Tons													
Alfalfa		Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	\$35.00	\$40.00	\$45.00	\$50.00	\$55.00
Per Acre	Grade	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	39.99	44.99	49.99	54.99	59.99
4.5+	1A	830.00	616.48	577.54	558.01	538.48	518.95	499.42	479.89	460.36	440.83	421.30	401.77
4.0-4.4	1B	719.95	533.71	497.62	478.09	458.56	439.03	419.50	400.00	380.47	360.94	341.41	321.88
3.5-3.9	2	608.08	450.06	416.65	397.12	377.59	358.06	338.53	319.00	299.47	279.94	260.41	240.88
3.0-3.4	3	501.41	369.79	338.60	319.07	299.53	280.00	260.47	240.94	221.41	201.88	182.35	162.82
2.5-2.9	4	393.86	288.93	261.24	241.71	222.18	202.65	183.12	163.59	144.06	124.53	105.00	85.47
2.0-2.4	5	278.73	202.95	177.88	158.35	138.82	119.29	99.76	80.23	60.70	41.17	21.64	2.11
1.5-1.9	6	187.74	133.23	110.20	90.67	71.14	51.61	32.08	12.55	1.02	1.02	1.02	1.02
1.0-1.4	7	115.57	75.93	54.53	39.55	24.57	9.59	1.02	1.02	1.02	1.02	1.02	1.02
less than	8	41.48	19.09	19.09	19.09	19.09	19.09	19.09	19.09	19.09	19.09	19.09	19.09

(b) In effect from January 1, 1995 through December 31, 1995:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre									
4.5+	1A	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.0-4.4	1B	880.28	711.70	659.69	620.63	581.57	452.51	503.44	
3.5-3.9	2	770.57	620.37	570.27	531.21	492.14	453.08	414.02	
3.0-3.4	3	659.85	528.45	480.14	441.08	402.02	362.96	323.89	
2.5-2.9	4	552.59	438.79	391.96	352.90	313.84	274.77	235.71	
2.0-2.4	5	444.74	348.75	304.24	265.18	226.12	187.06	147.99	
1.5-1.9	6	331.84	255.28	212.53	173.46	134.40	95.34	74.12	
1.0-1.4	7	235.03	172.65	131.26	92.20	53.14	47.07	47.07	
Less than	8	150.78	98.31	58.00	28.03	28.03	28.03	28.03	
1.0	8	50.78	14.39	14.39	14.39	14.39	14.39	14.39	

(c) In effect from January 1, 1996 through December 31, 1996:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre									
4.5+	1A	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.0-4.4	1B	930.27	806.91	741.85	683.25	624.66	566.07	507.47	
3.5-3.9	2	821.19	707.03	642.92	584.32	525.73	467.13	408.54	
3.0-3.4	3	711.61	606.85	543.63	485.04	426.45	367.85	309.26	
2.5-2.9	4	603.76	507.80	445.32	386.73	328.14	269.54	210.95	
2.0-2.4	5	495.62	408.56	347.25	288.65	230.06	171.47	112.87	
1.5-1.9	6	384.95	307.61	247.17	188.58	129.98	71.39	39.56	
1.0-1.4	7	282.33	212.08	152.32	93.72	35.13	26.04	26.04	
Less than	8	185.98	120.68	61.47	16.52	16.52	16.52	16.52	
1.0	8	60.08	9.70	9.70	9.70	9.70	9.70	9.70	



(d) In effect from January 1, 1997 through December 31, 1997:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre		\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.5+	1A	980.25	902.13	824.00	745.88	667.75	589.63	511.50	
4.0-4.4	1B	871.81	793.69	715.56	637.44	559.31	481.19	403.06	
3.5-3.9	2	763.38	685.25	607.13	529.00	450.88	372.75	294.63	
3.0-3.4	3	654.94	576.81	498.69	420.56	342.44	264.31	186.19	
2.5-2.9	4	546.50	468.38	390.25	312.13	234.00	155.88	77.75	
2.0-2.4	5	438.06	359.94	281.81	203.69	125.56	47.44	5.00	
1.5-1.9	6	329.63	251.50	173.38	95.25	17.13	5.00	5.00	
1.0-1.4	7	221.19	143.07	64.94	5.00	5.00	5.00	5.00	
Less than									
1.0	8	69.37	5.00	5.00	5.00	5.00	5.00	5.00	

Class 2, Medium Rotation

(a) In effect from January 1, 1994 through December 31, 1994:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre		\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.5+	1A	729.20	517.40	480.35	462.77	445.19	427.61	410.04	
4.0-4.4	1B	623.54	442.75	408.85	391.27	373.70	356.12	338.54	
3.5-3.9	2	523.54	371.60	340.62	323.04	305.46	287.88	270.31	
3.0-3.4	3	429.25	304.01	275.65	258.07	240.49	222.92	205.34	
2.5-2.9	4	340.56	239.86	214.00	196.43	178.85	161.27	143.69	
2.0-2.4	5	257.46	179.20	155.56	137.99	120.41	102.83	85.41	
1.5-1.9	6	179.50	126.94	105.87	88.29	70.71	53.11	35.55	
1.0-1.4	7	110.10	72.41	52.91	39.55	39.55	39.55	39.55	
Less than									
1.0	8	39.74	19.09	19.09	19.09	19.09	19.09	19.09	

(b) In effect from January 1, 1995 through December 31, 1995:

Tons		ASSESSED VALUE PER ACRE									
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00			
Per Acre											
4.5+	1A	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99			
4.0-4.4	1B	780.21	615.57	567.43	532.28	497.12	461.96	426.81			
3.5-3.9	2	677.24	533.27	487.24	452.08	416.92	381.77	346.61			
3.0-3.4	3	578.04	453.31	409.22	374.06	338.90	303.75	268.59			
2.5-2.9	4	482.65	375.72	333.37	298.22	263.06	227.90	192.75			
2.0-2.4	5	390.92	300.42	259.74	224.59	189.43	154.28	119.12			
1.5-1.9	6	303.06	227.45	188.25	153.10	117.94	82.78	63.94			
1.0-1.4	7	218.55	160.08	122.59	87.44	52.28	47.07	47.07			
Less than		139.75	91.19	54.75	28.03	28.03	28.03	28.03			
1.0	8	47.31	14.39	14.39	14.39	14.39	14.39	14.39			

(c) In effect from January 1, 1996 through December 31, 1996:

Tons		ASSESSED VALUE PER ACRE									
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00			
Per Acre											
4.5+	1A	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99			
4.0-4.4	1B	831.22	713.74	654.52	601.78	549.05	496.31	443.58			
3.5-3.9	2	730.93	623.80	565.62	512.89	460.15	407.42	354.68			
3.0-3.4	3	632.54	535.02	477.81	425.08	372.35	319.61	266.88			
2.5-2.9	4	536.05	447.42	391.10	338.36	285.63	232.89	180.16			
2.0-2.4	5	441.42	360.98	305.48	252.75	200.02	147.28	94.55			
1.5-1.9	6	348.66	275.70	220.94	168.21	115.47	62.74	34.47			
1.0-1.4	7	257.61	193.21	139.31	86.58	33.85	26.04	26.04			
Less than		169.41	109.97	56.60	16.52	16.52	16.52	16.52			
1.0	8	54.87	9.70	9.70	9.70	9.70	9.70	9.70			

(d) In effect from January 1, 1997 through December 31, 1997:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre	1A	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.5+	1B	882.23	811.91	741.60	671.29	600.98	530.66	460.35	
4.0-4.4	1B	784.63	714.32	644.01	573.69	503.38	433.07	362.76	
3.5-3.9	2	687.04	616.73	546.41	476.10	405.79	335.48	265.16	
3.0-3.4	3	589.44	519.13	448.82	378.51	308.19	237.88	167.57	
2.5-2.9	4	491.85	421.54	351.23	280.91	210.60	140.29	69.97	
2.0-2.4	5	394.26	323.94	253.63	182.32	113.01	42.69	5.00	
1.5-1.9	6	296.66	226.35	156.04	85.73	15.41	5.00	5.00	
1.0-1.4	7	199.07	128.76	58.44	5.00	5.00	5.00	5.00	
Less than									
1.0	8	62.44	5.00	5.00	5.00	5.00	5.00	5.00	

Class 3, Minimum Rotation

(a) In effect from January 1, 1994 through December 31, 1994:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre	1A	\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.5+	1B	640.57	430.72	395.63	380.00	364.38	348.75	333.13	
4.0-4.4	2	554.88	372.95	287.38	325.09	309.47	293.84	278.22	
3.5-3.9	3	472.22	316.99	262.72	271.75	256.13	240.50	224.88	
3.0-3.4	4	392.71	262.72	235.67	220.05	204.42	188.80	173.17	
2.5-2.9	5	316.23	210.26	185.48	169.85	154.23	138.60	122.98	
2.0-2.4	6	242.78	159.36	136.92	121.29	105.67	90.04	74.41	
1.5-1.9	7	171.26	120.66	101.53	85.91	70.28	54.65	39.02	
1.0-1.4	8	104.51	68.89	51.28	39.55	39.55	39.55	39.55	
Less than									
1.0	8	39.64	19.09	19.09	19.09	19.09	19.09	19.09	

(b) In effect from January 1, 1995 through December 31, 1995:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre		\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.5+	1A	688.45	527.72	483.49	452.24	420.99	389.74	358.49	
4.0-4.4	1B	602.40	450.29	417.96	386.71	355.46	324.21	292.96	
3.5-3.9	2	518.38	394.06	353.48	322.23	290.98	259.73	228.48	
3.0-3.4	3	436.46	328.96	290.10	258.85	227.60	196.35	165.10	
2.5-2.9	4	356.55	265.07	227.72	196.47	165.22	133.97	102.72	
2.0-2.4	5	278.67	202.23	166.43	135.18	103.93	72.68	56.20	
1.5-1.9	6	202.07	147.50	113.92	82.67	51.42	47.07	47.07	
1.0-1.4	7	128.66	84.08	51.51	28.03	28.03	28.03	28.03	
Less than									
1.0	8	44.93	14.39	14.39	14.39	14.39	14.39	14.39	

(c) In effect from January 1, 1996 through December 31, 1996:

Tons		ASSESSED VALUE PER ACRE							
Alfalfa	Grade	Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
Per Acre		\$5.00	9.99	14.99	19.99	24.99	29.99	34.99	
4.5+	1A	736.32	624.71	571.34	524.47	477.59	430.72	383.84	
4.0-4.4	1B	649.93	517.62	495.21	448.33	401.46	354.58	307.71	
3.5-3.9	2	564.54	471.13	419.59	372.72	325.84	278.97	232.09	
3.0-3.4	3	480.20	395.21	344.52	297.65	250.77	203.90	157.02	
2.5-2.9	4	396.88	319.89	269.26	223.08	176.21	129.33	82.46	
2.0-2.4	5	314.56	245.09	195.94	149.06	102.19	55.31	30.60	
1.5-1.9	6	232.89	174.35	126.31	79.44	32.56	26.04	26.04	
1.0-1.4	7	152.80	99.26	51.73	16.52	16.52	16.52	16.52	
Less than									
1.0	8	50.21	9.70	9.70	9.70	9.70	9.70	9.70	

(d) In effect from January 1, 1997 through December 31, 1997:

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE							
		Under	\$5.00	\$10.00	\$15.00	\$20.00	\$25.00	\$30.00	
4.5+	1A	784.20	2.99	14.99	19.99	24.99	29.99	34.99	
4.0-4.4	1B	697.45	634.95	572.45	509.95	447.45	384.95	322.45	
3.5-3.9	2	610.70	548.20	485.70	423.20	360.70	298.20	235.70	
3.0-3.4	3	523.95	461.45	398.95	336.45	273.95	211.45	148.95	
2.5-2.9	4	437.20	374.70	312.20	249.70	187.20	124.70	62.20	
2.0-2.4	5	350.45	287.95	225.45	162.95	100.45	37.95	5.00	
1.5-1.9	6	263.70	201.20	138.70	76.20	13.70	5.00	5.00	
1.0-1.4	7	176.95	114.45	51.95	5.00	5.00	5.00	5.00	
less than 1.0	8	55.50	5.00	5.00	5.00	5.00	5.00	5.00	

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

42.20.147 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALLING LESS THAN 20 ACRES (1) An applicant for agricultural land classification must prove that the land indicated in the application actually produced the livestock, poultry, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. Land upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres to be eligible for classification as agricultural land. Proof of production shall be evidenced by:

(a) through (c) remain the same.

(2) The applicant must provide proof that the parcel(s) indicated in the application marketed at least \$1,500 of gross income each year. Acceptable proof of income shall include:

(a) sales receipts, canceled checks, copy of income tax statements, or other written evidence of sales transactions; and

(b) Annual rental or lease payments of at least \$1,500 provided there is demonstrated proof of agricultural activity on the land and the land is capable of sustaining that activity.

(3) remains the same.

(a) A copy of the current year county farm and ranch assessment filed by the owner, the owner's immediate family members, the owner's agent, employee, or lessee; and

(b) An affidavit statement from the agricultural stabilization and conservation service (ASCS) indicating proven yield, or

(c) A statement from the soil conservation service (SCS) indicating that the parcel(s) is/are capable of producing the necessary animal unit months of grazing capacity; or

(d) An affidavit statement from the county brand inspector or meat packing plant (animal fiber), or indicating that they inspected or slaughtered animals owned by the applicant; and

(e) A visual confirmation by the county appraiser.

(4) remains the same.

(5) For valuation as agricultural land, the owner of land used as a christmas tree farm must provide proof that:

(a) all trees are cultivated or under accepted, proven husbandry practices;

(b) all trees are sheared on a regular basis; and

(c) the property contains a minimum of 2,000 trees.

(6) For valuation as agricultural land, the owner of land used as a cherry tree orchard must provide proof that:

(a) there are a minimum of 100 trees; and

(b) they are under an accepted management practice.

(7) Land qualifying in (5) and (6) will be graded and assessed as continuously cropped farm land, grade 1A4.

(8) For contiguous and noncontiguous parcels of land under one ownership as defined in ARM 42.20.140 totalling less than 20 acres in size, any acreage in excess of that set forth in the timberland classification in ARM 42.20.113 is classified as agricultural provided the acreage is actively devoted to agricultural use.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-201 through 15-7-216 MCA.

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

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

NEW RULE 1. CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALLING 20 TO 160 ACRES IN SIZE

(1) An applicant for agricultural land classification must prove that the parcel(s) indicated in the application actually produced the livestock, poultry, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. Parcels upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres to be eligible for classification as agricultural land. Proof of production may be evidenced by:

(a) The current year's county farm and ranch assessment filed by the owner's immediate family members, the owner's agent, employee, or lessee; and

(b) Documents evidencing production, storage, or sale of agricultural products.

(2) The applicant must provide proof that the parcel indicated in the application marketed at least \$1,500 of gross income each year. Acceptable proof of income shall include:

(a) Sales receipts, canceled checks, copy of income tax statements, or other written evidence of sales transactions;

(b) Annual rental or lease payments of at least \$1,500 provided there is demonstrated proof of agricultural activity on the land and the land is capable of sustaining that activity; and

(c) Annual rental payments of at least \$1,500 made under the federal conservation reserve program (CRP), or a successor to that program.

(3) If the land is primarily used to grow crops that are not marketed, the applicant must prove that the parcel on the application produces no less than 450 bushels of grain, with wheat as the base; 30 tons of hay; an equivalent measure of weight of any other field crop by comparison in the market for the year; or the parcel serves as grazing land supporting 40 or more animal unit months, with cattle as the base. Acceptable proof shall include any two of the following:

(a) A copy of the current year county farm and ranch assessment filed by the owner, the owner's immediate family members, the owner's agent, employee, or lessee;

(b) Written statements or documents from:

(i) the agricultural stabilization and conservation service (ASCS) indicating proven yield;

(ii) the soil conservation service (SCS) indicating that the parcel(s) are capable of producing the necessary animal unit months of grazing capacity; or

(iii) the county brand inspector or meat packing plant (animal fiber) indicating that they inspected or slaughtered animals owned by the applicant;

(c) A written estimate of the weight or quantity of food or animal fiber produced must be made by the applicant. The weight estimate will be multiplied by the current commodity price to

determine whether the \$1,500 annual gross income test has been met; or

(d) A confirmation by the county appraiser.

(4) As provided in ARM 42.20.147.

(5) Land under the CRP, the integrated farm management (IFM) program, or a similar program shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs.

(6) For land between 20 to 160 acres, any acreage for timberland classification set forth in ARM 42.20.113 shall be classified pursuant to 15-6-133 and 15-7-202, MCA.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA.

NEW RULE II DEFINITION OF TERMS FOR PARCELS BETWEEN 20 TO 160 ACRES (1) The term "contiguous parcels of land" means separately described land acreages in the same ownership that are adjacent.

(2) The term "noncontiguous parcels of land" means land acreages in the same ownership that meet one of the two following standards:

(a) Acreages that are not adjacent but that are each an integral part of the operation of a bona fide agricultural operation, including within that operation all land owned by the owner or owner's immediate family members, owner's agent, employee or lessee; or

(b) Acreages that would meet the definition of contiguous contained in (1) above were the acreages not separated by one or more of the following features only:

- (i) roads and highways;
- (ii) navigable rivers and streams;
- (iii) local taxing boundaries;
- (iv) railroads lines; or
- (v) federal or state land that is leased from the federal

or state government by a taxpayer whose land ownership is contiguous to the federal or state land.

(3) Acreages that do not meet the definitions of either contiguous or noncontiguous parcels of land in (1) and (2) must individually meet the eligibility criteria set forth in 15-7-202, MCA, and ARM 42.20.147 through 42.20.149, to gain agricultural land classification.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA.

NEW RULE III VALUATION OF NON-AGRICULTURAL LAND FROM 20 TO 160 ACRES (1) Parcels of land not qualifying for agricultural land valuation under New Rule I is valued at the productive capacity value of grazing land, grade G3.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA.

NEW RULE IV VALUATION OF AGRICULTURAL LAND EXCEEDING 160 ACRES (1) In accordance with the provisions of 15-7-202, MCA, contiguous and noncontiguous parcels of land under one ownership as defined in ARM 42.20.140 exceeding 160 acres shall be valued as agricultural land.



(2) For contiguous and noncontiguous parcels of land under one ownership as defined in ARM 42.20.140 exceeding 160 acres in size, any acreage exceeding that which meets the criteria for timberland classification set forth in ARM 42.20.113 shall be deemed to have qualified for agricultural classification subject to the provisions of 15-7-202, MCA.

(3) Land under the CRP, the integrated farm management (IFM) program, or a similar program shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA.

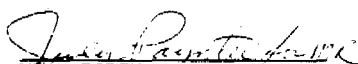
6. The Department is proposing to repeal, amend, and adopt these rules to enact changes caused by Senate Bill 168 during the 1993 legislative session. These amendments repeal and remove reference to Class 14 property which was stricken by Senate Bill 168. They also amend the agricultural land valuation schedules and specify that the new schedules will be phased in over a four year period beginning January 1, 1994.

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 December 10, 1993.

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

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State November 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED  
of ARM 42.22.1311 and 42.22. ) AMENDMENT of ARM 42.22.1311  
1312 relating to Industrial ) and 42.22.1312 relating to  
Trend Tables ) Industrial Trend Tables

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 24, 1993, the Department of Revenue proposes to amend ARM 42.22.1311 and 42.22.1312 relating to industrial trend tables.

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

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

INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS  
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	1.010	0.992
1990	1.033	1.030	1.020	1.035	1.023	1.030	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	1.170	1.157	1.165	1.140
1986	1.185	1.168	1.160	1.190	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	1.210
1981	1.338	1.310	1.317	1.354	1.300	1.325	1.259
1980	1.445	1.469	1.460	1.500	1.442	1.450	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

Year	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6	TABLE 7
1993	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
1992	1.0162	1.0120	1.0174	1.0269	1.0132	1.0072	1.0180
1991	1.0282	1.0202	1.0331	1.0465	1.0214	1.0058	1.0353
1990	1.0503	1.0406	1.0575	1.0678	1.0405	1.0148	1.0590
1989	1.0789	1.0678	1.0881	1.0993	1.0643	1.0334	1.0919
1988	1.1359	1.1274	1.1495	1.1560	1.1177	1.0943	1.1509
1987	1.1816	1.1780	1.1999	1.1982	1.1628	1.1612	1.1875
1986	1.1983	1.1925	1.2201	1.2148	1.1753	1.1716	1.1977
1985	1.2083	1.2003	1.2398	1.2236	1.1823	1.1773	1.2037
1984	1.2261	1.2184	1.2626	1.2392	1.1973	1.1905	1.2180
1983	1.2626	1.2515	1.2936	1.2777	1.2275	1.2147	1.2427
1982	1.2852	1.2711	1.3136	1.3071	1.2470	1.2290	1.2716
1981	1.3502	1.3294	1.3792	1.3631	1.3083	1.2698	1.3418
1980	1.5013	1.4714	1.5283	1.4949	1.4538	1.3888	1.4897
1979	1.6558	1.6325	1.6936	1.6402	1.6083	1.5585	1.6347
1978	1.7897	1.7824	1.8536	1.7931	1.7640	1.7146	1.7886
1977	1.9245	1.9429	1.9923	1.9451	1.8899	N/A	1.9345
1976	2.0244	2.0469	2.1014	2.0577	1.9977	N/A	2.0487
1975	2.1403	2.1756	2.2321	2.2099	2.1204	N/A	2.1926
1974	2.4149	2.4671	2.4914	2.4196	2.4197	N/A	2.5090

<del>TABLE 1</del>	<del>TABLE 5</del>
<del>Baking (12)</del>	<del>Aircraft &amp; Airframe</del>
<del>Cardboard Container</del>	<del>Manufacturing (15)</del>
<del>Fabrication (20)</del>	<del>Alcohol Plant (15)</del>
<del>Creamery &amp; Dairy (12)</del>	<del>Bottling (12)</del>
<del>Fish Cannery (12)</del>	<del>Brewing &amp; Distilling (20)</del>
<del>Fruit Cannery (12)</del>	<del>Cement Manufacturing (20)</del>
<del>Furniture Manufacturing (10)</del>	<del>Chemical Manufacturing (12)</del>
<del>Honey Processing (12)</del>	<del>Cereal Products (16)</del>
<del>Leather Fabrication (20)</del>	<del>Coal Fired Power</del>
<del>Logging Equipment (10)</del>	<del>Generation (16)</del>
<del>Meat Packing (12)</del>	<del>Concrete Products (18)</del>
<del>Pole Treating Equipment (10)</del>	<del>Concrete Ready Mix (18)</del>
<del>Pulp &amp; Paper Manufacturing (13)</del>	<del>Electrical Equipment</del>
<del>Sawmill Equipment (10)</del>	<del>Manufacturing (10)</del>
<del>Textile Fabrication (10)</del>	<del>Electronic Component</del>
<del>Wood Pellet Plant (16)</del>	<del>Manufacturing (10)</del>
<del>Woodworking (20)</del>	<del>Feed Milling (16)</del>
<del>TABLE 2</del>	<del>Fertilizer Manufacturing (12)</del>
	<del>Flour Milling (16)</del>

Clay Products (15)	Gasohol Plant (15)
Natural Gas Processing (16)	Grain Handling Facilities (16)
Oil Refining (16)	Hydroelectric Generation (20)
Petroleum (16)	Laundry & Drycleaning (10)
Rubber & Vulcanizing (15)	Oxygen Generation (20)
Stationary Asphalt Plant (15)	Paint Manufacturing (12)
Sugar Refinery (18)	Plastic Products

TABLE 3	Manufacturing (20)
Fertilizer Distribution (10)	Polystyrene (20)
Foundry (15)	Printing (12)
Industrial Shop Equipment (10)	Refrigeration (12)
Metal Fabrication (20)	Seed Treating & Cleaning (16)
Metal Machining & Milling (15)	Steam Power Generation (16)
Peat Moss Bagging Plant (20)	Sulphur Manufacturing (12)
Rifle Manufacturing (15)	Vegetable Oil Extraction (20)
Warehousing (10)	

TABLE 4  
Candy & Confectionery (20)

TABLE 6	TABLE 7
Bentonite (20)	Electric Power Equipment (16)
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	
Beneficiation (20)	
Nonferrous Smelting (15)	
Open Pit Mining &	
Quarrying (15)	
Ore Milling & Concentrating (15)	
Phosphate Beneficiation (20)	
Stone Products (15)	
Talc Beneficiation (20)	
Underground Mining (10)	
Vermiculite Processing (20)	

TABLE 1

Equipment	(life)
Textile Fabrication	10
Logging Equipment	10
Clay Products	15
Refrigeration	12
Rubber & Vulcanizing	15
Brewing & Distilling	20
Pulp & Paper Manufacturing	13
Laundry & Drycleaning	10
Leather Fabrication	20
Alcohol Plant	15
Gasohol Plant	15
Cardboard Container Fabrication Fabric	20
Plastic Product Manufacturing	20
Polystyrene	20
Sawmill Equipment	10
Pole Treating Equipment	10

TABLE 2

Equipment	(life)
Steam Power Generation	16
Flour, Cereal & Feed	16
Metal Working	20
Paint Manufacturing	12
Chemical Manufacturing	12
Bottling	12
Industrial Shop Equipment	10
Metal Fabrication	20
Metal Machining & Milling	15
Foundry	15
Rifle Manufacturing	15
Coal Fired Power Generation	16
Wood Pellet Plant	16
Fertilizer Manufacturing	12
Vegetable Oil Extraction	20
Oxygen Generation	20
Feed Milling	16
Flour Milling	16
Cereal Products	16
Grain Handling Facility	16
Seed Treating & Cleaning	16

TABLE 3

Equipment	(life)
Creamery & Dairy	12
Cannery/Fruit	12
Baking	12
Cannery/Fish	12
Candy & Confectionery	20
Packing/Fruit	12
Packing/Meat	12
Honey Processing	12
Egg Packing	20

TABLE 4

Equipment	(life)
Woodworking	20
Contractor Equipment	10
Furniture Manufacturing	10

TABLE 5

Equipment	(life)
Petroleum	16
Printing	12
Cement Manufacturing	20
Warehousing	10
Aircraft & Airframe Manufacturing	15
Sulphur Manufacturing	12
Oil Refining	16
Concrete Ready Mix	18
Concrete Products	18
Stationary Asphalt Plant	15
Sugar Refinery	18
Natural Gas Processing	16
Fertilizer Distribution	10
Peat Moss Bagging	20

TABLE 6

Equipment	(life)
Electric Power Equipment	16
Electric Equipment Manufacturing	10
Electronic Component Manufacturing	10
Hydroelectric Generation	20

TABLE 7

Equipment	(life)
Mining & Milling	15
Bentonite	20
Coal Crushing & Handling	20
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

Note: 1. ~~The number in parentheses indicates assigned economic life expectancies.~~

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

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 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  
1993 4 Table - ~~Table 1~~ Group 1

Case	I	II
Equipment - Motor		
Original Installed Cost	\$ 200	\$ 100
Year Installed	1981 7	1973 4

<u>Case I</u>			<u>Case II</u>		
Cost	\$	200	Cost	\$	100
x Trend	<del>1.251</del>	<u>1.1816</u>	x Trend	<del>1.251*</del>	<u>1.2261*</u>
RCN	<del>250</del>	<u>236</u>	RCN	<del>125</del>	<u>123</u>
x % Good	<del>.20</del>	<u>.39</u>	x % Good	.20	
Sound Value	\$	<u>50</u>	Sound Value	\$	25

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

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

3. ARM 42.22.1311 and 42.22.1312 are proposed to be amended due to the annual review of the Chapter 22 rules for industrial properties. Some sections of language have been clarified and trends updated for the 1994 assessment year.

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

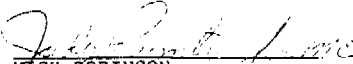
no later than December 8, 1993.

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 December 8, 1993.

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

  
MACK ROBINSON  
Director of Revenue

Certified to Secretary of State November 1, 1993.



BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the Matter of the Proposed	)	NOTICE OF PUBLIC
Adoption of New Rules Regarding	)	HEARING
Voter Information Pamphlet Format	)	

To All Interested Persons.

1. On November 30, 1993 a public hearing will be held at 11:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the adoption of new rules regarding the Voter Information Pamphlet rules.

2. The proposed new rules provide as follows:

RULE I SUBMISSION OF VOTER INFORMATION PAMPHLET ARGUMENTS AND REBUTTALS (1) The secretary of state is empowered under section 13-27-410, MCA, to prescribe by rule the format and manner of submission of the arguments concerning the ballot issue.

AUTH: 13-27-401, MCA IMP: 13-27-406, 13-27-407, MCA

RULE II DEFINITIONS Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(1) "VIP" refers to the Voter Information Pamphlet which contains the arguments for and against ballot issues.

(2) "Graphics" refers to anything other than letters, grammar or punctuation marks.

(3) "Oversize type" and "undersize type" refer to any typesetting that is not consistent with the uniform size of the argument.

(4) "Columns" refers to any of the vertical sections of printed matter lying side by side on a page and separated by a rule or blank space.

AUTH: 13-27-401, MCA IMP: 13-27-406, 13-27-407, MCA

RULE III FORMAT OF VOTER INFORMATION PAMPHLET ARGUMENTS AND REBUTTALS (1) Format of arguments and rebuttals:

(a) The argument must be of a uniform typesetting; use of oversize or undersize type is prohibited.

(b) Use of graphics, tables or graphs is prohibited.

(c) Use of columns is prohibited.

(d) Bold, italics and underlined words are acceptable.

(e) Hyphenated words will be counted as one word.

(f) A number such as 303 will be counted as one word; however, three hundred and three will be counted as four words.

(g) Arguments submitted for publication in the VIP must be limited to 500 words; arguments in excess of this limit will only be printed through the 500th word. Rebuttals submitted for publication in the VIP must be limited to 250 words; rebuttals in excess of this limit will only be printed through the 250th

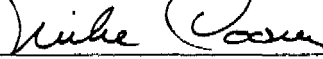
word. Errors in typing or grammar will not be corrected or edited.

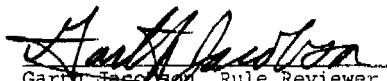
AUTH: 13-27-401, MCA IMP: 13-27-406, 13-27-407, MCA

3. The rules are necessary to ensure that arguments and rebuttals for printing in the VIP are submitted in a fair, efficient, and uniform manner.

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 Joe Kerwin, Election Bureau, Secretary of State's office, State Capitol, Room 225, Helena, Montana 59620, and must be received no later than December 9, 1993.

5. Joe Kerwin, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

  
MIKE COONEY  
Secretary of State

  
Garth Jacobson, Rule Reviewer

Dated this 1st day of November, 1993.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 1.2.419	)	ON PROPOSED AMENDMENT OF
regarding scheduled dates for	)	ARM 1.2.419
the Montana Administrative	)	FILING, COMPILING, PRINTER
Register	)	PICKUP AND PUBLICATION OF
	)	THE MONTANA ADMINISTRATIVE
	)	REGISTER

TO: All Interested Persons.

1. On November 30, 1993 a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

199394 Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 43	January 54	January 65	January 1413
January 1514	January 1918	January 2019	January 2027
<del>February 1</del>			
January 31	February 21	February 32	February 1110
February 1214	February 1615	February 1716	February 2524
March 17	March 28	March 39	March 1117
March 1521	March 1622	March 1723	March 2531
April 54	April 65	April 76	April 1514
April 1918	April 2019	April 2120	April 2928
May 32	May 43	May 54	May 1912
May 1716	May 1817	May 1918	May 2726
<del>June 1</del>			
May 31	June 21	June 32	June 109
June 1413	June 1514	June 1615	June 2423
<del>July 2 June 27</del>	<del>July 6 June 28</del>	<del>July 7 June 29</del>	July 157
July 1911	July 2012	July 2113	July 2921
August 21	August 32	August 43	August 1211
August 1615	August 1716	August 1817	August 2625
<del>September 1</del>	<del>September 7</del>	<del>September 8</del>	
August 29	August 30	August 31	September 168

21-11/10/93

MAR Notice No. 44-2-77

September <del>20</del> 12	September <del>21</del> 13	September <del>22</del> 14	September <del>30</del> 22
October <del>4</del> 3	October <del>5</del> 4	October <del>6</del> 5	October <del>14</del> 13
October <del>18</del> 17	October <del>19</del> 18	October <del>20</del> 19	October <del>28</del> 27
<del>November 1</del>			
<del>October 31</del>	November <del>21</del>	November <del>32</del>	November <del>10</del> 10
November <del>15</del> 14	November <del>16</del> 15	November <del>17</del> 16	November <del>24</del> 23
November <del>29</del> 28	November <del>30</del> 29	<del>December 1</del>	December <del>9</del> 8
		<del>November 30</del>	
December <del>13</del> 12	December <del>14</del> 13	December <del>15</del> 14	December <del>23</del> 22

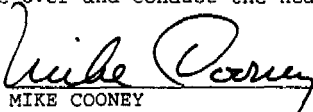
(3) remains the same.

AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1994.

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 Kathy Lubke, Administrative Rules Bureau, Secretary of State's office, State Capitol, Room 225, Helena, Montana 59620, and must be received no later than December 8, 1993.

5. Kathy Lubke, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

  
MIKE COONEY  
Secretary of State

  
GARTH JACOBSON  
Rule Reviewer

Dated this 1st day of November 1993.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

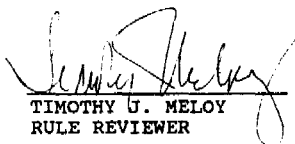
In the matter of the amendment )	NOTICE OF AMENDMENT
of ARM 4.10.206 dealing with )	of ARM 4.10.206
licensing for pesticide )	relating to A Pesticide
operators )	Operator's License

TO: All Interested Persons

1. On September 16, 1993, the Department of Agriculture published a notice of proposed adoption of the above-stated rule at page 2063 of the 1993 Montana Administrative Register, issue no. 17.
2. The department has adopted the rules as proposed.
3. No comments were received.



LEO A. GIACOMETTO, DIRECTOR  
DEPARTMENT OF AGRICULTURE



TIMOTHY U. MELOY  
RULE REVIEWER

Certified to the Secretary of State, October 22, 1993

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to fees and	)	ARM 8.30.407 and 8.30.701
unprofessional conduct, and	)	AND ADOPTION OF NEW RULES
adoption of new rules pertain-	)	I (8.30.801) THROUGH VI
ing to crematory facility	)	(8.30.806)
regulation, casket/containers,	)	
shipping cremated human remains,	)	
identifying metal disc, proces-	)	
sing of cremated remains, and	)	
crematory prohibitions	)	

TO: All Interested Persons:

1. On August 12, 1993, the Board of Funeral Service published a notice of proposed amendment and adoption at page 1787, 1993 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 8.30.407 and 8.30.701 and adopted new rule I (8.30.801), II (8.30.802), V (8.30.805) and VI (8.30.806) exactly as proposed. The Board has adopted new rule III (8.30.803) and IV (8.30.804) as proposed but with the following changes:

"8.30.803 SHIPPING CREMATED HUMAN REMAINS (1) Cremated human remains sent through the U.S. mail must be marked, registered, ~~insured~~, sealed and properly addressed.

(2) and (3) will remain the same."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-705, MCA

"8.30.804 IDENTIFYING METAL DISC (1) and (2) will remain the same.

(3) ~~The identifying metal disc shall be properly secured to THE NUMBER OF THE IDENTIFYING METAL DISC SHALL BE WRITTEN PLAINLY AND PERMANENTLY ON THE OUTSIDE OF~~ each receptacle containing human remains when the remains are delivered to a cemetery, columbarium or mausoleum.

(4) will remain the same."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-704, 37-19-705, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

COMMENT NO. 1: New rule III(1) (8.30.803) should delete the word "insured," as the rules already state that the mail must be registered, and that if shipped by common carrier, must have an internal tracing system. The problem with insuring human remains is placing a value on them. What to some may only be the cost of a cardboard container may to others be priceless. The protection of consumers will not be compromised by the removal of the word "insured."

RESPONSE: The Board concurs with the comment and will amend the rule as shown above.

COMMENT NO. 2: New rule IV(3) (8.30.804) should delete the language "The identifying metal disc shall be properly secured to each receptacle containing human remains ..." as this language combined with (1) and (2) confuses the issue of whether this is a single or double identifying metal disc. The language could be changed to "The number of the identifying metal disc shall be written plainly and permanently on the outside of each receptacle ...."

RESPONSE: The Board concurs with the comment and will amend the rule as shown above.

BOARD OF FUNERAL SERVICE  
GUY MISER, 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, November 1, 1993.

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

In the matter of the amendment of )	NOTICE OF AMENDMENT
rules 16.14.501, 506, 521, 540, )	OF ARM 16.14.501, 506,
and 701, dealing with municipal )	521, 540, and 701.
solid waste management )	
	(Solid Waste)

To: All Interested Persons

1. On September 16, 1993, the department published notice of the proposed amendment of rules 16.14.501, 506, 521, 540 and 701 at page 2083 of the 1993 Montana Administrative Register, issue number 17.

2. The department has amended the rules as proposed with the following changes: (new material is underlined; material to be deleted is interlined):

16.14.501 PURPOSE AND APPLICABILITY (1)-(3) Same as proposed.

(4) The effective dates of ARM 16.14.506 and 16.14.521(1)(e) and (g) are extended until April 9, 1994, as they apply to existing landfill units and lateral ~~extensions~~ expansions to existing units that meet the following requirements:

(a)-(c) Same as proposed.

(5) Same as proposed.

16.14.506 DESIGN CRITERIA FOR LANDFILLS (1)-(16) Same as proposed.

(17) The requirements of this rule are effective October 9, 1993, except for the existing landfill units and lateral ~~extensions~~ expansions to existing units defined in ARM 16.14.501(4), which must comply by April 9, 1994.

16.14.521 SPECIFIC OPERATIONAL AND MAINTENANCE REQUIREMENTS -- SOLID WASTE MANAGEMENT SYSTEMS (1)-(3) Same as proposed.

(4) Subsections (1)(e) and (g) of this rule are effective October 9, 1993, except that the application of those subsections to the existing landfill units and lateral ~~extensions~~ expansions to existing units defined in ARM 16.14.501(4) is delayed until April 9, 1994.

(5) Same as proposed.

16.14.540 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II LANDFILLS Same as proposed.

16.14.701 PURPOSE AND APPLICABILITY (1) Same as proposed.

(2) Compliance with the requirements of this subchapter must be implemented according to the following schedule:

(a)-(c) Remain the same.



(d) Owners and operators of all MSWLF units that serve a geographic area with a population of 4,999 persons or less and meet the conditions of ARM 16.14.506(16) must comply with the requirements of this subchapter according to the following schedule:

(i)-(ii) Same as proposed.

3. Five persons provided comments during the public meeting held on October 6, 1993 at 1 p.m. in Room C209 of the Cogswell Building, 1800 Broadway, Helena, Mt. In addition to these comments, seven written comments and one oral comment were received during the 30 day public comment period. Summaries of the comments and the department's response to them follow.

Comment 1: Ten of the comments supported the delay in the effective date of solid waste regulations for smaller landfills in Montana.

Response: The department accepts the comments and proposes that the delay be adopted.

Comment 2: One commentor objected to the proposed extension because: (1) Facilities in Montana have expected the new regulations since 1984 and recognition by the Department of any EPA extension of the Part 258 deadlines would simply "reward" facility owners/operators that have done little to ensure compliance with the new standards.

(2) The EPA has questionable legal authority to extend compliance deadlines.

(3) The extension would pose potential risks to human health and the environment.

(4) An extension would be unfair to firms and communities that have already invested in complying with the regulations.

(5) Recycling efforts would be undercut by the extension of compliance deadlines.

Response: The department finds that: (1) It disagrees with the comment because the EPA did not finalize its regulations until October 9, 1991, and therefore, facilities could not be expected to be in compliance with the regulations as adopted until they were actually adopted. Furthermore, the department is still in the process of making final corrections to its own regulations.

(2) This rulemaking process is not the proper forum for an argument on the legality of the EPA extension. In any case, the delay proposed by the department is within the department's broad rulemaking authority for solid waste management systems pursuant to the Montana Solid Waste Management Act.

(3) The risk to human health and the environment of the continued operation of smaller, non-conforming landfills has been considered by both the EPA and the department. The

extension is limited to existing units and lateral expansions of existing units. The majority of Montana's garbage, around 60%, is disposed of in landfills that must be in full compliance with all regulations without delay. Montana has required all landfills serving populations of 5,000 or more persons to monitor ground water since January 1, 1992. Only about 5% of the waste disposed of in Montana is at the smaller facilities that have not previously been required to monitor ground water. The extension is for only six months. All landfills in Montana are already required to operate with acceptable "good housekeeping" requirements such as access control, liquid restrictions, daily cover, no open burning, etc. The proposed delay does not extend to those operational practices. All of these factors combined minimize the environmental risks.

(4) While the department acknowledges the apparent unfairness to those who have begun the investment necessary to comply with the new regulations, it also recognizes that some smaller communities need additional time to either raise the funds necessary to come into compliance or establish alternative waste management systems. Some local governments in particular need the time to alter property and other tax rates in order to obtain sufficient funding. For the record, only one landfill in Montana was in full compliance with the regulations on October 9, 1993.

(5) The EPA's proposed delay became final on September 27, 1993. Montana's parallel extension is allowing local governments the additional time and funding needed to obtain the equipment, contracts, and operational skills needed to implement recycling programs in their local communities. While the delay may appear to have a short term negative effect, the overall effect will be a net increase in recycling in Montana.

Comment 3: One commentor requested that if any delay was granted that the following additional conditions be included: (1) Operators that benefit from the extension should not be allowed to increase volumes beyond 1992 levels or receive any out-of-area waste during the extension. This commentor further stated they should not be able to use an extension of the effective date to increase the volumes they received, on a daily basis, during 1992 or begin receiving waste from outside the area historically served by the facility.

(2) Only facilities that receive less than 20 tons per day should be granted an exemption from the design criteria.

(3) That the extension to the less than 20 ton per day landfills should only be granted if the facility is actively being replaced with an "upgraded or private or public replacement facility".

(4) No extension should be granted with regards to locational or operational criteria.

(5) No extension to ground water requirements should be recognized.

(6) An extension should only be allowed for facilities

engaged in vertical, rather than lateral, expansion.

(7) Facilities that otherwise qualify should be required to demonstrate that there is no evidence of ground water contamination.

Response: The department finds: (1) Landfills must be operated with a plan approved by the department. Section 75-10-221(5), MCA, states that the department may require submission of a new license application if the plan of operation changes. Major changes would thus trigger the full review under the Montana Environmental Policy Act, a process that could not be completed within the proposed extension, thus rendering the point moot. Minor changes are normal in landfill operations and are normally addressed in the plans of operation.

(2) The department believes that the EPA-suggested 100 ton per day limit provides the flexibility needed in Montana and that a 20 ton per day limit is too restrictive.

(3) There appears to be a typographic error in this sentence by the addition of the word or after the word up-graded. The department believes that the rule should provide maximum flexibility to Montana landfills in establishing alternatives to current waste management practices. The extension should not be limited to those constructing replacement landfills, but also to those requiring time for the construction of transfer stations, container sites, or other alternatives.

(4) The EPA delays all operational and locational requirements. The Montana proposal is more restrictive because of previously existing statutes and department regulations. There is no proposed extension for locational criteria in the proposed rule. The only delay in the operational criteria is in methane monitoring and waste screening requirements. These are new department requirements. Both methane monitoring and waste screening would require either extensive training or construction costs, or the physical construction of additions to facilities that may close at the end of the extension period. The imposition of these requirements was deemed to be too burdensome for these facilities and thus the department chooses to extend the time for compliance.

(5) The department agrees with the EPA rather than the commentor that the smallest and most remote landfills should have additional time to comply with the ground water monitoring regulations if they decide to remain open beyond April 9, 1994. The department estimates that at most two landfills may be covered under this one year extension. Landfills that serve populations of 5,000 persons or more were required by Montana statutes to have commenced ground water monitoring by January 1, 1992, unless a no migration petition was approved by the department. This is a more restrictive requirement than the EPA schedule and applies to most landfills in Montana.

(6) Most of the smaller landfills in Montana use a trench fill system. The restriction of the extension to

vertical expansions only would have a detrimental effect on proper waste disposal and site usage at these landfills. The department believes that an unrestricted extension is in the best interests of these landfills.

(7) The imposition of a demonstration of no contamination is equivalent to a requirement to monitor ground water. All landfills are required to operate in a manner so they will not pollute ground water. If there is some evidence of pollution, the department has the ability to require ground water monitoring. All landfills in operation after the effective date of the rules will be required to monitor ground water. The department believes that one of the primary reasons for the delay is to enable landfills to close without the burden and expense of ground water monitoring where there is no obvious contamination.

Comment 4: Two comments were received requesting that the extension also be applied to the run-on, run-off control requirements found in ARM 16.14.521(1)(j), 521(1)(k) and 521(1)(l).

Response: The department's old regulations, effective July 1, 1980, required that landfills not pollute state waters. See 16.14.505(1)(d). Run-on controls were also specifically required under ARM 16.14.505(1)(e) of those rules. The Montana Water Quality Act, found in Title 75, Chapter 5 of the Montana Codes Annotated, also prohibits the pollution of state waters. Although the current regulations are more specific, landfills in Montana have been required to comply with essentially the same requirements for at least 13 years. The department feels it has little statutory leeway and has allowed sufficient time for compliance with these requirements and will therefore not extend the delayed effective date to cover these portions of the rules.

Comment 5: One comment was received inquiring whether the department meant to use the term lateral "expansion" rather than lateral "extension".

Response: The correct term should be "expansion" when referring to landfill units and extension when referring to effective dates. The proposed rule is revised to reflect the change.

Comment 6: One letter was received which, in part, requested that the department also provide locations to the counties for waste disposal.

Response: This is outside the scope of this rulemaking. Section 75-10-102(1)(d), MCA, states: "Local governments shall retain primary responsibility for adequate solid waste management..."

Comment 7: One comment noted that Montana law required ground water monitoring by January 1, 1992, at landfills that serve populations of 5,000 or more persons, not 20 tons per day or more.

Response: The department agreed and amended 16.14.701(2)(d) accordingly.

  
ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 1, 1993

Reviewed by:

  
Eleanor Parker, DHES Attorney

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
STATE OF MONTANA

In the matter of the amendment of )	NOTICE OF AMENDMENT
rules 16.47.311, 335, 336, and 343,) )	OF RULES AND
and the adoption of new rules I )	ADOPTION OF NEW RULES
and II establishing rules on )	16.47.337 & 338
consultant labor classifications )	
and amending existing rules to )	
conform with these changes. )	

(Petroleum Board)

TO: All Interested Persons.

1. On September 30, 1993, the board published notice of the proposed amendment and adoption of the above captioned rules at page 2206 of the 1993 Montana Administrative Register, issue number 18.

2. The board has amended and adopted the rules with the following changes:

RULE I (16.47.337) CONSULTANT LABOR CODES, TITLES, AND DUTIES Same as proposed.

RULE II (16.47.338) OTHER CHARGES ALLOWED OR DISALLOWED (1) The following additional charges are eligible for reimbursement, unless listed as disallowed under (2). Other types of charges may be reimbursed if shown to be necessarily and reasonably incurred in furtherance of the corrective action plan:

(a) Long distance telephone charges specific to the job site project.

(b) Same as proposed.

(c) Supplies and materials directly associated with the site project (e.g., equipment purchased or withdrawn from inventory specifically for the corrective action, sample charges, or well supplies).

(d)-(e) Same as proposed.

(f) Lodging at actual cost unless clearly excessive under the circumstances.

(g) Meals at \$20 per full day (\$4 for the morning meal, \$6 for the midday meal, and \$10 for the evening meal) or the appropriate portion of a full day. Exceptions for higher actual costs may be made with a showing that seasonal or other factors make such rates absolutely unavailable not typically available in certain limited areas (receipts will be required).

(h) Vendor and subcontractor materials and/or labor, at cost unless a markup is allowed under (3)(d) of this rule.

(2) The following list indicates, by way of example and not limitation, types of charges that are not eligible for reimbursement. While these examples may be necessary, they

should be built into a firm's general overhead and recovered through the basic rates.

(a) Same as proposed.

(b) Preparation of billing information for submission to the client.

(c)-(e) Same as proposed.

(f) Markups, add-ons, or profit added to vendor or subcontractor invoices, except as allowed under (3)(d).

(g)-(h) Same as proposed.

(3) The following charges may be eligible for reimbursement, only if approved by the board staff prior to claim submission:

(a)-(b) Same as proposed.

(c) Pollution Premiums for pollution liability insurance which covers subcontractors at actual cost (verification of coverage may be required).

(d) Markups, not to exceed 7%, on subcontractor invoices when the subcontractor is furnishing labor (and incidental goods or supplies) on a project as part of the cleanup. Proof of payment by the contractor to the subcontractor will be required.

(e) Sampling fees, at \$10 per sample, including bottle, ice, packing and handling charges.

16.47.311 DEFINITIONS Same as proposed.

16.47.335 APPLICATION FOR GUARANTEE OF REIMBURSEMENT OF FUTURE OR UNAPPROVED EXPENDITURES Same as proposed.

16.47.336 REVIEW AND DETERMINATION (1) Same as proposed.

(2) The board will normally consider applications submitted as complete (by staff recommendation or applicant request) up to 60 days preceding a scheduled board meeting. Applications filed and submitted as complete less than 60 days preceding a board meeting will not be considered at that meeting unless, and only to the extent that, expedited review and reimbursement or commitment is necessary to prevent environmental damage which would occur if consideration is held for the following board meeting. The payment of claims ~~with-out reductions recommended by board staff~~, for which authority to pay has been delegated under (3) of this rule, is not subject to this procedure. The agenda for consideration of applications at board meetings will follow the order in which applications were submitted as complete and which are not paid under (3) of this rule.

(3) ~~When a claim has no reductions recommended by board staff, and includes only services that are either listed in one or more of the labor codes set out in [Rule I] or approved pursuant to [Rule II(3)], the~~ The board may delegates to the executive director authority to process ~~such a claim for reimbursement and order payment of specified categories of claims upon receipt and review.~~ The executive director

shall report the number of such claims and the amounts obligated to the next meeting of the board.

(4)-(7) Same as proposed.

16.47.343 CORRECTIVE ACTION EXPENDITURES: DOCUMENTATION Same as proposed.

3. . Testimony and comments were received on the above captioned rules; the boards' response follows:

COMMENT 1: In Rule I, in a small company there will be individuals who must of necessity carry out duties described in several codes. The key should be the overall cost of the project, which a small firm may be able to do more efficiently at the bottom line even though a senior engineer may pull a sample or two.

RESPONSE: It may be possible to work toward bottom-line job estimates and claims reserves in the future, but the Board is not prepared to take that step at this time. The occasional performance of a lower-code job by a higher-code individual is not necessarily going to be disallowed, if a showing is made that this was an efficient way to operate under the particular circumstances.

COMMENT 2: If Rule I(3) contemplates revisions or updates, the frequency of this process should be specified.

RESPONSE: It is contemplated that, if and when rate schedule revisions or new filings justify a new analysis, this will be done in the spring and issued by July 1 of a given year. Since the new data may not always be coming in, the Board does not wish to commit to issuing a revision each year in the language of the rule.

COMMENT 3: Notifications under Rule I(3) should specify the number of firms submitting schedules and the number of submissions used in the computation.

RESPONSE: Only one firm asked that this be done, with no showing of interest on the part of any others. Therefore, since to do what was requested would require a great deal of staff time, the board rejected the suggested change, but remains willing to indicate this information on the notifications if it is of interest to several firms.

COMMENT 4: The phrase "whose invoices the board frequently reviews" in Rule I(3) is too restrictive. A firm should be able to have its fee schedule considered after the first time it does work in Montana.

RESPONSE: The suggestion was not adopted because a firm working a single project has a greater chance of skewing the data. The term "frequently" is understood to include any



firm which has been involved in at least five claims since the Board began operations.

COMMENT 5: Rule I(4) should be deleted as unnecessary.

RESPONSE: The Board does not wish its staff to make judgments about when to accept or reject fee schedule submissions without structuring that discretion as indicated in this paragraph.

COMMENT 6: In Rule I(5), rates which exceed the range of allowable rates should be deemed "ineligible for reimbursement" rather than "unreasonable".

RESPONSE: This comment misconstrues the statute. Labor related to corrective action will generally be within the scope of eligible costs, expenses reimbursable under 75-11-307, MCA. However, the rate at which that labor is billed may not be found reasonable under 75-11-309(2), MCA.

COMMENT 7: Rule II(1) should specify that site investigation costs are reimbursable along with costs in furtherance of the corrective action plan.

RESPONSE: The additional words are not necessary, because the term "corrective action plan" does include investigation preceding work plan approval.

COMMENT 8: In Rule II(1)(a), long distance calls should not be limited to those specific to the job site, as long as the calls are related to the project.

RESPONSE: The Board agrees with this point and will amend the rule to replace "job site" with "project".

COMMENT 9: In Rule II(1)(c), the same comment as above was made about the use of "site"; also, equipment leased or rented should be eligible.

RESPONSE: "Project" will replace "site"; equipment which is leased or rented will be covered under a new category of eligible costs at the end of Rule II(1).

COMMENT 10: In Rule II(1)(f), there should be safeguards against excessively expensive lodging costs.

RESPONSE: The Board agrees and amended this item accordingly.

COMMENT 11: Meal reimbursements should be limited to state rates, currently \$15.50 per day.

RESPONSE: The state rates are widely viewed as inadequate. The Board declines to compound this problem by visiting it upon the private sector.

COMMENT 12: In Rule II(2)(b), the preparation of billing information and invoices should be an allowable charge because of the Board's highly complex requirements.

RESPONSE: Since preparation of standard billing information for invoicing the client is not subject to the board's requirements referred to, the exclusion for billing information preparation was retained, with a phrase added to clarify that the exclusion refers to information for submission to the client. Time spent on special documentation per requirements of the Board is within the duties of occupational code 1005, clerical administration and accounting personnel, and may be claimed under that code.

COMMENT 13: A particular company requires computer charges for writing reports to be billed under other direct charges rather than built into general and administrative expense, making the exclusion in Rule II(2)(c) a problem.

RESPONSE: No change was made because most firms handle this expense as the rule proposes. Perhaps this firm can change its billing practices.

COMMENT 14: In Rule II(2)(f), markups are appropriate on subcontractors' and vendors' invoices and should be allowed within the industry range of ten to fifteen percent. There are substantial administrative costs associated with paying these invoices, which should be borne by the clients who use these services rather than being assigned to general and administrative overhead and billed to other clients who do not use them. The effort required to revise bookkeeping systems to meet the requirements the proposed rules would cause overall rates to go up more than if these invoices continued to be treated as other direct charges.

RESPONSE: The Board agrees that subcontractors who do work on the project involve administrative costs to the consultant and concludes that these should be covered with a markup not to exceed seven percent. Paying vendors of goods and supplies or other services does not involve administrative costs of a similar magnitude and markups will not be allowed as distinct claims. Note the preface to subsection (2), that many types of expenses listed in this subsection are necessary but should be built into a firm's general and administrative overhead in the labor rates rather than being claimed as other direct costs. This is a cost of doing business.

COMMENT 15: In Rule II(2)(h), interest should be allowed in cases of unreasonable delay caused by the state's processing of a claim.

RESPONSE: This is a matter of contract between the responsible party and the consultant as to what if any carrying charges an account may bear. The Board administers a reimburse-

ment program and is not in a contractual relationship with either party, thus will not pay interest under the law as it is written.

COMMENT 16: In Rule II (3)(b), trespass fees are not defined.

RESPONSE: The Board understands trespass fees as moneys paid a third party landowner for a privilege, less than an easement, of placing items such as monitoring wells on the third party's land temporarily. The industry also understands this term and further definition in the rule is not necessary.

COMMENT 17: In Rule II(3)(c), how is the actual cost of pollution liability insurance determined? Some forms of this coverage are not project-specific.

RESPONSE: Pollution liability insurance on the consultant's own activities will not be project-specific. This phrase is intended to recognize riders written for particular subcontractors on particular projects, and the actual cost is the additional premium for that rider.

COMMENT 18: Rule II(3) should also allow sampling fees to be eligible for reimbursement.

RESPONSE: The Board agrees and is amending this concept into subsection (3).

COMMENT 19: The definition of a consultant in the proposed amendment to ARM 16.47.311 is vague and could still allow unqualified persons to call themselves consultants and claim reimbursement.

RESPONSE: In the absence of any public licensure or private entity certification of persons calling themselves environmental consultants, the Board is unwilling to attempt to narrow the term through reimbursement policies.

COMMENT 20: The delegation of authority to make eligibility determinations in the proposed amendment to ARM 16.47.335(4), should be limited to situations where the facts are closely similar to those in a previous determination made by the Board, as opposed to a previous determination made by staff.

RESPONSE: The Board agrees with the point but finds it unnecessary to revise the rule. All previous eligibility determinations made since the Board was organized have been made by the Board and none by the staff.

COMMENT 21: The authority of the Board to delegate various functions to its staff is not clear.

RESPONSE: The Board is changing the term "delegates" to

"may delegate" in ARM 16.47.336 to clarify that delegation to pay claims will be done by motion which will specify how delegated authority may be exercised and subsequently ratified. Subdelegation has been recognized in Montana administrative law when a department head, as defined in the Executive Reorganization Act, delegates final decision authority. Hoven, Verick & Amrine, P.C. v. Comm'r of Labor, 237 Mont. 525, 774 P.2d 995 (1989). In any event, subdelegation of a function involving the exercise of discretion is generally recognized when the state entity with statutory authority retains the power to ratify acts done under subdelegated authority and to hear any person aggrieved by the exercise of such authority. [1 Davis, Administrative Law (2d ed.) §3.17] The Board contemplates that any motion it adopts to delegate claims payment authority will be subject to its subsequent ratification and to the claimant's right to be heard by the Board.

COMMENT 22: The delegation of authority to pay routine claims in the proposed amendment to ARM 16.47.336 should be withheld for first-time claims; should not be withheld when reductions are small or routine; and should be made by resolution rather than done in this more permanent fashion by rule.

RESPONSE: The Board agrees with these points and is amending the rule accordingly.

PETROLEUM TANK RELEASE COMPENSATION BOARD  
HOWARD WHEATLEY, CHAIRMAN

By: Jean A. Riley  
Jean A. Riley, Executive Director

Certified to the Secretary of State November 1, 1993

Reviewed by:

Eleanor J. Parker  
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

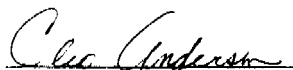
IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT  
of ARM 42.31.402 relating to ) of ARM 42.31.402  
Telephones ) relating to Telephones


TO: All Interested Persons:

1. On September 16, 1993 the Department published notice of the proposed amendment of ARM 42.31.402 relating to telephone license tax at page 2107 of the 1993 Montana Administrative Register, issue no. 17.

2. No public comments were received regarding this rule and the proposed amendments.

3. Therefore, the Department adopts the rule as proposed.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State November 1, 1993.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.10.410	)	RULE 46.10.410 PERTAINING
pertaining to at-risk child	)	TO AT-RISK CHILD CARE
care services	)	SERVICES

TO: All Interested Persons

1. On September 16, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.410 pertaining to at-risk child care at page 2114 of the 1993 Montana Administrative Register, issue number 17.

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

46.10.410 AT-RISK CHILD CARE SERVICES Subsections (1) through (2)(f)(iv) remain as proposed.

(g) Families may choose any legally operating child care provider to care for their children, as long as the person is age 18 or over and ~~does is not reside in the same household the parent or a person living with the children as a parent WHO RESIDES IN THE SAME HOUSEHOLD.~~ If not already licensed or registered, the provider must register with the local office of the department of family services in order to receive payment.

Subsections (2)(h) through (9)(a)(iv) remain as proposed.

AUTH: Sec. 53-2-201 and 53-4-212 MCA

IMP: Sec. 53-2-108, 53-2-201, 53-2-606, 53-4-212 and 53-4-231 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The Department of Family Services (DFS) has pointed out that it was the intention of the 1993 Montana Legislature in amending 52-2-703(2) MCA, in House Bill 118 to prohibit child care payments to parents or any other adult who resides in the same household as the child. DFS noted that ARM 46.10.410(2)(g) as proposed to be amended allows payments to an adult household member who does not have a parental relationship with the child, which is inconsistent with the requirements of the statute. DFS therefore suggested that the Department of SRS change subsection (2)(g) so that it is consistent with 52-2-703(2) and DFS' policy in this regard.

RESPONSE: The Department of SRS agrees that its policy should be consistent with DFS' policy. Therefore subsection (2)(g) of ARM

46.10.410 is being changed to prohibit payments to any household member as well as to the child's parent.

*Dawn Silva*  
Rule Reviewer

*[Signature]*  
Director, Social and Rehabilitation Services

Certified to the Secretary of State November 1, 1993.

VOLUME NO. 45

OPINION NO. 15

CITIES AND TOWNS - Election or appointment of city judge after adoption of commission-manager form of government;  
ELECTIONS - Election or appointment of city judge after adoption of commission-manager form of government;  
JUDGES - Election or appointment of city judge after adoption of commission-manager form of government;  
LOCAL GOVERNMENT - Alternative forms of commission-manager government;  
MUNICIPAL GOVERNMENT - Alternative forms of commission-manager government;  
PUBLIC OFFICERS - Election or appointment of city judge after adoption of commission-manager form of government;  
MONTANA CODE ANNOTATED - Title 7, chapter 3; sections 7-3-125, 7-3-4301, 7-3-4305, 7-3-4462, 7-4-4102;  
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 1 (1993), 41 Op. Att'y Gen. No. 48 (1986).

HELD: When a city of the third class adopts a commission-manager form of government established in Mont. Code Ann. tit. 7, ch. 3, pt. 3, the city is not bound by Mont. Code Ann. § 7-3-4462 requiring an election of the city judge, but rather may continue to appoint its city judge under an ordinance passed pursuant to Mont. Code Ann. § 7-4-4102.

October 22, 1993

Ms. Katherine Curtis  
Columbia Falls City Attorney  
P.O. Box 329  
Columbia Falls, MT 59912

Dear Ms. Curtis:

You have requested my opinion on an issue which I have rephrased as follows:

Where a city has adopted the commission-manager form of government described in title 7, chapter 3, part 3, may it continue by ordinance to appoint, rather than elect, the city judge?

On November 3, 1992, the voters of the City of Columbia Falls (hereinafter referred to as "the City") voted to alter its council-mayor form of government and adopt the commission-manager form of government described in Mont. Code Ann. tit. 7, ch. 3, pt. 3. The position of city judge was neither addressed nor considered when the new form of government was adopted. The City is currently operating under an ordinance which provides for the appointment of the city judge.



Your question arises from the language of Mont. Code Ann. § 7-3-4462 which provides in pertinent part:

(1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election.

You note that this section seems to conflict with Mont. Code Ann. § 7-4-4102(3) which expressly allows a city of the third class to determine by ordinance whether the office of city judge shall be filled by appointment by the governing body or by election. The underlying question then is whether the City necessarily became subject to the requirement in Mont. Code Ann. § 7-3-4462, requiring the city judge to be elected, when it adopted a commission-manager form of government.

It must first be recognized that there are a number of different forms of government which a local government may adopt. This choice was created by the 1972 Montana Constitution which required the legislature to provide optional or alternative forms of government that each local government unit or units could adopt, amend, or abandon. Mont. Const. art. XI, § 3. The new Constitution further required the legislature to develop the procedures for each local government unit to review its structure and submit one alternative form of government to the qualified electors at the next general or special election. Mont. Const. art. XI, § 9.

In accordance with these mandates, the legislature defined the alternative forms of government and established the procedures for changing the form of local government. See Mont. Code Ann. § 7-3-101 (purpose of Mont. Code Ann. tit. 7, ch. 3, pts. 1-7 is to comply with Mont. Const. art. XI, § 3(1)). Under these procedures, a local government is given the option of adopting five basic alternative forms of government or a charter form of government. Mont. Code Ann. tit. 7, ch. 3, pts. 1-7. Within each form of government, the local government is also provided a list of suboptions to further define the structure and nature of its government. For example, in establishing a commission-manager form of government the voters may choose between self-government and general government powers (Mont. Code Ann. § 7-3-302), how members of boards are appointed (Mont. Code Ann. § 7-3-312), how commission members are selected (Mont. Code Ann. § 7-3-313), what type of election to have (Mont. Code Ann. § 7-3-314), and other similar options relating to how the chairman is selected, the terms of commission members and the size of the commission (Mont. Code Ann. § 7-3-315 to -317). Under the commission-manager form of government there are, therefore, numerous suboptions which may be selected by the local government in establishing its actual structure and operation.

When these new options and suboptions were established by the legislature, the old statutory bases for the existing forms of municipal government were nonetheless retained. For example, the old commission-manager form of government is still described in Mont. Code Ann. tit. 7, ch. 3, pts. 43 and 44, and the strong and weak mayor forms of government are described in parts 41 and 42. Three municipal governments--Bozeman, Great Falls and Helena--had adopted the old commission-manager form of government prior to the enactment of Mont. Code Ann. §§ 7-3-101 to -709. Helena and Great Falls have since adopted charters pursuant to Mont. Code Ann. § 7-3-701. Only the City of Bozeman continues to operate under the old commission-manager statutes. It is important to recognize that this older set of statutes defines a commission-manager form of government that is separate and distinct from the new commission-manager form of government detailed in Mont. Code Ann. tit. 7, ch. 3, pt. 3.

It becomes apparent that there are two different forms of a commission-manager government when the provisions establishing each form are compared. In order to adopt the commission-manager form of government established in title 7, chapter 3, part 3, the voters must prepare a petition in compliance with Mont. Code Ann. § 7-3-125. The petition must be signed by 15 percent of the electors and must be accompanied by a certificate which contains the "plan of government" in which all of the suboptions are detailed. See Mont. Code Ann. § 7-3-142.

In distinct contrast to these procedures, parts 43 and 44 of title 7, chapter 3, require a wholly different process in order to adopt the old municipal commission-manager form of government. Mont. Code Ann. § 7-3-4301(1) provides: "Any municipality may abandon its organization and reorganize under the provisions of this part and part 44 by proceeding as hereinafter provided." In 1991, when the City was proposing to change its new form of government, Mont. Code Ann. § 7-3-4305 defined the process of adopting the old commission-manager form as follows:

(1) Upon a petition being filed with the city or town council, signed by not less than 25% of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this part and part 44 be submitted to the qualified electors of such municipality, said city or town council shall thereupon and within 30 days thereafter order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this part and part 44 shall be submitted to the qualified electors of such municipality.

Thus, in order to adopt the form of government set forth in parts 43 and 44, the petition proposing the change in government

must explicitly propose reorganization under those parts and contain signatures from 25 percent of the municipality's registered voters.

With respect to the facts underlying your question, the City went through those procedures set forth in Mont. Code Ann. § 7-3-125 and proposed adoption of the commission-manager form of government contained in title 7, chapter 3, part 3. The petition explicitly stated that the proposed plan of government was that described in title 7, chapter 3, part 3. Signatures from only 15 percent of the registered electorate were required in order to bring the matter to a vote. The City, therefore, did not follow any of the procedures required by Mont. Code Ann. § 7-3-4305 and cannot be considered to have adopted any of the provisions in the commission-manager form of government set forth in Mont. Code Ann. tit. 7, ch. 3, pts. 43 and 44.

Mont. Code Ann. § 7-3-4462 is part of the statutes defining the structure of the old commission-manager form of government. The City would only be bound by this statute had it adopted the commission-manager form of government described in parts 43 and 44 of title 7, chapter 3. Since the City did not adopt that form of government, it is not bound by this section and is not required to provide for the election, rather than the appointment, of its city judge. The City may therefore continue pursuant to Mont. Code Ann. § 7-4-4102(3) to determine by ordinance whether the city judge is appointed or elected.

This conclusion is consistent with prior Attorney General's Opinions which have recognized that the recent statutory scheme defining new forms of government necessarily controls when the new and the old schemes are in conflict. See, e.g., 45 Op. Att'y Gen. No. 1 (1993) (municipal commission-manager forms of government controlled by the later statutes); 41 Op. Att'y Gen. No. 48 at 200, 202 (1986) (earlier statutes, to the extent of any repugnancy, are controlled by the later statutes). Here, however, I need not rely upon this reasoning because your question does not involve reconciling a conflict between the old and the new schemes. Rather, the City clearly adopted only the new commission-manager form of government defined in title 7, chapter 3, part 3, and therefore is not bound by the older statutes.

I have received a large number of signed petitions requesting that I give the opinion that the city judge must be elected. Under Mont. Code Ann. § 7-4-4102(3), the governing body of a city of the third class has the authority to determine by ordinance how the city judge is selected. Although the City's ordinance currently provides for the appointment of its city judge, nothing in the statutes precludes the City from amending this ordinance in order to provide for the election of the city judge.

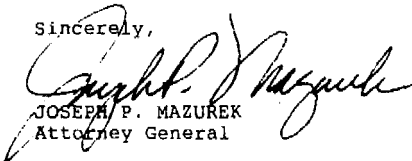
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THEREFORE, IT IS MY OPINION:

When a city of the third class adopts a commission-manager form of government established in Mont. Code Ann. tit. 7, ch. 3, pt. 3, the city is not bound by Mont. Code Ann. § 7-3-4462 requiring an election of the city judge, but rather may continue to appoint its city judge under an ordinance passed pursuant to Mont. Code Ann. § 7-4-4102.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/elg/pdl

VOLUME NO. 45

OPINION NO. 16

COUNTY OFFICERS AND EMPLOYEES - Employment status of county welfare department personnel;  
EMPLOYEES, PUBLIC - Employment status of county welfare department personnel;  
PUBLIC ASSISTANCE - Employment status of county welfare department personnel;  
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - Employment status of county welfare department personnel;  
ADMINISTRATIVE RULES OF MONTANA - Rules 2.21.801 to 2.21.822;  
MONTANA CODE ANNOTATED - Sections 2-9-305, 2-18-101(13), 2-18-201, 2-18-204, 2-18-206, 2-18-213, 2-18-302, 2-18-304, 2-18-618(8), 53-2-201(1), 53-2-203, 53-2-301, 53-2-302, 53-2-304 to 53-2-306, 53-2-811;  
MONTANA LAWS OF 1993 - Chapters 477, 567;  
OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 29 (1992), 42 Op. Att'y Gen. No. 52 (1988), 42 Op. Att'y Gen. No. 23 (1987), 36 Op. Att'y Gen. No. 68 (1976), 36 Op. Att'y Gen. No. 52 (1975), 36 Op. Att'y Gen. No. 32 (1975);  
UNITED STATES CODE - 29 U.S.C. §§ 201 to 219.

HELD: County welfare department personnel are state employees for purposes of the Fair Labor Standards Act, entitlement to employee benefits, and participation in employee-related programs. If county welfare department personnel are involuntarily terminated from employment and wish to pursue a grievance, they must follow the grievance procedure established by the Department of Social and Rehabilitation Services unless the Department and the county have mutually agreed upon an alternative process.

October 29, 1993

Peter S. Blouke, Ph.D  
Director  
Department of Social  
and Rehabilitation Services  
P.O. Box 4210  
Helena, MT 59604-4210

Dear Dr. Blouke:

You have requested my opinion regarding the status of employees working in county welfare offices which are under the supervision of the Department of Social and Rehabilitation Services (Department). You ask whether these workers are county or state employees for purposes of the following benefits and programs: the retirement incentive program described in 1993 Mont. Laws, ch. 567; reduction in force benefits under 1993

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Mont. Laws, ch. 477; sick leave grants under Mont. Code Ann. § 2-18-618(8) and Mont. Admin. R. 2.21.801 to 2.21.822; seniority and longevity increases provided in Mont. Code Ann. § 2-18-304; and coverage under the Federal Family and Medical Leave Act. You also question the employment status of these workers for purposes of determining whether a worker is exempt from the provisions of the Fair Labor Standards Act, and whether, upon termination from employment, the worker should follow a grievance procedure established by the state or the county.

While the employment status of county welfare department personnel has not yet been addressed in an Attorney General's Opinion, the question has arisen with respect to workers in county assessors' offices. In 36 Op. Att'y Gen. No. 68 at 453 (1976), former Attorney General Woodahl was asked whether staff members of the various county assessors' offices are employees of the county or the state for purposes of determining their salaries. In resolving this question, Attorney General Woodahl considered the respective degrees of authority granted to the state taxing authority, the Department of Revenue, and the county assessor to determine which entity was responsible for setting employee salaries. Specifically, he noted that the Department of Revenue (DOR) was constitutionally vested with the responsibility of overseeing property valuation and taxation; that in carrying out this responsibility, DOR had assumed the burden of paying the salaries of officers and employees within the county assessor's office; that those employees received the same "fringe benefits" as were given state employees; that DOR was statutorily authorized to "secure such personnel as is necessary to properly perform [its] duties;" and that the relevant statutes referred to the county assessors as "agents" of DOR. Id. at 454-55. Attorney General Woodahl concluded that, taken together, these provisions "clearly show that the legislature has seen fit to place the burden of maintaining the county assessor's office on the department of revenue." Id. at 455.

A similar analysis was employed by former Attorney General Greely in 42 Op. Att'y Gen. No. 52 at 202 (1988), in which he considered whether the county assessor or DOR was responsible for setting the policies and internal operating procedures of the office of a county assessor. Noting that employees in the county assessor's office were paid by the state, and that the county assessor was statutorily an "agent" of DOR, Attorney General Greely concluded that the state was responsible for the internal operation of a county assessor's office, including employment practices, except with regard to county assessors and their deputies whose employment is controlled by statute.

These opinions establish that, absent an express legislative declaration regarding employment status, it is necessary to compare the supervisory authority of the county and state to determine the employment status of county welfare department

personnel. See also 44 Op. Att'y Gen. No. 29 (1992) (comparing the attorney general's authority to that of the county commissioners to determine the employment status of a county attorney for purposes of Mont. Code Ann. § 2-9-305 under the Montana Comprehensive State Insurance Plan and Tort Claims Act); 36 Op. Att'y Gen. No. 32 (1975) (comparing the administrative authority of the county and the state over county attorneys); Cantwell v. Geiger, 228 Mont. 330, 742 P.2d 468 (1987) (comparing the supervisory authority of the county commissioners and the department of revenue over county assessors). When comparing the authority of the Department to the county welfare department offices, it is apparent that the Montana Legislature has provided for cooperative state-county administration of public assistance. See State ex rel. Dean v. Branford, 108 Mont. 447, 92 P.2d 273 (1939); State ex rel. Broadwater County v. Potter, 107 Mont. 284, 84 P.2d 796 (1938); State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P.2d 305 (1938). While the Department has overall responsibility for the administration of public assistance programs, each county which has not transferred its public assistance and protective services to the Department is responsible for local administration of all public assistance operations in the county. Mont. Code Ann. §§ 53-2-201(1) and -306. This opinion is concerned only with those counties which have not exercised their option under Mont. Code Ann. § 53-2-811 to transfer these responsibilities to the state.

Local public assistance activities are administered by a county department of public welfare, which consists of a county board, composed of the board of county commissioners, and such staff personnel as are necessary for the department's efficient performance. Mont. Code Ann. §§ 53-2-301 and -302. The county board is authorized to select its staff personnel, but it must do so from a list of qualified persons furnished by the Department. Mont. Code Ann. § 53-2-304(1). The staff personnel are directly responsible to the county board, but the Department may supervise such county employees with regard to the efficient and proper performance of their duties. Mont. Code Ann. §§ 53-2-304(1) and -203. The county board may not dismiss any member of the staff without the approval of the Department, but the Department may request the county to dismiss any member of the staff for inefficiency, incompetence, or similar cause. However, the final authority for dismissal is in the county board. Mont. Code Ann. § 53-2-304(1). This provision apparently conflicts with Mont. Code Ann. § 53-2-203(1)(d), which grants the Department the authority to "supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards."

The Department is also authorized to maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel. Mont. Code Ann. § 53-2-203(1)(a). The salaries and travel expenses of staff personnel attached to the county board are paid from state public

assistance funds, but the county board is required to reimburse the Department for the full amount of salaries and expenses which are not reimbursed to the Department by the federal government. Mont. Code Ann. § 53-2-304(2).

These statutes suggest that much of the responsibility for selection and supervision of employees is shared by the state and the county. Some provisions, such as those granting final authority for dismissal, are ambiguous. This ambiguity renders it particularly difficult to determine legislative intent with respect to employment status of county welfare department personnel, since the authority to hire and fire typically defines the employment relationship. See Karell v. American Cancer Soc'y, 239 Mont. 168, 175, 779 P.2d 506, 510 (1989) (defining the right to hire and fire as an "exclusive right" of the employer); see also Cecil v. Cardinal Drilling Co., 244 Mont. 405, 797 P.2d 232 (1990).

Unlike the statutes in the opinions cited above, the provisions at issue here do not mandate or even suggest a particular conclusion as to which agency is the "employer" of county welfare workers. In this respect, the statutes are comparable to those at issue in 42 Op. Att'y Gen. No. 23 at 91 (1987). In that opinion, former Attorney General Greely was asked whether the authority to establish or eliminate a deputy assessor position lies with county or state government. Attorney General Greely noted that the relevant statutes were in apparent conflict, since one granted DOR the authority to "secure such personnel as is necessary to properly perform its duties," and another granted the board of county commissioners the authority to "fix and determine the number of county deputy officers." Id. at 93.

Because the statutes offered no definitive answer to the question presented, Greely looked instead to agency practice and usage, citing State Dep't of Highways v. Midland Materials, 622 P.2d 1322, 1325 (Mont. 1983), for the proposition that "when faced with problems of statutory construction, the court must show deference and respect to the interpretations given the statute by the officers and agencies charged with administration." See also Link v. City of Lewistown, 253 Mont. 451, 833 P.2d 1070 (1992); Helena Aerie No. 16 F.O.E. v. Department of Revenue, 251 Mont. 77, 822 P.2d 1057 (1991); Norfolk Holdings v. Department of Revenue, 249 Mont. 40, 813 P.2d 460 (1991). Because it had been customary for the past 15 years to establish at the local level the number of deputy assessor positions, Attorney General Greely concluded that, as between state and county governments, the authority to eliminate those positions rested with the county.

The agency practice with respect to county welfare department personnel has been to treat them as state employees for purposes of salary, benefits, and other employment-related issues. All public assistance personnel, including employees in county



welfare offices, receive compensation and benefits in accordance with the state pay and classification program. The statewide pay schedules are set forth in Mont. Code Ann. § 2-18-213. In setting the number of state employee positions in the biennial state budget, the legislature typically includes the positions for county welfare employees as authorized state employee positions. A permanent state position is a position that is designated as such by a state agency, in this case the Department, and approved by the legislature in the biennium budget. Mont. Code Ann. §§ 2-18-101(13), -204 and -206. The employees in county welfare offices, including the directors, are classified by the Department of Administration as state employees whose salaries, benefits, rights and responsibilities are determined in accordance with the relevant state statutes, rules, and policies. See Mont. Code Ann. § 2-18-201; see generally Mont. Code Ann. tit. 2, ch. 18; Mont. Admin. R. tit. 2, ch. 21. The Department of Administration must authorize all changes in personnel or salary status. Changes may not be authorized which would cause the Department to exceed its appropriation. Mont. Code Ann. § 2-18-302. Finally, any collective bargaining with labor unions is conducted by the Department. The collective bargaining agreements list the State of Montana as the employer of workers in county welfare offices.

The agency practice of treating county welfare employees as state employees for purposes of salary, benefits, and other employment-related issues is a direct result of the Department's statutory authority to maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and, most significantly, salary schedules for all public administration personnel. Mont. Code Ann. § 53-2-203(1)(a). The practice is not the result of an arbitrary exercise of authority by the Department. Under these circumstances, it is my opinion that this established practice should continue unless and until the legislature directs otherwise. I conclude that county welfare department personnel are state employees for purposes of determining their entitlement to and participation in the programs and benefits which you describe.

I am not persuaded that a county is the employer merely because county boards of public welfare are required to reimburse the Department from county poor funds the full amount of salaries and travel expenses not reimbursed to the Department by the federal government. Mont. Code Ann. § 53-2-304(2). The fact that a county may ultimately be responsible for paying a portion of the salary and travel expenses of its welfare department personnel does not transform these workers into county employees. The source of an employee's salary is not necessarily determinative when there are other aspects of the employment relationship which strongly suggest the worker is an employee of either the county or the state. See 42 Op. Att'y Gen. No. 52 (1988) (holding that although the legislature required county governments to assume 30 percent of the salary

costs for county assessors' offices, the responsibility for the internal operations of a county assessor's office belonged to the state).

I am also not persuaded by the legislature's reference to county welfare department personnel as "county employees" in Mont. Code Ann. § 53-2-304(1). This is the only such reference in all of the relevant statutes discussed herein. A literal reliance upon this term would directly conflict with the Department's clear grant of authority to "supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards." Mont. Code Ann. § 53-2-203(1)(d) (emphasis added). A literal interpretation of the words of an act should not prevail if it creates a result which is contrary to the apparent intention of the legislature. 2A Sutherland Statutory Construction § 46.07 (4th ed. 1992); Carchman v. Nash, 473 U.S. 716, 727-28 (1985). Every effort must be made to produce a harmonious whole, Wynia v. City of Great Falls, 183 Mont. 458, 465, 600 P.2d 802, 806-07 (1979), and absurd results should be avoided if possible, Johnson v. Marias River Elec. Coop., 211 Mont. 518, 524, 687 P.2d 668, 671 (1984). The legislature's single reference to "county employees" does not, therefore, govern the outcome of this opinion. It simply creates an ambiguity which must be resolved by considering the overall legislative intent as evidenced by the other provisions of the act.

My conclusion also extends to your inquiry regarding employment status for purposes of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 to 219. The FLSA governs minimum wage and overtime hours of state and local government employees who are not exempt from its provisions. An exempt employee is not entitled to overtime pay but may claim compensatory time in accordance with state policy. It should be the state's responsibility to make determinations regarding exemption status under the FLSA. As noted above, the state has assumed a significant degree of responsibility for employment-related concerns arising out of its duty to maintain a merit system. In addition, the Department is statutorily authorized to supervise the "entire status" of public assistance personnel attached to county boards in accordance with the merit system, which includes salary schedules. Mont. Code Ann. § 53-2-203(1)(a), (d). A determination of whether an employee is exempt from the FLSA is a "status" determination which is clearly the prerogative of the Department.


Finally, you ask whether county welfare personnel, upon involuntary termination, are required to follow the grievance procedure established by the county or the state. Given the fact that the county and state share final dismissal authority, Mont. Code Ann. §§ 53-2-203 and -304, it would make sense for the county and state to devise a mutually agreeable grievance process for those employees who are not required to follow a procedure outlined in a collective bargaining agreement.

However, in the absence of a mutually agreeable grievance process, I conclude that an employee should follow a grievance procedure established by the Department for the reasons underlying my conclusions above. The Department has exercised authority in many other aspects of employment, and it is consistent with that practice to require that employees follow the grievance procedure established by the state, regardless of whether final authority for dismissal is exercised by the county or the state. In addition, Mont. Code Ann. § 53-2-305 provides that county welfare departments are under the general supervision of the Department. Requiring workers in county welfare offices who are terminated from employment to follow the Department's established grievance procedure is a valid exercise of the State's general supervisory authority.

THEREFORE, IT IS MY OPINION:

County welfare department personnel are state employees for purposes of the Fair Labor Standards Act, entitlement to employee benefits, and participation in employee-related programs. If county welfare department personnel are involuntarily terminated from employment and wish to pursue a grievance, they must follow the grievance procedure established by the Department of Social and Rehabilitation Services unless the Department and the county have mutually agreed upon an alternative process.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/ja/mlr

21-11/10/93

Montana Administrative Register

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

# ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1993. This table includes those rules adopted during the period October 1, 1993 through December 31, 1993 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 September 30, 1993, 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 1993 Montana Administrative Register.

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